

**REPORT ON MEASURES TO COMBAT  
DISCRIMINATION IN THE 13 CANDIDATE  
COUNTRIES (VT/2002/47)**

**COUNTRY REPORT  
HUNGARY**

**MAY 2003**

**Andras Kadar – Lilla Farkas**

**MEDE European Consultancy**  
Hooghiemstraplein 155  
3514 AZ Utrecht  
Netherlands  
Tel +31 30 634 14 22  
Fax +31 30 635 21 39  
[office@europeanconsultancy.nl](mailto:office@europeanconsultancy.nl)  
[www.europeanconsultancy.nl](http://www.europeanconsultancy.nl)

**Migration Policy Group**  
Rue Belliard 205, Box 1  
1040 Brussels  
Belgium  
Tel +32 2 230 5930  
Fax +32 2 280 0925  
[info@migpolgroup.com](mailto:info@migpolgroup.com)  
[www.migpolgroup.com](http://www.migpolgroup.com)

This report has been drafted as part of a study into measures to combat discrimination in the candidate countries, funded by the European Community action programme to combat discrimination. The views expressed in this report do not necessarily reflect the views or the official position of the European Commission.

## Chapter 1 The legal framework, definitions and scope

### a. The legal framework

#### *Outline of the system*

The present system of Hungarian anti-discrimination legislation is far from comprehensive. The constitutional anti-discrimination clause is amplified by a patchwork of anti-discrimination provisions scattered in statutes governing different fields, such as labour, education, healthcare, etc. However, most of these provisions lack effective sanctions, therefore remain little more than declarations. Even in labour law where a relatively extensive system of anti-discrimination sanctions exists this framework is inadequate. This is partly due to the fact that there is no widespread awareness of remedies and partly due to the unwillingness of the competent authorities to act with the necessary firmness.

Experts and NGOs have been advocating for a comprehensive anti-discrimination act; with adequate and effective sanctions and a strong agency to oversee implementation. The new government's program promises the adoption of a comprehensive anti-discrimination law. The drafting of the bill is presently in progress. To give an accurate picture of the prevailing anti-discrimination scene, we shall first outline the existing system and then give an account of the efforts made at reforming it.

***Does national law guarantee the principle of equal treatment or non-discrimination with respect to the grounds 1) racial or ethnic origin, 2) religion or belief, 3) disability, 4) age and 5) sexual orientation? If so, what is the nature of the national legal framework (e.g. are the anti-discrimination laws and provisions general or ground-specific? Is discrimination on all of the grounds listed in Art.13 EC expressly prohibited in law as opposed to a non-exhaustive list that could be interpreted to include all listed grounds)? What is the scope of these laws and provisions? Is the level of protection the same for all grounds? Is there a definition of the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation, in legislation or case law? Does national law cover other grounds of discrimination (in particular nationality and membership of a national minority)?***

The cornerstone of the existing system is the general anti-discrimination clause (Article 70/A) of Act XX of 1949 on the Constitution of the Republic of Hungary (hereinafter: Constitution):

*(1) The Republic of Hungary shall ensure human and civil rights for everyone within its territory without discrimination of any kind, whether based upon race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or upon any other grounds.*

*(2) Any discrimination described in Paragraph (1) shall be severely punished by law.*

*(3) With, inter alia, measures aimed at the elimination of the inequalities of opportunity the Republic of Hungary assists in the realization of the equality of rights.*

Although Paragraph (1) refers to fundamental human and civil rights only, in its decision No. 61/1992 the Constitutional Court extended the principle of non-discrimination to the whole legal system.

Field-specific anti-discrimination provisions amplify this constitutional provision. The majority of these are declarative and lack appropriate sanctions. Below we outline the most important fields where anti-discrimination provisions exist.

Labour law: The field with the most extensive system of discrimination-related provisions (and sanctions) is labour law. The key provision is Article 5 of Act XXII of 1992 on the Labour Code (hereinafter: Labour Code). Paragraph (1) of this Article runs as follows: *“In connection with an employment relationship, no employee shall be discriminated against on the basis of sex, age, family status, disability, nationality, race, origin, religion, political conviction or membership in organizations representing employees or activities connected therewith, as well as any other circumstances that have no relation to employment.”*

Furthermore, Article 2 of Act IV of 1991 on the Promotion of Employment and Support for the Unemployed (hereinafter: Act on the Promotion of Employment) provides that *“in the course of promoting employment and providing for the unemployed, no discrimination shall be made among employees and unemployed people on the grounds of their sex, age, race, origin, religion, political conviction and membership in organizations representing employees. This provision shall not prevent those vulnerable on the employment market from being entitled to extra rights and benefits.”*

Healthcare: Article 7 Paragraph (1) of Act CLIV of 1997 on Healthcare (hereinafter: Healthcare Act) declares: *“all patients shall be entitled – within the framework prescribed by law – to receive [...] non-discriminative health services.”* Under Paragraph (4) of the same article, health services may be regarded as non-discriminative if *“in the course of providing the given service the patients are not discriminated against on the basis of their social situation, political views, origin, nationality, religion, sex, sexual orientation, age, family status, mental or physical disabilities, qualifications or any other grounds not related to their health conditions.”*

Child protection: Article 3 Paragraph (2) of Act No XXXI of 1997 on the Protection of the Child (hereinafter: Child Protection Act) provides that *“in the course of protecting children it is prohibited to discriminate on the grounds of belonging to a sex, a nation, a national minority or an ethnic group, conscientious, religious or political conviction, origin, property, the lack or restriction of legal capacity and the fact that one is protected under the present law.”*

Education: Article 4 Paragraph (7) of Act LXXIX of 1993 on Public Education (hereinafter: Public Education Act) declares that *all forms of discrimination are prohibited in public education on any basis, especially on grounds of the colour, sex, religion, national or ethnic affiliation, political or other opinion, social, ethnic or national minority origin, financial condition, age, birth or any other situation of the child or the child’s relatives as well as based on the maintainer of the educational institution.*

Civil Law: Act IV of 1959 on the Civil Code (hereinafter: Civil Code) contains regulations concerning the inherent fundamental rights of individuals (civil rights). Article 76 provides that *discrimination against private persons on the grounds of sex, race, nationality, or religion; violation of the freedom of conscience; any unlawful restriction of personal freedom; injury to body or health; contempt for or insult to the honour, integrity, or human dignity of private persons shall be deemed as violations of inherent rights.*

The Media: According to Article 3 Paragraph (2) of Act 1 of 1996 on Radio and Television Broadcasting (hereinafter: Media Act), *the broadcaster shall respect the constitutional order of the Republic of Hungary, broadcasting activity may not violate human rights nor be capable of inciting hatred against individuals, sexes, peoples, nations, national, ethnic, linguistic and other minorities, denominational or religious groups.* Under Paragraph (3) *broadcasting may not aim, explicitly or implicitly, at insulting or excluding any minority or majority, or at presenting these or discriminating against them on the basis of racial considerations.*

The present Hungarian system's approach is neither ground-specific nor general but is primarily based on the fields regulated. There is an anti-discrimination provision for each field, but the grounds of protection differ. As shown by Table 1 in Annex 2, significant inconsistency remains both in the selection and the wording of the grounds.

The structural inconsistency is, however, more important. Whereas most of the Hungarian anti-discrimination legislation is field-specific, two statutes take a ground-specific approach: Act LXXVII of 1993 on Minorities (hereinafter: Minorities Act) and Act XXVI of 1998 on the Rights of Disabled Persons and the Guaranteeing of their Equal Opportunities (hereinafter: Disabled Persons Act).

Under Article 3 Paragraph (5) of the Minorities Act “*any form of discrimination against minorities is prohibited.*” Article 4 prohibits “*any policy that aims at, or leads to, the assimilation of a minority into the majority nation; aims to alter the national or ethnic conditions of territories inhabited by minorities to the disadvantage of the minorities; persecutes a national or ethnic minority or any of its members because of their national status, makes their living conditions more difficult, or prevents them from exercising their rights; aims at the forced evacuation or resettlement of a national or ethnic minority.*”

Interestingly, the Disabled Persons Act does not explicitly prohibit discrimination, it rather circumscribes the question. Article 2 Paragraph 4 states that in *decision-making concerning disabled persons due account shall be taken of the fact that disabled persons are equal members of society and the local community, so conditions enabling them to participate in social life shall be created.*

Field-specific laws fail to regulate in a unified manner the grounds on which discrimination is prohibited. Table 1 in Annex 2 provides a comparative analysis of the various methods of regulation and wording. In relation to the grounds listed in Council Directive 2000/43/EC (hereinafter: Racial Equality Directive) and Council Directive 2000/78/EC (hereinafter: Employment Equality Directive) it is noteworthy that since its list is open-ended, theoretically, grounds not expressly included in any of the statutory lists are covered by the constitutional anti-discrimination clause.

1) *Racial or ethnic origin*: Various terms cover these categories – race (*faj*), colour (*szín*), belonging to an ethnic group (*etnikai csoporthoz való tartozás*), ethnic affiliation (*etnikai hovatartozás*), ethnic origin (*etnikai származás*), national origin (*nemzeti származás*); nationality (*nemzetiség*), and national affiliation (*nemzeti származás*), belonging to a national minority (*nemzetiséghez való tartozás*), national minority origin (*nemzetiségi származás*) and origin (*származás*). The reason for this abundance and inconsistency is partly historical and is partly related to the lack of concept in the legislative work. Race, nationality and national origin are the terms used in the earlier statutes; the finer distinction between nationality, ethnicity and affiliation with a national minority is a subsequent development.

2) *Religion or belief*: The ban of discrimination on the ground of religion is included in all the relevant statutes. “Religion” is not distinguished from “belief” in the terminology of the above quoted laws, although both the Constitution and Act IV of 1990 on the Freedom of Conscience and Religion and on Denominations acknowledge this distinction. Neither on a statutory level nor in the relevant jurisprudence are these terms defined.

3) *Disability*: The express protection on the ground of disability is a relatively new development. The first Act to list this ground was the labour Code of 1992. Unlike in the case of most grounds, the term “disability” does not have a statutory definition. Under Article 4 of the Disabled Persons Act a person is disabled if he/she “has a fully or greatly restricted command of organoleptic, locomotor or mental abilities, or is greatly restricted in his/her communication, and this constitutes an enduring obstacle with regard to his/her active participation in social life”.

4) *Age*: It is a relatively new protected ground, but it has been included in the non-discrimination lists ever since its first appearance in 1991 (except the Child Protection Act), which shows an increasing awareness of age discrimination.

5) *Sexual orientation*: Sexual orientation is mentioned expressly in only one of the statutes: the Healthcare Act. However, the jurisdiction of the Constitutional Court consequently regards sexual orientation as being one of the “other grounds” listed by Article 70/A of the Constitution. In its decision 20/1999 (VI. 25) on abolishing a discriminatory provision of the Penal Code (penalizing homosexual incest between siblings, while not rendering incest between heterosexual siblings punishable), the Constitutional Court claimed the following: “The sole basis of distinction in the case examined is sexual orientation: homosexual siblings are punishable under the law, whereas heterosexual siblings are not. In terms of Article 70/A of the Constitution, this is discrimination based on »other ground«”.

***Where there is no anti-discrimination law, the reports should make note of any relevant public or academic discussion, policy debate or legislative proposals at the national level. In particular, the reports should explain what any proposed legislation entails.***

The idea first came up during the preparation of the Medium-term Action Plan for the Improvement of the Living Conditions of the Roma Minority (Government Resolution 1093/1997). Experts participating in the drafting of the document argued in favour of such legislation but the government was reluctant to act on that initiative.

In the beginning, the previous government opposed the adoption of a comprehensive anti-discrimination code. Its officials regarded the functioning system as highly satisfactory, which provided sufficient remedies to victims of discrimination.

At the same time NGOs pressed for reform. Based on the Racial Equality Directive the Minorities Ombudsman prepared a draft for the general anti-discrimination act entitled “Act on Measures Against Racism and Xenophobia”. In late 2000 the Parliamentary Committee for Human Rights, Minorities and Religious Affairs refused to submit the draft to the Parliament as a so-called “committee bill”, but confirmed the need for such a statute. It “drew the Government’s attention” to the Draft, requesting that the issue be included in the government’s legislative program. Later, two further anti-discrimination bills were submitted to the Parliament.

In the meantime complaints were filed with the Constitutional Court claiming that not having adopted a comprehensive anti-discrimination bill, the Parliament has failed in its legislative duty, thus creating an unconstitutional situation. In its Decision 45/2000 the Constitutional Court however, dismissed the motions by declaring that “the fact that instead of a comprehensive one, various legal norms regulate a certain legal matter is not contrary to the principle of the rule of law. Therefore, it is not *per se* unconstitutional if a certain aspect of life is regulated in several different acts or decrees, instead of being regulated in a single legal norm [...] The Constitution itself contains fundamental anti-discrimination provisions. The details and safeguards of these provisions are contained in legal norms inferior to the Constitution. The constitutional provisions

– including that stipulating the right to equality – are thus being detailed in various acts and decrees. The Constitution and closely related legal norms contain the provisions that – if taken together – add up to the comprehensive regulation of the prohibition of anti-discrimination. [...] One can conclude that effective legal regulations operate as a multifaceted defence system to eliminate discrimination, thus the Parliament has in this manner complied with its legislative obligation.” However, the Court admitted that a “scattered regulation of discrimination may lack provisions pertaining to certain forms of discrimination.”

Interestingly, not long after the Constitutional Court’s decision backing the governmental stance, the Ministry of Justice established a so-called “Interdepartmental Anti-discrimination Committee” (IAC) to examine whether the existing legal framework needed amendment. According to our information, this development was closely related to the issue of the Roma from Zámoly. On 29 March 2001 the IAC decided to review the existing legislation. Until the change of government in May 2002, the IAC held three more meetings with no tangible results.

The change in government resulted in a breakthrough in the field of discrimination. The programs of the Socialist MSZP and the Liberal SZDSZ explicitly promised a comprehensive anti-discrimination law. The Ministry of Justice prepared the Concept Paper of the Act on Equal Treatment and Equal Opportunities (hereinafter: Concept Paper) by late February 2003, and the first draft of the bill to be submitted to Parliament (hereinafter: Draft Bill) has already been prepared by date. The finalization of the bill is presently in progress and is therefore subject to changes. Due to this fact we will limit ourselves to briefly describing and analysing the solutions envisioned by the Draft Bill.

Governmental commitment for combating discrimination is indicated by the fact that on 6 May 2003 a minister without portfolio for equal opportunities was appointed.

The Draft Bill opts for a comprehensive anti-discrimination act. Article 6 – providing the definition of direct discrimination – enumerates the protected grounds: gender; racial or ethnic origin; colour; nationality; mother tongue, disability; health status; religion or belief; political or other opinion; family status; maternity (pregnancy); sexual orientation; gender identity; age; social origin; financial situation; the characteristics of the individual’s employment; any other ground. As we can see, the proposed list covers significantly more grounds than the Directives and it is also non-exhaustive, thus providing sufficient flexibility and leaving open the possibility of prohibiting – if necessary – discrimination based on any “other ground” not included in the list.

### Summary

The Hungarian Constitution contains a general anti-discrimination clause, which is augmented by sectoral provisions prohibiting and more often than not sanctioning discrimination. In the majority of laws discrimination based on sexual orientation is not expressly prohibited. The picture is worse when it comes to age discrimination. Although civil and labour law sanctions apply to all grounds of discrimination as contained in Article 13 TEC, the same cannot be said for administrative sanctions. A high level of inconsistency characterizes the interpretation of these grounds. Nonetheless, it is promising that the Draft Bill wishes to address the majority of these shortcomings.

### **b. The definition of discrimination**

#### **Direct and indirect discrimination**

***Is there a definition in law of both direct and indirect discrimination? If so, does this conform to the definitions in the Directives?***

In the Hungarian conceptual framework definitions related to discrimination are largely missing. Until 1 July 2001, there was no statutory definition of either direct or indirect discrimination. This changed when during the transposition of community law relating to sex discrimination a definition of indirect discrimination was introduced into the labour Code. At present, while there is a definition of indirect discrimination in labour law, still no definition of direct discrimination exists. Some analysis of the term “discrimination” (with no distinction between direct and indirect discrimination) can be found in the decisions of the Constitutional Court.

*The Constitutional Court’s interpretation of Article 70/A of the Constitution*

The Constitution “recognizes only specific equality rights, which the Constitutional Court’s case law has generalized”. Thus, the non-discrimination principle’s scope is broad, i.e. in theory it covers all walks of life and is not limited to e.g. employment and education. There is room to extend protection to further suspect classes. The wording of Paragraph (3) makes it clear that under the Constitution, the equality of rights may only be realized through various measures, including positive action.

Although it stipulates the state as being the guarantor of civil and human rights to everyone without discrimination based on race, sex etc., the constitutional anti-discrimination clause is not qualified in a manner that would prevent it from having a horizontal effect.

The “first” Constitutional Court was relatively active in fleshing out an interpretation of the constitutional anti-discrimination clause, an interpretation, which echoes the Racial Equality Directive’s theoretical underpinnings. János Kis however charges that beyond the “European liberal minimum” the Court’s approach was not liberal and that this prevented it from specifically examining race and gender discrimination.

The Court first interpreted equality in 1990, finding that it was linked to the right to human dignity, in that the law must treat every person as equals in dignity. The Court found that if a social goal or constitutional right could only be realized through positive discrimination that breached the latter, more concrete form of equal treatment, this would not be unconstitutional. Although later the Court restricted the grounds of positive discrimination by delegating social justice as the only justification this trend was later reconsidered and community goals were allowed as grounds for justification.

The extensive interpretation made it necessary for the Court to set up different tests for discrimination concerning fundamental human rights on the one hand and other rights on the other. In the first case the Court applies the test of necessity and proportionality, while in the latter a test defined in Constitutional Court Decision No. 35/1994 is applied: “the unconstitutionality of a measure unfavourably discriminating between persons and not concerning fundamental rights may be established if the infringement is related to one of the fundamental rights – and thus ultimately to the general right to human dignity – and the discrimination or restriction does not have an objectively reasonable ground, i.e. it is arbitrary.” The Court refers to these key concepts (objectively reasonable ground and arbitrariness) in several subsequent decisions.

*Case law*

Reference to the Constitutional Court's interpretation can at times be found in the judgments of ordinary court, though the lack of this kind of "permeability" is a typical problem of the Hungarian legal system. The so-called Tiszavasvári case provides an example for this.

On December 2, 1998 the local government of Tiszavasvári (Szabolcs-Szatmár county) was ordered by the Nyíregyháza town court to pay compensation in the sum of HUF 100,000 (€ 435) per capita to Roma students. The students sued the elementary school because it had organized a separate graduation ceremony for them. The court applied the Constitutional Court's test to the case. "It was unreasonable to deprive the plaintiffs from the opportunity to participate in the traditional graduation parade. The practice of the preceding years [i.e. no separate graduation ceremony] proves that the behaviour conducted vis-à-vis the plaintiffs cannot be regarded as reasonable. The goal of segregation – the citation of sanitation reasons – does not qualify as legitimate because the given problem would have required sanitary measures [and not segregation] and as the data of the lawsuit prove appropriate sanitary measures would have been available."

The only available judgment that does not relate to race discrimination but to employment discrimination based on sex also invoked the provisions of the Civil Code, as well as the constitutional anti-discrimination clause and Article 70/K – the latter provides for the right to bring before court claims relating to the violation of fundamental rights.

In 1997 a company published a job advertisement discriminating on the grounds of age and sex. The Office of Equal Opportunities (a Department of the Ministry of Social and Family Affairs) brought a test case against the company. The court ordered the respondent to publish an advertisement claiming that in the future it would respect the constitutional principle of equality and it would not take into consideration circumstances which were not related to the job when deciding upon employment issues. The novelty of the case lay in the fact that it gave horizontal effect to the constitutional provisions through the Civil Code.

In other cases, however, ordinary courts invoked Constitutional Court decisions to limit the scope of protection from discriminatory conduct.

The case of Sz. town, where the denial of service to Roma customers in a pub was at issue provides an example for this. In the first instance judgment the town court held the following: "For the prohibition of discrimination may not be taken to mean that the absolute differentiation between natural persons is prohibited. Constitutional Court decision No. 61/1991 (XI.20.) refers to and establishes this, and it is also contained in Supreme Court judgment 387/1992".

Given that in the case of Sz. town the court rejected the plaintiff's claim as being factually unfounded, it is difficult to discern why it considered it relevant to quote a Constitutional Court decision at all. The decision invoked did not deal with matters relating to the prohibition of discrimination. Instead, it related to a local government decree regulating local referenda and a concrete decision reached about the separation of villages. Judgment 387/1992 reinforced a fundamental principle of domestic civil law, i.e. that rights had to be exercised for the purpose intended. It was found that "the exercise of civil rights suits the social purpose intended as long as it does not violate provisions relating to respect for the civil rights and interests of others".

In relation to the case of a Discotheque in D. town – where, again, the denial of service to Roma customers was at issue – the Szabolcs-Szatmár-Bereg County Court proceeding on appeal adopted a similar line of reasoning. In its judgment the County Court invoked Constitutional Court decision No. 9/1990 (IV.25.), where it was argued that the prohibition of discrimination shall not be taken to mean a ban on every type of differentiation. Furthermore, the Court referred to Constitutional Court decision No. 21/1990 (X.4.) that related to the right to receive a certain form of *ex gratia* provision.

Regrettably, the County Court's reference to the constitutional jurisprudence in the case of the Discotheque in D. town appears similarly flawed as that of the town court in the case of Sz. town. Constitutional Court decision No. 9/1990 related to tax benefits provided to families with children, where childless families were excluded from benefits. The Constitutional Court in this case examined positive action that was aimed at ensuring greater social equality. The same must be said about Constitutional Court decision No. 21/1990 (X.4.), which dealt specifically with the interpretation of Article 70/A of the Constitution.

### *Definitions*

As argued above, a number of laws, including the Civil and the labour Code, prohibit discrimination. Curiously, the only statutory definition available in Hungarian law is for indirect discrimination in employment– in effect since 1 July 2001. Under Article 5 Paragraph (2) of the labour Code “*indirect discrimination shall be taken to occur if the employees concerned may – on the basis of the characteristics enlisted under Paragraph (1) – be regarded as a mostly unified group and the measure, instruction or condition related to the employment relationship and formally setting the same requirements for everyone or guaranteeing the same rights to everyone is disproportionately detrimental to them, unless it is justifiable with appropriate, necessary and objective reasons.*”

In Decision No. 45/2000 the Constitutional Court made the closest attempt so far at clarifying its notion of discrimination. It held that “[e]stablishing discrimination necessarily requires some kind of *comparison*, since discrimination implies the differential treatment of persons, things or phenomena which *from a certain well defined perspective* can be regarded as equal. This differential treatment has to be visible in the external world. Legally meaningful discrimination can only be defined with reference to some *right or duty.*”

### *Comparative analysis*

The theoretical context underpinning the Directives on the one hand and the Hungarian Constitutional Court's relevant jurisprudence on the other show basic similarities but there are also significant differences. Both appear to go beyond the formal concept of equality and employ the concept of substantive equality of opportunity.

Positive action, under the Directives, is allowed in order to “prevent or compensate for disadvantages linked to racial or ethnic origin”, while its justification under Hungarian law is the “elimination of the inequalities of opportunity”. The former appears to use a more redistributive language (compensate) than the latter. Also, whereas positive action under the Directives must be “with a view to ensuring *full equality in practice*”, the corresponding constitutional provision seems weaker in that its final objective is more formal (realization of the equality of rights). Then again, under the Constitutional Court's interpretation positive action can be justified if it seeks to deliver social justice or a community goal, terms that carry a meaning beyond the mere

elimination of the inequalities of treatment. Given that it is the result of political consensus the permission of positive action under the Directives is broad and sufficiently strong.

The Hungarian Constitution's non-discrimination clause contains a substantive right. If properly implemented, it should provide protection in all walks of life from discrimination by public bodies as well as private individuals.

### *Definitions envisioned by the Draft Bill*

The definition of direct discrimination is set forth under Article 6 of the Draft Bill, in terms of which direct discrimination shall be constituted by any action, measure, condition or practice (hereinafter: action) as a result of which a person or group based on its gender; racial or ethnic origin; colour; nationality; mother tongue, disability; health status; religion or belief; political or other opinion; family status; maternity (pregnancy); sexual orientation; gender identity; age; social origin; financial situation; the characteristics of the individual's employment; any other ground is treated less favourably than another.

The Directives on the other hand focus on the actual, past or hypothetical treatment of a person. Furthermore, they demand a comparison, even if only a hypothetical one. In the Hungarian definition the need for comparison seems not to be reckoned with. Similarly, that this comparison can be based on past, present and hypothetical treatment fails to come through. The Draft Bill remains oblivious to the practical significance of allowing a hypothetical comparator.

Indirect discrimination is defined by Article 7 of the Draft Bill as follows: indirect discrimination shall be taken to occur when based on considerations defined under Article 6 Paragraph (2) [the list of protected grounds] an apparently lawful action puts persons or groups at disadvantage compared with a person or group in a comparable (összehasonlítható) situation. No intent is required for indirect discrimination to be established, i.e. it is enough to foresee disadvantage. No indirect discrimination occurs if the action can be justified by a legitimate aim and the means of achieving that aim are necessary and appropriate.

The main problem with this definition is that while the Directives envisage hypothetical scenarios ("where an apparently neutral provision, criterion or practice *would* put persons [...] at a particular disadvantage), the Hungarian definition demands that actual particular disadvantage occur.

## **Harassment**

### ***Does national law define harassment, as defined in the Directives? Are there any existing or forthcoming Codes of Practice on harassment?***

Regardless of protected grounds, at present the concept of harassment does not exist in Hungarian law. There are different legal institutions, which sanction certain types of conduct corresponding to those defined in the Directives. In certain instances these can substitute for the concept of harassment. However, given their text, it falls to the discretion of judges and law enforcement officials whether or not to take into account discriminatory motive.

The crime and petty offence of defamation (Article 180 of the Penal Code and Article 138 of the Petty Offences Act), as well as the petty offence of dangerous threat (Article 151 of the Petty Offences Act) can be invoked to punish and sanction behaviour tantamount to harassment.

As these provisions fail to address each field covered by the Directives, one cannot but conclude that domestic law at present does not regulate harassment in an appropriate manner. In the view of the Ministry of Justice, although most conducts covered by the term “harassment” are already punishable, the question could best be settled through the appropriate amendment of the Petty Offences Act.

The Draft Bill aims at defining harassment in full compliance with the Directives. Article 8 Paragraph (2) runs as follows: a conduct that is related to the protected grounds and has the purpose or effect of violating human dignity of a person, acting in an intimidating, hostile, degrading, humiliating and offensive manner and/or creating such an environment shall amount to harassment.

The definition fails to point out that the conduct subject to prohibition must be unwanted.

No information is yet available as to whether or not Codes of Practice on harassment are being prepared. Also, no case law relating to harassment could be identified.

### **Instruction to discriminate**

#### ***Is it contrary to national law to give instructions to discriminate? Does this conform to the Directives?***

In domestic law no provision prohibits or sanctions instruction to discriminate. *In lieu* of express provisions prohibiting instruction to discriminate, one cannot provide an appropriate analysis of compliance with community law. However, the principle of holding superiors liable for their unlawful instructions or orders is widely accepted. In labour law (Article 104 of the labour Code) workers are bound by their superiors’ instructions. They have the obligation to call attention to damages that might result from compliance with instructions. However, under civil law (Article 348 of the Civil Code) employers and not workers can be held liable for damages so caused.

Damages can be sought from the employer, even if the instruction was not given by him/her but by another superior of the employee. This is preferential to the victim, who does not need to consider whether or not the employee acted upon an instruction or his/her own initiative.

Civil servants are also bound by their superiors’ instructions but can express their dissent (even in writing) therewith or, ultimately refuse to abide by the instruction (Article 38 of Act XXIII of 1992 on the Status of Civil Servants).

The professional members of armed organs have the right to warn their superiors of unlawful orders but ultimately, they may not refuse to comply (Article 69 of Act XLIII of 1996 on the Service Relationship of Professional Members of Armed Organs).

In light of the above, what seems problematic is seeking to establish the liability of and sanction the individual superior who instructs to discriminate. Taking the analogy of cases relating to police ill-treatment or misconduct, it is argued that even if employers – especially public authorities, such as the police – pay civil law damages, they do not necessarily make sure that the employee giving the instruction is held liable for his/her conduct. Indeed, victims can have little impact on how disciplinary proceedings are conducted and whether or not disciplinary actions are taken. In some instances short deadlines open for the submission of complaints leading to disciplinary proceedings amount to a further and substantial limitation.

In the case of Jenő. R. and his relatives a police commando ill-treated three Roma men and publicly humiliated them in various ways. The official police newspaper made a coverage of the action taken against the victims and carried photos of the event. Although damages were sought and paid by the competent police station, data is not available as to whether or not the policemen taking part in the action, or indeed their superior had been held liable for their action.

In relation to civil obligations, contractors, lawyers etc. act pursuant to instructions. Under Article 392 Paragraph (1) of the Civil Code, contractors must comply with the instructions of their customers. Under Paragraph (3) contractors are under the obligation to warn customers if their instructions are unreasonable or unprofessional. Failing to do so results in their liability for damages. The same obligation of warning and the shift of liability for damages govern commissions (Article 476). Under Paragraph (4) contractors cannot carry out their work according to the instructions, if this would lead to the violation of the law. To avoid liability for unlawful instructions contractors can terminate their contracts (Articles 395 Paragraph (1) and 483 Paragraph (2)). It is clear, that these provisions put the person giving the instruction to discriminate in a more advantageous situation as compared to the person receiving the instruction. In comparison to the relations in employment – as described above – this works to the detriment of self-employed persons.

In criminal law if the discriminatory act amounts to a criminal offence, the person giving the instruction is liable under Article 21 of the Criminal Code.

Under Article 8 Paragraph (1) of the Draft Bill, the instruction to directly or indirectly discriminate shall amount to the violation of the principle of equal treatment.

#### Summary of Chapter 1 section b.

No statutory definitions exist for direct discrimination, harassment and the instruction to discriminate. Indirect discrimination is only defined in labour law. No specific sanctions address the issue of harassment. In comparison to workers self-employed persons are at disadvantage when it comes to liability for the instruction to discriminate. The Draft Bill strives to remedy the present situation, but it remains to be seen whether or not the forthcoming Bill defines these basic notions in conformity with the principles underlying community legislation, as the solutions offered by the first version of the Draft Bill leave room for improvement. The concept of equality as developed by the Constitutional Court sits comfortably with that contained in the Directives.

#### **c. Scope**

##### ***Fields of application***

***Does the prohibition of racial and ethnic discrimination apply to all the fields of application listed in Article 3 of the Racial Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?***

The most important fields in which anti-discrimination provisions exist are listed in Chapter 1/a. Here we examine the extent to which sectoral regulations cover the fields listed in the Racial Equality Directive and pinpoint gaps in the Hungarian system. We focus on whether or not discrimination is prohibited in these fields. The practical implementation of the relevant provisions will be dealt with under Chapter 2/f, on sanctions.

*1) Conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion:*

Under Article 5 Paragraph (3) of the labour Code, “When applying Paragraphs (1) and (2) [listing the grounds of discrimination and defining indirect discrimination] any measure, instruction, condition or practice preceding and promoting recruitment shall be regarded as being in connection with employment.” This provision was included in the labour Code by Act XVI of 2001 and came into force on 1 July 2001. Before this amendment, the labour Code did not provide any remedy or sanction in relation to recruitment, which is the anomaly that occurs most frequently (with special regard to Roma). Now employers discriminating in recruitment are liable to pay damages to applicants.

Under Article 5 Paragraph (4) “Employers shall provide the opportunity to employees for promotion without discrimination and solely on the basis of the length of employment, professional skills, experience and performance.” Article 2 of the Act on the Promotion of Employment extends the non-discrimination principle to the facilitation of access to employment.

These provisions do not apply to all types of employment. The labour Code does not cover public employees and civil servants. Their work is governed by Public Employees Act and Act XXXIII of 1992 on the Status of Civil Servants (hereinafter: Civil Servants Act). The provisions of the labour Code are to be applied to public employees unless the Public Employees Act indicates otherwise. For civil servants the labour Code can only be applied if the Civil Servants Act expressly allows.

Article 3 of the Public Employees Act lists the Articles of the labour Code, which may not be applied to public employees. Article 5 of the labour Code is not among these, which means that the prohibition of discrimination applies to public employees. Under Article 71 of the Civil Servants Act, only Paragraph (4) of the labour Code’s anti-discrimination clause is not applicable to civil servants, i.e. the ban on discrimination in promotion. The reason for this is the strict and predictable system of promotions (based primarily on qualifications and time spent in service) civil service.

Nor is self-employment covered by the labour Code. This issue is of great importance, because of the so-called “forced entrepreneurship”. Employers often encourage workers to become “private entrepreneurs” or to form business associations because this way the employers can avoid the payment of social security contributions. In this arrangement the work to be performed is done on the basis of a civil law contract. It is easier for employers to terminate such contracts than to put an end to an employment contract. The guarantees protecting the interests of employees do not apply to the contractual relationship between the private entrepreneur and his/her client (i.e. the de facto employer), and this is also true for the safeguards against discrimination.

Discrimination in access to self-employment may be examined from two possible aspects. The first one is whether anyone can acquire the permit required for private entrepreneurship (“entrepreneur’s license”). Act V of 1990 on Private Entrepreneurship does not declare the principle of non-discrimination, however it claims – under Article 4 Paragraph (10) – that *the issuing of an entrepreneur’s license may only be refused if the fulfilment of the application [for the license] would constitute a breach of the law*. With regard to the formation of business associations not even such an indirect non-discrimination exists.

The other question is whether there is protection against the actions of those clients (de facto employers) who select between private entrepreneurs or business associations (de facto employees) in a discriminatory manner. To illustrate the problem, let us quote a case taken by NEKI.

In February 1999, Lajos B., a Roma man, applied for a job (to disseminate leaflets). He was not hired. Once he saw that the word “Gypsy” was written across his application form in block letters, NEKI tested the employers’ hiring practices and found them racially discriminatory. Invoking Article 5 of the labour Code, NEKI filed a lawsuit against the company on 24 September 1999. *However, the labour court refused to adjudicate the case, claiming that since the distribution of the leaflets was to be done on the basis of a civil law contract and not in the framework of an employment relationship the case did not fall under its competence.* This meant that instead of a labour case a civil lawsuit had to be brought (where – for instance – the reversed burden of proof does not apply). The first court hearing of the civil case will take place in the near future.

Article 207 Paragraph (7) of the Civil Code, which prescribes that “*a fraudulent contract shall be null and void, and if such contract is intended to disguise another contract, the contract is to be judged on the basis of the disguised contract*” may provide a solution to this problem. In the case of forced entrepreneurs, the civil law contract may be regarded as a fraudulent contract aimed at disguising a labour contract and the employment relationship constituting the subject thereof. It is noteworthy that under Article 1 Paragraph (5) of Act LXXV of 1996 on labour Inspection authorizes labour inspectors to qualify the legal relationship between the employer and the person performing work for the employer. Thus, labour inspectors are entitled to establish that a fraudulent agency contract between a de facto employer and a private entrepreneur is in fact an employment relationship and that the provisions of the labour Code apply to this relationship, including the non-discrimination clause of the Code.

*2) Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience:*

Vocational guidance, training and retraining provided by the employer fall under the scope of the general anti-discrimination clause of the labour Code. The principle of non-discrimination in the course of vocational training provided in the framework of public education is established under Article 4 Paragraph (7) of the Public Education Act quoted above. Article 14 of the Act on the Promotion of Employment enumerates the forms of financial support that may be provided to those who participate in training programs aimed at promoting employment. As we pointed out above, the Act on the Promotion of Employment also contains a general non-discrimination clause.

*3) Employment and working conditions, including dismissals and pay:*

These fields also fall under the scope of the labour Code’s non-discrimination clause. Problems outlined with respect to access to employment also apply here.

*4) Membership of and involvement in an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations:*

No explicit prohibition of discrimination exists in the sectoral regulation of these fields. The laws applying to trade unions completely lack such non-discrimination clauses, while statutes governing membership in different professional chambers usually enumerate the objective conditions of admission and claim that if someone meets these criteria he/she may not be denied membership. This is the approach taken for instance by Act XI of 1998 on Attorneys (with regard to membership in the Bar Associations) and, Act LVIII of 1996 on the Professional Chambers of Engineers and Architects.

*5) Social protection, including social security and healthcare; and 6) social advantages:*

As we pointed out above, Article 7 Paragraph (1) of the Healthcare Act sets forth the general prohibition of discrimination in the field of healthcare.

In the social sector we do not find such a general non-discrimination clause: neither Act III of 1993 on Social Administration and Social Benefits nor Act LXXX of 1997 on Persons Entitled to Social Security Provisions and Private Pension and on the Financial Background of such Provisions prohibits discrimination. This field thus falls back on the constitutional non-discrimination clause. This is all the more surprising because cases of discrimination against the Roma are not rare in the social sphere. "In his 1999 report, the Minorities Ombudsman expressed concern over the high number of Roma complaints relating to the constitutional right to social security. Applicants in desperate financial and housing conditions, complained of the negligence of local governments in treating their concerns. The Ombudsman uncovered numerous unconstitutional practices in connection with the disbursement of social benefits such as child support."

*7) Education:*

Race discrimination and segregation are prevalent in education, concluded the Minorities Ombudsman after investigations in 1997 and 1998. The segregation of Roma pupils has been on the rise. As pointed out above, Article 4 Paragraph (7) of the Public Education Act prohibits discrimination.

*8) Access to and supply of goods and services which are available to the public, including housing:*

No specific prohibition of discrimination is spelled out in the laws directly connected to these fields, although racially motivated denial of access to goods and services is frequently reported. There are however, instruments to which victims of discrimination may resort. Under Article 6 Paragraph (1) (f) of Act CLV of 1997 on Consumer Protection (hereinafter: Consumer Protection Act) "*the legal consequences prescribed in this Act shall be applied to economic organizations in the event that such organizations unlawfully withhold goods from placement on the market or unlawfully deny the provision of services.*"

Housing is another field where in spite of the deeply seeded discriminatory tendencies there are no clear-cut non-discrimination provisions. According to a study on local government attitudes, 61 % of respondents would refuse to have Roma settle in their locality. Unconstitutional attempts by local governments to prevent Roma families from moving into certain areas or, more frequently, to force them out of villages or towns have also been recorded.

### *Solution envisioned by the Draft Bill*

From the Draft Bill, it is not entirely clear to what areas the scope of the new anti-discrimination law will be extended. Under the heading “The Specific Fields of the Ban on Discrimination” (Chapter III), it deals with five sectors: employment; social security and healthcare; housing; education and training; and finally access to goods and services.

From the provisions personal scope (Articles 3–5) however it may be inferred that all fields of life will fall under the new act’s scope, with limited exceptions. Article 5 of the Draft Bill for instance claims: the requirement of equal treatment does not extend to (a) legal relations regulated by family law and legal relations between relatives; (b) the internal legal relations of legal persons and organizations not having a legal personality. On the basis of the principle of *argumentum a contrario*, we may conclude that the requirement of equal treatment (and thus the scope of the law) extends to all other legal relationships. Taking the overall approach of the Draft Bill into account, this latter – more general – approach seems likely.

As regards the personal scope of the Draft Bill: the new law’s scope will – as it stands – extend to the entire public sector, whereas some exemptions will be made with regard to private actors. The Draft Bill’s scope will only extend to private actors if they make a so-called public offer. This means for instance that renting out an apartment by a private person will only fall under the law’s scope if the offer is publicized. This issue is expected to trigger heated debate.

***Does the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation apply to all the fields of application listed in Article 3 of the Employment Equality Directive, including both the private and the public sector? Does the prohibition go beyond the scope foreseen in the Directive?***

Since the present Hungarian system is field-based, what is said above in respect of racial and ethnic origin and the fields listed in the Racial Equality Directive, is also true for religion or belief, disability, age and sexual orientation and also the fields enumerated in the Employment Equality Directive. Although Article 5 Paragraph (1) of the labour Code does not explicitly mention sexual orientation among the grounds (as opposed to all the other grounds mentioned in the Employment Equality Directive), it shall be understood as being one of the circumstance “that have no relation to employment”.

### Summary

The Hungarian anti-discrimination provisions cover most but not all of the fields listed in the Racial Equality Directive, while in some respects (e.g. child protection) they go beyond the scope of the Directive. In theory, sectoral laws, which contain no express prohibition of discrimination fall under the general ban on discrimination. As regards the Draft Bill, it is not entirely clear to what areas the scope of the new anti-discrimination law will be extended. Based on the overall approach of the Draft Bill a fully comprehensive scope is more likely. The fields covered by the Directives will definitely be covered by the new law.

### ***Exceptions and exemptions***

***Occupational requirements – Do such exemptions exist on the national level? Does national law define ‘genuine and determining occupational requirements’ and, if so, how?***

Hungarian labour law contains an exemption under Article 5 Paragraph (5) of the labour Code. *“Any difference of treatment clearly and directly required by the character and nature of the work shall not constitute discrimination.”*

Interpreting the above provision, Decision no. 97 of the labour Law Board (*Munkaügyi Kollégium*) of the Supreme Court states: “In particular, [such difference of treatment is not prohibited] when the difference of treatment is based on essential and legitimate conditions that may be taken into consideration at the time of hiring. Consequently, the employer may only lawfully require that men fill certain occupations where the character or nature of the work, or labour conditions exclude the employment of women.”

There are no provisions in the Hungarian legal system that clearly fall under the category of genuine and determining occupational requirements. Some provisions that primarily concern the employment of women and minors can be found in the labour Code. Article 75 Paragraph (1) prescribes, for instance that *“Women and minors may not be employed in work that may be detrimental to their health or development. Such jobs, and jobs that can only be performed if specific working conditions are provided or on the basis of a preliminary medical examination, shall be determined by law.”*

The labour Code refers to Decree 33/1998 of the Ministry of Welfare on the Medical Examination and Assessment of labour, Professional and Personal Hygienic Suitability (hereinafter: labour Suitability Decree). Article 10 Paragraph (1) of the Decree states: *“In the course of examining and assessing labour suitability it shall be taken into consideration that women (with special regard to women of child-bearing age, pregnant women – especially those in the early phase of pregnancy –, women who are breast feeding and women giving milk) are not or only conditionally suitable for work entailing health risks or dangerous encumbrances and enumerated under Annex 8.”*

Under Article 10/A Paragraph (1) *“the encumbrances excluding or only conditionally allowing the employment of minors are listed in Annex 8.”* Article 10/B Paragraph (1) prescribes that *“in the course of examining and assessing labour suitability it shall be taken into consideration that older employees are not only conditionally suitable for work entailing health risks or dangerous encumbrances and enumerated under Annex 8.”* Annex 8 of the Decree contains a very detailed list of encumbrances that are potentially harmful to the health of vulnerable groups and therefore require prohibition. Examples are: microwave radiation, overpressure, exposition to highly poisonous, carcinogenic materials and materials damaging reproductive capacity. Annex 9 lists the activities for which individual risk assessment is required when deciding on the suitability of women, minors and older employees.

***Please note that the Employment Equality Directive includes particular provisions with regard to organisations the ethos of which is based on religion or belief.***

At present, the Hungarian legal framework contains no discrimination-related provisions taking account of the special ethos of religious organizations.

***Does national law governing disability discrimination make any specific exceptions or provisions in relation to occupational health and safety rules?***

See the section dealing with reasonable accommodation.

### *Solution envisioned by the Draft Bill*

Unlike the Directives, the Draft Bill attaches a general exemption clause to not only indirect but also to direct discrimination. Under Article 6 Paragraph (3), an action shall not constitute direct discrimination if it has an objectively reasonable ground related to one of the protected grounds listed under Paragraph (2). The same test (“objective reasonability”) is used with regard to indirect discrimination. Article 9 of the Draft Bill creates the possibility of positive action.

Furthermore, different specific exemption clauses are formulated with regard to the different sectors specified by the Draft Bill (see them under the section dealing with scope). With regard to employment, Article 18 of the Draft Bill claims: “the following shall not constitute the violation of the requirement of equal treatment: (a) proportionate distinction justified by the nature or characteristic of the job and based on the essential and lawful conditions that may be taken into consideration in the course of recruitment; (b) distinction based on proportionate and genuine occupational requirements justified by the nature or the circumstances of a job performed with regard to the special ethos of a religious organization.”

Health care institutions maintained by religious organizations are exempted from the obligation of equal treatment in respect of their admission rules, financial and house rules. Patients may also request health care institutions to divert from the principle of equal treatment if this is justified by their health status, religion or belief, or racial or ethnic origin (Article 21 of the Draft Bill). These exemptions go way beyond what is permitted by the Directives and are very easy to misuse. Their reconsideration will be inevitable.

In the field of education, separation of students is possible under Article 24 of the Draft Bill if justified by the specific features of religious or minority education. Parental consent for such separation is required. With regard to access to goods and services, the Draft Bill (Article 25) claims that entry to premises serving to preserve traditions and maintain cultural self-identity of a group definable by racial or ethnic identity, religion or belief, political opinion or sexual orientation may be restricted. The Article claims that this shall not be done in a manner that is degrading for other groups and that the misuse of this exemption is strictly forbidden. The above outlined system of exemptions will need to be reconsidered for more coherence and compliance with the Directives.

### Summary

Exceptions as contained in Article 4 of the Directives exist in labour law. There are no provisions that clearly fall under the category of genuine and determining occupational requirements. No specific exceptions exist in relation to disability. The Draft Bill’s system of exemptions leaves room for improvement.

### **Reasonable accommodation**

***Are there specific national law provisions regulating the use of pre-employment medical examinations? If so, what are the main provisions/norms? What is the relationship between this body of law and the principle of equal treatment/prohibition of disability discrimination? How does this body of law relate to the duty to provide a ‘reasonable accommodation’?***

Under Article 75 Paragraph (1) of the labour Code, women and children under 18 must not be employed in jobs that could deteriorate their physical condition and development. Such jobs, and jobs that can only be performed if specific working conditions are provided or if the applicants

undergo preliminary medical examination, shall be determined by law. Under Paragraph (2) of the same Article, with a view to protecting health or public interest, the law can set further conditions for employment (the National labour Council must be consulted before the adoption of such provisions). Furthermore, it may stipulate that certain types of work may only be performed in possession of relevant professional skill and practice. Under Paragraph (3), with a view to the employment of employees with diminished ability to work, the law may stipulate different rules (again the National labour Council must be consulted).

Under Article 49 Paragraph (1) of Act XCIII of 1993 on Work Safety (hereinafter: Work Safety Act), workers - as a general rule - may be employed only for work they are physically and mentally fit to undertake, that does not endanger their descendants, and in the course of which they do not endanger other workers' health and physical integrity. This provision imposes a general duty to undergo medical examinations prior to recruitment. Periodic medical examinations – as stipulated in sectoral decrees – are to decide whether or not workers are in good enough health to work. Under Paragraph (2), the competent ministers can require examinations concerning suitability for certain careers.

Under Article 1 of the labour Suitability Decree, the examination for labour suitability is a medical examination aimed at formulating an opinion on fitness prior to the commencement of and during occupational training and retraining. Specific rules apply to: (i) drivers – including those working in public transport; (ii) those working at railway companies, ships and civil aviation; (iii) the employees of armed organs; (iv) those in possession of guns and rifles and (v) those working at places of overpressure. Specific provisions govern the psychological examination of workers employed in nuclear stations. Examinations can be preliminary, periodic or extra-ordinary. The examinations of labour suitability aim at determining future health risks.

Examinations do not extend to the determination of whether the ability to work is diminished, nor does it extend so far as to determine disability. Furthermore, they do not extend to the provision of opinions on mental abilities and one's mental state. Under Article 4 Paragraph (1), the preliminary examination of fitness for work – as a general rule - must be carried out (a) prior to the commencement of work; (b) prior to a change in the employee's job or work place.

Under Paragraph (3), the preliminary examination of labour suitability must be carried out (i) on all students prior to admission to a training institution; (ii) on students whose participation in occupational training is limited due to health reasons or (iii) on the unemployed if labour centres or training institutions so require.

The above show that pre-employment medical examination is regulated under domestic law and that employers are in general under the duty not to employ workers for work they are not fit to carry out. Specific attention is paid to the health of women and children under 18. The principle of equal treatment is contained in Article 70/A of the Constitution and fully permeates the domestic legal system. However, as already has been argued, the practical implementation of this constitutional principle is a different matter. This has been done on the basis of e.g. Article 76-84 of the Civil Code and Article 5 of the labour Code. Thus, although none of the above cited legal acts and decrees contain provisions specifically prohibiting discrimination, given that they relate to employment, Article 5 of the labour Code can invoke the constitutional protection in their regard.

Section 1.1 pinpointed that the Disabled Persons Act contains specific protection in case discrimination is based on disability and that Article 27 of the Act brings into effect the prohibition on discrimination by invoking the relevant provisions of the Civil Code.

Consequently, one could argue that parallel to protection under the labour Code, protection under the Civil Code could equally be sought in relation to discrimination in pre-employment medical examinations. Given, however, that at present only the labour Code provides for the reversal of the burden of proof, plaintiffs would be well advised to take their cases to labour and not civil courts. Also, the former possess greater expertise in dealing with employment-related issues, such as pre-employment medical examinations.

As will be shown below, provisions relating to reasonable accommodation are not linked to provisions regulating the use of pre-employment medical examinations.

***Does national law permit an employer to inquire about disabilities prior to entering into a contractual relationship with a prospective employee? If so, in which stage of the job application procedure? Are prospective employees required to disclose, prior to employment, disabilities that impact on job performance? If so, how much and what type of information are they obliged to disclose? According to the law, what consequences follow if they fail or refuse to disclose the information?***

Under Article 3 Paragraph (1) of the labour Code, while exercising rights and fulfilling obligations employers and employees must proceed *bona fidae*, honestly and in mutual co-operation. Under Paragraph (2), the employer is under the obligation to inform employees about each fact, circumstance and/or the changes thereof that is significant in relation to the exercising of rights and the fulfilment of obligations. Viz. the employee the employer is under this obligation during the process leading to the conclusion of the contract of employment. Under Article 77 of the labour Code, employees may only be required to make declarations, fill in forms or undergo examinations of fitness for work that do not violate their civil rights and are capable of providing information relevant in relation to employment.

*In lieu* of specific regulations in this regard, under the Public Employees Act, the same provisions apply. Under Article 7 Paragraph (1) of the Civil Servants Act, civil servants might be required to undergo a process of lustration by the national security service. In question 44 of the “C” Type Control Form on applicants and persons serving in confidential positions, applicants are asked to identify risks related to their person that might be relevant in terms of national security. The information expected here can cover data on HIV infection, disability, etc. Under Paragraph (3) of the same Article, further legal provisions can require physical or psychological fitness for the civil service.

Given that case law relating to Article 77 of the labour Code is not yet available, it seems reasonable to outline here what the Commentary of the labour Code contains in this regard. “Prior to contracting a worker the employer rightly demands that in order to succeed in the selection process he/she must obtain as much information from the applicant as possible. Given the workers are placed at a disadvantage in the practise of obtaining and using information, civil rights must be ensured. Data can be required under two conditions. First, it shall not violate the employee’s civil rights. Second, it shall relate to issues relevant to employment. Such can be the requirement that the applicant or worker take part in a medical examination of fitness for work. The present provision is in harmony with Articles 76-84 of the Civil Code. We would like to draw attention to the fact that not only employers but also head hunters can require such data, but that they are equally bound to comply with the above civil law obligations.”

Domestic law permits employers to inquire about an applicant’s fitness for work. Undoubtedly, during an examination of fitness for work one would find it hard to hide his/her disability. Furthermore, this examination takes place prior to the signing of the contract. As borne out in

Article 3, employees are under the obligation to act *bona fide*, with honesty and in cooperation with the employer. The wording of the provision suggests that employees are under a general obligation to disclose to employers as soon as possible information that can impact on their job performance. Nonetheless, Article 3 does not impose an express duty on job applicants to act in this manner prior to their employment. Given the general wording of Article 3, employees seem to be under the obligation to disclose all types of information relevant in an employment context.

Failing or refusing to disclose the information required can have various consequences. First, under Article 7 of the labour Code, an annulment of the contract can be sought in court. This may arise if during the contracts conclusion either of the parties erred in relation to a relevant fact or circumstance, given that the other party caused him/her to err, the other party could have realized the error or if both parties proceeded on a wrong assumption. The party at fault can lay a claim against the contract within 30 days from the date when he/she realized his/her error. No claims can be laid after six months.

Furthermore, under Article 87 Paragraph (1), either party can terminate employment on an ordinary, as well as an extra-ordinary notice. Under Article 89 Paragraph (2), the employer is under the obligation to give clear reasons for an ordinary notice. In case of dispute, it falls to the employer to prove that his/her reason to terminate the employment was real and reasonable. Under Paragraph (3) only reasons relating to the employee's abilities or conduct concerning employment, or those relating to the operation of the employer can be given.

In terms of Article 96 of the labour Code, both the employer and the worker can terminate employment on an extra-ordinary notice if the other party (i) deliberately or with grave negligence and significantly violated his/her obligations relating to employment or (ii) displays conduct that renders the continuation of employment impossible.

***Is the duty to provide reasonable accommodation defined by law? Is the failure to provide such accommodation considered to constitute direct or indirect discrimination and/or does it infringe other (labour law) standards? Does such a duty exist only with respect to people with disabilities or also with respect to people discriminated against on the other grounds covered by the two Directives?***

***How do courts determine whether accommodation is 'reasonable' or whether it imposes a 'disproportionate burden'? What type of criteria is used (medical, occupational, educational, grants etc.)?***

Under Article 19 Paragraph (4) of the Work Safety Act, in relation to the creation of work places where employees with physical disabilities are employed, the physical environment (accommodation) has to suit the changes in the character of the human body. The Act does not impose an express duty on employers not yet employing disabled workers to create reasonable accommodation.

In relation to reasonable accommodation three levels of protection are accorded to workers living with disabilities. The first relates to the "lucky" ones who find jobs at protected work places (Decree 12/1983 of the Minister of Health), the second to disabled workers who become disabled while in employment (Joint Decree 8/1983 of the Ministers of Health and Finances). The third level accords protection to disabled workers seeking employment on the "normal labour market" (Decree 11/1998 of the Minister of labour on the labour centres' procedure of work rehabilitation and certain provisions fostering the employment of the unemployed with diminished abilities to

work, Disabled Persons Act and the labour Code). Given that Article 5 of the labour Code provides protection on the basis of disability, it is relevant in this regard as well.

Employment is an area where heavy emphasis is placed upon equal opportunities as far as persons with disabilities are concerned. Therefore, Article 15 Paragraph (1) of the Disabled Persons Act provides persons living with disabilities with the possible right to be integrated, or, *in lieu* of this, the right to a protected employment. Under Paragraph (2) the employer is under the obligation to provide to an extent necessary for the performance of the work, accommodation at the work place (munkahelyi környezet), i.e. in particular the appropriate refurbishment of tools and machines. Support from the central budget can be requested to cover the expenses incurred by refurbishment. Under Article 16, if the person living with disability cannot be employed in integrated employment, his/her right to work must **as far as possible** be ensured through the maintenance of special work places. The central budget provides normative support to protected work places.

Despite the rights language of the relevant provisions of the Disabled Persons Act, the wording, i.e. the reference to possibilities, to a great extent diminishes prospects to enforce the duty to provide reasonable accommodation in employment. Although the Act itself does not define the failure to provide reasonable accommodation as direct or indirect discrimination, with reference to Article 70/A of the Constitution and Article 5 of the labour Code the relevant provisions can be invoked. This language, on the other hand, implies, that litigation relating to “disproportionate burden” will focus on financial criteria. At present, however, no case law could be found in relation to either the duty to provide reasonable accommodation or to the disproportionate burden.

No specific duty to provide reasonable accommodation based on grounds other than disability is imposed under domestic law.

***How does, under national law, a failure to provide reasonable accommodation relate to the prohibition of (direct or indirect) discrimination?***

The analysis contained in Section 1.b, shows that reasonable accommodation has not yet been considered in relation to discrimination. The Disabled Persons Act provides specific rights to people living with disabilities, including under Article 5 the right to an environment that is without obstacles, safe and perceptible. This right relates particularly to transport and the possibility of guidance regarding environments built specifically for the disabled.

The Act does not accord specific rights to disabled persons in relation to employment, although the right to safe environment etc. taken in conjunction with Articles 15 and 16 on equal opportunities in employment could be taken to cover accommodation. Based on this line of reasoning, and linking it to the constitutional anti-discrimination clause, or to be more practical to the Civil Code (as does the Disabled Persons Act in Article 27), one could argue that a duty to provide reasonable accommodation exists in Hungarian law. Given that under Article 84 Paragraph (1) (d), a disabled person could claim the termination of the situation that violates his civil rights, the duty to provide reasonable accommodation could in practice be enforced.

**Summary**

Employers are in general under the duty not to employ workers for work they are not fit to carry out. Provisions relating to reasonable accommodation are not linked to provisions regulating the use of pre-employment medical examinations. Employees seem to be under the obligation to disclose all types of information relevant in an employment context. There is no express duty on

employers not yet employing disabled workers to create reasonable accommodation. Despite the rights language of the Disabled Persons Act, prospects for the enforcement of the duty to provide reasonable accommodation in employment seem rather bleak. No such duty based on other grounds is imposed. The concept of reasonable accommodation is missing from the first version of the Draft Bill, this deficiency may however be remedied during the legislative process.

### **Minimum requirements**

***When is differentiation on grounds of age ‘objectively and reasonably’ justified under national law? How is this test being applied?***

The Constitutional Court has in a number of cases dealt with the question whether it is legitimate to define an age minimum or maximum with regard to certain positions and occupations. In its Decision No. 857/B/1994 the body stated the following: “[...] the legislator is entitled to subject the exercise of certain professions and the filling of certain positions to age-related conditions, i.e. to set a lower and an upper age limit.” The Constitutional Court established that “age-related restrictions concerning the filling of certain positions shall not be regarded as discriminative unless they are arbitrary. [I]f the age-related conditions concern each person in the given category and are not arbitrary, they do not violate Article 70/A Par (1) of the Constitution.”

Thus, “differentiation based on age is permitted, if it pertains to each person in the given category and is not arbitrary, i.e. it is reasonable and necessary for the aim to be achieved”. No case law from ordinary courts is at present available on this matter.

***Are any specific arrangements made in national law regarding age discrimination and occupational social security schemes? (Consider this question with reference to article 6.2 Employment Equality Directive).***

Under Article 7 Paragraph (1) of Act LXXXI of 1997 on Social Security Pension, after 31 December 1997 and prior to 1 January 2009 persons of at least 62 years of age are eligible for full old age pension, given they have at least 20 years of service. Under the general rule, therefore, no discrimination based on sex pertains to the fixing of the age of retirement. The Act provides for an intricate web of exceptions that, taking the date of birth and in certain other instances the length of service and the date of retirement into account, progressively lead to the general retirement age of 62. These exceptions are more suspect to discrimination based on sex but clearly reflect a painful social contract on the matter of raising the age of retirement.

Under Article 8 employees, who, until 1 January 2003 performed particularly damaging work that subjected their body to increased physical pressure are eligible for age preference as stipulated by law in effect as of 31 December 2000. When defining age preferences, Articles 1-7 of Government Decree 168/1997 provide for differences based on sex.

The principle of calculation outlined in relation to full old age pensions governs premature old age pensions, where maximum five years discount is given to workers wishing to retire before they reach retirement age. Under Article 9, women can retire under this scheme at the earliest of 55 years of age, whereas for men the age requirement is 60.

***Is compulsory retirement permitted? Are there any national provisions on retirement? Do they allow the fixing of retirement ages by individual or collective labour agreements and, if so, what are the conditions?***

Compulsory retirement is permitted in the case e.g. of civil servants, judges, lay judges, judges of the Constitutional Court, public notaries, the professional personnel of armed organs.

- 1 Under Article 15 Paragraph (1) (f) of the Civil Servants Act, the service relationship of civil servants of 70 years of age ceases.
- 2 Under Article 57 Paragraph (1) (h), of Act LXVII of 1997 on the Status of Judges, if prior to turning 70 but after the coming of retirement age the judge requests his/her retirement, or if he/she reaches 70, his/her employment ceases. Under Article 127, the lay judge's appointment ceases at the age of 70.
- 3 Under Article 22 of Act XLI of 1991 on Public Notaries, the retirement age is fixed at 70.
- 4 Under Article 59 Paragraph (1) (a) of the Armed Organs Service Act, the service relationship of the member of the professional personnel ceases once he/she reaches the upper age limit of professional service.

Under Article 30 of the labour Code, collective agreements can regulate, *inter alia*, the rights and obligations relating to employment. In terms of judgment No. 1998.451 "collective agreement is a regulation pertaining to employment. In a defined field it gives rights and imposes obligations on both the employer and the workers. Therefore, the collective agreement may not be interpreted in a manner that is not clear from its text".

Under Article 76 of the labour Code, employment contracts must be provided in writing and can regulate any issues the parties choose to regulate. It cannot be contrary to the law and the relevant collective agreement. Its compulsory elements are the following: description of the parties, basic remuneration, job description and the place of work.

Under Article 21 of the Public Employees Act, public employees are appointed for an unlimited length of time. To substitute for another employee, public employees can be appointed for a limited length of time. Under Article 11 Paragraph (1) of the Civil Servants Act, civil servants are appointed for an unlimited length of time.

It appears that the fixing of retirement ages is not excluded from the scope of collective agreements nor from individual contracts. However, no age that would be contrary to relevant legal provisions can be fixed in individual employment contracts. The majority of legal provisions fixing compulsory retirement ages relate to public and civil servants paid from the central budget.

***Are mandatory retirement ages fixed in national legislation/legally binding collective agreements? At what ages? What (if any) conditions/restrictions are imposed (e.g. not before state pension age/entitlement to (full) state pension)? Are rights to protection from unfair dismissal lost upon reaching this retirement age?***

Mandatory retirement ages are widely fixed in domestic legislation, mainly in relation to publicly funded employment. The general upper age limit for public service is 70 years. However, the mandatory retirement age does not prevent e.g. civil servants from retiring earlier, at the general age of retirement, i.e. 62. The Act on the Status of Judges stipulates under Article 57 Paragraph (2) that once a judge becomes eligible for (accident) disability pension, his/her service can be terminated. However, no such discretion is allowed in other instances.

Undoubtedly, the biggest group subject to mandatory retirement age is that of civil servants. Under Article 17 Paragraph (1) (d), of the Civil Servants Act, civil service can be terminated – in the form of a discharge – if the civil servant is a pensioner. In terms of Article 19 Paragraph (1) not only old age pensioners, but also service pensioners, disability pensioners etc. come under the

definition of pensioners. Under Article 17 Paragraph (3) the employer is under the obligation to provide reasons for the discharge. The reasons must be clear and in the case of a dispute it falls to the employer to prove that they were real and reasonable. Under Article 18 Paragraph (1) the period of discharge is six months, during which civil servants are eligible to the average sum of their salary. Under Paragraph (3) they can be excused from work for three months.

***Are mandatory retirement ages (widely) imposed by employers (even if apparently in agreement with employees)? At what ages? Are rights to protection from unfair dismissal lost upon reaching these retirement ages?***

The state as employer imposes mandatory retirement ages on a wide group of state employees. Workers can continue working after they reach retirement age. If they stay in employment after the mandatory retirement age, they are eligible to their pension as well as their salary. The same protection under labour law is due to them as to workers under retirement age. However, a growing number of employers employ older workers on fixed term contracts, for which protection is non-existent.

***Are early retirement schemes promoted by the State? If so, are they justified (or might they be justified) by any of the examples provided in Article 6 of the Directive (legitimate employment policy, labour market and vocational training objectives etc)?***

Apart from early retirement for specific occupations, such as miners and the professional personnel of armed organs, for labour market reasons the State allowed on a significant scale for early retirement right after the political changeover. Various retirement schemes operated, with different conditions and funding. However, by 1998 the pre-pension scheme was terminated and unemployment allowance before retirement was introduced. Classic early retirement now costs more for employers than prior to the 1997 legal reform. There are two reasons behind this shift in policy: (i) a general increase for labour since 1996-97, and (ii) the realization that the Pension Fund could not continue funding the relatively generous schemes of early retirement.

In 1992 the share of early retirement stood at 25,5 %, which increased to 29,6 % by 1996. The ratio dropped by 2000 to 3,6 %. However, the number of newly provided disability pensions – which in many instances serve as an alternative to early retirement - remains far too high. In 2000, its share stood at 54,6 %.

***Is selection for redundancy widely decided on age grounds?***

No hard data could be found on the topic. Expert György Lázár charges that age discrimination exists in relation to dismissals, because “forcing older workers into early retirement is generally viewed as being more humane, than dismissing younger workers”. Lázár finds that older workers suffer discrimination when applying for jobs, whereas their position is quite safe when it comes to staying in employment. However, based on his interviews with a number of employers - conducted for the ILO - he depicted improvement in this field, i.e. “more and more employers recognize that his/her age alone does not qualify the candidate”.

***Is there obvious evidence of age discrimination in access to training opportunities?***

Lázár states that in 1995 older workers were “strongly underrepresented in labour market training”. However, taking into account all active programs (not only training) “their share improved substantially [...] by December 2000, but their share also increased within the registered unemployed”. In December 2002 the share of registered unemployed aged 50+ stood at 16,1 %.

In 2001 out of all training offered by labour centres they completed 3,7 %. Surprisingly, their share among the unemployed who initiated their own training and then received state support stood at 3,3 %. It was most likely for the unemployed aged 50-54 to drop out from training programs (9 %).

No specific programs targeted at older workers exist. Lázár warns that the older unemployed have “very low education or obsolete vocational qualification” and the majority lack “life-long learning habits”. Taking into account other active programs, such as wage subsidy for the long-term unemployed and the subsidy for setting up businesses he concludes as follows. “The re-employment rates by age groups show that the current labour market policies can also be appropriate in promoting the employment of older workers.” However, he finds that the most appropriate type of training must be identified for the different groups of older workers”.

### Summary

The general constitutional test is applied to age discrimination. Compulsory retirement is prevalent in civil and public service. National law fixes mandatory retirement ages. As opposed to the period of transition the State does not promote early retirement schemes. Age less frequently plays part in selection for redundancy. No obvious evidence of age discrimination could be found in access to training opportunities, but much remains to be done in order to involve older workers in training.

### **Positive action**

***Do specific measures exist in order to ensure or promote full equality or to compensate disadvantages linked with racial or ethnic origin, religion or belief, age, disability or sexual orientation (e.g. mandatory or voluntary quota systems, positive action programs, financial incentive schemes, etc.)? Is the government considering adopting such measures?***

***Are there comparable specific measures in relation to gender discrimination?***

Certain provisions of domestic law *expressis verbis* allow for positive action. The Constitutional Court has interpreted the meaning of Article 70/A Paragraph 3 – see Chapter 1/b.

- 1 Disabled Persons Act, Article 3: *Given their situation, disabled persons have lesser access to their rights in relation to others, therefore it is reasonable to accord preferences to them in all possible ways.*
- 2 labour Code, Article 5 Paragraph (6): *In respect of a specific group of employees the obligation of priority may be prescribed in employment-related regulations, in connection with an employment relationship and under the same conditions.*

In Hungary positive discrimination is frequently used with a negative connotation. Although positive action programs do not exist, social policy measures have been taken with a view to diminishing the inequality of opportunities Roma presently face. However, funding for these policy measures has been scarce and spent with little control. Still, central budget support bearing the ‘Gypsy label’ is prone to give the false impression that the country has gone a long way in implementing specific measures that compensate for disadvantages linked to ethnic origin.

To a certain extent and rather ambiguously Hungary has been implementing action programs for Roma e.g. in education (on the basis of ethnic quota) and housing (the Roma component of the

national housing program 2001). Whether these initiatives would pass the ECJ's test seems unlikely.

To highlight the necessity of reshaping the existing policy relating to Roma so that it better suits the requirements of Article 5 and what is generally understood in the EU as positive action, a short summary of the critique of the 1999 Medium-term package of measures to improve the living conditions and social protection of the Roma in Hungary is provided. In fact, the very title of the measures is telling of their character as social policy measures.

“Few specific strategies for improvement are elaborated in the Package; rather, it often calls for research, assessment and evaluation of the situation in each sphere, and for more detailed programmes to be developed in line with findings in each area. However, implementation of research projects has fallen behind schedule in many areas. With even this initial phase yet to be completed, the more relevant practical activities to address identified problems are even farther from realization.”

“The Medium-term Package is both centralized and compartmentalized. The State has not integrated local authorities, minority self-governments or the NGO sphere into the implementation process, and has done little to seek wider social acceptance for program objectives. Implementation is also characterized by discrete decision-making and ad hoc activities by the individual ministries, limiting the opportunity to foster the development and implementation of integrated programs.”

To ensure better mainstreaming, the new government in office since April 2002 established the Council of Roma Affairs. It has consultative powers in the preparation of measures, co-operates in, monitors and evaluates implementation. Finally, it has a key role in ensuring dialogue with NGOs – 21 of its members are public figures appointed by the Prime Minister. Its operation is aimed at augmenting that of the Inter-ministerial Committee of Roma Affairs consisting of the representatives of ministries and tasked with the coordination of the implementation of the Medium-term Package. A further government measure aims at the improvement of the financial and professional monitoring of the Package.

The Directorate General of Equal Opportunities of the Ministry of Employment Policy and labour Affairs is running three programs that aim at creating opportunities in the field of (i) employment rehabilitation; (ii) equal opportunities between men and women (with partial funding from the EU PHARE Program) and (iii) Roma labour market programs (mainly public works).

#### *The solution proposed by the Draft Bill*

The Draft Bill envisages positive action in employment, along conditions compatible with the ECJ's case law. In terms of Article 9, no infringement of the requirement of equal treatment shall be constituted by measures based on a law or a government decree and brought for a definite period of time with the aim to eliminate the objectively verifiable inequality of opportunities of a particular social group. Under Paragraph (2) of the same Article, the measure aimed at the elimination of such inequality may not infringe fundamental rights, may not guarantee automatic advantages and shall leave room for the consideration of individual aspects of the article. The Draft Bill also prescribes that firms employing over 200 workers be obliged to draw up equal opportunity plans. Given the average size of companies operating in Hungary this figure may prove to be too generous.

## Summary

National law allows for positive action. Various social policy measures exist for the Roma and efforts are being made to promote the social advancement of women and the disabled. The Draft Bill envisages positive action in the field of employment in conformity with the relevant ECJ case law.



## Chapter 2 Remedies and enforcement

### a. Judicial and/or administrative procedures

*What judicial, administrative and conciliation procedures are available on the national level for the enforcement of the principle of equal treatment? Is action needed on the national level to comply with Articles 7.1 and 9.1 respectively?*

#### Judicial procedures

##### *Civil courts*

Victims of discrimination may sue in civil courts based on Articles 75 and 76 of the Civil Code. The possible remedies applicable by the court are listed under Article 84 of the Civil Code and are discussed in Chapter 2/f. Articles 75, 76 and 84 of the Civil Code provide victims of discrimination with a flexible instrument. These apply to all types of discrimination no matter which field or ground is at issue.

##### *labour courts*

In Hungary, labour courts apply the labour Code and are relatively independent within the judiciary. The most important remedies in labour law are the following: (i) the declaration of an agreement as null and void (Article 8); (ii) order to continue employment (Article 100 Paragraph 1); (iii) reinstatement and the payment of average earnings for a maximum of twelve months (Article 100 Paragraph 4); (iv) employer's full liability for damages (Article 174) including the payment of lost income, material damages and justified expenses (Article 177).

#### Administrative procedures

Procedures are field-specific. Different administrative organs have power to act.

##### *Employment*

Under Article 3 Paragraph (1) (d) of the labour Supervision Act labour inspectorates examine compliance with non-discrimination provisions. They may resort to a number of sanctions: (i) call on employers to abide by the rules of labour law; (ii) oblige employers to terminate the violation; (iii) propose the impositions of the so-called "labour law fine"; and (iv) conduct a petty offence procedure (Article 6). First time offenders can be fined between HUF 50.000 (€ 215) and HUF 100.000 (€ 435). For repeated violation the upper limit rises to HUF 3.000.000 (€ 13.043) (Article 7). labour inspectors may conduct petty offence procedures parallel to proposing the imposition of a labour law fine. However, if a fine is imposed, inspectors may not conduct petty offence procedures (Article 7).

Under Article 93 of Government Decree 218/1999 on Petty Offences (hereinafter: Petty Offences Decree) the employer who refuses to hire a person owing to his/her gender, age, race, religion, etc. or discriminates between employees is liable to be fined up to HUF 100.000 (€ 435).

Though as a general rule labour inspectors proceed ex officio, under Paragraph (2) of Article 3 of the labour Supervision Act investigations into cases of discrimination may only be conducted upon the request of the victim. Tamás Gyulavári, charges that the biggest problem is exactly this. This practically paralyses the use of the above sanction, because most victims are too vulnerable to be aware of the possible legal remedies.

### *Access to goods and services*

Under Article 47 of the Consumer Protection Act, the regional consumer inspectorate may, upon finding a violation, such as the unlawful denial of services under Article 6 (i) order the termination of the infringement; (ii) prohibit continuation of the illegal conduct; (iii) order the closure of a business establishment. Under Article 48 Paragraph (1) a fine can be imposed, which is not capped.

Under Article 46 of the Act, Act IV of 1957 on Public Administrative Procedures (hereinafter: CPAC) apply in consumer protection procedures. Article 13 of the CPAC allows for *ex officio* procedures, thus there is no need for personal complaints from victims. Under Article 3 Paragraph (4) of the CPAC private and legal persons whose rights are concerned are regarded as victims.

### *The media*

The National Radio and Television Board (ORTT) has the power to ensure the lawful operation of the media. The ORTT may apply sanctions “if the broadcaster fails to meet or violates the conditions and regulations prescribed in the Act” (a wording that may be interpreted to include the principle of non-discrimination). Under Article 112 of the Media Act the ORTT may (i) call on the broadcaster to terminate the injurious conduct; (ii) establish the violation of the law in a written warning, and shall call upon the broadcaster to terminate the violation of the law, and to abstain from the violation of the law in future; (iii) suspend broadcasting rights for a set period not exceeding thirty days; (iv) enforce the penalty defined in the broadcasting contract; (v) impose a fine in the case of a public service broadcaster, or at the initiative of the Complaint Committee, between the limits defined in Article 135; (vi) terminate the broadcasting contract with immediate effect. Written warning and the penalty defined may be applied with the other sanctions.

The ORTT operates a Complaint Committee, which has the power to investigate complaints against all broadcasters. The Committee has reasonably extensive rights in connection with complaints concerning the requirement of the dissemination of objective, detached and neutral information as set forth under Article 4.

### *Other fields*

In other fields, no specialized public administrative bodies have the power to sanction discriminative acts. This leaves victims of discrimination with seeking remedies in civil court. This is the situation for instance in healthcare where only a weak complaints mechanism exists.

### Conciliation procedures

#### *General mediation procedure*

Act LV of 2002 on Mediation (hereinafter: Mediation Act) was promulgated on 17 December 2002 and will enter into force on 17 March 2003. Under Article 1 of the Act, its aim is to facilitate the settling of civil law disputes emerging in connection with the personal and property rights of private and other persons in cases where the parties' right of determination is not limited by law. As no such limitation exists in relation to Article 76 of the Civil Code on the ban on discrimination, victims of discriminative acts will be entitled to resort to the mediation procedure, once the statute enters into force.

Under Article 36, the agreement reached in a mediation procedure does not prevent the parties from asserting their claim in a court procedure. However, in these cases plaintiffs are liable to pay all costs.

### *Access to goods and services*

Chapter VI of the Consumer Protection Act regulates the operation of the so-called arbitration boards. In terms of Article 18 of the Act, “*arbitration boards are established for the purpose of attempting to reach an agreement between an economic organization and a consumer to settle a dispute or, should the prior process fail to produce results, to decide on the matter in order to quickly, efficiently and simply enforce consumer rights.*” Arbitration boards are independent organs operating in affiliation with regional chambers of commerce. Board members are appointed in equal proportions by the chamber and by social organizations representing consumer interests (Article 21).

The consumer must attempt to settle the case directly with the economic organization involved. The latter has the duty to cooperate. In case of disagreement, it shall inform the consumer in a written statement (Article 27). The consumer (or an NGO representing consumer interests) can then petition the arbitration board and attach a fee of HUF 1,000 (€ 4.3).

Under Article 30 of the Act, the chairman of the council shall attempt to negotiate an agreement between the parties. The council shall approve the agreement by resolution, if it is in conformity with legal regulations, otherwise, or if there is no agreement, it shall continue the proceeding. If necessary, the chairman shall inform the consumer of his rights and obligations.

The council decides by simple majority vote within thirty days from the commencement of the proceeding. The deadline may be extended by maximum thirty days. The council delivers a *recommendation*, if the economic organization involved in the case has stated upon the commencement of the proceedings that it does not accept the decision of the council as obligatory. Otherwise it is without dispute an *obligatory resolution* (Article 31-32).

The organization shall comply with the resolution within fifteen days from its delivery. If the resolution is obligatory, but the organization fails to comply, the consumer may request execution by court (Articles 33 and 36). Otherwise, (a) the chamber operating the arbitration board or the competent consumer protection inspectorate can publish, (withholding the consumer’s name) the complaint and the outcome of the proceedings, or (b) the consumer can try to enforce his/her claim in a court procedure (Articles 34 and 36).

### *Education*

Decree 40/1999 of the Minister of Education established the Commissioner for Educational Rights. Under Article 1 of the Decree, the Office of the Commissioner for Educational Rights is an independent, internal organizational unit of the Ministry of Education that promotes citizens’ rights concerning education. The Decree establishes a special conciliation procedure.

Parents, students, teacher etc. have the right to complain, provided that all available administrative remedies are exhausted and less than a year has elapsed since the measures complained of (Article 5). Complaints relating to Articles 70/F and 70/G of the Constitution, public education, higher education and vocational education and training can be brought to the Commissioner (Article 3). The explicit inclusion of Article 70/A of the Constitution in the scope would be highly advisable. In 2001 the Commissioner examined discrimination only in relation to disabled students.

Complaints not dismissed by the Commissioner undergo the conciliation procedure. The Commissioner sends the petition to the institution complained of for a declaration and initiates that consensus be reached with the petitioner. In case of an agreement the Commissioner prepares a report and sends it to the parties concerned. If no consensus is reached, the Commissioner

prepares a report on the results of the conciliation and calls on the institution to terminate the infringement. In case of non-compliance the Commissioner sends a recommendation to both the institution and its supervisory organ. The latter have the duty to respond within 30 days. The Commissioner reports to the Minister of Education (Article 7). In 2001 the Office issued initiatives and recommendations on 51 occasions.

#### Other forums to be approached in cases of discrimination

##### *The “Ombudsman”*

Under Article 32/B of the Constitution the Ombudsmen (Parliamentary Commissioners) investigate violations of constitutional rights and initiate general or individual measures to remedy such violations. There are currently four ombudspersons in Hungary: the Ombudsman for Civil Rights (General Ombudsman), the Deputy Ombudsman for Civil Rights, the Ombudsman for the Rights of National and Ethnic Minorities (Minorities Ombudsman) and the Ombudsman of Data Protection.

Under Act LIX of 1993 Ombudsmen are appointed by two-thirds parliamentary majority vote. Financial independence (Article 9) and immunity are provided for. Any victim of acts or omissions of public authorities or public service providers can complain to the Ombudsmen’s office, provided that all administrative remedies are exhausted or none exist. The Ombudsmen can proceed *ex officio*.

Ombudsmen can investigate into any authority, including the armed forces, national security services, and policing organs. They may request information, a hearing, written explanation, declaration or opinion from the competent official or demand that an inquiry be conducted by a superior. When finding a violation, the Ombudsmen issue recommendations, to which perpetrators must respond within 30 days. Further, Ombudsmen may (i) petition the Constitutional Court; (ii) initiate that the prosecutor issue a protest; and (iii) propose that a legal provision be amended, repealed or issued (Article 25). Ombudsmen may initiate disciplinary or criminal proceedings (Article 24).

The Ombudsmen’s main publicity weapon is their annual report submitted to Parliament. Further, they can request parliamentary investigations and debates.

#### Solution envisioned by the Draft Bill

The Draft Bill sets forth the establishment of the Equal Treatment Committee (ETC). Besides assisting victims, conducting independent surveys and publishing independent reports, the ETC would function as a public administrative authority with the power to investigate complaints and fine perpetrators. The Draft Bill’s model needs further refinement – see Chapter 3 below.

#### Summary

An intricate web of judicial and administrative procedures is available to victims of discrimination. Problems arise in relation to fields that are not covered, e.g. housing and social assistance. The major shortcoming of the system is, however, the length and the lack of efficacy of these procedures. Thus, the Draft Bill rightly places the emphasis on setting up a strong agency that could remedy some of the problems and assist victims of discrimination in finding their way round the various avenues.

## **b. Associations**

*Are associations and other entities with a legitimate interest in ensuring compliance with anti-discrimination law entitled to engage in judicial and/or administrative procedures on behalf of or in support of the complainant? If so, how often do associations and other entities make use of this possibility and with what results?*

Hungarian law does not fully guarantee the right of associations, organizations or other legal entities with a legitimate interest to engage, either on behalf or in support of victims of discrimination in judicial or administrative procedures. There is a difference in *sui generis* legal standing and NGOs *locus standi* when providing legal assistance to victims. There are further differences between administrative and court procedures.

### *Public administrative procedures*

Only in consumer protection procedures do associations have *sui generis* legal standing (Article 2 (h) of the Consumer protection Act). Otherwise, NGOs only have legal standing in public administrative procedures as authorized representatives of victims (Article 18 of the CPAC).

### *Civil court procedures*

In civil court cases not even the derivative legal standing is available for NGOs (Articles 66-67 of the Code of Civil Procedure). The Code allows private attorneys, law firms and family members to represent victims in court. For groups most vulnerable to discrimination neither of these solutions are satisfactory. They either lack the necessary financial means to hire an attorney or the knowledge to represent themselves in court. NGOs could be given the right of representation on the analogy of trade unions, which can represent their members in court (Article 67, Par. (1) f, of the Code of Civil Procedure). Similar to NGOs, the Minorities Ombudsman lacks standing in court.

### *The solution proposed by the Draft Bill*

The Draft Bill wishes to redress the problem of legal standing. It vests the ETC and those associations which – in their deeds of foundation – list among their objectives the protection of the rights of disadvantaged groups and persons, with the right assist victims of discrimination in pursuing their claims: under Article 14, in administrative procedures such associations may exercise the “client’s” rights, whereas in civil cases they may act as representatives of victims. Furthermore, the Draft Bill provides the ETC, the public prosecutor and associations meeting the aforementioned requirement with the right of action popularis, when its Article 13 claims that if the actual victim of the infringement cannot be identified, these entities may bring a civil lawsuit against the discriminator. (This may be the case for instance if a local council issues a discriminative decree.)

### Summary

NGOs do not have *locus standi* when providing victims of discrimination with legal assistance. The Draft Bill’s solution, i.e. the adoption of the *actio popularis* model seems a right step in the Directives’ direction.

### **c. Time limits**

#### ***What is the situation concerning time limits?***

##### *Time limits in civil cases*

As we pointed out under Section 2.a, civil lawsuits brought for the violation of so-called inherent rights are one of the instruments most frequently used by victims of discrimination. In such cases we have to distinguish between the limitation of non-pecuniary and pecuniary claims, i.e. point 1-4 and point 5 of Article 84 of the Civil Code (see text above).

In the first four cases, there is no statute of limitation. When damages are claimed the general liability regulations of civil law prevail. The general period of limitation is five years, which runs from the occurrence of the damage (Article 324 of the Civil Code). In case of difficulty relating to the enforcement of the claim, a further year is given (Article 326). Acts, such as a written notice suspend the period of limitation, but it recommences if a final decision is given in the suspension procedure (Article 327). For damages incurred by a crime the limitation is extended as long as the offence remains punishable (Article 360).

##### *Time limits in labour cases*

Under Article 11 of the labour Code the general period of limitation is three years. Suspension, commencement of the period and recommencement of suspension are regulated in a manner similar to civil law. The period of limitation in relation to criminal offences is five years.

##### *Time limits in petty offence cases*

In terms of Article 11 of the Petty Offences Act, the time limit for petty offence cases is six months from the perpetration of the petty offence. The petty offence act authorities, disciplinary authorities, courts and the prosecutor to interrupt the process of limitation (i.e. the term of limitation restarts on the day of such acts), however, there is an absolute time limit in petty offence cases: no one can be punished for a petty offence if two years pass from the time of the perpetration.

##### *Time limits in cases of consumer protection*

Under Article 39 of the Consumer Protection Act, the Bureau of Consumer Affairs, NGOs or the public prosecutor may file charges against a party causing substantial harm to a wide range of consumers by illegal activities even if the identity of the consumers injured cannot be established. Such legal action may be filed within one year of the occurrence of the illegal activity.

### **d. The burden of proof**

#### ***Does the principle of the shift or easing of the burden of proof in cases of discrimination exist under national law (constitutional, civil, penal, labour and administrative)?***

At present only three statutory provisions – all in employment - allow the reversal of the burden of proof. Article 5 Paragraph (8) of the labour Code runs as follows: “*In the event of any dispute concerning the employer’s action, the employer shall be required to prove that his actions did not violate the provisions on the ban of discrimination.*” From 1 January 2000 during the course of labour supervision procedures, employers have the duty to prove non-discrimination. Article 6 of the Act on the Service Relationship of Professional Members of Armed Organs practically repeats the provisions of the labour Code.

Only a restricted number of statutes reverse the burden of proof. However, these take a stricter approach than the Directives, which only allow for the reversal of the burden of proof if a presumption is established.

The present Hungarian system does not require the establishment of presumption, though labour law experts warn that this would be necessary, because it is difficult to apply this unfamiliar concept. This problem is highlighted by the case of Katalin F.

In April 2000, Katalin F., a Roma woman working as a nurse applied for the position of chambermaid at a hotel in Budapest. While waiting for the interview, she overheard the manager stating: "I do not hire Gypsies here, I hate them all". She immediately sought assistance from two social workers. She told her roommate about the incident and subsequently contacted the Minorities Commissioner. She sued the hotel in the Metropolitan labour Court, which found that "the plaintiff shall substantiate that she contacted the employer with the aim of contracting into employment. [...] If she succeeds in proving this, the [court reverses the burden of proof]. In the court's view, the plaintiff failed to fulfil this obligation." The court admitted testimonies from the employees of the hotel, claiming they had never met her before. It found the testimony of one social worker flawed because (a year after the incident) she could not recall the name of the hotel. Further, (and contrary to the minutes of the trial) it found discrepancies in the plaintiff's account with regard to the time of the appointment and the circumstances of waiting. Though the plaintiff submitted a certificate from MATÁV [the Hungarian telephone company] verifying the time of the telephone conversation between her and the hotel, this could not save her case.

labour law is the only field where the reversed burden of proof exists. This institution will have to be introduced in other fields, such as education, housing, health care and social security.

#### *Solution proposed by the Draft Bill*

The Draft Bill (Article 11) extends the reversal of the burden of proof beyond the scope of labour law, to all (non-criminal) judicial procedures. In accordance with the Directives, the burden of proof is not reversed in criminal procedures, and – using the authorization provided by the Directives – nor is it reversed in proceedings, where the exploration of the facts of the case is the obligation of the proceeding authority. The present wording of the Draft Bill may not be clear enough to provide adequate guidelines for the domestic jurisprudence, which is not familiar with the concept.

#### Summary

No specific problems could be identified in relation to time limits. Hungarian labour law allows for the reversal of the burden of proof. However, the application of this provision has so far proved ambiguous. Although the Draft Bill reverses the burden of proof in all non-criminal judicial procedures related to discrimination its wording is not precise enough to ensure the flawless application of the concept.

## **e. Victimization**

***Does protection against victimisation, as defined in Article 9 and Article 11 respectively, exist in national law?***

No general definition of victimization as defined in Article 9 exists in Hungarian law. Moreover, no general protection exists in Hungarian legislation for victims of (gender or race, etc. based) discrimination from adverse treatment as a result of complaints related to discrimination.

In general, the protection available to victims of discrimination is of a reparatory nature. In labour law, for example, should the court determine that an employment contract had been terminated in an unlawful manner (e.g. contrary to the prohibition of discrimination), the court will rule that the employee, based on his/her request, must be re-employed in his/her original position. The employer may not request that the employment of the person be discontinued. (labour Code, Article 100 (1)-(3)).

Article 156 of the Code of Civil Procedure does not exclude that a request for interim measures be filed in labour lawsuits contesting the employer's decision to terminate the employment contract – based on allegedly discriminatory grounds. (The request for interim measures in such a case would aim at maintaining the employment contract until the court has an opportunity to decide on the employee's petition.) Publicly accessible case law, however, contains no reference to labour lawsuits in relation to the application of interim measures.

Act I of 1977 on Public Interest Complaints and Recommendations provides protection to public interest complainants.

In terms of Article 8 Paragraph (4) of the Draft Bill, a conduct that violates, aims at violating or threatens to violate the rights of any person who files a complaint or launches a procedure in connection with the infringement of the requirement of equal treatment or participates in such a procedure, shall be regarded as victimization. Under Paragraph (1) of the same Article, victimization shall constitute the infringement of the requirement of equal treatment. This entails that the same sanctions shall be available for victimization as for discriminative acts.

### Summary

No general definition of victimization as defined in Article 9 exists in Hungarian law. In general, the protection available to victims of discrimination is of a reparatory nature. The Draft Bill defines victimization and attaches the same sanctions to it as it does to discrimination.

## **f. Sanctions**

***What provisions exist on the application of effective, proportionate and dissuasive sanctions, penalties and remedies in anti-discrimination cases? How do these compare to sanctions in other areas (eg labour law)? Do equivalent provisions already exist on the national level in other areas? Is multiple discrimination an aggravating circumstance?***

*The law*

Relevant provisions are described above in Section 2.a. Here we only provide a reminder to demonstrate how fragmented the system of sanctions is.

- 2 labour Code, Article 5 Paragraph (7)
- 3 Civil Code, Articles 76 and 84
- 4 labour Supervision Act, Article 3
- 5 Petty Offences Decree, Article 93 (discrimination against an employee) and also Article 142 par. (5): The person who, by deliberately violating legal provisions relating to public education discriminates against a child or student is punishable with a fine up to HUF 100.000.
- 6 Decree 6/1999 of the Ministry of Social and Family Affairs: employers on whom a labour-law fine has been imposed shall not be entitled to apply for state subvention aimed at the expansion of employment for a period of one year after the decision imposing the fine becomes absolute.
- 7 Media Act, Article 112
- 8 Public Education Act, Article 77 Paragraph (3): The kindergarten, school, dormitory and the organizer of occupational training are objectively and fully liable regardless of their culpability for damages caused to children and students in relation to their placement in kindergartens, studies in schools, membership in a dormitory and in relation to occupational training. In relation to damages the relevant provisions of the Civil Code shall be applied, taking into account that the above organs may only be exempted from liability for damages if they prove that the damages occurred outside of their sphere of operation and were caused by an unavoidable reason. No damages shall be paid if they occurred as a result of the unavoidable conduct of the person injured.
- 9 Disabled Persons Act, Article 27: If an unlawful detriment is imposed on someone because of his/her disability, he or she may be entitled to exercise all the rights applicable in the case of the violation of the inherent rights of the individual. This refers to the remedies enumerated under Article 84 of Act IV of 1959 on the Civil Code
- 10 Health Care Act, Article 29: the patient – if his/her rights are not respected – is entitled to file a complaint with either the health service provider or its maintainer. The service provider or the maintainer is obliged to respond to the complaint within 10 days. The complaint and the related documents shall be kept for 5 years. Under Paragraph (2) of the Article the fact that the patient exercises the right to filing a complaint shall not influence his/her right to turn to other competent authorities.
- 11 Consumer Protection Act, Articles 46 and 47
- 12 Government Decree 4/1997, Article 8: Par. (1) of Government Decree No 4 of 1997, “if inspection reveals that a shop, or the professional employees at a given shop, do not comply with legal regulations, the notary may provisionally close the shop until the noted shortcomings are remedied, or for a maximum period of up to 90 days”. Under Par. (2) “Orders for the temporary closure of a business establishment shall take effect immediately, without consideration of appeal”. According to Par. (3) “The notary may revoke the business license if the trader fails to comply with the provisions of Subsection 1.”

The Hungarian enforcement model is fundamentally individualistic. Remedies for discriminatory acts can be sought under the Civil Code, the labour Code and various administrative proceedings, but the system of sanctions is not cohesive. Extreme forms of racial discrimination are penalized. The core provisions of this patchy system are to be found in Articles 76 (racial discrimination is a violation of civil rights) and 84 (the types of remedies to be sought) of the Civil Code.

Given the wording of Article 76, theoretically any act of discrimination can be brought under its tenet. More importantly, however, it can also be perceived as the legal provision that operationalizes and ensures the vertical effect of the constitutional anti-discrimination clause. Civil law remedies range from the finding of a violation to *in integrum restitutio*, a public

acknowledgement of the violation and compensation. A court-imposed ban to discontinue or repeat the violation is clearly a preventive sanction. However promising it seems, the ambiguous application renders public interest fine – analogous to exemplary or punitive damages – rather toothless. If a public body discriminates, under Article 349 of the Civil Code it is liable for pecuniary, as well as non-pecuniary damages. Hungarian law does not allow for class action, but test and sample cases can be brought.

Since 1 January 1999 labour courts have had the competence to rule on discrimination in relation to recruitment. Under Article 5 Paragraph (1) there shall be no racial discrimination in employment, whereas under Article 5 (7) the consequences of discrimination shall be adequately remedied. This provision, however, goes on to say that the remedy accorded for the violation shall not imply the violation of the rights of other employees, which appears to prevent courts from ordering employers to hire applicants previously turned down on grounds of their race. This leaves compensation as the main remedy under labour law.

In civil (and labour law) cases complainants can apply to the court for *pro bono* representation. There are no court fees in labour law cases and only claims failing under Article 76 and 84 of the Civil Code are subject to fees. However, these concessions have so far failed to have an impact on individual litigation, and it appears that for the majority of Roma the mounting of a lawsuit is too great a hurdle to overcome. Also, reports by human rights organizations have demonstrated that even if damages are awarded, they are hardly dissuasive, given their quantum and the length of the proceedings.

Administrative authorities, such as the labour inspection, the consumer inspection and notaries have the power to investigate and sanction (mainly fine) employers and service providers who discriminate on the basis of race. Nevertheless, they have been found to persistently fail to investigate complaints and adequately sanction perpetrators.

A common understanding is that sanctions, especially if applied at the end of three-five years of court proceedings, are not dissuasive enough. No specific sanctions are available in the field of housing, the administration of social welfare and healthcare. Thus, remedies and sanctions can in these instances be sought under the Civil Code's chapter on civil rights and under Article 349 that provides for pecuniary, as well as non-pecuniary damages caused in an official capacity. For a successful claim one needs to establish that the action complained of was of an administrative nature and that the victim exhausted all ordinary remedies before raising the claim under Article 349. Needless to mention, the filing of civil lawsuits in these cases is costly for some vulnerable groups, including the majority of Roma.

An elaborate set of sanctions is provided in the field of employment. With regard to the petty offence of discrimination against an employee, however, the Minorities Ombudsman remarks that it is not the wording of the regulation, which is problematic, rather the fact that this particular provision is rarely invoked. The investigation of employers' discriminatory practices are hampered by the fore mentioned restriction introduced in 1995, allowing only victims to lodge complaints.

The application of sanctions to discrimination in recruitment is staggeringly ineffective. Statistics by the National labour and labour Safety Inspection show that no employer has ever been fined for denying recruitment on the basis of Roma origin; a total of only 16 sanctions have been imposed between 1997-99. Also, petty offence law does not recognize the responsibility of legal persons, therefore a private individual must be identified in order to allow for the above offence to be established and sanctioned. This, in the Minorities Ombudsman's view works to the

detriment of the victims of employment discrimination. Furthermore, he finds that the application of administrative sanctions is irregular and inconsistent.

The following case highlights the lack of sanctions in the field of vocational training.

János O., a Roma boy cared for by the State in a foster home decided to become a hairdresser. The foster home helped him find the appropriate school. The tutor contacted nine hairdressers in the neighbourhood but shortly after the owners had learnt about the newcomer's ethnic origin, they refused to take him in. The tenth hairdresser agreed to take the boy in, but after a couple of days sent him away. The lack of sanctions leaves victims of discrimination helpless in such instances.

#### *Solution proposed by the Draft Bill*

The Draft Bill's system of sanctions has not been finalized yet. It is clear though that the Draft Bill wishes to solve the problem of the scattered system of sanctions by establishing a more robust agency, the ETC with a specific duty of promoting equal treatment, investigating all discrimination complaints and acting firmly against perpetrators.

The Draft Bill relies heavily on sanctions already operating in civil law. Furthermore, the document employs fines, while also suggesting some new forms, e.g. the banning of discriminating business associations from tenders aimed at acquiring state support: under Article 36 of the Draft Bill, if the ETC establishes that the requirement of equal treatment has been violated, it may (i) order that the violation be terminated; (ii) prohibit the continuation of the violation; (iii) impose a fine ranging from HUF 50,000 to HUF 3,000,000 ((€ 217 – 13,043); and finally prohibit that the discriminator participate in public tender or receive other forms of state funding.

A problem is that the Draft Bill wishes to maintain the authority of the labour inspectorates and consumer protection inspectorates for discrimination in these fields. This may lead to inconsistencies in the system of remedies and uncertainties concerning scope of authority in different individual cases. The relation of court procedures and the ETC's procedures also needs to be refined. To make the system more coherent, petty offences in different fields ought to be identically defined and sanctioned, which also requires further legislative efforts.

#### Summary

The Hungarian system of sanctions is fragmented and fails to cover various fields that come under the Directives. The enforcement of the non-discrimination principle is retrospective rather than preventive. However, in many respects it stands up for comparison with other European countries. It is the length of proceedings (particularly judicial) and the quantum of compensation that prevents sanctions from being effective, proportionate and dissuasive. Given that proceedings before administrative bodies are less costly and lengthy, their reluctance to investigate and sanction acts of discrimination is an equally grave concern. This is an issue that a more robust agency with a duty of promoting equal treatment could adequately address. Finally, the fact that at present domestic law only allows the handling of data relating to racial and ethnic origin upon the consent of the person concerned severely impedes on establishing discrimination, particularly in cases involving indirect discrimination and institutional racism. The Draft Bill's system of sanctions requires significant refinement to be sufficiently effective.

#### **g. Dissemination of information**

***What action is being taken or is planned to ensure that anti-discrimination legislation has been or will be brought to the attention of the public?***

No consistent action has been taken at enhancing awareness of the wider public about anti-discrimination legislation. In the past two years there have been a number of initiatives, but no systematic and concerted action.

On 7 June 2001, the Employment and labour Committee of the Parliament organized a so-called “open parliamentary day” on discrimination in the field of employment. Representatives of the different ministries, experts and NGO activists shared their experiences about the practical implementation of provisions related to equal treatment and non-discrimination. As an element of his persistent campaign for a comprehensive anti-discrimination act, the Minorities Ombudsman organized an international conference on anti-discrimination legislation in Budapest, between 6–7 December 2001. Neither of the two events received sufficiently wide spread publicity.

It as a positive development that throughout December 2002 the Concept Paper was available on the Ministry of Justice’s website, together with a call for comments. The text was also sent to independent experts and NGOs. Still, this only concerns a narrow circle of professionals, and not the wider public.

***What action is being taken or is planned to ensure - by means of information and training and where necessary by effective sanctions - that all officials and other representatives of the public authorities at every level abstain from any discriminatory speech or behaviour in the exercise of their functions?***

The PHARE Office of the Office for National and Ethnic Minorities launched its Anti-Discrimination Training Project on 6 January 2003. The project consists of two components. Component 1 (Institutional Development) aims at the legal and conflict management training of the staff of Roma right protection offices, while Component 2 is a general anti-discrimination training for Roma and primarily for civil servants and professionals who regularly come into contact with Roma and work in education, adult training, social welfare, public health, employment, housing, policing and the media.

The project allows for the training of altogether 465 people (45 in Component 1 and 420 in Component 2). The total budget for the project is € 300,000 (approx. HUF 70,000,000), of which € 250,000 is PHARE support and € 50,000 is co-financing by the Hungarian government.

#### Summary

Parallel to the sectoral nature of the anti-discrimination system, so far no consistent action has been taken at raising awareness among the wider public of anti-discrimination legislation. Despite efforts made in this regard we cannot speak about systematic and concerted action.

#### **h. Social Dialogue and NGOs**

***Has the government taken steps to promote dialogue with the social partners at national level? If so, what are the measures adopted and what are the results?***

The National labour Council includes the representatives of the Government and all the national organizations representing employers and workers. According to Article 16 of the labour Code,

the Government discusses employment-related issues of national significance with the national organs representing the interests of employers and employees in the National labour Council. At present the tasks of the National labour Council are mostly related to salaries (minimum wages, national wage-bargaining, etc.).

Despite its hostile attitude to social dialogue, on 1 July 1999 the government established the European Integration Council in order to involve the social partners in the process of accession. This body continues to operate after July 2002.

Running between June 2002 and December 2003 the EU PHARE Program is allocating € 2 million (toppled with the Hungarian own share of € 500.000) to the establishment of the institutions of sectoral social dialogue. The project aims at ensuring the effective participation of the Hungarian social partners in the work of the relevant commissions of the EU.

***Has the government taken steps to promote dialogue with non-governmental organizations at national level? If so, what are the measures adopted and what are the results?***

The socialist-liberal coalition seems to pay more attention to social dialogue but meaningful co-operation between the parties only re-commenced in the summer of 2002. No information is available about the inclusion of organizations representing older people, religious minorities or gays and lesbians. Presently, co-operation seems to be limited to traditional social partners, i.e. trade unions and employers' organizations. However, various efforts are being made by NGOs working in the social field at joining in. Given the number of pensioners and the political importance of certain churches (e.g. the Catholic Church) it is expected that in the longer run their organizations will also be involved. Of the gay and lesbian organizations Háttér has joined forces with the Hungarian Helsinki Committee in participating in the legislative process relating to the transposition of the Directives.

#### *Minority issues*

Under point 3 of Government resolution 1048/1999 (V.5.) on the Commencement of the Inter-Departmental Committee on Roma representatives of Roma minority NGOs and experts may be consulted, given that they are invited by the Committee. The Romani Civil Rights Foundation, for example, has delegated a member to the Committee's meetings and receives its reports regularly. The Committee convenes at least four times a year and operates along its own schedule and work plan.

#### *Disability rights*

Under Article 24 of the Disabled Persons Act the National Disability Council assists the Government in performing its task related to the issue of disability. In terms of Article 25, four delegates of the national rights protection organizations of visually impaired, hearing impaired, mentally disabled and physically disabled persons, and three delegates of NGOs working for the disabled also participate in the work of the Council.

#### Summary

Social dialogue is rather underdeveloped and at present is limited to traditional social partners. However, due to recent financial impetus and a change in the political climate fast improvement is to be expected in this field.

### Chapter 3 Specialised bodies

***Does such a body exist on the national level? Where it does, what are its resources (staff and budget), powers and duties in relation to the requirements of the Racial Equality Directive? Has it also a mandate on other grounds of discrimination?***

***Are existing bodies addressing the issue of multiple discrimination?***

***Where a body does not exist on the national level, are there plans to establish such a body?***

Just as Hungary is lacking a comprehensive set of sanctions, it is short of a unified regulatory agency entrusted with all the powers envisaged under Article 13 of the Racial Equality Directive. Several bodies appear to have competence to investigate and sanction discrimination. Nevertheless, neither is under the statutory duty to promote equal treatment regardless of a person's racial or ethnic origin.

#### *Appraisal of the Minorities Ombudsman's activities*

We have outlined the powers of the Ombudsmen under Section 2.a. While their powers meet two of the requirements of Article 13 of the Racial Equality Directive, they are not entitled to provide assistance to victims of discrimination in pursuing their complaints. The primary agency dealing with complaints of racial discrimination is the Minorities Ombudsman. He does not have the power to investigate complaints from members of minority groups other than those recognized under the Minorities Act. Persons belonging to other groups – e.g. Jews - can, nonetheless, seek assistance from the Parliamentary Commissioner for civil rights. The Minorities Ombudsman does not have the power to investigate the conduct of private individuals.

The Minorities Ombudsman regularly conducts *ex officio* investigations (on education, housing and employment discrimination), which “seem to be a relatively good substitute for class action” and demonstrate his “strong emphasis on the systemic aspects of racial discrimination”. Significantly, however, he has no power to sanction or have sanctioned persons who are unwilling to co-operate in the investigation.

As we have seen, the Minorities Ombudsman has the competence to report, issue recommendations and launch *ex officio* investigation. He has on a few occasions commissioned research into specific problems. Thus, the only limitation to his power to conduct independent surveys appears to be financial. He, however, has neither the statutory power, nor the necessary resources to assist victims in pursuing their complaints.

In October 2001 the Ministry of Interior, the Office for National and Ethnic Minorities and the National Gypsy Self-Government established the Client-Service Network for Anti-discrimination. Candidates working for established human rights NGOs were not selected as attorneys. Approximately HUF 30 million was allocated from the central budget to cover its operational costs. Attorneys, members of the network have the primary task to consult clients, but they can also draft written submissions and undertake legal representation. As of January 2002 the Network had received 196 requests for assistance, of which 22% related to property, 16% related to the justice system, 13% to social affairs, 13% to employment, and only 8% to discrimination. 22 cases were taken before court.

### *Professional debate and the solution envisioned by the Draft Bill*

As it was pointed out in Chapter 2 Section (a), the Draft Bill wishes to fulfil the requirement set forth by Article 13 of the Racial Equality Directive by setting up the so-called Equal Treatment Committee (ETC). In terms of Article 27 of the Draft Bill the ETC would consist of four members and a president appointed for six years by the Prime Minister upon the suggestion of the Minister of Justice. The ETC's activity would extend to discrimination based on any ground, not only race. The ETC would have the power to conduct investigations, issue recommendations, impose sanctions, initiate lawsuits and administrative procedures, and provide advice in the legislative process.

The greatest concern with regard to the Draft Bill's solution is that it fails to clarify the ETC's relationship to already existing institutions, first and foremost that of the Minorities Ombudsman, the labour and the consumer protection inspectorates. It may also prove problematic if the Ministry of Justice is vested with the right to supervise the ETC's operation. A greater degree of independence may be achieved by placing the body to a higher hierarchical level, i.e. under the Prime Minister's supervision.

### Summary

The primary agency dealing with discrimination based on race is the Minority Ombudsman, who already has the powers to conduct independent surveys, publish reports, and make recommendations. However, he is not entitled to sanction perpetrators. Nor does he have the power and financial means to provide assistance to victims of discrimination in pursuing their complaints. With reference to the Commission's guidelines the Draft Bill proposes the establishment of the Equal Treatment Commission that would be competent to deal with all types of discrimination and proceed against all types of perpetrators. It would have the power to conduct investigations, issue recommendations, impose sanctions, initiate lawsuits and administrative procedures. The clarification of the ETC's relationship to already existing institutions and its place in the public administrative hierarchy will be inevitable.

## **Chapter 4 Compliance and implementation**

### **a. Screening**

#### ***Does national law provide a mechanism for the abolition of laws, regulations and administrative provisions that are contrary to the principle of equal treatment?***

Under Article 1 (b) of Act XXXII of 1989 on the Constitutional Court the latter is entitled to subsequently examine the constitutionality of any legal provision. Any law that is contrary to the constitutional non-discrimination clause is also automatically unconstitutional. Under Article 21 Paragraph (2) any person has the right to petition the Constitutional Court for such examination. Under Article 40 of the Act if the Constitutional Court finds that a legal provision is unconstitutional, it shall – fully or partly – abolish that provision. The unconstitutional statute loses effect on the day of the publication of the Constitutional Court's decision and from this day on, it may not be applied.

#### ***Is there a mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended?***

Under Article 8 and 13 of the labour Code an agreement (individual or collective) that violates labour law regulations shall be null and void. If annulled or successfully contested, the agreement shall be invalid (Article 9). If invalidity results in damages, these shall be paid (Article 10).

### Summary

The Constitutional Court has the power to review discriminatory legislation. National labour law allows for discriminatory agreements and contracts to be declared null and void.

## **Annex 1**

### **The text of legal provisions cited in the report**

#### Constitution

Article 60 (1) In the Republic of Hungary everyone shall have the right to the freedom of thought, conscience and religion.

2) This right shall include the freedom to choose or adopt a religion or belief and the freedom, either individually or in community with others, in public or private and through religious acts and rites or in any other way, to manifest or not to manifest, to practice and to teach one's religion or belief.

#### labour Code

Article 174 (1) Employers shall be subject to full liability for damages caused to employees in connection with their employment, regardless of accountability.

Article 177 (1): (1) On the basis of their liability pursuant to Articles 174-176, employers shall reimburse employees for the loss of income, material damages and justified expenses incurred in connection with the damage and its prevention. (2) Employees shall also be compensated for damages, which are not of financial nature.

#### Civil Code

Article 389: by concluding contracts for professional services, contractors shall be obliged to design, fabricate, process, convert, install, or repair things or to create some other result by work, and customers shall be obliged to accept delivery of such services and pay the contracted fee for them.

Article 474 (1) Agency contracts shall be concluded to oblige an agent to carry out the matters entrusted to him. (2) An agent must fulfil the principal's instructions and represent his interests regarding the authority conferred upon him

#### Act on the Promotion of Employment

Article 14 (1) Financial support may be granted for the training, offered or approved by the employment centre, of a person a) who is unemployed; b) whose job is expected to be terminated within one year, regarding which the employer involved has informed the person in question and the employment centre of competence by the location of the business in writing in advance; c) who is performing community service work and agrees to participate in training; d) who is employed, but whose employment cannot be maintained without further training. (2) The Executive Board of the labour Market Fund may define additional groups to be eligible for training assistance. (3) The following forms of support may be granted: a) income supplement benefits or income compensation benefits, and b) reimbursement of training costs.

#### Media Act

Article 135. In the case of unauthorized broadcasting, or broadcast transfer without reporting or in a manner differing from that reported, the Board may impose a fine on the culpable party corresponding to double the revenues realized illegally, or if they cannot be established, a fine extending from HUF 10,000 (€ 43.5) to HUF 1,000,000 (€ 4350), which is payable by the responsible party to the Fund.

Article 50. (2) If, based upon the position taken by the Complaint Committee, the broadcaster has violated the requirement of the balanced provision of information, the broadcaster shall, at the date and in the manner defined by the Complaint Committee, in accordance with the contents of the statement of the Complaint Committee, communicate

the statement of the Complaint Committee, without any evaluating commentary, or shall enable the protestor to present his viewpoint.

(3) In the case of more serious or repeated violations of the requirement of providing balanced information, the Complaint Committee may initiate that the Board impose a fine.

#### Constitution

Article 70/F (1) The Republic of Hungary guarantees the right of education to its citizens.

(2) The Republic of Hungary shall implement this right through the dissemination and general access to culture, free compulsory primary schooling, through secondary and higher education available to all persons on the basis of their ability, and furthermore through financial support for students.

Article 70/G (1) The Republic of Hungary shall respect and support the freedom of scientific and artistic expression, the freedom to learn and to teach.

(2) Only scientists are entitled to decide in questions of scientific truth and to determine the scientific value of research.

#### Act LXIII of 1996 on the Service Relationship of Professional Members of Armed Organs

Article 6 (1) In connection with the service relationship, no member of the professional personnel shall be discriminated against, especially not on the basis of sex, family status, nationality, race, origin, religion, political views, affiliation with organizations representing employees or activities connected therewith, as well as any other circumstances that have no relation to the service relationship.

(2) Distinctions based on the nature and length of the service, rank and position shall not be regarded as discrimination.

(3) In the event of any service dispute related to the violation of the prohibition of discrimination or the rules of lawful distinction, the armed organ shall be required to prove that his actions did not violate the provisions of Paragraphs (1) and (2).

#### Criminal Code

##### Article 180 - Defamation

(1) The person who, apart from the case set forth in Article 179, uses an expression amounting to an infringement of dignity or commits another act of such a type,

a) in connection with the job, performance of public mandate or in connection with the activity of public concern of the injured party,  
b) before extensive publicity shall be punishable for a misdemeanour with imprisonment of up to one year, public labour, or a fine.

2) The person who commits slander with assault, shall be punishable in accordance with Paragraph (1).

#### Act LXIX of 1990 on Petty Offences

Article 138 (1) The person who uses an expression amounting to an infringement of dignity or commits another act of such a type shall be punishable with a fine up to HUF 50,000 (€ 217)

(2) A procedure for the petty offence of defamation shall only be launched upon the private motion of the injured party.

##### Article 151 Dangerous threat

(1) The person who

a) in order to excite fear seriously threatens another person with the perpetration of a crime against the life, physical integrity or health of the threatened person or the threatened person's relative;

- b) in order to excite fear, seriously threatens another person with making available for the public a fact suitable for the impairment of the honour of the threatened person or the threatened person's relative,  
may be punishable with confinement or a fine up to HUF 150,000 (€ 650).
- (2) The perpetrator of the offence defined in Par. (1) may be expelled from the country.
- (3) The offence defined in Par. (1) shall be decided upon by a court.

#### labour Code

- Article 104 (1) In the absence of a contrary agreement, the employee shall be obliged to perform his/her tasks in accordance with the instructions of the employer.
- (2) The employee shall not be obliged to abide by the instruction, if it violates the law or a rule concerning employment. If the performance of the instruction may cause foreseeable damages, the employee shall be obliged to call the employer's attention to this fact, however, he/she may not refuse to carry out the instruction.

#### Civil Code

- Article 348 Par (1) If an employee should in connection with his/her employment cause damage to a third party, the employer shall be responsible vis-à-vis the third party unless a legal regulation provides otherwise.

#### Act XXIII of 1992 on the Status of Civil Servants

- Article 38 (1) The civil servant shall be obliged to abide by the instructions of his/her superior.
- (2) The civil servant shall refuse to abide by the instruction of the superior if by carrying out the instruction he/she would
- a) commit a crime or a petty offence;
  - b) directly and severely endanger the life, health, or physical integrity of another person.
- (3) The civil servant may refuse to abide by the instruction, if this could directly and severely endanger his/her life, health or physical integrity, or would violate the law.
- (4) The civil servant shall be obliged to warn the superior and may request that the instruction be given in writing, if the instruction or its implementation would violate the law or the lawful interest of those concerned or it could cause foreseeable damages. The superior shall not refuse to give the instruction in writing. The civil servant shall suffer no disadvantage due to his/her request concerning the writing down of the instruction.
- (5) If the civil servant does not agree with the superior's decision or instruction, he/she may articulate his/her dissenting opinion in writing. He/she shall suffer no disadvantage due to this.
- Article 50 (1): a civil servant commits a disciplinary offence if he/she culpably violates his/her obligation relating to his/her service.
- Article 51 (1): the employer must initiate disciplinary proceedings if there is well-founded suspicion that a disciplinary offence has been committed. No disciplinary procedure can be initiated if more than three months have elapsed since the violation of the service obligation became public or more than three years have elapsed since it was committed.
- (2): the employer can warn the civil servant without mounting a formal procedure if the facts appear simple and the civil servant admits to the violation of his/her obligations.

#### Act XLIII of 1996 on the Service Relationship of Professional Members of Armed Organs

- Article 69 (1) A member of the professional personnel shall be obliged to obey the orders of the superior, unless by doing so he/she would commit a crime.
- (2) With the exception set forth under Par. (1) a member of the professional personnel shall not refuse to obey unlawful orders. If however, he/she realizes that the order is unlawful,

he/she shall immediately warn the superior about this fact. If the superior still maintains the order, the member of the professional personnel may request that the order be given in writing. In this case only the person giving the order shall be responsible for the implementation of the order.

Article 119: a member of the professional personnel commits a disciplinary offence and must be held liable in disciplinary proceedings, if he/she culpably violates his/her obligation relating to his/her service.

Article 121 (1): no disciplinary action can be taken against a member of the professional personnel if he/she acted on the order of his/her superior. If, however, he/she knew that by complying with the order he/she would commit a disciplinary offence, he/she must be held liable, unless e.g. acting in lawful self-defence.

Article 122: no disciplinary procedure can be initiated if more than one year elapsed since the violation of the disciplinary rules; six months elapsed since the commission of the disciplinary offence; three months elapsed since the competent superior had learnt about the offence.

#### Criminal Code, Act IV of 1978

Article 21 (1): the abettor is a person who intentionally persuades another person to perpetrate a crime.

(2): the item of punishment established for the perpetrators shall also be applied for the abettor.

#### Civil Code

Article 84 (1) A person whose inherent rights have been violated may have the following options under civil law, depending on the circumstances of the case:

- a) demand a court declaration of the occurrence of the infringement,
  - b) demand to have the infringement discontinued and the perpetrator restrained from further infringement;
  - c) demand that the perpetrator make restitution in a statement or by some other suitable means and, if necessary, that the perpetrator, at his own expense, make an appropriate public disclosure for restitution;
  - d) demand the termination of the injurious situation and the restoration of the previous state by and at the expense of the perpetrator and, furthermore, to have the effects of the infringement nullified or deprived of their injurious nature;
  - e) file charges for damages in accordance with the liability regulations under civil law.
- (2) If the amount of damages that can be imposed is insufficient to mitigate the gravity of the actionable conduct, the court shall also be entitled to penalize the perpetrator by ordering him to pay a fine to be used for public purposes.

#### labour Code

Article 8 (1) An agreement that violates an employment-related regulation or otherwise violates a legal regulation shall be considered null and void. If such nullity cannot be remedied within a short time without causing injury to the parties and to public interest, it shall be recognized ex officio.

Article 100 (1) If a court establishes that the employer has unlawfully terminated an employee's employment relationship, such employee, upon request, shall continue to be employed in his/her original position.

(4) If the employee does not request [...] reinstatement of the employee in his/her original position, the court shall order, upon weighing all applicable circumstances, in particular the unlawful action and its consequences, the employer to pay no less than two and no more than twelve months' average earnings to the employee.

Article 174 (1) Employers shall be subject to full liability for damages caused to employees in connection with their employment, regardless of accountability.

Article 177 (1) On the basis of their liability pursuant to Articles 174-176, employers shall reimburse employees for the loss of income, material damages and justified expenses incurred in connection with the damage and its prevention. (2) Employees shall also be compensated for damages which are not of financial nature.

#### Civil Code

Article 324 (1) The period of limitation for claims shall be five years, unless otherwise prescribed by law.

Article 326: (1) The period of limitation commences upon the due date of the claim.

(2) If the obligee is unable to enforce a claim for an excusable reason, the claim shall remain enforceable within one year of the cessation of the hindrance or, in respect of a period of limitation of one year or less, within three months, even if the period of limitation has already lapsed or there is less than one year or less than three months, respectively, remaining therein. This provision shall also be applied if the obligee has granted a respite for performance after expiration.

Article 327: (1) A period of limitation shall be suspended by a written notice for performance of a claim, the judicial enforcement of a claim, the amendment of a claim by agreement (inclusive of concession), and the acknowledgment of a debt by the obligor.

(2) The period of limitation shall recommence after suspension or following the non-appealable outcome of a suspension proceeding.

(3) If a writ of execution is issued in the course of a suspension proceeding, the period of limitation shall be suspended only by the acts of enforcement.

Article 360 Paragraph (4) The provisions on periods of limitation shall be applied with the difference that the period of limitation for a claim cannot be less than five years if the damage has been caused wilfully or criminally. However, in respect of damages caused by the commission of a crime, the period of limitation for a claim shall not expire even after five years as long as the criminal offence remains punishable under the statute of limitations.”

Article 11 (1) The term of limitation for claims related to employment relationships shall be three years. The period of liability for damages caused by a criminal offence shall be five years, or longer, as consistent with the statute of limitations for such criminal liability.

(2) The term of limitation for a claim shall commence upon the date on which the claim falls due. Lapse of a claim shall be recognized ex officio. Any performance effected following the term of limitation may not be reclaimed on the grounds of limitation.

(3) If the obligee is unable to enforce his/her claim for an excusable reason, he/she may do so within six months of the cessation of the hindrance thereto even if the period of limitation has already lapsed, or if there is less than six months remaining.

(4) The term of limitation shall be suspended by a written notice aimed at the enforcement of a claim, the judicial enforcement of a claim, the amendment of a claim by agreement, conclusion of a concession, or by acknowledgment of a claim by the obligor. The period of limitation shall recommence after suspension or after the definitive conclusion of a suspension proceeding causing such interruption. If a writ of execution is issued in the course of a suspension proceeding, the period of limitation shall be suspended only by acts of enforcement.

Article 8 (1) An agreement that violates any employment-related regulation or otherwise violates a legal regulation shall be null and void. If such invalidity cannot be remedied within a short time without causing injury to the parties and to public interest, it shall be recognized ex officio.

Article 9 An agreement if annulled or successfully contested shall be invalid. The regulation pertaining to employment relationships shall be applied in place of any invalid part of an agreement, unless the parties would otherwise not have concluded the agreement without the invalid part.

Article 10 (3) In the event that the invalidity of an agreement results in damages to the parties, the provisions on liability for damages shall be duly applied.

Article 13 (1) Employment-related matters shall be governed by law or, on the basis of authorization granted by law, by other legal regulations.

(2) A collective bargaining agreement may govern any employment-related issues, however, with the exception set forth in Paragraph (3), such agreement may not be contrary to legal regulations.

(3) Unless otherwise provided for by this Act, a collective bargaining agreement or an agreement between the parties may deviate from the provisions set forth in Part Three of this Act [dealing with the detailed rules of employment relationships] on the condition that such deviation provides more favourable terms for the employee.

(4) A collective bargaining agreement or an agreement between the parties shall be null and void in the event that it violates the provisions of Paragraphs (2)-(3) above.

**Annex 2**  
**Tables**

**Table 1: Non-discrimination grounds in different Hungarian laws**

<b>Ground</b>	<b>Const. (1949)</b>	<b>Civil Code (1959)</b>	<b>Act on the Prom. of Empl. (1991)</b>	<b>labour Code (1992)</b>	<b>Public Edu. Act (1993)</b>	<b>Healthc are Act (1997)</b>	<b>Child Prot. Act (1997)</b>
<b>Race</b>	+	+	+	+			
<b>Colour</b>	+				+		
<b>Belonging to an ethnic group; Ethnic affiliation; Ethnic origin</b>					+		+
<b>National origin; Nationality; Belonging to a nation; National affiliation</b>	+	+		+	+	+	
<b>Belonging to a national minority; National minority origin</b>					+		+
<b>Origin</b>			+	+		+	+
<b>Religion; Religious conviction</b>	+	+	+	+	+	+	+
<b>Disability; Mental or physical disability</b>				+		+	
<b>Age</b>			+	+	+	+	
<b>Sexual orientation</b>						+	

Other [than political] opinion; Conscientious conviction	+				+		+
Language	+						
Sex; Belonging to a sex	+	+	+	+	+	+	+
Political opinion; Political conviction; Political views	+		+	+	+	+	+
Social origin	+				+	+	
Social situation						+	
Property	+						+
Income					+		
Birth	+				+		
Family status				+		+	
Qualifications						+	
Membership in organizations representing employees			+	+			
Activities connected with membership in organizations representing employees				+			
Lack or restriction of legal capacity					+		+

Being protected under the effect of the Child Protection Act							+
Maintainer of the educational institution					+		
<b>Open ended list</b>	+	+		+	+	+	

Note 1: The Media Act is not included in the table, because of the way it structures the ban on discrimination: from its wording – see above – it is unclear whether the intention is to ban discrimination on racial grounds only, or on the other grounds mentioned in the provision forbidding the incitement to hatred (gender, nationality, language, religion, etc.) as well.

Note 2: The grounds relevant for the purposes of the present study are indicated in bold letters.

Note 3: Open-ended taxation means that the list given by the particular statute is non-exhaustive – Constitution: “any other grounds”; labour Code: “any other circumstances that have no relation to employment”; Healthcare Act: “any other grounds not related to [the patients’] health conditions”; Public Education Act: “any other situation”. Depending on grammatical and logical interpretation, the Civil Code can also be seen as containing reference to further grounds of discrimination.