



Commissie Gelijke Behandeling

According to Dutch law, everyone in the Netherlands should be treated equally. Unfortunately, the law is not always obeyed. People who feel that they have been discriminated against can file a petition for an opinion from the Dutch Equal Treatment Commission (in Dutch: 'Commissie Gelijke Behandeling' or 'CGB').

What is the CGB and what are its main activities?

The CGB has been established by the Dutch government in 1994. It is an independent, professional organisation. People can ask the CGB questions about Dutch equal treatment law or ask the CGB to give an opinion in a specific case.

When the CGB receives a petition for an opinion, it investigates whether equal treatment law has been violated. In some respects, the CGB is similar to a court. However, an important difference is that the CGB searches for information itself. Other differences are that filing a complaint is free of charge and that a lawyer is not needed. The CGB does not have to wait for petitions to be filed. It is also entitled to investigate on its own initiative in specific areas where systematic or persistent patterns of discrimination are suspected.

In the course of time, the CGB has acquired a great deal of knowledge. Therefore, it regularly advises among others the government on issues regarding equal treatment. Members of the CGB also participate in conferences and expert meetings and give lectures and training on a regular basis.

Equal treatment law

Equal treatment law stipulates that it is forbidden to discriminate against a person on the following grounds:

- Sex
- Race
- Religion
- Belief / Political conviction
- Sexual orientation
- Civil status
- Nationality
- Disability or chronic illness
- Age

Also an instruction to discriminate against persons on any of the above-mentioned grounds shall be deemed to be discrimination.

Finally, the prohibition on discrimination includes a prohibition of harassment. This means conduct, which connects with the above-mentioned grounds, and which aims at or results in affecting the dignity of the person and the creation of a threatening, humiliating and offending environment.

In addition to these grounds, the Commission considers petitions about discrimination on the ground of working hours. This means that any unjustified discrimination between a person working on a full-time or a part-time contract is prohibited.

The Commission also considers petitions about discrimination in conditions of employment between persons with a flexible or fixed labour contract.

The situations in which the non-discrimination and equal treatment norms apply

It is forbidden to treat people differently on the above-mentioned grounds in the following fields:

- In employment relationships. Unequal treatment is forbidden in any area that is related to paid work, from job advertisement to the actual employment contract. This includes salary, holidays, promotion, training and professional education, dismissal, employment-finding and working conditions. The law addresses not only employers but also all those involved in labour relations and the framing of working conditions. Thus, Manpower organisations and the parties involved in drawing up collective agreements (e.g. unions, ministries) also fall within the scope of equal treatment law.
- In working relationships across professions, for example, among doctors, lawyers, solicitors or tax advisors. In these situations there is no hierarchical employer-employee relationship. However, it is equally forbidden to discriminate against colleagues in the profession on one of the forbidden grounds.
- In membership of or involvement in an employers' organisation, trade union or a society of professional companions, as well as in the advantages which arise from that membership or involvement. However, in the case of the grounds of religion, belief, political opinion, race, sex, nationality, sexual orientation, and marital status, an exception is made for organisations founded on religious, ideological or political principles.
- In offering or permitting access to goods and services by professionals, public services and institutions working in the fields of housing, social services, health care, cultural affairs and education. Individuals offering goods and services should also refrain from discrimination. Unequal treatment is forbidden in concluding, implementing or terminating agreements or contracts and in providing information on those matters.
- In receiving career orientation and advice about educational or career opportunities.

With regard to the grounds of disability or chronic illness and age, the prohibition of discrimination is temporarily restricted to employment, including vocational training. This legislation is meant to be extended to the other fields, especially the field of offering goods and services.

With regard to the ground of race, discrimination is also forbidden in social protection, including social security and social advantages. This means that a part of the public sector – besides the field of employment – has become within the scope of the Commission's activities.

Direct and indirect discrimination

There is a difference between 'direct' and 'indirect' discrimination. Direct discrimination is unequal treatment based explicitly on one of the grounds listed

above. For example, someone who is refused an application to rent a house because he is a homosexual is the victim of direct discrimination.

Indirect discrimination occurs when a certain requirement, rule or practice seems neutral, but indirectly leads to discrimination on one of the discrimination grounds. An example is a job advertisement for bulb peelers in which fluency in Dutch is required. The requirement may seem neutral, but can lead to the unequal treatment of ethnic minorities. After all, it is more difficult for them to meet the requirement.

Direct discrimination is (almost) always forbidden. Indirect discrimination is only allowed when there is an objective justification for it.

Who may ask for an opinion of the CGB?

Any person who thinks that he or she has been discriminated against can file a petition at the CGB. In order to ask for an opinion, you must be the direct victim of this unequal treatment. For example, with regard to a job advertisement for a female executive secretary, only a male person who qualifies for the position can ask for an opinion. The request has to be in writing. As this requirement is sometimes difficult to fulfil, especially for people of non-Dutch origin, it is possible instead to specify the complaint during an interview at the Commission's office.

Sometimes a person does not want to file a petition himself or herself. In this case this person can ask someone else to be his or her representative. However, this does not mean that in this way a person can stay anonymous. The representative may be a lawyer, a relative or a friend, a union, an anti-discrimination body or a legal advice centre. Other associations or foundations can also take legal action to protect the interests of other persons, but only if these interests are in accordance with the association's constitution or statutes.

If unequal treatment occurs within an organisation, the works council or service committee may contact the CGB.

Employers or organisations may also want to know whether their own conduct, policies or regulations comply with the equal treatment law. They can request for an assessment of one's own conduct, practice or regulations.

Finally, a judge handling a lawsuit concerning unequal treatment may ask the opinion of the CGB.

What happens when the CGB is asked to give an opinion?

After receiving a complaint, the CGB decides whether it is authorised to investigate the case.

If the CGB is authorised, it starts an investigation. The CGB questions both parties (the complainant and the defendant) and gives both parties the opportunity to respond to the other party's point of view. The CGB can also obtain information from 'third parties', for example from witnesses.

After the CGB has collected enough information, it closes the investigation and there is a hearing. The hearing usually lasts about one hour and is open to the public. Both parties can testify and bring an expert along. The CGB asks questions and compares the different points of view.

After the hearing, the CGB discusses the case in a closed meeting. It decides within eight weeks whether equal treatment law has been violated. The CGB's opinion is important, but not legally enforceable. This means that the CGB cannot force the discriminating party to comply. However, in practice, they are usually complied with.

The CGB tries to strengthen the impact of its work by actively following up on its decisions. It may for example talk to representatives of the branch of industry in which the unequal treatment occurred. In this way, the CGB hopes to prevent similar cases in the future.

How to request for an opinion?

Any person who feels that he or she is treated unequally can file a petition at the CGB. This request has to be in writing. As this requirement is sometimes difficult to fulfil, especially for people of non-Dutch origin, it is possible instead to specify the complaint during an interview at the Commission's office.

The request should explain why the person feels that he or she has been treated unequally. It should also specify who is responsible for the unequal treatment. The more information is given, the better the CGB can understand the nature of the complaint. Therefore it is important to include copies of all documents relevant to the case.

Someone else may file the request on the complainants behalf and represent him or her during the procedure. If this is the case a statement of authorisation should be included.

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This leaflet contains a simplified description of the equal treatment law. For that reason, you cannot derive any rights from it.

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Some examples of CGB opinions

Working hours

A woman worked part-time and was a member of the works council of the company. Works council meetings were often held during hours she did not normally work. For these hours she only received the basic hourly rate as a supplement to her normal salary. Full-time workers received a full hourly rate, including a number of secondary employment conditions (such as sick pay and a contribution to the pension scheme by the employer). The CGB concluded that there is a case of unequal treatment against part-time workers if, in exceeding individual working hours, they receive a lower salary than full-time workers.

Sexual harassment at the workplace

A woman complained of sexual harassment at work by a male colleague. Although management had tackled the man about this, the woman complained that this had not effectively ended the harassment. A report drawn up by an independent expert bureau found that sexual harassment had occurred as a result of the company's failure to implement anti-harassment policies. The CGB concluded in favour of the company. As soon as the incidents came to the knowledge of the management team, it took sufficient measures to put an end to the harassment. The fact that the company had conducted an independent research inquiry and was willing to follow up on the recommendations in the report was the deciding factor in this conclusion.

Positive action

A regional police force asked the CGB's opinion on its positive action policies regarding the increase of women in the force. The policies consisted of preferential treatment of women during selection procedures and in hiring new personnel. The AWGB allows for positive action if the aim of the program is to reduce de facto inequalities and the unequal treatment is proportional to that aim. The CGB specified these criteria in this cast. It recommended that the employer compare the numbers of women working in the police force with the numbers of qualified women in the labour market. Only if and in so far as there is a discrepancy between those numbers should preferential treatment be allowed. The employer should also announce its policy plan publicly in its job advertisements. The CGB concluded that in this case the plan fulfilled all the criteria and thus was allowed under the AWGB.

A Christian kitchen help

A church advertised for kitchen help in a juvenile home. One of the requirements was that the applicant should be a Christian. A foundation campaigning against discrimination filed a class action against the church, stating that this advertisement discriminated on the ground of religion. Under the AWGB, an exception is made for a religious organisation to impose requirements on the occupancy of a post which, in view of the organisation's purposes are necessary for it to live up to its founding principles. To judge whether this exception was applicable, a close examination of the circumstances of the case was necessary. The CGB concluded that, as the kitchen help would also attend meals, Bible readings and prayers, and would be in close contact with the juveniles, the requirement was allowed under the conditions of the AWGB.

Homosexual teacher rejected for a post

The board of a Christian school asked the CGB's opinion about whether it had dealt correctly when it had rejected a homosexual teacher for a post. The board had not invited the applicant for an interview because he lived with his male partner. The school is founded on the teachings of the Bible and the homosexual preference of the applicant was in conflict with the school's Christian identity. The CGB concluded that rejection on the ground of living with a male partner is the same as rejection on the ground of homosexuality. The AWGB does not allow justification for discrimination on the basis of religion if this amounts to discrimination on the sole fact of homosexuality.

Unequal pay for women

A trade union complained that women peeling tulip bulbs for a certain horticulture firm earned less than their male colleagues for the same work. Women also had less favourable working conditions and fewer opportunities for promotion. The Commission found that the pay inequality was the result of the different types of contracts offered to men and women and of the different pay scales applied to men and women. Women had no opportunity to get promoted to work that demanded more physical strength. These practices are directly discriminatory on the ground of sex. In the same company, workers of Turkish origin got paid less than their Dutch colleagues. The company thereby also discriminated on the ground of race.

Discrimination on the ground of marital status

An employer has a regulation concerning leave-taking in which employees who have children in basic education get priority when they want to take leave during school holidays. The complainant in this case stated that this regulation constituted (indirect) discrimination on the ground of marital status. The CGB conducted research into the numbers of people who are disadvantaged by this rule. It used statistics provided by the employer, the branch organisation and the National Bureau for Statistics. These figures showed that unmarried people are not specifically disadvantaged by the preferential treatment of employees with young children. The Commission concluded that there was no indirect discrimination on the ground of marital status. The question of whether there would be objective justifications for this regulation was not therefore relevant in this case.

Trainee sent away because of headscarf

A trainee at an elementary school was sent away because she wore a headscarf. The director of the school justified this by stating that wearing a headscarf is contrary to the school's absolute neutral position on religious affairs. By refusing to remove this religious sign, the trainee was disrespectful towards Islamic teachers and pupils who did not wear a headscarf or did not want to do so. The CGB ruled that in principle a school might ask its staff to show an attitude of tolerance towards people of various religious convictions. However, in this case it was not obvious that the refusal to remove the headscarf could be interpreted as an attitude of intolerance. Therefore the director had discriminated against the trainee on the ground of religion.