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The effects and limits of anti-discrimination law in The Netherlands

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1. Introduction

In this article I will analyse the limits and effects of Dutch anti-discrimination law, based on results of recent empirical research. In The Netherlands, as in most other Western countries, legislation was introduced to protect employees and citizens against discrimination. This kind of legislation often is described as weak, lacking in sufficient enforcement, rather ineffective and often largely symbolic (Gelb, 2000; Lacey, 1992; Pedriana, 2001; Petersen, 2001). Proving of discrimination often is problematic (Easteal, 2001; Bindman, 1992). First, I will provide brief information about the relevant statutes and legal provisions (Section 2). After giving the research outline (Section 3), I present the main results of the empirical research in Section 4. The results are explained by five factors, these are discussed in Section 5. The final section contains concluding remarks.

2. Dutch anti-discrimination law

In The Netherlands, the Criminal Code (1971) contains the first legal instruments against discrimination in the form of provisions against racial discrimination. These provisions were introduced to implement the International Convention on the Elimination of all Forms of Racial Discrimination (Rodrigues, 1997; Böcker, 1991).

Subsequently, implementation of EC directives on equal treatment of men and women resulted in the first Dutch anti-discrimination act, the Equal Pay Act, which came into force in 1975. Gradually, the scope of anti-discrimination legislation

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widened from equal pay for men and women, to equal treatment of men and women in any area related to work (recruitment, terms and conditions of employment and dismissal).

When the Equal Treatment Act (Algemene Wet Gelijke Behandeling) entered into force in 1994, once more the scope of anti-discrimination law was extended since, unequal treatment is explicitly prohibited on grounds of gender, marital status, race, nationality, religion, belief, political opinion and hetero- or homosexual preference. This applies to all aspects of employment and professions, e.g. advertising, recruitment, appointment, terms and conditions of employment including salary, on the job training, promotion and dismissal. Unequal treatment is likewise forbidden in the supply of goods and services (schools, banking, and sports meetings), and in providing advice about educational or career opportunities.[1] Since 1996, in labour relations, unequal treatment on grounds of part-time or fulltime employment is prohibited as well. Further extension of the scope of anti-discrimination law is to be expected. Currently, bills containing legal provisions prohibiting discrimination on grounds of handicap, age and temporary labour contracts are under discussion in parliament.

In addition to the Equal Treatment Act, Dutch employers are legally required to submit annual reports on the proportion of ethnic minorities they employ in order to improve their labour market participation (see Jonkers and Minderhoud, 1999; Jonkers, 2001; Rodrigues, 1997). There is no such legal requirement to improve the situation of women on the labour market. Our research is limited to the Equal Treatment Act.

2.1. Complaints concerning discrimination

The Equal Treatment Act provides for the establishment of an Equal Treatment Commission (hereafter 'the Commission'). The Commission is an independent semi-judiciary body. The objective of the Commission is to interpret and promote compliance with equal treatment legislation within the judicial framework of this legislation (Goldschmidt and Gonçalves-Ho Kang You, 1997). The Commission investigates complaints about discrimination. From September 1994 to December 2001, almost 2500 complaints have been filed. The number of complaints on grounds of race and/or nationality increased. In recent years, about 40% of the decisions by the Commission concerns discrimination on grounds of race or nationality. About the same amount of decisions concerns gender discrimination. In 55% of all cases, the Commission decided on unlawful discrimination. Decisions of the Commission are not legally enforceable. The Commission cannot force the party who is found guilty of discrimination to comply with its decision.

About 80% of the decisions of the Commission concern discrimination in employment, such as the question whether race played a role in the termination of a labour contract (dismissal, not offering contract renewal), denial of promotion etc.

[1] See for the (English) text of the Dutch Equal Treatment Act the website of the Dutch Equal Treatment Commission: www.cgb.nl/act.

Other cases concern complaints about racial discriminatory treatment on the work floor. Decisions on gender discrimination often deal with equal pay and pensions for men and women or pregnant workers.

The number of complaints filed at the Equal Treatment Commission is slightly higher than the number of new discrimination cases at the Prosecutors Office (criminal offences). The cases at the Prosecutors Office amount to about 200 annually and concern 80% racial insults (Van Donselaar and Rodrigues, 2001, p. 83).

3. Researching the effects of anti-discrimination law

Recently, I was involved in two empirical research projects on the effects and limits of anti-discrimination legislation in The Netherlands:

- A research project on the social effects of the Dutch anti-discrimination laws conducted in 1999 (Asscher-Vonk and Groenendijk, 1999).
- Research on practices and opinions on occupational activities for which the sex of the worker is considered to constitute a determining factor, that is the exception contained in Article 2(2) of EC Directive 76/207 (Monster et al., 2002).

In both studies, we used a perspective which Griffths (1999) terms 'the social working of law'. We concentrate on the social meaning and effects of the legislation in relevant social fields or sectors. This approach contrasts with a top–down instrumentalist approach concentrating on the issue whether the objectives of policymakers are realised.

In studying effects of legislation, it is important not only to study the effects in situations of conflict since the social effects of legislation are not confined to those situations: effective legislation makes people comply with rules in everyday life without discussion and conflicts. For that reason, we did not restrict our research to special effects of anti-discrimination laws, but also included general effects, i.e. the influence of legislation in everyday practice in organisations subject to the law. Actors then apply legal rules without intervention from the judicial system by enforcement agencies, judges or lawyers. Special effects are effects in particular conflicts, where people refer to the law, and rules are applied by legal institutions such as the Equal Treatment Commission or a court.

3.1. Obtaining data

The research findings are based on several sources of information. We focused our research on experiences and opinions of people who in fact had dealings with the Equal Treatment Commission, or could or should be familiar with the Equal Treatment Act in view of their position.

The general effects of the legislation were investigated by questioning personnel managers and people in three economic sectors on their knowledge of the legislation and the Commission, and the problems they encountered in relation with equal

treatment. We conducted a telephone survey under personnel managers of 553 labour organisations and we interviewed managers in 11 financial service organisations, eight schools, and 12 housing societies. Additional information on general effects was obtained in interviews with 17 personnel managers of welfare organisations and 17 intermediaries on the role of gender in recruitment and selection of personnel.

To investigate the level of societal support for anti-discrimination law, we interviewed representatives of relevant non-governmental organisations on their experiences and opinions: 24 interest organisations such as unions and anti-discrimination bureaus, and nine organisations of addressees, like employers organisations.

The study of special effects of the legislation focuses on complaints with the Equal Treatment Commission. We conducted a telephone survey under 126 persons who filed a complaint with the Equal Treatment Commission in 1997 and 58 of their opponents, studied the aftermath of decisions taken by the Equal Treatment Commission in all 149 files of rulings by the Commission in 1997, and interviewed parties involved in 15 of these rulings.

4. Research findings

4.1. General effects of anti-discrimination legislation

4.1.1. Experiences of personnel managers

Since the 1975 Equal Pay Act, employers are subjected to anti-discrimination law. We conducted a telephone survey under 553 labour organisations with more than 10 employees (governmental, non-profit and commercial organisations). Most respondents knew that the Equal Treatment Act existed. But their knowledge about the content of the legislation was rather limited. When asked to mention the elements of personnel management to which the anti-discrimination rules apply, one-third did not mention a specific element. Small firms responded that they did not know, while small governmental organisations indicate that one is not allowed to discriminate at all (discriminate on any element). That discrimination is prohibited in recruitment is generally known, whereas dismissal or education and promotion are only spontaneously mentioned by about 15% each. When asked to mention prohibited discrimination grounds, about two-third mentions gender and race/nationality. Passive knowledge was higher. At least 81% of the respondents were familiar with all discrimination grounds, apart from part-time/fulltime employment (49%). Remarkably, 86–76% of the respondents indicated that two grounds not covered by current anti-discrimination law, age and handicap, are included in the discrimination prohibition. Respondents did not possess more detailed information about the contents of the legislation. About 90% of the respondents were unfamiliar with the distinction between direct and indirect discrimination.

The Equal Treatment Act did not give rise to a re-assessment of equal treatment in personnel management. One-third of the organisations did discuss the matter, in

particular the proportion of men and women or the position of ethnic minorities. Especially, large governmental organisations discussed equal treatment, in small commercial organisations this was quite rare. Nevertheless, one out of ten personnel managers stated that the Equal Treatment Act did give rise to adaptations of, in particular, procedures concerning personnel recruitment.

All in all, the general effects of the anti-discrimination laws in labour organisations are rather limited and restricted to a minority of these organisations. The general effects are most profound in large governmental organisations and least in small enterprises. The legislation seems to have resulted in some adaptations in procedures concerning personnel recruitment and in discussions on the proportion of men and women in the staff or the work force.

In the research on the role of gender in recruitment, we interviewed personnel managers and employment officers. For them, adherence to the general principle of equality does not contradict with the widely accepted practice to prefer a man or a women for a particular vacancy because of the composition of the team. Respondents refer to common knowledge about characteristics and qualities of men and women. Therefore, they think it wise to strive for a well-balanced gender composition of teams and sections within the organisation. In fact, the job segregation between men and women is rather traditional in almost all organisations included in the research. According to respondents, with a few exceptions, no women apply for a man's job, and no men apply for a woman's job. Traditional job segregation is reinforced by the preferences within organisations, and the application behaviour of women and men seeking employment. These findings indicate a striking difference between gender and race in personnel recruitment. Gender in recruitment is not controversial on several levels, whereas race is highly controversial.

4.1.2. Equal treatment in supplying goods and services

The Equal Treatment Act not only applies to employment, but also to the supply of services and goods. We interviewed staff from three sectors providing important social goods and services. Since 1994, their activities are subject to anti-discrimination law. The Act and the Commission are not or scarcely known in these organisations. As a consequence, the general effects of the legislation are insignificant. It still is possible, however, that the Equal Treatment Act and Commission are indirectly influencing ways of thinking, and norms in these institutions.

Within schools, equal treatment is an issue. In particular, the position of migrant pupils and, prejudices by pupils and parents are discussed regularly. Tolerance and equality are considered important norms that should be transferred to children. This discourse is separate from the Equal Treatment Act.

In the distribution of housing, equal treatment is not on the agenda anymore. The reason for this may be that housing corporations do not really select their clients at the moment. In the new distribution system, clients apply for a vacancy, whereas allotment is decided by the date of entry in the registration system. Housing corporations claim that this distribution system does not allow for racial discrimination. Research shows the chances of ethnic minorities to be equal to

others under the new distribution system. This is an improvement of the former system that tended to work at the disadvantage of ethnic minorities.

Equal treatment is not often a topic in financial services either. Most of our respondents did not relate equal treatment to the usual routines of risk assessment. For instance, in the insurance business, it is quite common to distinguish categories based on statistical evidence of the risks implied. These categories result in differentiation of insurance-premium or conditions. This common method of risk assessment in insurance, judgement based on a classification of the clients into a risk category, is not easily compatible with judgement in every individual case as required by Equal Treatment legislation.

4.1.3. Support for equal treatment

In general, the support for equal treatment is high, and almost everyone we interviewed endorsed it. Everyone was conscious of the risk of being accused of discrimination. However, equal treatment was not (high) on the agenda of personnel managers or managers responsible for supplying services or goods.

Some interest groups actively used the equal treatment legislation in achieving their goals. However, most interest groups did not regard it as their primary task to monitor compliance and enforcement of the legal provisions.

4.2. Special effects of anti-discrimination legislation

As to the special effects of the anti-discrimination provisions, the survey of labour organisations shows that most complaints of employees about unequal treatment were dealt with internally. About 10% of the respondents mentioned such complaints, in particular respondents from large governmental organisations and from large organisations with a mean proportion of women and ethnic employees. Small labour organisations were hardly confronted with these complaints. In response to any given complaint, 2 out of 5 have taken measures. Only a small proportion of the complaints was brought before the Equal Treatment Commission (1.4% of the labour organisations in the survey experienced a complaint with the Commission).

Fewer complaints were brought against small enterprises, whereas the chance of non-compliance with the legislation is probably higher. In small enterprises, we found less knowledge of the legal provisions, less attention paid to unequal treatment, and less adaptations of internal procedures as a result of the legislation. The reason for the relatively low number of complaints brought against small enterprises is probably that the fear of negative effects of suing the employer in these cases is higher and more real.

Comparing the number of complaints with the Commission with the results of research among employers and Turkish employees also leads to the conclusion that the number of potential complaints about unequal treatment on grounds of race or nationality is much higher than the number of petitions actually presented.

Almost half of the employees who filed a complaint with the Equal Treatment Commission against their employer said to have experienced disadvantageous

consequences. One-third changed employer for that reason. This applies in particular to small organisations, and higher educated complainants.

About half of the complainants and their opponents think that decisions of the Commission have a substantial impact on the behaviour of employers and organisations. Only 25% of the complainants and 7% of the opponents think the decision has no influence whatsoever. Issuing the complaint did not result in any form of action taken by the opponent. After the Commission decided unlawful unequal treatment, measures were taken (or considered) in conformity with the decision according to half of the complainants and opponents. One-third of the opponents, who according to the Commission's decision had not been guilty of unlawful unequal treatment, also took measures.

A study of Commission files reveals that in one-third of the cases where the Commission decided the complaint is justified, the opponent complies with this decision. Often, general measures are taken such as the adaptation of internal rules or procedures (changing job requirements or recruitment forms, written records of language policy, drafting a code of conduct). In those cases, not only the complainant, but also others in comparable situations may benefit from a positive decision of the Commission. In some cases, the decision has impact on a whole branch of industry by way of an adapted collective agreement. The complainant him/herself does not always profit from a positive decision. In some cases, the employer complies with the decision in a general way, but this does not help the complainant anymore because the complainant in the meantime has been dismissed, or the vacancy has been filled. In other cases, the opponent refuses to comply with the decision of the Commission. Decisions of the Commission do not have a binding force. In the case the opponent does not comply, a complainant should take further action such as going to court so as to force the opponent to comply.

Most opponents disagreed with the Commission that they treated the complainant unequally, because the procedure did not convince them. When compliance requires a fundamental shift within the organisation, the opponent is not convinced of the need to take measures, or compliance will lead to considerable costs, chances of non-compliance increase. In these circumstances, it is likely that compliance does not take place at all, or that only minimal or cosmetic measures are taken. In some cases, the Commission finds unlawful unequal treatment because the organisation does not have an explicit policy or written rules on the matter, without specifying the criteria such a policy should meet. For example, the Commission ruled that the informal rule of an employer that the language on the work floor should be Dutch amounted to unequal treatment. Following this ruling, the employer decided to put the existing informal language rules down on paper.

5. Conditions for effective anti-discrimination law

In this section , I will try to explain the effects of anti-discrimination law described. The effects of anti-discrimination law depend on several factors. I will focus on

the following:

(1) law enforcement, (2) communication to the beneficiaries and the addressees of the legislation, (3) mobilisation of the beneficiaries, (4) availability of expert legal assistance, and (5) characteristics of the relevant social field.

5.1. Law enforcement

The first factor affecting the impact of the provisions is the kind of legislation, and in particular the organisation of its enforcement. Legal rules are not self-enforcing. Enforcement of legal provisions can rely on the vigilance of individuals or other civil parties, enforcement agencies or other public organisations. The more enforcement relies on the activity of individuals deprived of their rights, the more important communication of the rules and the social context. Enforcement of Dutch anti-discrimination law depends mainly on the action of individuals who feel discriminated against. They are the actors mobilising the law. This is what Macaulay (1979) and Griffths (1999) termed an 'individual rights strategy'. New laws give individuals new subjective rights. Anti-discrimination legislation is a characteristic example of this type of law. Discrimination is prohibited and members of target groups like women, ethnic or religious groups and homosexuals, are given the right to equal treatment. To uphold this right on equal treatment, an individual has to take action. He or she can appeal with the opponent to comply with the law. Should this claim be unsuccessful, he or she can file a complaint with the Equal Treatment Commission or a court.

The current act also empowers interest groups to seek compliance by filing a complaint. During the period 1994–2001, about 8% of the decisions of the Commission were made at the request of a non-governmental organisation. Another 4% of the decisions were made at the request of an addressee (usually an organisation in its role as employer or service provider). The overwhelming majority of complaints is filed by an individual complainant. In contrast, a study of US Courts of Appeals sex discrimination cases concludes that collective action is rather common (Burstein, 1989, pp. 653–655).

In general, an act will have more impact if the enforcement is not exclusively dependent on individuals deprived of their rights. Enforcement by specific enforcement agencies often is more effective.

The Equal Treatment Commission is a such a specialised agency. Complainants, opponents and persons providing legal aid find this Commission professional, independent, and careful. Their experiences with the accessibility, treatment, information provided and the procedure during the hearings are positive.

Most representatives of interest groups are content with the expertise and the thoroughness of the Commission. Some would prefer a more active attitude, however. Representatives of organisations of addressees, not surprisingly, prefer a very limited role for the Commission.

The Commission takes a rather passive attitude. Over the years, the legal competencies of the Commission have increased. The current Commission is competent to initiate an investigation or to enforce compliance with rulings of the

Commission in court. These new competencies have hardly been used so far, however. Attention is focused on the investigation of complaints and handing down rulings. Advise, consultation with or mediation between parties receive less attention. The Commission is confronted with at least three dilemmas.

First, there is a tension between solving disputes and the interpretation and explanation of legal norms. The Commission in fact concentrates on rule-making. That may be a problem for complainants not aiming at a decision involving issues of principle.

A second tension is that between orientation towards the parties and orientation towards the legal establishment, in particular judges and courts. This tension is evidenced in the formulations employed in the rulings of the Commission. Are these written to convince the parties and the relevant social field, or is the argumentation primarily meant to impress judges and lawyers? The short motivation of the decision, the limited attention for the parties' arguments, and the frequent reference to other decisions indicate a legal orientation. This orientation towards the legal world is characteristic for the current Commission. The first commissions for equal pay and equal treatment of men and women were not legally oriented at all. Most members of these first commissions were not legally trained, they were in fact representing employers and employees.

The combination of judicial tasks and the competence to initiate investigations is the third dilemma. The Commission experiences a tension between these two tasks which forces a choice. It seems possible, however, to combine both tasks.

The legal framework allows the Commission to choose one of the three roles: (1) explication of rules and rule-making, (2) solving disputes by decisions and mediation, (3) enforcement of equal treatment legislation. In fact, the current Commission mainly focuses on the first role.

5.2. Communication with the beneficiaries and the addressees

It is crucial that potential actors are well-informed about the legal rules. First of all, members and organisations of the beneficiary groups should know that they have a legal right to equal treatment, so as to enforce their rights. Although the know-how within the beneficiary groups about the legislation was not studied in our research, according to respondents from interest groups, this knowledge leaves much to be desired. Four out of five claimants and opponents know that discrimination on grounds of race or nationality is forbidden, three out of four agree. The other grounds for discrimination are less well-known. Personnel managers know more about the Equal Treatment Act than claimants or opponents.

5.3. Mobilisation of the beneficiaries

The Equal Treatment Act provides members of different groups with an individual right to equal treatment: women, non-nationals, ethnic groups, religious groups, part-time employees, homosexuals, people with a particular belief or a political opinion. The individual rights model of the legislation assumes that members of this

beneficiary groups can in fact enforce their rights. This means that members of these groups should take action.

Even if people know about their legal rights, they do not automatically uphold this right, should the occasion arise, for they should first recognise their situation as one involving unlawful discrimination. That is: they should know their treatment is due to their gender, nationality, race, religion and so on, and they should interpret this as unlawful discrimination. This casts them in the less attractive role of a victim. People who feel discriminated against often choose a different course of action than mobilising the law. They try to find another job, house or supplier, or they reconcile themselves with the situation. As Burstein (1989, p. 652) states: 'Mobilisation of (Equal Employment Opportunity legislation) is highly problematic .... for two reasons. First, most plaintiffs will have far fewer resources than employer and union defendants. Second, while many of the potential *benefits* of pursuing EEO cases are *collective*, many of the *costs* of pursuing them are *individual*.'

In this respect it is important that there are interest groups which inform, activate and support their rank and file in realising equal treatment. Interest organisations themselves can also try to survey compliance with the law by (certain categories of) addressees. Some beneficiary groups are highly organised and are supported by numerous organisations promoting their interests; other groups are diffuse and hardly organised.

In The Netherlands, two kinds of organisations should be mentioned here, (1) anti-discrimination bureaus and (2) works councils and trade unions. All other possibly relevant interest groups, like women's organisations and organisations of homosexuals, only incidentally take a case before the Equal Treatment Commission and are not surveying compliance with the law systematically. In The Netherlands, especially in cases involving racial discrimination, the role of anti-discrimination bureaus is very important. Since the 1980s, special agencies were established in many Dutch towns, where people who had experienced racial discrimination could file a complaint and ask for assistance. Some of these agencies were established by local authorities, others were started by non-governmental organisations.[2] One such organisation is involved in half of the complaints filed in 1997 with the Equal Treatment Commission about discrimination on grounds of race or nationality. Anti-discrimination bureaus assist individual complainants in filing their complaint. In some cases, they act on their own behalf, for instance in case of complaints about discrimination in advertisements, or they organise an experimental test to prove discrimination at the entrance of discotheques. Almost half of the rulings of the Commission made at the request of a non-governmental organisation are at the request of an anti-discrimination bureau. This is the only category of interest organisation that systematically combats (racial) discrimination and tries to monitor compliance with the legal requirements.

[2] Rodrigues (1997). Information in English and German about the activities of anti-discrimination bureaus and the fight against racism in The Netherlands can be found on the website of the LBR, the Dutch National Bureau against Racial Discrimination, www.lbr.nl/euroinfo.

The role of works councils and trade unions is more complicated. Trade unions are prepared to assist an individual member in filing a complaint about discrimination. However, fearing to disrupt their relationship with the employer, they are very reluctant to file a complaint against an employer about discrimination themselves. Snell (1979) and Gregory (1982) conclude the attitude of trade unions in the UK towards complaints about unequal treatment of women varies from complete support for complaining women to overt hostility. Burstein (1989) mentions trade unions in the US even as defendants in equal treatment cases next to employers in the above citation.

The number of complaints filed by works councils increased in recent years. Their role was not highlighted in our research, but for the same reasons they are also unlikely to easily file a complaint against their employer. Complaints by trade unions and works councils will only be filed in cases where they are prepared to risk conflict. Trade unions and works councils may be reluctant to get involved in cases that are either controversial or only marginally important within their rank and file.

5.4. *Availability of expert legal assistance*

Legal assistance can be an important intermediary between legislation and the members of the beneficiary groups, when it is of sufficient quality and readily available. A lawyer (or other adviser) may draw attention to violations of the law and can help to enforce compliance. This may be done either directly by negotiating with the opponent, or indirectly by filing a complaint before the Equal Treatment Commission or starting another legal procedure. Half of the complainants were assisted by a lawyer, an anti-discrimination bureau or other person providing (legal) assistance. From what appears from the files, lawyers and unions rarely supply legal assistance in Commission cases concerning discrimination on grounds of race and/or nationality. Anti-discrimination bureaus play the most important role as intermediary and provider of legal assistance in these cases. Perhaps this is because lawyers are less familiar with and have less expertise in the field of racial discrimination, financial interests may be smaller or victims of racial discrimination may not expect (rightfully or not) support from a lawyer. In The Netherlands, lawyers do not monopolise legal advice and assistance. All kinds of interest organisations provide legal assistance to their members.

5.5. *Characteristics of the relevant social field*

The concept of semi-autonomous social field (Moore, 1973) refers to the social environment with its own norms and structures in which legislation is supposed to work. Examples of a social field are a particular labour organisation or a particular economic or societal sector. A social field can generate resistance against new legislation and can prevent people from upholding their rights by informal sanctions. On the other hand, a social field can support particular legal norms and incorporate them into the prevailing norms and structures. Griffths argues that the social fields in which anti-discrimination law is supposed to work, labour organisations, are

resistant to change. Fuller et al. (2000) point out that law and the legal environment interact with beliefs and actions at all levels of the organisation, and that employees' interpretations and mobilisation of rights is a response to legal structures within the workplace.

Our survey of labour organisations shows that the idea of equal treatment better fits with governmental organisations than with business organisations, and also better with large business organisations than with small ones. It is unclear, however, to what extent the legislation and legal requirements are implemented in organisational routines and policy. Files of the Equal Treatment Commission show that not all governmental organisations are prepared to comply immediately with a ruling of the Commission, especially when compliance implies high costs.

In a branch of industry or an organisation (social field), the idea of equal treatment has to compete with other relevant and often more relevant ideas such as exclusion of unwarranted risks (in financial services), competing prices or security. Those competing ideas often are central to the main objectives of the social field, while equal treatment is only a marginal idea in the periphery. In recruitment, for instance, the main focus is on getting the best person for the job, equal treatment usually is not on the mind of personnel managers filling a vacancy. Veldman (1991) concludes that managers refer to internal rules and customs, whereas equal treatment legislation is not transferred into internal organisational routines.

Systematic implementation of equal treatment laws in organisations may be prevented by a lack of knowledge and information about the legal requirements, by incompatibility with existing routines and traditional ways of doing things within the organisation, and by the expected costs of compliance. The level of voluntary compliance with the Equal Treatment Act varies. Compliance with some provisions is high, for instance, it is now a widely accepted practice to add in advertisements that men and women can apply. I expect that obvious cases of conscious non-compliance will not occur very often. More often, organisations will not exactly know what is expected from them or they will use a strategy of minimisation (Snell, 1979).

The Dutch Equal Treatment Act applies to several different social fields, each with its own characteristics and peculiarities. The Act and its legal norms have not been written for the specific circumstances in a particular social field. What the legal norms exactly stand for in a particular context is often not clear at first sight. The broadness and diversity of relevant social fields make it hard for the Equal Treatment Commission to promote compliance with the law by consulting the central actors of a social field. This would require specific expertise of quite diverse sectors such as banking, insurance, education, housing, health care, and industry.

A serious barrier in enforcing Equal Treatment legislation in labour relations by individual complaints is the risks to which complaining employees are exposed. It may be risky to appeal to the legal right on equal treatment. From a victim of discrimination one could also become a victim of filing a complaint.

From our telephone survey of complainants, more than half of the employees who filed a complaint about their employer stated that they had experienced negative consequences. More than 50% changed jobs in the meantime (in particular in small

organisations), 60% of these changes were related to the complaint. About one-third of the complainants still working with their employer did experience negative consequences in their job. According to the complainants, 60% of the employers reacted negatively to the filing of a complaint. Direct superiors also reacted negatively.

Kumar (1986, p. 9) came to a comparable conclusion in his research on complaints over racial discrimination at the British industrial tribunals: 43% of complainants still employed there at the moment of complaining experienced negative repercussions, most of them were forced to leave.

Employers often interpret the filing of a complaint or the involvement of a lawyer as an escalation signifying that the employee does not intend to solve problems amicably. This risk is not specific to anti-discrimination legislation. It is a general problem limiting the possibilities of employees to invoke the law against their employer as long as they want to keep the job (Griffths, 1999, p. 325; Blankenburg and Schönholz, 1979). Filing a complaint is risky in situations where the complainant has a relationship with the opponent which he or she wishes to continue. The risk increases with the dependency of the complainant on the opponent, and as the contact between them becomes more personal. An appeal to formal rights bears the risk that the relationship deteriorates or breaks down. Efficacious legal protection against this kind of victimisation is not possible.

6. Conclusion

Almost everyone we interviewed agreed with the principle of equal treatment. Nevertheless, the general effects of anti-discrimination legislation are limited. In particular situations and in some branches of industry, application of the Act gives rise to problems, or the Act is neglected altogether. It is hard to isolate the general effects of the Equal Treatment Act from other relevant factors, e.g. the rising education of women and ethnic minorities, growing number of part-time workers, changing patterns in family life, increasing shortages in labour, and the growing duration of residence in The Netherlands of immigrants. The general effects of the anti-discrimination legislation are probably rather limited and support existing social processes of emancipation.

The general effects of the legislation may be indirect. Publicity of the legislation, the Commission and judgements by the Commission may contribute to the social acceptance of the principle of equal treatment, and the idea that discrimination should not be allowed. In the long run, these ideas will spill over to, for instance, personnel management, without actors perceiving this as an effect of the legislation. These diffuse effects are hard to demonstrate, however.

The special effects are concentrated in the few hundred cases the Equal Treatment Commission deals with every year. Discrimination is not always recognised as such and it is very hard for an employee and even for a trade union or works council to challenge discrimination by the employer or colleagues.

In general, the support for equal treatment is high. However, knowledge of specific legal provisions is deficient. It seems that people agree with the general notion of equality and therefore presume that their own behaviour is in accordance with the law. Implementation of equal opportunity laws in organisations may be prevented by lack of knowledge and information about legal requirements, existing routines and traditional ways of doing things within organisations, and expected costs of compliance. The enforcement of Dutch anti-discrimination legislation is left mainly to individual victims of discrimination, who have to take action to enforce the law. This is hampered by inadequate knowledge about the legal rules, inadequate support and expert legal assistance, and possible victimisation of complainants

The limited impact of the legislation is explained by the choice of the legislator to let victims enforce the law, the rather passive attitude of the Equal Treatment Commission, and the limited actions undertaken by interest organisations of the beneficiaries. Only anti-discrimination bureaus regard it as part of their task to enforce compliance with anti-discrimination legislation. Despite the extensive legal protection against discrimination, some discriminatory practices are persistent.

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