



Commissie **Gelijke** Behandeling

Comments on the fifth Dutch  
report on

**THE IMPLEMENTATION OF THE CONVENTION ON THE  
ELIMINATION OF ALL FORMS OF DISCRIMINATION  
AGAINST WOMEN**

from the Dutch Equal Treatment Commission (CGB)

30 January 2009

# 1 Introduction

The Dutch Equal Treatment Commission (CGB) has read with great interest the fifth Dutch report on the implementation of the International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) to the monitoring committee, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee). On the basis of its expertise in the sphere of equal treatment, the CGB would like to draw attention to a number of points which in its view are not discussed in the government report or not in sufficient detail.

The CGB is an independent body that monitors compliance with equal treatment legislation in the Netherlands. It does so by assessing complaints submitted to the CGB by people who feel they have been discriminated against on the grounds of gender, race, nationality, religion or belief, sexual orientation, marital status, political opinion, working hours, a permanent or temporary employment contract, disability or chronic illness, or age. Equal treatment legislation covers a limited number of areas (which can differ per ground). The material scope of sex-equality legislation encompasses labour, access to goods and services, and education. The opinions of the CGB are not binding, but are generally complied with. Apart from investigating and judging individual complaints, the CGB offers advice to both governmental and private organisations on aspects of equal treatment, and provides information on equal treatment legislation.<sup>1</sup> Within UN context the CGB is regarded as the Dutch national human rights institution.

In 2006 the CGB delivered an advisory opinion to the CEDAW Committee<sup>2</sup> in reaction to the fourth periodic report of the Netherlands. In the underlying advisory opinion the CGB will not address the issues of Pensions and political participation separately, as it did in the previous shadow report. This shadow report is restricted to what the CGB considers to be the most relevant and pressing issues in the field of equal treatment at this moment. However, if the CEDAW Committee requires additional information, the CGB will be happy to meet such a request.

## Reading note

This shadow report refers to relevant articles from the CEDAW. Wherever relevant, reference is also made to pages in the government report. Every paragraph is followed by a *suggestion for questions* which may assist the CEDAW Committee members in preparing their discussion with the Dutch government.

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<sup>1</sup> See [www.cgb.nl](http://www.cgb.nl) for further information on the Equal Treatment Commission (CGB).

<sup>2</sup> CGB, Advisory Opinion 2006/03, <http://www.cgb.nl/downloadables-en.php>.

## 2. General remarks

### 2.1 Complaints and opinions on gender discrimination

#### CGB

The government does not report on the number of requests for opinions and the number of opinions issued by the CGB. To provide minimal insight into the number of requests and opinions on the ground of gender, some statistics are given below.

	2005	2006	2007
Number of <i>complaints</i> giving gender as the principal ground for discrimination <sup>3</sup>	108 (17%)	83 (12%)	86 (17%)
Number of <i>opinions</i> in which gender is the principal ground for discrimination <sup>4</sup>	55 (22%)	51 (20%)	41 (18%)

A closer look at the data for 2005, 2006 and 2007 shows that generally more men than women have requested an opinion, on average 60:40%.

If the statistics for 2005 are broken down by the grounds of discrimination on which women and men have requested an opinion, it turns out that more men filed a complaint on the grounds of age (142 men: 50 women), disability or chronic illness (36 men: 28 women), and race/ ethnic origin (51 men: 24 women). On the grounds of sex (79 women: 23 men<sup>5</sup>) and religion (18 women: 7 men) it is the other way round.<sup>6</sup>

In 2007 more than one third of the opinions concerning sex discrimination related to pregnancy, an issue that received quite some attention in the previous years as well. Other issues that were dealt with in the fifth CEDAW reporting report related e.g. to unequal pay, sexual harassment, pensions and problems in relation to the access to goods and services. Opinions concerning grounds for discrimination other than sex can sometimes be important for women too, for example opinions concerning the discrimination of Muslim women because they wear a headscarf. The CGB will discuss this in more detail below.

For many years the CGB has delivered opinions on comparable issues with regard to discrimination on the ground of sex, which demonstrates the persistency of certain forms of gender discrimination.

#### Anti-discrimination bureaus

Some numbers of complaints received by local anti-discrimination bureaus in 2005 are provided on page 23 of the government report. Apart from that, the government report provides hardly any statistical data, as requested by the CEDAW Committee.<sup>7</sup>

Available data from local anti-discrimination bureaus show that the number of sex-discrimination complaints has been increasing since 2003. In 2003 and 2004, there were 112 and 111 complaints respectively filed (3% of the total number of complaints), in 2005 and 2006 the complaints increased to 191 resp. 196, followed by the number of 284 in 2007 (7%). Most of the local gender discrimination complaints regard discrimination on the labour market.<sup>8</sup> Expectations by the government are, according to page 23 of the report, that the total number of registered reports of discrimination will increase after 2006 because of improvements to reporting opportunities- the CGB assumes that the government refers to priorities set by the police and its policy measures in relation to local anti-discrimination bureaus, see below.

<sup>3</sup> CGB, *Annual Reports 2005, 2006 and 2007*.

<sup>4</sup> CGB, *Opinionbundel 2005, 2006 and 2007*.

<sup>5</sup> The difference in the number of complaints filed in 2005 on the ground of sex (108 to 102) can be explained by the fact that a complaint can be filed by more than one person or by an organisation.

<sup>6</sup> CGB, *Annual Report 2005*, p. 35.

<sup>7</sup> *Concluding comments of the CEDAW: Netherlands*, CEDAW/C/NLD/CO/4, 2 February 2007, Observation nrs. 18, 20, 24, 28 and 36.

<sup>8</sup> Art.1, *Kerncijfers 2005*, *Kerncijfers 2006*, *Kerncijfers 2007*, <http://www.art1.nl/artikel/6881-Kerncijfers>.

### **Public campaign and national network of local anti-discrimination bureaus**

The government mentions (again page 23) its intention to launch a public campaign on discrimination. However, this public campaign had not yet been launched at the time of writing (end of January 2009). The government has indicated that it will start running a campaign after a national network of local anti-discrimination bureaus has been established. This national network has not been established.

Until recently approximately half of the Dutch inhabitants did not have access to a local anti-discrimination bureau. In 2005 the government has set up an Advisory Committee chaired by former Minister Borst-Eilers. The Advisory Committee suggested the government to financially support local municipalities to establish local anti-discrimination bureaus. Such bureaus should be easily accessible for all inhabitants, support (potential) victims of discrimination and provide necessary information on the scale and different types of discrimination that occur in the Netherlands. The CGB notes that the proposal for an Act of Parliament to set up such a national network of local anti-discrimination bureaus<sup>9</sup> is not mentioned in this report.

The CGB welcomes this proposal, as this means that all men and women in the Netherlands can easily ask for support in (alleged) discrimination cases. However, in its advisory opinion 2008/07<sup>10</sup> the CGB drew attention to the fact that criteria on the quality of the services provided by such bureaus needs to be formulated and that the already existing bureaus should be continuously supported in their ongoing effort to be (come) professional service-providers.

According to the abovementioned figures, more men than women file a complaint at the CGB. The CGB wonders whether the public campaign will address women in particular, in order to make them more aware of their rights to equal treatment and the way in which they can enforce their rights.

***Can the government indicate what results have been achieved thanks to the improvements in the registration procedures after 2006 and the establishment of a national network of local anti-discrimination bureaus? How is the government in its announced public campaign going to raise the awareness of women about their rights and stimulate their willingness to report discrimination when confronted with discrimination?***

### **2.2 Emancipation policy 2008-2011**

In October 2007 the Dutch government presented its measures to enhance the emancipation of women in a document called 'More opportunities for women: Emancipation policy 2008-2011' (page 6 of the government report and its appendix I). It is remarkable that almost all the measures mentioned in this document are targeted at women. In the emancipation memorandum hardly anything is said about the role of men in the emancipation process of women. This gives the impression that the emancipation of women is women's business alone, whereas it is clear that efforts from both women and men are necessary to bring change about.<sup>11</sup>

In the discussion that followed the presentation of the emancipation policy document, the House of Representatives asked the government for an additional policy memorandum involving the role of men (see page 52 of the government report). This 'Plan of the Man' was sent to Parliament in August 2008 and raised 10 points of concern and possible solutions to the issues at stake.<sup>12</sup>

***Can the government indicate why it hardly focuses on the role of men in the emancipation process and present at CEDAW's 45<sup>th</sup> Session in January 2010 the results that have been achieved by implementing the 'Plan of the Man'?***

<sup>9</sup> Kamerstukken, TK 2007-2008, 31 439, nr. 1-7.

<sup>10</sup> CGB Advisory Opinion 2008/07, *reactie CGB op voorstel Wet Gemeentelijke Antidiscriminatievoorzieningen*, 28 mei 2008.

<sup>11</sup> See CGB Advisory Opinion 2007/07 on the emancipation memorandum.

<sup>12</sup> Kamerstukken, TK 2008-2009, 30 420, nr. 124.

## **3 Labour**

### **3.1 Women of non-Dutch origin (articles 2 and 11, CEDAW)**

In its report, the government writes on page 32 that the labour participation of specific groups of women of non-Dutch origin is considerably lower than participation of native-Dutch women and that policy measures and initiatives in order to promote the labour participation of women in terms of persons and in terms of hours are in place or will be. The objective of the government is to eliminate factors that obstruct the labour participation of specific groups- including ethnic minorities and women of non-Dutch origin- in addition to and in reinforcement of the general employment market policy (page 47).

The government mentions some results of the Discrimination Monitor of non-Western ethnic minorities in the employment market<sup>13</sup> with regard to the position of women on page 47-48. Among women, discrimination plays a more important part in the entry to the labour market than in the position of women who already participate in the work force. In the period covering 2004-2006 the CGB delivered 93 opinions on discrimination on the grounds of race/ ethnic origin in the labour market. In more than half of the cases employers were actually to be blamed for discrimination. Other research into the obstacles faced by ethnic minorities shows that

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<sup>13</sup> SCP/Art.1. *Discriminatiemonitor niet-westerse allochtonen op de arbeidsmarkt 2007*, November 2007.

a quarter of the small and medium-sized enterprises in the Netherlands prefer not to employ someone of non-Dutch origin.<sup>14</sup> The same research also shows that young people of non-Dutch origin have more difficulty in finding a work experience position than young people of Dutch origin. One third of the young people interviewed said that they had occasionally experienced discrimination in the workplace. On the basis of the Discrimination Monitor the government has presented a plan of action to tackle discrimination on the labour market.<sup>15</sup> The measures are directed towards changing the (negative) perception of employers with regard to ethnic minorities, tackling discrimination where it concerns access to the labour market and tackling discrimination on the shop floor.

If the government wishes to encourage the participation of women and girls of non-Dutch origin in the workforce, it will have to take into account the specific forms of discrimination that women and girls of non-Dutch origin may face. In this context, the CGB considers it important that particular attention be paid to the position of women and girls who wear a headscarf because of their religious convictions. The majority of this group is of non-Dutch origin. The CGB will discuss this in more detail below.

***Can the Dutch government outline how it intends to tackle discrimination in the labour market, especially the obstacles women of non-Dutch origin encounter when they try to join the workforce, and what concrete results (in figures too) were obtained from its current policies?***

### **3.2 Positive action policy (articles 4 and 11, CEDAW)**

In its report on articles 7 and 8 CEDAW, the Dutch government describes the policy pursued by its various ministries to increase the number of women in higher positions. The government has set targets for achieving a more diverse workforce in the public sector, but does not use quota. Targets set by the government include women and people from ethnic minorities. Progress is being monitored. In May 2008 the 'Diversity Index' was launched by the government, which assists public and private employers to better understand the diversity of the workforce in their organisation.

Dutch as well as European equality legislation and case law do not allow for hard quota in combination with access to jobs, because it lacks the opportunity to take specific individual circumstances into account. Moreover, the use of quota as well as other less absolute forms of preferential treatment may entail possible negative side-effects. Therefore, the CGB subscribes to the view that quota generally are undesirable. However, at the same time it is important to improve job access for women in many sectors of the labour market and at many levels. One important instrument to facilitate access to the labour market for specific groups is positive action, of which preferential treatment is one instrument.

In its advisory opinion 2004/10<sup>16</sup> the CGB highlights the fact that using preferential treatment measures can contribute to remove obstacles for certain groups, but it should be accompanied by other positive action measures, it should be embedded in a broader context and should be restricted in time. European legislation allows for preferential treatment on the basis of sex for 'the underrepresented group'. The Dutch legislator has decided that there are no indications whatsoever that men are an underrepresented group on the labour market, due to discrimination. Therefore, Dutch equality law provides an exception to the prohibition on direct discrimination of women in cases of preferential treatment, but not for men. Thus, although employers in specific sectors would like to increase the number of male employees, an express preference for male candidates is not allowed. The CGB is of the opinion that this is in conformity with CEDAW.

The Dutch government expresses its intention to increase the number of men in a number of educational sectors, specifically in primary education and in university medical centres (page 52 and 68 of the Dutch government report). The government fails to explain the causes of the perceived underrepresentation of men as well as why both the fact of male underrepresentation as well as its intention to address this situation are relevant in the context of its report to CEDAW. The relevance of the government's intention to combat this phenomenon for the issue of the equal treatment and empowerment of women remains unclear. This is the more remarkable in the light of the Dutch legislation as explained above, that only allows for preferential treatment of women, and not for men.<sup>17</sup>

<sup>14</sup> *Etnische minderheden op de arbeidsmarkt. Beelden en feiten, belemmeringen en oplossingen*, [Ethnic minorities in the labour market. Facts and figures, obstacles and solutions] Amsterdam, April 2005, Regioplan publication number 1272. Research carried out by Regioplan Beleidsonderzoek [an independent commercial research company that specialises in socio-economic policy research] commissioned by the Ministry of Social Affairs and Employment.

<sup>15</sup> Kamerstukken, 2007-2008, TK 29 544, nr. 149.

<sup>16</sup> CGB Advisory Opinion 2004/10 on the policy document on preferential treatment of the Ministry of Social Affairs.

<sup>17</sup> See CGB opinions 2006-61 and 2007-185 on preferential treatment for men.

*Why and how is the underrepresentation of men in primary education and university medical centres relevant to the elimination of discrimination of women? In what way(s) does the Dutch government intend to realise a more balanced representation of men in specific areas?*

### **3.3 Pregnancy and motherhood (articles 2(c), (d), (e) and 11, CEDAW)**

In its report, the Dutch government does not discuss discrimination on the grounds of pregnancy or motherhood. Although pregnancy discrimination has been illegal in the Netherlands since 1980, it still occurs frequently. In 2007 more than one third of the opinions concerning sex discrimination related to pregnancy. The complaints with regard to pregnancy or maternity and labour vary from rejection of job applications and applications for promotion to employment contracts not being extended, bonuses not being paid and negative consequences for employment conditions.<sup>18</sup> The CGB assumes that these are just a fraction of the actual incidents.

#### Pregnancy and the labour market

Employers in general fear that women in a specific age category will become pregnant and thus ask for pregnancy and maternity leave and for that reason will not employ a woman. Another assumption is that female employees with child care responsibilities will not be as flexible as men. The CGB highlights the fact that in cases that arise in relation to pregnancy, employers are fully aware that their action is in breach of the law, apparently because they believe that the advantages of their discriminatory action outweigh the risks they are running. Temporary employment agencies are often not aware of their responsibility in protecting pregnant women and mothers from gender discrimination by a (potential) employer, but nevertheless act in a discriminatory manner.<sup>19</sup>

The government does not address the issue of employers acting contrary to equal treatment legislation in general and to pregnancy or motherhood discrimination in particular in its fifth periodic report. The CGB feels that, in the light of CEDAW articles 2 and 11, the government should take further steps to counter discrimination in the labour market on grounds of pregnancy and motherhood.

*Is the Dutch government taking or envisaging steps to enforce compliance with the ban on discrimination in relation to pregnancy and motherhood?*

#### Maternity benefits for self-employed women

The CEDAW Committee asked the Dutch government to reinstate maternity benefits for all women in line with article 11 (2) (b) of the Convention.<sup>20</sup> The CGB has written three Advisory Opinions in relation to this issue and gave several opinions.<sup>21</sup> As mentioned on page 49 of the fifth periodic report, the Government has proposed an Act of Parliament to this effect which came into effect in July 2008. A compensation arrangement for those self-employed women who were pregnant in the period in between the two Acts has not been presented by the government.

*Will the government consider a compensation arrangement for those self-employed women who were pregnant in between the period that the Invalidity Insurance (Self-Employed Persons) Act was revoked in 2004 and the new Act that came into effect in July 2008?*

### **3.4 Combining work and care and gender stereotypes (articles 5 and 11, CEDAW)**

<sup>18</sup> Opinions in which the CGB concluded that discrimination on the basis of pregnancy or motherhood occurred in the reporting period include opinions 2005-42, 2005-46, 2005-77, 2005-99, 2005-126, 2005-155, 2005-170, 2005-229, 2006-7, 2006-8, 2006-15, 2006-57, 2006-115, 2006-141, 2006-165, 2006-182, 2006-241, 2007-90, 2007-107, 2007-120, 2007-125, 2007-138, 2007-188, 2007-210.

<sup>19</sup> e.g. Opinions 2005-171, 2006-14, 2007-211.

<sup>20</sup> *Concluding comments of the CEDAW: Netherlands*, CEDAW/C/NLD/CO/4, 2 February 2007, Observation nr. 30.

<sup>21</sup> CGB Advisory Opinions 2006/06, 2006/10 and 2007/04; CGB opinion 2005-80.

Women and men still face difficulties in trying to combine work and care responsibilities in practice. The CGB regularly receives requests for an opinion on this issue and was asked to advise on a specific issue which involves many female students at the same time. On the request of Dutch University Medical Faculties, the CGB issued an advisory opinion<sup>22</sup> on how to combine medical internships with pregnancy and care responsibilities. The CGB outlined in its advice the relevant equal treatment legislation and other relevant law and the conditions which need to be fulfilled to implement a general policy to enhance the position of female medical interns.

### The role of men

A male employee of the Ministry of Defense, complained that his female colleagues with children under the age of 5 are exempted from military missions abroad, whereas men with children in the same age group are not. The CGB found<sup>23</sup> that this led to discrimination on the ground of sex. The complainant wanted to continue performing his caring responsibilities and prevent his wife from having to give up her job. Following this CGB opinion, the Ministry of Defence announced in October 2008 a measure to make a start with eliminating inequality between men and women.<sup>24</sup>

In press release 94/08, dated 9 September 2008<sup>25</sup>, the Ministry of Social Affairs and Employment announced its intention to provide for an extended maternity leave for mothers whose baby has to stay in hospital for the first few weeks. The rationale behind this proposal is the protection of the health of the mother and the child and to allow the mother enough time to take care for a while for her baby at home. The CGB wonders how exactly the health of the mother is at issue in these cases, and why this expanded leave is not extended to fathers. Without any further explanation, this policy measure seems to be based on the assumption that mothers will act as primary care takers for children.

In the government report nothing is said about the obstacles or discouragements men encounter to combine work and care taking duties, whereas indirectly this is of influence on the emancipation of women. It is plausible that in some organisations it is a taboo for men to work part-time or to make use of parental leave or leave which is meant for taking care of sick family, in which case the chances are that women will be the ones to work less in order to take up these tasks.

### *How does the government intend to enhance the reconciliation of work and care for both women and men?*

## **3.5 Unequal pay (articles 1, 2 and 11(1)(d), CEDAW)**

Women earn less than men. This is also apparent from the figures mentioned on page 45 of the government report, as well as from the results of a bi-annual study by the Health and Safety Inspectorate: In the market sector, women earn 23% less than men in 2006, while 6.5% of the difference in earnings cannot be explained by factors such as job level or the duration of employment relation. For civil servants the difference in earnings between men and women is 12% in 2006, of which 2.6% is not explained<sup>26</sup> by factors as mentioned above.

The term corrected earning difference is not a legal term. It is calculated by correcting the earning difference (the difference between the mean wage of women and mean wage of men expressed as a percentage of the mean wage of men) for contextual characteristics such as age, function level and sector. It is not about the wages paid by one single employer but a representative picture of wages paid by employers in the Netherlands. Eventually an unexplained part remains. The unexplained part of the reward difference can be unequal pay between men and women in the sense of the equal treatment legislation but, that is not necessarily the case. Wage discrimination can also be present in the explained part of the reward difference. This is the case when it is explained by using factors which are not entirely neutral.

The CEDAW Committee recommends the government to take steps to ensure that all wage discrimination in the workplace is eliminated.<sup>27</sup> The government gives details about its measures to counter unequal pay in its fifth periodic report, pages 46-47.

<sup>22</sup> CGB Advisory Opinion 2004/07.

<sup>23</sup> CGB opinion 2008-52.

<sup>24</sup> Kamerstukken, TK 2008-2009, 41 243, nr. 10.

<sup>25</sup> [http://home.szw.nl/index.cfm?fuseaction=app.document&link\\_id=150851](http://home.szw.nl/index.cfm?fuseaction=app.document&link_id=150851).

<sup>26</sup> See also "De arbeidsmarktpositie van werknemers [position of employees in the labour market] in 2006", Health and Safety Inspectorate [Dutch Ministry of Social Affairs and Employment], November 2008.

<sup>27</sup> *Concluding comments of the CEDAW: Netherlands*, CEDAW/C/NLD/CQ/4, 2 February 2007, Observation nr. 30.

Furthermore, in a recent policy document of the State Secretary of Social Affairs and Employment<sup>28</sup>, it was announced that the Health and Safety Inspectorate will fulfil a more active role in the prevention of unequal pay by addressing employers more actively and enforcing them to do research in their companies with regard to wage differentials. If significant wage differences are found, the employer should undertake a more in-depth study and discuss the results with the works council or another body representing its personnel. The Equal Treatment Commission very much welcomes this change in Dutch government policy.

The Equal Remuneration Quickscan (mentioned on page 47 of the government report) is a tool for identifying differences in pay between various groups. The government expects this tool to act as a stimulus for employees and employers to submit a request for an opinion on pay to the CGB. Since 2007 a 'light version' of this tool is available in an interactive program on the internet. It is not (yet) clear how often employers actually use this program to check their wage policies on a possible friction with the equal treatment legislation.

Due to the persistent problems of unequal payment of women, the CGB has started a study on its own initiative at the end of 2008 to learn more about the mechanisms underlying unequal pay in the medical care-sector.<sup>29</sup>

***Given the persistence of the problem of unequal pay on the basis of gender and the measures being taken by the Dutch government, can the government (in January 2010 at CEDAW's 45th Session) present specific results of its equal pay policies and more in particular to provide information on the specific results of the new role of the Health and Safety Inspectorate (e.g. how many employers will be contacted by the Inspectorate? By which criteria will the success of the measure be evaluated?)***

### **3.6 Procedures for discrimination complaints and working conditions (article 2(e), CEDAW)**

#### *Complaints procedures*

The CEDAW Committee calls upon the Dutch government to adopt legislation designed to ensure that companies and organizations introduce proper complaints mechanisms.<sup>30</sup> The CGB notes that many organisations and companies *still* do not have proper procedures for dealing with complaints from employees about discrimination and the CGB is therefore interested in the foundations (in figures) of the governments assumption on page 15 of its report: "Larger companies and institutes in particular have now instituted internal complaints procedures and complaints commissions, where employees can take any complaints about discrimination and (sexual) intimidation."

The CGB often finds that if there is a complaints procedure in place, employees and management are often insufficiently aware of its existence. Apart from a complaints procedure it is important to monitor general signals of discomfort on the shop floor, for example by carrying out an (anonymously) employee satisfaction survey regularly. By doing so, employees are able to signal discrimination and other misbehaviour among employees, without immediately having to accuse a colleague or manager of discrimination or (sexual) harassment. This could have a positive impact on the work climate.

#### *Working conditions*

The State Secretary of Social Affairs has announced that the concept of discrimination will be introduced in the Working Conditions Act in the article which defines harassment and other behaviour on the shop floor.<sup>31</sup> Employers are obliged on the basis of the current article to pursue a policy to address stress on the shop floor and to prevent (sexual) intimidation and violence. The Health and Safety Inspectorate has a monitoring role to enforce this obligation. If and when this article involves discrimination, employers need to address this issue, too, in their prevention policy. In December 2008 the government submitted an Act of Parliament in order to change the Working Conditions Act accordingly.<sup>32</sup>

***Is the Dutch government implementing measures designed to encourage companies and organisations to introduce a complaints procedure?***

<sup>28</sup> Kamerstukken, TK 2008-2009, 27 099, nr. 20.

<sup>29</sup> At the time of writing this report, results are not available. However, if in the course of 2009 results will become available, the CGB will, if desired, send a summary of the most important outcomes to CEDAW.

<sup>30</sup> *Concluding comments of the CEDAW: Netherlands*, CEDAW/C/NLD/CQ/4, 2 February 2007, Observation nr. 30.

<sup>31</sup> Kamerstukken, 2007-2008, TK 29 544, nr. 149.

<sup>32</sup> Kamerstukken, 2008-2009, TK 31 811, nr. 2, Artikel V.

*Can the government present some results of the enforcement by the Health and Safety Inspectorate of the duty for employers to have anti-discrimination policies in place on the shop floor?*

## 4. Combination of gender and religious discrimination

### 4.1 General

A large number of Muslims live in the Netherlands and most of them are of non-Dutch origin. Some of the women with Islamic religious convictions have chosen to wear a headscarf. Over the last years the wearing of headscarves, veils and burqas was heavily debated in Dutch society, due to among others proposals on the ban of burqas and headscarves and the discussion on counteracting (alleged) radicalisation of people with a Muslim background. The CGB regularly receives requests for an opinion on the issue of religious headwear.

The Commission has already stated in various opinions that a general ban on wearing a headscarf is in breach of the ban on discrimination on religious grounds.<sup>33</sup> Moreover, a ban of this kind also results in indirect discrimination on the grounds of gender. A ban is only permissible under special circumstances, for example where it is necessary for reasons of safety or hygiene. The number of complaints about discrimination from Muslim women because of wearing a headscarf has increased over the last few years. Half of the 28 opinions of the CGB on ground of religion in 2007 were on the issue of wearing a headscarf. The ban affects Muslim women of non-Dutch origin even more, because many migrants in Dutch society are also discriminated against and marginalised on other grounds such as race/ethnic origin.

*Is the Dutch government taking steps to reverse the negative attitude towards Muslim women?*

### 4.2 Access to services and social life (articles 2 and 13, CEDAW)

The government report does not mention discrimination against women on the basis of their wearing headscarves when entering cafés, restaurants or sport schools. Some proprietors, on the one hand, do not want specific religious or political opinions to be expressed in their establishments and therefore require their visitors to be dressed 'neutrally'. In the Netherlands, this mainly has an impact on women who wear a headscarf as part of their religious convictions. Some proprietors, on the other hand, do welcome well-dressed people only in their establishment. For example, they deny entry to people wearing baseball caps, but formulate this policy as neutrally as possible to avoid a discussion with potential customers; therefore they introduce a ban on all 'headwear'. However, the effect on Muslim women is the same and leads to indirect discrimination.

Complaints that reached the Commission on this matter include for example a woman not receiving social assistance as long as she was wearing a headscarf and a woman being refused a training unless all headwear (including wearing a headscarf for religious reasons) were taken off.<sup>34</sup>

A relatively new issue was brought to the attention of the CGB in 2006 on wearing a headscarf in sport schools.<sup>35</sup> All five requests for an opinion led to the finding of direct or indirect discrimination. The latest opinion of 5 December 2008 was sent to the State Secretary for Health, Welfare and Sports and she publicly announced<sup>36</sup> that she would contact the sport schools sector organisation *FitVak* in order to discuss the exclusion of women wearing a headscarf. The exclusion of women with headscarves is contrary to the governmental purpose of encouraging women and girls from ethnic minorities to participate in sports (this objective is mentioned on page 89 of the periodic report too).

***Will the government consider to investigate discriminatory practices in the access to goods and services, including education, and to impose (penal) sanctions on providers who without good reason repeatedly deny access to women wearing headscarves, for example by fining a service or goods provider or by revoking their licence?***

***Can the government present the outcome of the discussion with relevant organisations on headscarves in sport schools?***

<sup>33</sup> For example, see CGB opinion 2005-104, 2004-112 and 2003-157.

<sup>34</sup> CGB opinion 2005-86, 2005-104.

<sup>35</sup> CGB opinion 2006-48, 2007-20, 2007-136, 2007-173, 2008-146.

<sup>36</sup> [http://www.ad.nl/rotterdam/waterweg/2890939/Busseemaker\\_begrip\\_voor\\_sportmoslima.html](http://www.ad.nl/rotterdam/waterweg/2890939/Busseemaker_begrip_voor_sportmoslima.html).

### 4.3 Access to work and job retention (articles 2 and 11, CEDAW)

In the Dutch government report the problems for women wearing a headscarf or veil in the labour market (or in other areas) are not mentioned at all. On page 42 the government mentions the perception in the employment market, but it is not clear if the government is addressing the problems of women as indicated below.

The CGB regularly receives complaints about employers who refuse to offer women wearing headscarves a job or a work experience position. It also receives complaints from women whose contract was not extended because they had decided to start wearing a headscarf during their trial period.<sup>37</sup> Even government bodies are guilty of this.<sup>38</sup> Fortunately, there is an increasing number of companies that include a headscarf in their dress code or work wear, but many others do not accept employees or trainees with headscarves.

The equal treatment legislation does not permit employers to stipulate a dress code that excludes specific groups of employees who wear certain items of clothing, such as a headscarf, on the ground of their religion. This is only permitted if there is an objective justification for doing so. Such dress codes make it more difficult for this group of women to gain access to the labour market and they therefore appear to be in breach of articles 2 and 11 of the Convention.

***While acknowledging that wearing a headscarf is an obstacle for women and girls to effectively participate on the labour market, which steps will the Dutch government take to enhance the participation of women of non-Dutch origin on the labour market?***

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<sup>37</sup> CGB opinion 2005-19, 2005-53, 2005-91, 2005-156; 2006-70, 2006-84, 2006-138, 2006-144, 2006-213, 2006-213, 2006-215, 2006-248; 2007-70, 2007-104, 2007-137, 2007-195, 2007-213, 2007-214, 2007-222.

<sup>38</sup> For example: CGB Opinion 2006-30 (police forces), CGB opinion 2007-195 (Netherlands Immigration Services -IND).

## 5 List of suggestions for questions to the Dutch government

- Can the government indicate what results have been achieved thanks to the improvements in the registration procedures after 2006 and the establishment of a national network of local anti-discrimination bureaus? How is the government in its announced public campaign going to raise the awareness of women about their rights and stimulate their willingness to report discrimination when confronted with discrimination?
- Can the government indicate why it hardly focuses on the role of men in the emancipation process and present at CEDAW's 45<sup>th</sup> Session in January 2010 the results that have been achieved by implementing the 'Plan of the Man'?
- Can the Dutch government outline how it intends to tackle discrimination in the labour market, especially the obstacles women of non-Dutch origin encounter when they try to join the workforce, and what concrete results (in figures too) were obtained from its current policies?
- Why and how is the underrepresentation of men in primary education and university medical centres relevant to the elimination of discrimination of women? In what way(s) does the Dutch government intend to realise a more balanced representation of men in specific areas?
- Is the Dutch government taking or envisaging steps to enforce compliance with the ban on discrimination in relation to pregnancy and motherhood?
- Will the government consider a compensation arrangement for those self-employed women who were pregnant in between the period that the Invalidity Insurance (Self-Employed Persons) Act was revoked in 2004 and the new Act that came into effect in July 2008?
- How does the government intend to enhance the reconciliation of work and care for both women and men?
- Given the persistence of the problem of unequal pay on the basis of gender and the measures being taken by the Dutch government, can the government (in January 2010 at CEDAW's 45<sup>th</sup> Session) present specific results of its equal pay policies and more in particular to provide information on the specific results of the new role of the Health and Safety Inspectorate (e.g. how many employers will be contacted by the Inspectorate? By which criteria will the success of the measure be evaluated?).
- Is the Dutch government implementing measures designed to encourage companies and organisations to introduce a complaints procedure? Can the government present some results of the enforcement by the Health and Safety Inspectorate of the duty for employers to have anti-discrimination policies in place on the shop floor?
- Is the Dutch government taking steps to reverse the negative attitude towards Muslim women?
- Will the government consider to investigate discriminatory practices in the access to goods and services, including education, and to impose (penal) sanctions on providers who without good reason repeatedly deny access to women wearing headscarves, for example by fining a service or goods provider or by revoking their licence? Can the government present the outcome of the discussion with relevant organisations on headscarves in sport schools?
- While acknowledging that wearing a headscarf is an obstacle for women and girls to effectively participate on the labour market, which steps will the Dutch government take to enhance the participation of women of non-Dutch origin on the labour market?