

**Act of March 2<sup>nd</sup>, 1994, containing general rules providing protection against discrimination on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status (Equal Treatment Act)**

We Beatrix, by the grace of God Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that, having regard *inter alia* to article 1 of the Constitution, it is desirable to provide protection against discrimination on the grounds of religion, belief, political opinion, race, sex, heterosexual or homosexual orientation or civil status, in order to promote equal participation in the life of society, and that it is therefore desirable to prohibit distinction on these grounds except in such cases as provided for by law, and that to enforce this prohibition it is desirable that an Equal Treatment Commission be established;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

**Chapter I Equal treatment of persons irrespective of their religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status**

**Article 1**

For the purposes of this Act and the provisions based upon it the following definitions shall apply:

- a. distinction: direct and indirect distinction;
- b. direct distinction: distinction between persons on the grounds of religion, belief, political opinion, race, sex, heterosexual or homosexual orientation or civil status;
- c. indirect distinction: distinction on the grounds of other characteristics or behaviour, resulting in direct distinction.

**Article 2**

1. The prohibition on distinction shall not apply to indirect distinction which is objectively justified.
2. The prohibition on distinction on grounds of sex contained in this Act shall not apply:
  - a. in cases in which sex is a determining factor and
  - b. in cases concerning the protection of women, notably in relation to pregnancy and motherhood.
3. The prohibition on distinction contained in this Act shall not apply if the aim of the distinction is to place women or persons belonging to a particular ethnic or cultural minority group in a privileged position in order to eliminate or reduce *de facto* inequalities and the distinction is reasonably proportionate to that aim;

4. The prohibition on distinction on the grounds of race contained in this Act shall not apply in cases where a person's racial appearance is a determining factor.
5. The prohibition on distinction on the grounds of nationality contained in this Act shall not apply:
  - a. if the distinction is based on generally binding regulations or on written or unwritten rules of international law and
  - b. in cases where nationality is a determining factor.
6. The cases referred to in sections 2, 4 and 5(b) shall be defined in more detail by order in council.

### **Article 3**

This Act shall not apply to:

- a. legal relations within religious communities and independent sections thereof and within other associations of a spiritual nature;
- b. the office of minister of religion.

### **Article 4**

This Act shall be without prejudice to:

- a. the Equal Opportunities Act;
- b. articles 1637ij, 1639e and 1639h of the Civil Code;
- c. distinction by or pursuant to any other Act of Parliament which entered into force before this Act.

### **Article 5**

1. It shall be unlawful to discriminate in or with regard to:
  - a. public advertising of employment and procedures leading to the filling of vacancies;
  - b. the commencement or termination of an employment relationship;
  - c. the appointment and dismissal of civil servants;
  - d. terms and conditions of employment;
  - e. permitting staff to receive education or training during or prior to employment;
  - f. promotion.
2. Section 1 shall not apply to:
  - a. the freedom of an institution founded on religious or ideological principles to impose requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a post; such requirements may not lead to distinction on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status;
  - b. the freedom of an institution founded on political principles to impose requirements which, having regard to the institution's purpose, are necessary for the fulfilment of the duties attached to a post; such

requirements may not lead to distinction on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status and

c. the freedom of a private educational establishment to impose requirements on the occupancy of a post which, in view of the establishment's purpose, are necessary for it to live up to its founding principles, although such requirements may not lead to distinction on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status.

3. Section 1 shall not apply to requirements which, in view of the private nature of the employment relationship, may reasonably be imposed on the employment relationship.

4. Section 1 shall not apply to requirements governing political opinion which may reasonably be imposed in connection with appointments to administrative or advisory bodies.

5. Section 1 shall not apply to requirements governing political opinion which may reasonably be imposed in connection with appointments to confidential posts.

6. Section 1 (d) shall not apply to distinction on grounds of civil status in relation to pension provision.

#### **Article 6**

It shall be unlawful to discriminate with regard to the conditions for and access to the liberal professions and opportunities to pursue the liberal professions or for development within them.

#### **Article 7**

1. It shall be unlawful to discriminate in offering goods or services, in concluding, implementing or terminating agreements on the subject, and in providing advice or information regarding the choice of educational establishment or career if such acts of distinction are committed:

- a. in the course of carrying on a business or exercising a profession;
- b. by the public service;
- c. by institutions which are active in the field of housing, social services, health care, cultural affairs or education or
- d. by private persons not engaged in carrying on a business or exercising a profession, in so far as the offer is made publicly.

2. Section 1 (c) shall not affect the freedom of a private educational establishment to impose requirements governing admission to or participation in the education it provides which, having regard to the establishment's purpose, are necessary for the fulfilment of its principles; such requirements may not lead to distinction on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status. Distinction on the grounds of sex shall be permitted solely if the distinctive nature of the establishment so requires and if equivalent facilities are available for pupils or students of both sexes.

3. Section 1 (a and d) shall not apply to requirements which may reasonably be imposed having regard to the private nature of the circumstances to which the legal relationship applies.

#### **Article 8**

1. If an employer terminates an employee's employment in contravention of article 5 or on the grounds that the employee has invoked article 5, either at law or otherwise, such termination shall be invalid.

2. Without prejudice to chapter 8 of the General Administrative Law Act, an employee may invoke section 1 within two months of being given notice of termination of employment or within two months of termination of employment if the employer has terminated it other than by giving notice. The invalidity of the termination of employment shall be invoked by notifying the employer. Termination of employment as referred to in section 1 shall not render the employer liable for compensation. All claims by the employee in connection with the invocation of invalidity of termination of employment under this section shall lapse after six months.

#### **Article 9**

All contractual provisions which conflict with this Act shall be null and void.

#### **Article 10**

1. Legal persons with full legal powers which, in accordance with their constitution or statutes, represent the interests of people who could invoke this Act may bring legal action with a view to obtaining a ruling that conduct contrary to this Act is unlawful, requesting that such conduct be prohibited or eliciting an order that the consequences of such conduct be rectified.

2. No conduct may form the subject of a case or claim as referred to in article 1 if the person affected by the conduct objects to such a case being brought.

### **Chapter 2      The Equal Treatment Commission**

#### **Article 11**

1. An Equal Treatment Commission shall be established, hereinafter referred to as the Commission.

2. The Commission may establish subcommittees from among its members for the performance of its duties.

#### **Article 12**

1. The Commission may, in response to a request in writing, conduct an investigation to determine whether distinction as referred to in this Act, the Equal Opportunities Act or article 1637ij of the Civil Code

has taken or is taking place, and may publish its findings. The Commission may also conduct an investigation on its own initiative to determine whether such distinction is systematically taking place in the public service or in one or more sectors of society, and publish its findings.

2. A request in writing as referred to in section 1 may be submitted by:
  - a. a person who believes that he/she has suffered distinction as referred to in this Act, the Equal Opportunities Act or article 1637ij of the Civil Code;
  - b. a natural or legal person or competent authority wishing to know whether they are guilty of distinction as referred to in this Act, the Equal Opportunities Act or article 1637ij of the Civil Code;
  - c. a person responsible for deciding on disputes concerning distinction as referred to in this Act, the Equal Opportunities Act or article 1637ij of the Civil Code;
  - d. a works council or a committee as referred to in chapter XIA of the General Civil Service Regulations or corresponding regulations which believes that distinction as referred to in this Act, the Equal Opportunities Act or article 1637ij of the Civil Code is taking place in the company or civil service unit respectively for which it was appointed;
  - e. a legal person with full legal powers which, in accordance with its constitution or statutes, represents the interests of those whose protection is the objective of this Act, the Equal Opportunities Act or article 1637ij of the Civil Code.
  
3. If a request in writing as referred to in section 2 (d and e) names persons who are said to have been disadvantaged, or if an investigation conducted on the Commission's own initiative relates to such persons, the Commission shall inform the persons concerned of the planned investigation. The Commission shall not have the power to involve persons as referred to in the previous sentence in the investigation or the evaluation if they have stated in writing that they have reservations about such involvement.

### **Article 13**

1. The Commission shall institute an investigation and shall forward its findings, in writing and with reasons, to the petitioner, the person said to be guilty of distinction and, if relevant, the victim of distinction.
  
2. The Commission may make recommendations when forwarding its findings to a person said to be guilty of distinction.
  
3. The Commission may forward its findings to such of Our Ministers as may be concerned, and to such organisations of employers, employees, professionals, public servants, consumers of goods and services and relevant consultative bodies as it believes appropriate.

### **Article 14**

1. The Commission shall not institute an investigation if:
  - a. the request referred to in article 12, section 2 is manifestly unfounded;
  - b. the interest of the petitioner or the importance of the behaviour concerned is manifestly insufficient;

c. the period of time which has elapsed since the distinction referred to in article 12 took place is such that an investigation can no longer reasonably be conducted.

2. In cases as referred to in section 1, the Commission shall notify the petitioner in writing, giving reasons.

#### **Article 15**

1. The Commission may bring legal action with a view to obtaining a ruling that conduct contrary to this Act, the Equal Opportunities Act or article 1637ij of the Civil Code is unlawful, requesting that such conduct be prohibited or eliciting an order that the consequences of such conduct be rectified.

2. No conduct may form the subject of action as referred to in section 1 if the person affected by that conduct has reservations.

#### **Article 16**

1. The Commission shall comprise nine members - including a chair and two assistant chairs - and the same number of deputy members.

2. The chair and the assistant chairs must fulfil the requirements laid down in article 48, section 1 of the Judiciary (Organisation) Act governing eligibility for appointment as a judge in a district court.

3. The members and deputy members shall be appointed by Our Minister of Justice, in consultation with Our Minister of the Interior, Our Minister of Employment & Social Security, Our Minister of Education & Science and Our Minister of Welfare, Health & Cultural Affairs.

4. Article 11, with the exception of part d (3<sup>o</sup>), and article 12, with the exception of section 1 (e), articles 12a and 13, article 13a with the exception of section 5, article 13b and articles 14a to 14c, 14d, sections 1 and 2, and 14e of the Judiciary (Organisation) Act shall apply *mutatis mutandis*.

5. For the purposes of article 14d, section 2 of the Judiciary (Organisation) Act, the Supreme Court shall afford the chair of the Commission an opportunity to provide information, verbally or in writing, on a complaint that is before the Commission and to make known his/her views thereon.

6. The members and deputy members shall be appointed for a maximum of six years. They may be reappointed immediately. The Minister of Justice may accept their resignation, if tendered.

#### **Article 17**

1. An office shall be set up to assist the Commission in the performance of its duties.

2. Our Minister of Justice shall, on the recommendation of the Commission, appoint, promote, suspend and dismiss the staff of the office. Our Minister of Justice shall decide in what cases they shall be appointed, promoted, suspended and dismissed.

3. The secretary, who shall also be the head of the office, must fulfil the requirements laid down in article 48, section 1 of the Judiciary (Organisation) Act governing eligibility for appointment as a judge in a district court.

#### **Article 18**

1. The Commission may, in the performance of its duties, call on the assistance of civil servants designated by such of Our Ministers as it may concern.

2. The Commission may, in the performance of its duties, seek assistance from one or more persons who can supply the information required by the Commission for that purpose.

#### **Article 19**

1. The Commission and the persons referred to in article 17 who are designated by the Commission may call for all the information and documents which may reasonably be considered necessary for the performance of its duties.

2. Everyone shall be obliged, unless they are exempt on the grounds of official or professional confidentiality, to provide the information and documents required pursuant to section 1 in full and in accordance with the truth, in the manner and within the time-limit laid down by or on behalf of the Commission. This obligation shall not apply if, in this way, a person would expose themselves or a relative by blood or marriage, in the direct or indirect line to the second or third degree, or his spouse or former spouse to the risk of criminal prosecution for an indictable offence.

#### **Article 20**

1. The Commission shall issue an annual report of its activities, which shall be published. It shall forward this report in any event to such of Our Ministers as it may concern and to the advisory bodies concerned.

2. Every five years, calculated from the entry into force of this Act, the Commission shall draw up a report of its findings on the operation in practice of this Act, the Equal Opportunities Act or article 1637ij of the Civil Code. It shall forward this report to the Minister of the Interior.

#### **Article 21**

1. Further rules concerning the working methods of the Commission shall be laid down by order in council, including in any event rules governing:

a. the manner in which cases are to be dealt with;

- b. hearing both parties;
- c. the public conduct of hearings;
- d. the publication of its findings as referred to in article 13, section 3.

2. The salaries, travel and accommodation expenses and other remuneration of the members and deputy members of the Commission shall be laid down by order in council, and rules shall likewise be laid down concerning the entitlement of the members of the Commission to redundancy pay after the expiry of the period for which they were appointed.

### **CHAPTER 3 Concluding provisions**

(Articles 22 and 23 have been deleted.)

#### **Article 29**

1. The prohibition on distinction on the grounds of nationality contained in this Act shall not apply for a period of two years, to be calculated from the entry into force of the Act, in respect of distinction practised by administrative authorities on the basis of published policy rules.

2. The policy rules referred to in section 1 shall be defined as written rules for the exercise of a power by an administrative authority.

#### **Article 33**

Our Minister of the Interior shall, in consultation with Our Minister of Justice, Our Minister for Social Affairs & Employment, Our Minister of Education & Science and Our Minister of Welfare, Health & Cultural Affairs, forward to the States General as soon as possible after receipt of the report referred to in article 20, section 2, a report on the operation in practice of this Act, the Equal Opportunities Act and article 1637ij of the Civil Code.

#### **Article 34**

This Act shall enter into force with effect from the first day of the sixth calendar month after the date of publication of the Bulletin of Acts and Decrees (*Staatsblad*) in which it appears. An earlier date of entry into force may be laid down by Royal Decree.

#### **Article 35**

This Act may be cited as the Equal Treatment Act.

Done

The Minister of the Interior

The Minister of Justice

The State Secretary for Social Affairs and Employment

The Minister of Education and Science

The Minister of Welfare, Health and Cultural Affairs