ANTI-DISCRIMINATION LAW IN THE NETHERLANDS:
A SPECIFIC LEGAL PATCHWORK,
NORMATIVE SYSTEM AND INSTITUTIONAL STRUCTURE

Jenny Goldschmidt

1. INTRODUCTION

Even for experts non-discrimination law in the Netherlands is a very complex issue. To get a full understanding of the law, many different national and international laws have to be consulted. Even the answer to a concrete question as to whether there is a case of discrimination or not can depend on different legal provisions. In the context of this volume it is not necessary to give a detailed description of the legal system of non-discrimination law, so I will focus on the general structure, the key concepts and the role of the Equal Treatment Commission.

This bird’s-eye view intends to highlight the central questions that have to be answered when setting up a national system of non-discrimination law. The answers depend on the specific national legal, social and political context. Even although in Europe the law of the European Union plays a predominant role in the national legal systems’ non-discrimination laws, the national characteristics are decisive in the choices that have been made for specific concrete problems.

The focus will be on non-discrimination law in employment, and more specifically on the civil law in force in this area, and other aspects of non-discrimination law will only be mentioned where relevant.


Dutch non-discrimination law has its roots in both European law and in the Constitution of the Kingdom of the Netherlands of 1984 (hereafter: the Constitution). This double origin explains the reason for the complex and inaccessible legal system, as the various laws and regulations both overlap and at the same time show some crucial differences.

This situation is even further complicated by the fact that other non-discrimination law can also play a role in the national legal system. The latter
aspect will be dealt with only when it is directly relevant to understanding the Dutch system.

a. **Implementation of European law**

The first non-discrimination law was based on the European Community law as it came into force in the 1970s, described by Susanne Burri in her contribution. This means that the focus was on equal pay and equal treatment of men and women at the workplace, both in the public and in the private sectors. Gradually the scope of the European Union law has been and is still being extended to include not only many more grounds of discrimination (not only gender) but also more areas (not only work). The European Union law has been implemented in the national legal system, incorporating its specific aspects and concepts in national laws.

The laws that are based on the EU obligations are the following:

- Equal Treatment in Employment (Men and Women) Act (Wet gelijke behandeling mannen en vrouwen, WGB)
- Equal Treatment (Working Hours) Act (Wet verbod op onderscheid naar arbeidsduur, WOA)
- Sections 7:646 to 7:649 inclusive of the Civil Code (Burgerlijk Wetboek)
- Sections 125g and 125h of the Civil Servants Act (Ambtenarenwet)
- Equal Treatment (Temporary and Permanent Employees) Act (Wet Onderscheid Bepaalde en Onbepaalde Tijd, WOBOT)
- Equal Treatment (Disability or Chronic Illness) Act (Wet gelijke behandeling op grond van handicap of chronische ziekte, WGBH/CZ)
- Equal Treatment in Employment (Age Discrimination) Act (Wet gelijke behandeling op grond van leeftijd bij de arbeid, WGBL)

The European directives prescribe not only a specific normative framework, but several directives also contain an obligation to establish a specialised body to promote effective implementation of non-discrimination laws. So, the specific enforcement structure in the field of equality that exists in the Netherlands is also a direct result of the European requirements. The enforcement of the provisions that originate from other sources has been incorporated in the same structure.

b. **Constitutional Dimension: Third Party Effect and Conflicts with Other Fundamental Rights**

In 1984 a revised Constitution of the Netherlands came into force. This Constitution starts with the fundamental rights and freedoms, the principle of equality and prohibition of non-discrimination being the very first article. The