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**Your reference**

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Re Government's approach to discrimination

This government wants to forcefully tackle discrimination. The principle of equality, enshrined in Article 1 of the Constitution, is of crucial importance in a democratic constitutional state. The coalition agreement, 'Confidence in the future,' also states that everyone in the Netherlands is equal and has the freedom to be visibly themselves. The government becomes actively involved wherever that freedom is curtailed, discriminated against or even if people are not safe. Discrimination, as the reporting figures show, can appear in many forms, such as discrimination against skin colour, religion, gender, sexual orientation, disability, age or origin. That is why a broad approach is needed, aimed at multiple forms of discrimination, which focuses on awareness, prevention and combatting.

The National Action Programme against discrimination of 22 January 2016<sup>1</sup> is, together with the Labour Market Discrimination Action Plan<sup>2</sup> and the Pregnancy Discrimination Action Plan<sup>3</sup>, focused on ensuring an effective and coherent approach to discrimination. On behalf of the Minister of Social Affairs and Employment, the Minister of Justice and Security, the Minister of Education, Culture and Science, the Minister for Primary and Secondary Education and Media, the Minister of Health, Welfare and Sport and the State Secretary of Social Affairs and Employment, I hereby offer you the the Netherlands government approach to discrimination and, for the first time in conjunction, the annual Progress Report on the three above action plans against discrimination. In this letter, I will first discuss the recently reported figures on discrimination from 2017. These are an important, but not the only, indication of the extent to which different forms of discrimination occur in society. Then, on the basis of the coalition agreement, I will discuss the key objectives that the government has in tackling discrimination. I will also, in the appendices, report on the progress of the ongoing measures of the three action plans against discrimination. I will also go into various motions

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<sup>1</sup> Parliamentary Papers II, 2015/16, 30950, no. 84

<sup>2</sup> Parliamentary Papers II 2013/14, 29544, no. 523.

<sup>3</sup> Parliamentary Papers II, 2016/17, 29544, no. 775.

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that your Lower House has adapted over the past year in the area of discrimination.

### 1. Reports of discrimination in the Netherlands

Insight into the number of reports of discrimination is of great importance in taking the right measures to combat discrimination. Reports also appear annually with an overview of the reports that have come in. In this letter, you are being presented with the reports published today: "Discrimination figures in 2017" and "A Picture of Criminal Discrimination in 2017" (appendices 4 and 5).

#### *Discrimination figures in 2017*

In the report "Discrimination figures in 2017," discrimination incidents registered by the police, and the incidents of discrimination that have come in with the anti-discrimination provisions, (ADVs) are discussed. These figures have also been supplemented with information from the Netherlands Institute for Human Rights and the Internet Discrimination Hotline (MiND). This creates a coherent overview of discrimination incidents and notifications registered in the Netherlands.

The figures in the report give an indication of the extent to which discrimination takes place in Dutch society. Discrimination is not always recognized as such. Moreover, a great many of the discrimination experiences are, unfortunately, not reported, despite major efforts of the organizations where this can be reported. It should be noted that the figures refer to *possible* cases of discrimination and not exclusively to cases where discrimination has been established. However, the report does provide insight into the kinds of incidents that occur, who are affected by them and where they happen. Thus, the report is essential to be able to effectively combat discrimination.

The overall picture of the discrimination incidents and notifications registered in 2017 show that the number of police registrations declined, the number of reports to the ADVs and the hotline for discrimination on the internet, MiND, remained about the same and the number of questions and reports at the The Netherlands Institute for Human Rights increased:

- The police registered 3,499 discrimination incidents (notifications, declarations and their own perceptions of discrimination and crimes, such as vandalism and abuse, with a discriminatory motive); that came to 20% less than in 2016.
- In addition, 1,506 discrimination incidents were reported directed against an employee with a public service mission (in particular, police officers). This number is about equal to 2016.
- A total of 4,691 reports came to the ADVs, a similar number as in 2016 (1% less).

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- At MiND, there were 1,367 reports of discrimination made on the internet. This is an increase of 49% from 2016. This increase is, in any case, partly explained by the cancelling of the possibility to also report internet discrimination at another counter, the Hotline for Discrimination on the Internet (MDI).
- The Netherlands Institute for Human Rights received 416 requests for a judgement, 10% less than in 2016. The number of questions and reports at the Institute increased by more than a third (from 3142 in 2016 to 4259 in 2017), also in connection with a contact point for reporting pregnancy discrimination, set up at the Institute in 2017.<sup>4</sup>

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The increase in the number of registrations of discrimination on the grounds of disability or gender was striking. In both cases, this may be due to specific public campaigns and the media attention for the implementation of the UN Convention on the rights of people with disabilities and for discrimination due to pregnancy.

Almost one in five discrimination incidents registered by the police involved violence. This varies from a punch to a full-fledged brawl and abuse. In 2017, 603 incidents of violence took place (usually in combination with a discriminatory statement). In addition, the police registered another 474 incidents involving threats. Thus, the number of registered threats and violent incidents increased again after the level had been lower in recent years.

As in recent years, discrimination based on origin came to the forefront both at the police and at the ADVs. The police recorded 1450 discrimination incidents based on origin (41% of the total), of which just over a third had to do with the black or dark skin colour of the person concerned. At the ADVs, there were 1800 reports, 38%. Relatively speaking, the number of registrations of discrimination on the grounds of origin decreased compared to 2016 (from 42% to 38%, 201 fewer reports).

#### *A Picture of Criminal Discrimination in 2017*

The publication of the report "A Picture of Criminal Discrimination in 2017" provides insight into the approach to discrimination by the Public Prosecution Service. This publication reports on the specific discrimination facts entered and completed by the Public Prosecution Service in 2017 on the grounds of one of the articles of discrimination in the Criminal Code. The publication also reports on incoming general facts with a discrimination aspect (CODIS facts). CODIS facts

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<sup>4</sup> See the figures from the Netherlands Institute for Human Rights, as well as: Monitor Discrimination Cases 2017, Netherlands Institute for Human Rights, (12 April 2018), <https://mensenrechten.nl/publicaties/detail/38427>.

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are facts in which a discrimination aspect has played a role as a motive or reason, or where a discrimination aspect has been used to make the offense more penetrating.

In 2017, 144 specific discriminatory facts were entered, belonging to 138 different cases. The specific discrimination figures have decreased compared to 2016, but are slightly higher than in 2013, 2014 and 2015. Of the 144 specific discriminatory offenses, the most discriminated against were on the basis of skin colour, place of origin and national and ethnic origin (42%), followed by discrimination against Jews (41%). That was followed by discrimination most often directed against persons on the basis of their sexual orientation (8%) and Muslims (7%). The specific discrimination offenses occurred most often during or around sporting events (42%). All these facts concerned slogans or statements by supporters. 19% of the discriminatory offenses took place on the internet and 13% took place on the street or in public places.

In 2017, 187 CODIS facts were entered, belonging to 154 different cases. In the case of the CODIS facts, there is a significant decrease compared to 2016, but the number is slightly higher than in 2015. In the case of CODIS facts, the discrimination aspect was most frequently seen on skin colour, origin and national and ethnic descent (45%), followed by homosexual orientation (29%). In 9% of the cases, the discrimination aspect was focused on Jews. The percentage of cases of discrimination against Muslims is just as high (9%).

In 63% of the CODIS facts that were brought in, this was concerned with the general fact in which the discrimination aspect was a simple insult (article 266 of the Dutch Penal Code), in 10% of the CODIS facts entered into, it was a threat (article 285 of the Dutch Penal Code), in 9%, an act of vandalism and violence (article 141 of the Penal Code) and, in 6% of the cases, the general offense was abuse (article 300 of the Penal Code).

For each reported discrimination fact, it was investigated how the occurrence started; for example, orally, in writing, by means of an image, or in combination with violence. In 2017, most of the facts being reported were concerned with verbal statements (63%), just as in previous years.

For this report, for the first time, the relationship between the declarant and the person against whom the declaration was filed was investigated. Among other things, it studied how often a public person and how often a person speaking on behalf of an organization or foundation filed a report of discrimination. The category 'charges pressed from foundation or organization' in 2017 amounts to 16% of all declarations. The category 'Own observation by police or investigation services without official report (on behalf of the Public Prosecution Office)' is the largest category (42%). This can be explained by the fact that many football supporters have been arrested in the act following the police's own observation.

The majority of the anti-Semitic manifestations that were reported to the Public Prosecution Office in 2017 are football-related: these have to do with anti-Semitic statements that have been made around or during a football match. Often it is a reaction to the Amsterdam football club, Ajax. The National Expertise Center for

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Discrimination of the Public Prosecution Service (LECD) has been observing a large number of discriminatory statements by football supporters for several years. This year, football and sports supporters were added under the category 'SUSPECT' to show the extent of this problem.

One of the developments that has been observed for some time is that of discrimination on social media platforms. In all, 12% of all reported discriminatory offenses occurred on social media platforms. Discrimination on these platforms can spread quickly and remain visible for long periods of time, such that the statements can also reach a huge number of people. Thus, in the time that one suspect of a punishable statement on internet is detected and prosecuted, thousands of others have already been able to make many new statements. Even though the Public Prosecution Office can give a strong signal by prosecuting criminal manifestations on the internet, criminal law alone will never be enough to prevent new discriminatory expressions from appearing online.

#### *Second European Union Minorities and Discrimination Survey*

In September 2017, The Agency for Fundamental Rights of the European Union (FRA) published the EU-MIDIS II sub-report (*Second European Union Minorities and Discrimination Survey*).<sup>5</sup> The focus of this sub-report is the position of Muslims in Europe and their experiences. The results are based on interviews with 10,527 people with a Muslim background and deal with experienced discrimination. In the Netherlands, 1245 people were interviewed. This group consists of Dutch citizens with a North African or Turkish background. On 8 December 2017, the full EU-MIDIS II report was published, it contains largely the same results for the Netherlands.<sup>6</sup> The figures show that a good-sized majority of the Dutch respondents (65% and 59%), respectively, have been confronted with discrimination over the past five years. In the last twelve months, almost 40% have had to deal with abusive or threatening comments in person or online. Furthermore, the research revealed that 39% of respondents in the Netherlands with a Turkish background and 49% with a North African background have experienced discrimination when looking for work.<sup>7</sup>

## **2. Government's approach to discrimination**

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<sup>5</sup> fra.europa.eu (Second European Union Minorities and Discrimination Survey (EU-MIDIS II) Muslims- Selected findings).

<sup>6</sup> fra.europa.eu (Second European Union Minorities and Discrimination Survey – Technical report).

<sup>7</sup> With the present letter about the Government's approach to discrimination, the request of the MP Kuzu was carried out during the Regulation of Activities of 21 September 2017.

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The above figures from 2017, the recent reports and studies such as those of the FRA, the television programme Radar on labour market discrimination and the weekly magazine, 'de Groene Amsterdammer' about housing market discrimination, make it clear that the approach to discrimination in the Netherlands deserves on-going and undiminished attention. In a just society, your origin, gender, religion or sexual orientation must never determine your future and you are entitled to (within the limits of the rule of law) the freedom to be yourself and live in safety. We must never accept that a part of the Dutch population does not feel that they are an integral part of Dutch society.

The comprehensive approach to discrimination, deployed by the national action programme against discrimination, will be continued by this the Netherlands government and provided with new priorities. The addition to article 1 of the Constitution, the foundation of the legal protection against sexual orientation discrimination and disabilities, and a doubling of the maximum punishment for hate-mongering, are important priorities. With the criminal approach to discrimination, the the Netherlands government will focus more on a wider range of methods of disposal. An important addition to the civil law protection of discrimination is the clarification of the legal position of transsexuals and intersex persons in the equal treatment Act.

My colleagues and I will closely follow the ongoing and new measures of the action plans against discrimination and focus our joint efforts on, among other things:

- the approach to labour market discrimination (section 2.1), including
  - o the approach to discrimination in application procedures, pregnancy discrimination and a strong enforcement role for the SZW Inspectorate;
  - o the further integration in the labour market (of Dutch residents with a migration background);
  - o an inclusive government and an exemplary role for the government as employer;
- a more effective criminal law approach (section 2.2);
- the local approach to discrimination (section 2.3), including:
  - o the strengthening of anti-discrimination provisions (ADVs);
  - o the stimulation of local anti-discrimination policy;
- the tightening up of the legal framework (section 2.4).

Within the government, several ministers are responsible for tackling various forms of discrimination in various social fields. The coordinating role lies with the Minister of the Interior and Kingdom Relations and, as I have stated during the general consultation on discrimination on 14 February 2018, I see myself as the driving force and guardian of the agreements made in the coalition agreement on the approach to discrimination.<sup>8</sup> I want to give an impetus to this approach,

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<sup>8</sup> Parliamentary Papers II 2017/18, 30950, no. 143 (report of the General Consultation).

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where necessary. Apart from the official cooperation among the ministries involved, I would like to periodically discuss the mutual agreements at the government level. I will take the initiative for a ministerial meeting that will take place at least every six months, or as often as desirable.

As coordinating government member, I intend to show active involvement in word and in deed wherever there is discrimination. For example, on 28 March 2018, when research by the Groene Amsterdammer showed discrimination on the housing market, in a letter to your Lower House I promised to enter into a dialogue with the branch organizations in the near future to make agreements about good leasing practices. It is important that practices of discrimination, now and in the past come to the forefront. In late 2017, several articles appeared in the media about applicants who did not get a job at the municipality of Amsterdam in the 1950s because of their homosexuality. In this report, they mentioned the so-called 'homo lists.' I am currently conducting a preliminary study to find out whether similar 'lists' had also been drawn up in other municipalities. The results of this preliminary investigation are expected in mid-May 2018. Subsequently, partly on the basis of these outcomes, together with the minister responsible for the LGBTI emancipation policy, I will also commission the Minister of Education Culture and Science to conduct an independent in-depth scientific historical study which must, among other things, answer the question of whether, at that time, there was systematic discrimination on the basis of sexual orientation among government employers.

## **2.1 Approach to labour market discrimination**

### *Inclusive labour market*

In the coalition agreement the the Netherlands government has explicitly expressed its opposition to labour market discrimination: "Labour market discrimination is unacceptable and requires a firm approach. The Labour Market Discrimination Action Plan is therefore being followed up, which also includes combating discrimination in application procedures, during pregnancy and a strong enforcement role for the SZW Inspectorate." During the elaboration of the coalition agreement, the State Secretary of SZW, together with other departments, as well as parties such as the Netherlands Institute for Human Rights and the Labour Foundation, continues to build on the existing action plans to combat Labour Market Discrimination and Pregnancy Discrimination. Well-functioning measures are being continued and supplemented with actions that further contribute to combating labour market discrimination. In the development of the new Labour Market Discrimination Action Plan, as in the current action plans, a connection is sought with various target groups in combating labour market discrimination based on, for example, skin colour, religion, gender, sexual orientation, disability, age or origin. In the coming months, the follow-up to the Labour Market Discrimination Action Plan will be further developed. Your Lower House will be informed about this before the summer.

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The broadcast of the television programme Radar of 29 January 2018 made it clear that the approach to labour market discrimination requires constant attention. 78 temporary employment agencies were confronted with a discriminatory request: namely, no Turkish, Moroccan or Surinamese candidates for vacancies. Almost half of the approached temporary employment agencies cooperated with this request. The broadcast showed that a few intermediaries were aware of participating in discrimination. The State Secretary of SZW has started to tackle this problem. For example, there has been consultation with the branch organizations. In a letter that will soon be sent to your Lower House, the State Secretary will elaborate on the joint approach of the Ministry of SZW and the branch organizations.

Programme for Further Integration in the labour market \_\_\_\_ On 30 March 2018, your Lower House was informed about the Further Integration programme on the labour market.<sup>9</sup> This programme focuses on reducing the backlog in the labour market for those Dutch citizens with a migrant background. It is precisely now that this programme is very important. Our economy is running at full speed and in some sectors there is a large shortage of personnel. At the same time, a large number of Dutch citizens with a migration background are not being included. That is unacceptable, both for people themselves and for society as a whole.

The programme focuses on both employers and potential employees. The cooperation with employers focuses primarily on deficit sectors. There are possibilities for filling vacancies or for making combinations of work and training possible. Not only the involvement of employers is important. Dutch nationals with a migrant background themselves can also work to prepare themselves for the labour market. Given the diversity within the target group, the programme focuses on interventions for the following three groups:

- Interventions for asylum status holders. With this group, the focus is to help them find work or training courses as quickly as possible. From day one, for example, the focus is on learning the Dutch language and the orientation towards paid work. We are also working on a firm initial assessment, a personal Integration and Participation profile and the dissemination of good examples.
- Interventions for young people. The focus on young people is on improving study choice, combating (traineeship) discrimination and combinations of work and education as a second chance for those young people who have previously dropped out.
- Interventions for groups with a large distance from the labour market. This approach focuses on Dutch nationals with a migrant background who have

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<sup>9</sup> Parliamentary Papers II 2017/18, 29544, no. 821.



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been on the sidelines for some time. Together with VNG, Divosa, the municipalities concerned and, of course, the communities themselves, a number of pilot projects are focusing on intensive and obligatory guidance on the route to work.

### Programme on Inclusive Government

In 2016, a steering committee was set up in the framework of the Action Plan on Labour Market Discrimination in which the government sectors of State and Defense are represented, as well as the ministries of SZW and OCW. The objective of the Inclusive Government Programme is to provide inspiration for stimulating diversity within the government and semi-public sectors, without compromising the individual responsibilities of the sectors involved. This is done through sharing experiences and good examples. In 2017, the steering committee was expanded to include the public sector: the Police.

With respect to the Government, all ministries (in 2015 and 2016) separately signed the Diversity Charter of the Labour Foundation and have formulated their own action plans to promote diversity and inclusion in the organizations. The Police sector has also signed the Diversity Charter and are working on the implementation of a plan of action to promote diversity and inclusion. In 2017, the ministries engaged in the implementation of their action plans for the Diversity Charter. Also, several actions have taken place on the national level.

In the context of the motion of the members, Gijs van Dijk and Jasper van Dijk<sup>10</sup> we hereby give an overview of some of the activities that the Central Government has engaged in to prevent discrimination in the workplace and to promote diversity. In these progress reports, it will continue to be reported on how the government interprets the motion by Van Dijk and Van Dijk on preventing discrimination in the workplace.

- In the context of a balanced composition of the workforce, an effort is being made to promote the number of women in top positions (at the end of 2016, the proportion of women in top positions was 33%). With regard to ethnic diversity, it was agreed to work towards a higher percentage of employees with a non-Western migrant background in the higher functions. It is based on the relevant offer in relation to educational level on the labour market.
- The recruitment and selection process of, among other things, the National trainee programme, is screened for bias and recruitment officers are given training on selecting without prejudice. They are stimulated to set up diverse selection teams.
- The ministries organize awareness sessions and training courses for HR staff, managers and employees to prevent bias and promote an inclusive

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<sup>10</sup> Parliamentary Papers II 2017/18, 30950, no. 146.

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work environment. Diversity and inclusion is a theme in the course, that started 2017, for beginning supervisors.

- The number of jobs for people with an occupational impairment has increased. In addition, and within the framework of social return on investment, pilot projects were started for diverse groups who are far removed from the labour market.
- To implement the UN Convention on the rights of persons with disabilities, there is a implementation plan made by the government for its employees. Important spearheads in it are: access to government buildings, accessibility of public websites and the creation of jobs for people with occupational impairments.
- The national government is a member of the international LHBTI organization, Workplace Pride, whereby all employees of government can participate in the activities and training sessions given by Workplace Pride.
- In the model of the framework agreement for temporary employees, and in the contracts for the ICT purchasing category for hiring, a clause has been included that the Government can dissolve an agreement if a contractor has been irrevocably convicted of criminal discrimination or if the employees of a contractor have been irrevocably convicted of discrimination.

In 2018, the ministries and the police sector will continue to work on the implementation of their plans for the Diversity Charter. The formal exchanges of knowledge within the framework of the Inclusive Government Programme will also be continued.

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## 2.2 Criminal law approach to discrimination

In this section, the government discusses the way in which the role of criminal law in tackling discrimination is being interpreted. The National Action Programme against Discrimination has addressed the need for an effective and visible approach to discrimination. The focus has been on an approach from multiple perspectives and responsibilities, with both preventive and repressive policies aimed at both perpetrators and victims, by various chain partners. A criminal law approach must be used as an 'optimum remedium' [the optimal remedy] in combating discrimination: because criminal law alone is unable to give a lasting answer to discrimination, the criminal law deployment is always placed in the context of other interventions.

Criminal interventions are primarily aimed at restoring public order and penalizing perpetrators. When, in addition to a criminal law process, there is also a focus on contact between perpetrator and victim (for example, through mediation) or to show the perpetrator what the impact of his course of action has been (for example, by visiting the Anne Frank House), it is always carefully considered how the administration can be fitted into the implementation process. Therefore, even in the case of punishable and prosecutable offenses, the obvious thing to do is to determine, in consultation with all parties involved, which interventions are most appropriate.

For a meaningful approach, the criminal law effort must always be considered in the light of the broader approach to discrimination. Discrimination affects the entire society and also requires an approach that focuses on that entire society: an approach with many layers, where organizations with different backgrounds and objectives and from different disciplines are committed to tackling discrimination. Criminal law acts as a link in this larger approach.

If an approach outside of criminal law is the most meaningful and effective, the public prosecution can decide not to take criminal action. However, where discriminatory behaviour (also) requires criminal intervention for a meaningful and effective approach, it is important that the police and the Public Prosecution Service communicate with each other and are also in contact with other parties in the chain, such as the ADVs. The resolving of incidents on the spot, and the way in which that is most effective, requires a well maintained network at the national and regional levels.

### *Follow-up to pressing charges: interpreting the discretionary principle in discrimination cases*

If someone files a report of discrimination, then that is a clear signal that the conduct has had impact and that action is requested. This is especially true in cases where a victim is directly affected by an offence, such as abuse, insult or destruction with a discrimination aspect.

With the question to whether or not to instigate proceedings against certain statements, the prosecution, time and time, must weigh certain legal interests, on

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the one hand, against the protection of freedom of expression on the other. This applies, in particular, to expressions which in no way contribute to the public debate, or even prevent that debate, and are considered inconsistent with the values of pluralism, tolerance and open-mindedness that have been formulated by the European Court of Human Rights as important for a democratic society. It is important that every one, and certainly also a dissident, can contribute to the social debate without fear of being insulted, discriminated against, threatened or confronted with other criminal offences. Finally, an assessment will always have to be made on whether criminal law is the most meaningful and effective means for dealing with a specific case of discrimination. The above principles will be developed in a new version of the Instructions for Handling Discrimination, which will enter into force later this year.

#### *Cooperation*

The police, ADVs, and Public Prosecution Office have taken a following step to improve the effectiveness in dealing with discrimination. By setting out agreements on the cooperation, they want to take on discrimination incidents in a timely and effective manner, to monitor and safeguard the progress of discrimination cases, and assist victims of discrimination as well as possible in the exercise of their rights. The three parties want to handle every incident and every report or declaration of discrimination as meaningfully as possible, so that the most effect is achieved. Thus, the ADVs will inform the victim about the various possibilities for tackling discrimination, so that, in consultation, a choice can be made that best suits the case and the victim. These kinds of interventions require the three organizations to go beyond their own boundaries and to work more intensively with each other. According to the three organizations, by combining knowledge and expertise, complex discrimination cases can be more effectively addressed without losing sight of the victim and the environment. The ADVs, police and the Public Prosecution Office exchange information on discrimination incidents, regional and national discrimination reports and analyses. Where possible, they will use the same definitions with the registration of discrimination incidents. In this way, there will be better overview of the development of discrimination incidents. For this, a national information exchange protocol has been established.

#### *Punishment and mediation tailored to fit the offense.*

In the follow-up to the General Consultation on discrimination in the Lower House, two motions were adopted in April 2017 which deal with the manner of punishment in the case of violations of the discrimination articles in the Penal Code (articles 137 c through 137 g and 429 c Penal Code)

- The motion by the MPs Segers en Van Brenk (CU en 50+)<sup>11</sup>, calls on the Government, in consultation with the Council for the judiciary and

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<sup>11</sup> Parliamentary Papers II, 2016/17, 30950, no. 109.

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representative organisations, to examine how sentences can be tailored to the discriminatory character of the offence, for example, by applying a special condition or shaping a community service punishment that focuses on discrimination.

- the motion by MP Azarkan (DENK)<sup>12</sup> calls on the Government to investigate whether and how Government-facilitated contact between convicted perpetrators of discrimination and victims of discrimination can result in a responsible and effective way of punishing discrimination, whereby the participation of victims and perpetrators should be voluntary.

On 25 January 2018, an expert meeting on criminal offenses and the use of mediation and victim/offender confrontations in discrimination cases took place with representatives of the Public Prosecution Service, the police, the Netherlands Bar Association, the Dutch Probation Service, the National Association against Discrimination, RADAR / Article 1, Perspective Restoration Mediation and Restorative Justice Netherlands. For the the Netherlands government, a meaningful settlement of a report or declaration is paramount. The criminal law approach should therefore be considered in the light of the broader approach to discrimination. It is important to obtain clarity on what the purpose of an intervention is. Within some ADVs, successful projects are under way to confront perpetrators and followers with -- and make them aware of -- the excluding nature of their discriminatory expressions. ADVs can also facilitate conciliation or mediation. A pilot project in this area has proved successful. The concurrence with a criminal case can, however, have unforeseen consequences for both perpetrator and victim. For example, the participation of a suspect in a mediation process may be at odds with the principle of the presumption of innocence.

If the criminal law pathway is chosen, a settlement as proposed in the Segers and Van Brenk motion offers added value. Community service penalties offer the possibility to make a penalty fit the discriminatory nature of an offense. When imposing mediation or a learning trajectory as a special condition, it must always be carefully considered how the implementation of such a sentence can be fitted into the enforcement process. For a successful contact between perpetrator and victim or a mediation route, voluntary participation on both sides seems to be a condition. In addition to attention for the perpetrator, the victim should not be forgotten. Victims often indicate that they want to be heard, that they want answers to questions and want to be reassured about their fear of recurring victimhood.

In accordance with both motions, charges pressed and reports to ADVs and the police will, more than at present, be assessed against a wide range of settlement methods. A broad approach and cooperation are essential for this. This working method is enshrined in the cooperation agreement between the Public Prosecution Office, the police and ADVs for the Instruction for handling Discrimination of the Public Prosecution Office.

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<sup>12</sup> Parliamentary Papers II, 2016/17, 30950, no. 110.

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### *The Power of the Difference*

Under the umbrella of the programme, "The Power of the Difference," the police are actively working on the development of various measures to combat discrimination. This multi-annual programme is committed to the ambition to be the police for everyone and has four strategic goals: strengthening the connection with society, improving the craftsmanship (including addressing discrimination and better proactive police checks), developing a more inclusive work culture in the police force and more diversity in the teams. In 2017, important steps were taken. The target of a new influx of 25% of police personnel with a double cultural background has been achieved. The action framework for proactive monitoring has been circulated within the police organization and training sessions are now given. The police app, proactive monitoring, will be tested in the spring of 2018 in a pilot project. The most important task for this programme is to sustainably safeguard these sometimes intractable themes in the organization, the policies and the work processes. The original duration was until the end of 2018, but the police is now considering continuing it into 2019.

## **2.3 Local approach to discrimination**

### *The Strengthening of anti-discrimination provisions (ADVs);*

ADVs play an important role in preventing and combating discrimination. Municipalities are required by law, on the basis of the Municipal Anti-discrimination Measures Act (Wga) to design an ADV for assistance to victims of discrimination and the registration of notifications. In recent years, several bottlenecks with regard to the functioning of the ADVs have been identified, which relate, inter alia, to the variety of ADVs in size, design and independence, as well as the financing and the role of ADVs in prevention.

That is why in 2017, the research firm, Region, as commissioned by the Ministry of the Interior and Kingdom Relations, studied how the ADVs work in practice and are organized. There are currently a total of thirty-eight ADVs, divided into three different organization types:

- dependent (that is, part of another welfare or other organization) and operating locally
- dependent and operating regionally
- independent and operating regionally

The report by Region Plan concluded that regionally organized, independent ADVs seem to be best able to provide support to victims of discrimination, because all key enabling conditions to effectively support these ADVs are present. Thus, these ADVs generally take part in the Regional Discrimination Consultation (RDO), in which the cooperation between the police, the Public Prosecution Office and the ADV is implemented. The findability and accessibility also proved to be better than that of ADVs that are part of a municipality or other organization. To shed light on

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the perspective of municipalities with regard to ADVs, I had a study done by the Movisie Knowledge Institute in late 2017 (appendix 6). All municipalities were approached with a questionnaire about their local anti-discrimination policy and the ADV-function. 216 municipalities filled in the list partially and 154 municipalities filled in the list completely. There are currently about 38 ADVs. Municipalities of 36 ADVs filled in the list. The response gives a good, overall picture of the progress of the local anti-discrimination policy in the Netherlands. In addition, thirteen municipalities were interviewed by telephone (including Amsterdam, Den Haag, Deventer and Middelburg). The objective of the study was, on the one hand, to obtain a picture of anti-discrimination policy that municipalities have and, on the other hand, to map out the vision that municipalities have concerning the system of ADVs. The results of the local anti-discrimination policies follow below (under *Guide to anti-discrimination policy for municipalities*).

#### Results on the system of ADVs

How satisfied are municipalities about their ADVs?

- Municipalities appear to be divided over the desired administrative control of the ADVs (should an ADV be managed locally, as it is now, or at the regional level?). It does appear, however, that municipalities in the current situation make a choice about which they are generally satisfied and that, therefore, apparently suits the local situation.
- The regionally organized ADVs score the best with municipalities. Here, the *independent* regional ADVs score the highest, but the regional *dependent* ADV's also have a high score. The municipalities with a local, dependent ADV are less satisfied than average.
- Supervision of municipalities and of the ADVs is a concern mentioned by municipalities. This is particularly the case with smaller communities that may not be paying sufficient attention to the subject.
- The majority of municipalities is of the opinion that the present way of funding (for themselves) works well, but a majority also believes that the amount should be earmarked from the Municipalities Fund.

#### Follow-up steps in response to the study

The functioning of the ADVs in practice has now been mapped out from the perspective of the ADVs and the municipalities. For a definitive the Netherlands government approach, it is desirable that follow-up consultations be held with, among others, the VNG, the G4, the National Association against Discrimination (LVtD, the industry association of ADVs) and the police / the Public Prosecution Service. However, some possible solutions for the above-mentioned bottlenecks do seem to be reasonable; I will assess them with the most involved parties.

Problem-solving approach 1: For the time being, no system reform to mandatory regionalization of ADVs

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Movisie's research does not show that there is a widely supported wish by municipalities to relocate the obligation to install an ADV to a regional administrative level. Regional cooperation is certainly desirable and should be promoted, both in anti-discrimination policy and in the ADV function. However, this cooperation does not need to be legally anchored. This would limit the local diversity in this policy area too much. Moreover, it would be a huge shift in the current system of ADVs with far-reaching legal, administrative, organizational and financial consequences. The preconditions for a properly functioning ADV have been clearly mapped out. Based on this study, the solution of the current problems in the system and the desired regional cooperation seem to be achievable in other ways. This will have to be tackled together with the municipalities (including the G4 and VNG), the ADVs and other involved partners (such as the police and the Public Prosecution Service).

#### Problem-solving approach 2: Administrative consultation

Movisie's study reveals a call for more involvement and supervision from the national government. After the summer, I will take the initiative for administrative consultations about the ADV function with a number of municipalities where the functioning of the ADVs can be problematic, in practice. I will also, bearing in mind the motion by Özütok/Van den Hul<sup>13</sup> to explicitly include the financing of ADVs per report. To follow-up I will, in consultation with the LVtD and the VNG, follow the functioning of the ADVs in practice and, where necessary, address municipalities in a targeted manner with respect to the implementation.

#### Problem-solving approach 3: Stimulating smaller municipalities

Both parts of Movisie's research show that more stimulation in the direction of smaller municipalities would be desirable. Both the results of the local anti-discrimination policy and the results of the ADV's system show that (administrative) support for the smaller municipalities deserves to be intensified with regard to this subject. The guide for municipalities, drawn up in the context of the local approach and presented with this Progress Report and which will be distributed among all municipalities, offers an important instrument for this. The guide will be explicitly brought to the attention of smaller municipalities.

#### *Collaboration of hotlines*

In addition to the regular hotlines for discrimination, such as the police, ADVs and the Netherlands Institute for Human Rights, there are private initiatives. The various types of organizations each have their added value. Good cooperation is essential so that the interests of a person who reports discrimination are served as well as possible. In the specific area of Muslim discrimination, SZW has organized three consultations between the various hotlines in order to strengthen mutual cooperation. Cooperation has already taken place between some

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<sup>13</sup> Parliamentary Papers II, 2016/17, 30950, no. 126.



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organizations and, among other organizations, these consultations have contributed to the first steps towards cooperation. The LVtD intends to continue this hotline consultation.

#### *Guide to anti-discrimination policy for municipalities*

A guide has been announced in the National Action Programme against Discrimination to stimulate the local approach to discrimination. The 'Guide to anti-discrimination policy for Municipalities,' is being presented as a handy, clickable, pdf file and actively brought to the attention of all municipalities. A running text is attached to this letter (Appendix 7). The guide brings various studies on effective methodologies and local *best practices* together. In order to have the guide be able to respond well to the needs of municipalities, the Movisie knowledge institute has carried out, as commissioned by the Ministry of the Interior and Kingdom Relations, a study on local anti-discrimination policy. This study gives a good idea of the current state of the local anti-discrimination policy.

#### Research into local anti-discrimination policy

What are municipalities doing in the area of anti-discrimination?

- In 2012, a quarter of the municipalities carried out local anti-discrimination policy, which had increased to one third of all municipalities by 2017. 81% of the municipalities that indicate that they do not have an anti-discrimination policy, said that they have other policies that contribute to the fight against discrimination (such as work and participation policy, emancipation policy, security policy, integration policy).
- There are clear differences between large (> 100,000 residents) and small (< 25,000 residents) municipalities. The larger the municipality, the greater the likelihood that there is a local policy.
- The social areas of work and education are given most priority in the policies of municipalities. The anti-discrimination policy is almost always on legal grounds, but sexual orientation, ethnicity and disability are slightly higher on the agenda. The instruments used are generally education/training courses, campaigns, research and monitoring.
- There are several reasons presented for not developing an anti-discrimination policy. Some municipalities integrate the subject elsewhere, in other or regional policy. However, there are municipalities where a combination of lack of political urgency, a small number of reports and a lack of capacity and expertise mean that the subject is not a priority.
- What is striking is that municipalities in the study did not often indicate that they had to contend with financial constraints when implementing anti-discrimination policies.

#### *Guide to anti-discrimination policy for the restaurant and catering industry*

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In 2014, the Guide to anti-discrimination policy for the restaurant and catering industry was published. Over the past year, discussions were carried out with various stakeholders on the effectiveness of the approach to anti-discrimination in the hotel and catering industry, including ADVs, the Dutch Trade Association for the Hotel and Catering Industry, some municipalities and the Netherlands Institute for Human Rights. From this, the picture emerged that actors are aware of the possibilities for intervention and there are also various initiatives for combating discrimination in the hotel and catering industry more effectively. Attention to tackling discrimination in the hotel and catering industry continues to be important. In the above-mentioned general anti-discrimination policy guide for municipalities, which was drafted in support of the prevention of and fight against discrimination, once again attention is given to discrimination in the hotel and catering industry.

#### *Local meetings and projects*

In 2017, the ministry of SZW organized gatherings throughout the country to discuss discrimination against Muslims. For these meetings, representatives of local Muslim communities, municipalities, ADVs and the police were invited. The purpose of these meetings was to make contact in an accessible manner in order to build relationships at the local level, so that, in the case of discrimination, the affected parties could find each other quickly and could report it easily. Given the large turnout, the meetings clearly fulfilled a need. In some regions, it has already led to closer cooperation.

Also, projects to strengthen the inter-religious dialogue via the Consultation Jews, Christians, Muslims (OJCM) are supported, as are the local meetings between Turkish and Jewish organizations, organized by the Consultative Body for Turks in the Netherlands (IOT). To promote dialogue and interaction, in 2017 an inventory was carried out in six municipalities, where practical examples of dialogue between the Jewish and Muslim communities were described. The results were presented at a meeting in May 2017 for municipalities and communities.

## **2.4 Tightening the legal framework**

Although the current legal framework for tackling discrimination complies with international obligations, the Government also wants to respond to social comments that call for the tightening and clarification of the current legislation. The the Netherlands government is therefore willing to explore whether a separate *'hate crime'* article would have added value in the criminal approach to offences with a discriminatory motive. Such a law article has already been advocated for some time by interest groups and is part of the recommendations that the Netherlands has received from the Council of Europe and the United Nations. The study will focus on the possible added value and effectiveness of such a section of the law.

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The Government wants to draw a clear line for statements that qualify as hate-mongering. What must be prevented is that the right to freedom of expression is being misused in order to sow discord in society. In the coalition agreement, it states that, due to the seriousness of the offence of hate-mongering, the sentence should be increased. This increase in the severity of the sentence can be seen in the light of the above-mentioned social developments. The increase of the maximum sentence stresses that the Government is on the side of people who are offended, who are discriminated against and who feel threatened in their existence in the Netherlands. At the same time, of the threat of a heavier sentence serves as a deterrent. An increase in the maximum penalty for hate-mongering and violence will be included in the Bill to amend the Penal Code in connection with the re-evaluation of the criminalisation of some existing offenses (re-evaluation of criminalization of existing offenses) that will be submitted for consultation this spring.

With respect to the criminalisation of age discrimination as a result of postponing the motion by MP Krol, your Lower House was informed by letter of 13 September 2017<sup>14</sup> and by letter of 5 December 2017<sup>15</sup> of objections that the the Netherlands government sees in the addition of such a provision to both speech offenses and exclusion offences. In the view of the the Netherlands government, the current legal framework is sufficient to prevent and tackle age discrimination in the labour market. I would add that if, at any point in time, it should be concluded that more stringent regulations are necessary (including criminal enforcement as the ultimate option), it is obvious that such standards should focus on regulations concerning equal treatment in the context of work.

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<sup>14</sup> Parliamentary Papers II 2017-2018, 30 950 no. 140.

<sup>15</sup> Parliamentary Papers II 2017-2018, 30 950 no. 142.

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### **3. In conclusion**

Addressing discrimination requires a long-term process, a great deal of perseverance and a well thought-out joint effort. With this the Netherlands government approach, we continue to work on what has been set in motion in the various action plans against discrimination. In addition, we focus our joint efforts on a number of important spearheads presented in this letter. Together with municipalities, the police, the Public Prosecution Service, the ADVs and all those involved in tackling discrimination, we focus on a Netherlands where everyone can be themselves.

The Minister of the Interior and Kingdom Relations

K.H. Ollongren, M.A.