



Commissie **Gelijke** Behandeling

# **Potential solutions to discrimination cases adopted through ADR – The enforcement perspective**

**Richard de Groot**

**Legal advisor Equal Treatment  
Commission (NL)**



Commissie **Gelijke** Behandeling

# Mediation

Start project on January 1, 2005

Reasons:

- Quick, effective and more satisfying solution of disputes
- Creating more awareness of equal treatment norms

Mediation introduced as a structural means of solving cases in 2007



Commissie **Gelijke** Behandeling

# Procedure

- Legal advisor calls parties to offer mediation and explains the advantages of mediation
- Mediation also possible at later stage (e.g. at hearing)
- Case is directed to mediator (independent from CGB)
- Parties sign mediation agreement
- Mediator informs legal advisor regularly about progress
- Parties sign agreement and fill in evaluation forms  
Agreement is legally enforceable!
- Mediator writes summary



Commissie Gelijke Behandeling

# Facts

- Mediation offered in 215 cases  
(2011: 738 cases, 269 inadmissible,  
23 cases for mediation)
- 136 refusals (applicant: 95 times; defendant: 41)
- 7 cases: no mediator agreement signed
- 46 successful mediations (65%)
- 25 unsuccessful mediations (35%)
- 1 case still in mediation



Commissie Gelijke Behandeling

# Positive indicators

- Long and lasting relationship between parties
- Communication problems; equal treatment dispute is only small part of bigger dispute (procedural justice)
- Handicap/chronical illness: effective measures  
1 out of 3 cases are about discrimination on basis of handicap / chronical illness



Commissie **Gelijke** Behandeling

# Negative indicators

- Petitioner only wants 'justice to be done' (especially in cultural conflicts)
- No room for negotiation
- Person seems unable to reflect on his own behaviour in conflict (“most cases are suitable for conflicts, not all persons”)



Commissie Gelijke Behandeling

# Dilemma's

- Principal legal question (e.g. new legislation)  
Case of student at music school
- Mediation with little proof of discrimination  
Case of young girl and father with African background



Commissie Gelijke Behandeling

# Case of Frank

- 17 year old student with ADHD
- About to finish school, but needed to hand in 4 more pieces of written work
- School was about to send him from school because of his lack of motivation
- Mediation was succesfull





Commissie **Gelijke** Behandeling

# Case of Fatima

- Muslim woman working at christian school as assistant janitor
- Wanted to apply for new job as canteenworker
- School advised her not to apply for that job



Commissie **Gelijke** Behandeling

# The contract

- Mediation contracts are legally enforceable
- Parties sign for solving new conflicts through mediation before starting new legal actions
- Contract not always necessary
- Only once problem reported back



Commissie Gelijke Behandeling

# What did CGB learn from mediation?

- ‘Read between the lines’
- Ask questions at any stage of the procedure, e.g. at start: “How would a positive verdict help you further?”

Or at hearing: “What is this case about, according to you?”