



Commissie **Gelijke** Behandeling

Victimisation

The positive and negative consequences people experience or expect as a result of raising the issue of unequal treatment.

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Summary

This study concerns victimisation, in the context of unequal treatment of employees. Victimisation is interpreted as meaning the infringement of the rights of people who raise the issue of unequal treatment. The main research question is: Which positive and negative consequences do people experience or expect as a result of raising the issue of unequal treatment, and how can negative consequences be avoided? This question is answered using four empirical research phases in the field of work, which are preceded by a literature study. The first two empirical phases of the research concern quantitative and qualitative research respectively into the *experiences undergone* by CGB petitioners. The last two phases of the research are oriented around the *estimations made*, by both employees and intermediaries in the Netherlands, of the consequences of raising the issue of unequal treatment, and the significance thereof for the process.

The quantitative phase of research into experiences of CGB petitioners shows that victimisation is a real problem in the Netherlands, which affects a large number of CGB petitioners. Only a third of the CGB petitioners said that they were not disadvantaged by raising the issue of unequal treatment at work. The rest reported that they had been disadvantaged in one or more ways, varying from relatively mild to very serious. The differences in the victimisation experienced can be explained by a number of factors, some of which have received too little attention to date, namely the grounds of the unequal treatment, the source and the nature of the unequal treatment, and the presence of fellow victims within the organisation. In addition to the negative experiences, CGB petitioners also find the manner in which their petition is treated to be a positive experience. In the frequent instances in which the petitioners hardly received attention for their plight in the run-up to their petition, they did receive sufficient attention from the CGB. In three out of ten cases this resulted in the termination of the unequal treatment, and in approximately half the cases it resulted in a feeling of recognition.

In the qualitative case study, a limited number of cases of victimisation are described in detail on the basis of the accounts of the people involved from both the employer's and the employee's side. Taking these cases into account enables the identification of a number of process characteristics which affect the seriousness and extent of victimisation. These are primarily the length of the procedure and the increasingly long process of formalisation. If a case of unequal treatment is not resolved quickly and satisfactorily, the result may be an escalation of the process.

The third research phase which focused on the fear of victimisation among employees initially leads to the realisation that the majority of employees in the Netherlands are positive about their protection against unequal treatment and victimisation. The majority of employees believe that unequal treatment does not occur in their organisation, and they also regard the chance of it occurring as being small. In addition, a substantial majority are convinced that if unequal treatment were to occur in their organisation, this could be discussed and that the discussion would then lead to a positive outcome. With regard to the perceived protection against victimisation, there is the insidious problem of this perceived protection actually being lower in situations in which that protection is actually relevant. In fact, employees appear to estimate that a lower level of protection against victimisation exists if they have experienced a situation of unequal treatment

within their own organisation, if they regard it to be more likely for unequal treatment to occur within their own organisation, and if they themselves are members of a high-risk group as regards unequal treatment.

The fourth research phase involving intermediaries shows that a lot of intermediaries believe that fear of victimisation plays an important role when broaching the subject of unequal treatment. Not only are the employees who contact them concerned, the intermediaries themselves believe that complaining about unequal treatment implies risks. This concern on the part of both the intermediaries and their clients appears to have significant consequences. For example, this affects the way in which the issue of unequal treatment is raised, the referral to other actors and bodies and, in almost four in ten cases, the fear of victimisation causes people to give up the idea of raising the issue of unequal treatment (in more detail)

All in all, the insights from the various research phases show that raising the issue of unequal treatment at work often has significant positive consequences. Raising the issue of unequal treatment leads in many cases to an improvement in the situation. It also leads to additional benefits, such as attention for the situation, and recognition. Nevertheless, this does not alter the fact that raising the issue of unequal treatment frequently has (some) negative consequences in the form of a deterioration in the work situation, and social and/or work-related victimisation. This leads to a sombre conclusion as regards the existing protection against victimisation. While the legal ban on victimisation serves to protect employees who experience unequal treatment and to prevent people from keeping silent about unequal treatment, in practice the existing protection has its shortcomings. The ban has not resulted in a situation where employees who experience unequal treatment in practice are sufficiently protected, nor in a situation where they *feel* sufficiently protected. On this basis, proposals are being made on how to tackle victimisation, at both individual and supra-individual level, and on how the CGB can fulfil a role in this issue.

7 Conclusion

This study concerned victimisation in the context of unequal treatment of employees. Victimisation was interpreted as meaning the prejudicing of people who raise the issue of unequal treatment. The previous chapters reported on four phases of the research into this subject, with a focus on answering a large number of subquestions. The first two empirical phases of the research concerned quantitative and qualitative research respectively into the *experiences gained* by petitioners from the Equal Treatment Commission (CGB). The last two phases of the research were oriented around the *estimating*, by both employees and intermediaries in the Netherlands, of the consequences of raising the issue of unequal treatment and the significance of this estimate for the process.

This final chapter first summarises the most important insights per research phase and then draws conclusions about the formulation of the problem and the main research questions. The chapter ends with a number of recommendations for follow-up research.

7.1 The most important findings per research phase

Each of the four phases of the research offers a substantial number of insights into the problem of victimisation in the context of unequal treatment. The most important findings are the following.

The results of the quantitative research phase into experiences of CGB petitioners corresponds partly with the expectations on the basis of previous studies, but certainly provide a number of *eye openers* as well. Following the studies by Jaspers and Kleinwee in the 1980s, and Woldringh in the 1990s, this study shows that victimisation is still a very real problem and one that affects a lot of CGB petitioners. Of the 126 petitioners we talked to, only 34 percent said that they were not disadvantaged at all by raising the issue of unequal treatment. The rest reported one or more forms of social and/or work-related retaliation, varying from relatively mild to very serious.

However, the analyses carried out into the differences in the victimisation experienced revealed previously formulated statements to be largely no longer relevant. For example, it has transpired that the victimisation observed is not linked to the size of the organisation or to whether the petition to the CGB was founded or not.

On the other hand, victimisation differences could well be explained by a number of factors to which too little attention has been paid in previous research in the Netherlands, namely on the basis of the unequal treatment, the source and the nature of the unequal treatment and the presence of fellow victims within the organisation. To put it in concrete terms, serious, repeated victimisation occurs primarily in the event of:

- ▣ unequal treatment on the grounds of race (severe) and on the grounds of sex and chronic illness/handicap (to a lesser degree),
- ▣ whereby the focus is (partially) on unequal treatment by colleagues and direct managers at the workplace, and

- ▣ whereby the target of the unequal treatment is relatively isolated in the sense that this person is the only person, or is one of the few people, to which the ground of unequal treatment in question can be applied.

It is clear that these circumstances often occur simultaneously. Particularly in the context of unequal treatment on the grounds of race, the victims are quite frequently solitary individuals and small minorities who are the butt of unequal treatment at the workplace. In the event of more business-related disputes between an employer and an employee regarding, for example, formal decisions and the application of regulations relating to a number of employees in the organisation, the degree of victimisation is generally minor.

However, in the context of the assessment of the victimisation experiences of the CGB petitioners, one has to take into account that CGB petitioners also find how their petition is treated to be a positive experience. In the frequent instances in which the petitioners hardly received positive attention for their plight in the run-up to their petition, including from parties from whom they might have expected it, they did receive sufficient attention from the CGB. In three out of ten cases this resulted in the ending of the unequal treatment and in approximately half the cases a feeling of recognition. Subsequently, CGB petitioners were generally positive about their decision to involve the CGB. Almost nine out of ten petitioners said that calling in the CGB was the right choice and eight out of ten said they would do exactly the same again in a similar situation.

In the qualitative case study a limited number of cases of victimisation are described in detail on the basis of the accounts of the people involved from both the employer's and the employee's side. Taking these cases into account enables the identification of a number of process characteristics which affect the seriousness and extent of victimisation. These are primarily the length of the procedure that has to be completed and the increasing process of formalisation taking place at the same time. If a case of unequal treatment is not resolved quickly and satisfactorily, the result may be an escalation and an increase in tensions over time. An employee who does not feel he is being taken seriously in the first instance can decide to take more drastic steps such as submitting a formal complaint and the involvement of external parties. Employers and others in the organisation may be unhappy about the employee doing this and may then refuse to cooperate. However, some employees may regard this as a reason for taking additional steps, etc.

The risk of victimisation also increases mainly because an employee who takes a number of these steps can acquire a reputation for being a nagger or troublemaker who is not loyal to the organisation. Once that point has been reached, drastic social and work-related sanctions can easily follow. A key problem is that the introduction of external actors, such as the CGB, formalises a dispute. The employer, in particular, then acquires a different role as regards solving the dispute, meaning that the communication between the parties can stagnate, thereby hindering the location of informal solutions.

The third research phase initially leads to the realisation that the majority of employees in the Netherlands are positive about their protection against unequal treatment and victimisation. The majority of employees believe that unequal treatment in their organisation does not actually occur and they also regard the chance of it occurring as being small. In addition, a substantial majority are of the opinion that if unequal

treatment were to occur in their organisation, this could be discussed and that the discussion would then lead to a positive outcome.

However, fifteen percent of the respondents had experienced unequal treatment in their own organisation in the year prior to the survey, and their experiences were clearly less positive. In the first place it appears that the problem of unequal treatment was only actually raised in half of the situations in which it occurred. In the second place it appears that although raising the matter led to improvements in a substantial number of cases (in 40 percent of the cases), this was also often not the case. In addition, raising the issue regularly led to negative responses (in 18.5 percent of the cases).

A closer analysis of the survey details also shows that, as regards the perceived protection against victimisation, there is the surreptitious problem of this perceived protection actually being lower in situations in which that protection is actually relevant. In fact, employees appear to underestimate the protection against victimisation:

- ▣ if they have experienced a situation of unequal treatment within their own organisation,
- ▣ if they regard it to be more likely for unequal treatment to occur within their own organisation,
- ▣ if they themselves are members of a high-risk group as regards unequal treatment.

Lastly, this research phase revealed that the way in which unequal treatment can be made the subject of discussions within organisations has become very standardised. The 'complainant' has to stay calm and polite and a lot of people consider it unwise to involve superiors within the organisation or representatives from outside. In short, according to a lot of employees, there are social boundaries which it is better not to cross when raising the issue of unequal treatment and, in that sense, the possibility of invoking the right to equal treatment is restricted.

Lastly, the fourth research phase shows that a lot of intermediaries believe that concern about victimisation plays an important role when broaching the subject of unequal treatment. Not only are the employees who contact them concerned, the intermediaries themselves believe that complaining about unequal treatment implies risks. This concern on the part of both the intermediaries and their clients appears to have significant consequences. In approximately half the cases, the concern affects the way in which the issue of unequal treatment is raised and in almost four in ten cases the concern even causes people to give up the idea of raising the issue of unequal treatment (in more detail).

The fact that the concern about victimisation also plays a role as regards referrals to other actors and bodies is also important. For example, it transpires that referrals to superiors in an organisation are considered to be exceptionally risky and that the same applies to seeking legal assistance and the court. According to the respondents, the risks of involving the CGB or an anti-discrimination agency are fairly similar. In fact, the intermediaries regard the involvement of a confidential advisor or a professional mediator to be less risky.

This risk perceptions have a clear influence on the way in which the intermediaries advise. If fear of victimisation plays a role, the intermediaries generally advise mediation provided either by themselves or in the form of professional mediation. Approaching the CGB or

taking legal proceedings are only regarded as possible options at a later stage and even employees who are demonstrably within their rights may be advised to keep quiet and look around for other work.

As regards the existing legal protection against victimisation, approximately half of the intermediaries state that this is unsatisfactory. They primarily seek improvements in protection against victimisation in the form of information and changes in organisation policy and culture. Although possibilities for improving legal protection are proposed, they are very varied. Categories of employees who deserve more attention as regards protection against victimisation are employees with a temporary contract and ethnic minorities. According to the intermediaries consulted, these groups could receive more attention in the form of policy, training and empowerment.

7.2 Main conclusions

This research, as a whole, focused on responding to the formulation of the problem and the three main research questions formulated in the first chapter:

Which positive and negative consequences do people experience or expect as a result of raising the issue of unequal treatment and how can negative consequences be avoided?

1. To what extent is the institutional protection against victimisation effective?
2. How can victimisation be avoided or reduced?
3. What role can the Equal Treatment Commission play in the light of its opinion-giving and advisory tasks?

At the end of this study we want to examine the results in the light of these four questions. What does the research teach us as a whole?

An important initial learning point that has to be referred to in response to this question is that the various phases of the research clearly show that victimisation, the fear thereof and the extent of that fear, have turned out to be issues which are very difficult to research. Although the phases of the research exposed a significant portion of the general problem, there are still a great many questions to be asked. It has also become clear that a lot of questions that one might want to ask are fundamentally impossible to answer. This applies, for example, to the question of how often victimisation actually occurs in the context of unequal treatment and the question of what percentage of unequal treatment situations remain hidden due to fear of victimisation. The studies carried out only give an impression of what has been experienced by various actors at different levels and the data collected is shrouded in considerable uncertainty. This is partly due to the fact that the concept of victimisation refers to a very wide range of phenomena which can play a role at all kinds of different levels, in all shapes and sizes. Not only can the dismissal of an employee who has submitted a petition to the CGB be regarded as victimisation, but also the snapping response of a colleague in the workplace to a comment about discrimination. Care needs to be taken when drawing conclusions about such dissimilar events, certainly when one considers that cases of unequal treatment are usually complex and can involve a number of different phases which are important when it comes to drawing conclusions. It makes a considerable difference whether the snapped response at

the workplace results in the employee no longer daring to report the unequal treatment, or in gaining support from a manager who then takes corrective action.

It also appears that good empirical research into this material is extremely tricky for a completely different reason, namely because unequal treatment and victimisation appear to be issues which are difficult to research openly without people going on the defensive. We observed this particularly in the research phase which focused on the fear of victimisation among employees. Not only did it transpire that a lot of employers anxiously remained tight-lipped on the subject, we also detected a defensive attitude during the survey carried out among employees as regards discussing this theme. People sometimes responded extremely negatively to the survey, particularly employees who said they were not afraid of unequal treatment or victimisation.

If we take these considerations into account, an initial conclusion as regards the formulation of the problem is that the discussing of unequal treatment – at the workplace, at the CGB or elsewhere – often has significant positive consequences. Raising the issue of unequal treatment leads in many cases to an improvement in the situation. It also leads to additional benefits, such as attention for the situation and recognition. Nevertheless, this does not alter the fact that raising the issue of unequal treatment frequently has negative consequences. Employees regularly lose out, for example due to a deterioration in the work situation and social and/or work-related victimisation. Serious forms of victimisation are evident primarily in the context of unequal treatment on the grounds of race, sex and chronic illness/handicap, with the focus (partly) being on unequal treatment by colleagues and direct managers at the workplace, with the target of the unequal treatment being relatively isolated.

The different phases of the research show that there are not only large differences among employees as regards the actual risks of victimisation, but also in the degree of fear of victimisation. For the majority of employees, unequal treatment and victimisation are fairly irrelevant themes. This may be because they themselves do not belong to a clear risk category. This may also be because they may rightly or wrongly be under the impression that this problem does not occur within their organisation.

However, as far as another smaller group of employees in the Netherlands is concerned, unequal treatment, victimisation and fear of these are real themes which require explicit attention. Employees who do belong to the unequal treatment and victimisation risk categories and who have experienced these problems within their organisation, are considerably less sure about their situation. Protection against victimisation cannot be guaranteed precisely for these employees, who in fact need protection the most. When raising the issue of unequal treatment, these employees not only experience serious repercussions, but also the dilemmas that play a role as regards finding solutions. They are scared of raising the issue of unequal treatment and this often seriously impedes them when it comes to invoking their right to equal treatment. The various intermediaries, who could assist these employees when invoking such a right, do not have a solution for these problems either. First of all, the risk of victimisation is a reason for these employees to be reticent when it comes to involving intermediaries. Secondly, the risk of victimisation has a significant impeding influence on what intermediaries who have become involved can actually do for their clients. After all, the intermediaries are precisely the ones who know from experience that a fear of victimisation can be

legitimate and who see it as their task to protect their clients, sometimes even from themselves.

If we take the insights from the various quantitative phases of the research together, it is clear that a lot of employees who experience unequal treatment decide sooner or later not to raise the issue (any further). The effective termination of a situation of unequal treatment quite often leads to this subject having to be raised at various levels. The phases of the research show that filtering takes place at each of those levels, in the sense that a substantial number of employees at each level decide not to pursue a complaint or petition. Of course this is by no means always the consequence of the fear of victimisation. Situations of unequal treatment often improve. The employee may, in time, change his mind. The employee may decide that yet another procedure is not worth the effort. The employee may have found another job. However, the phases of the research show that, in many cases, the fear of victimisation is a key reason for not raising, or continuing to raise, the issue of unequal treatment.

All in all, these insights lead to a sombre conclusion as regards the initial main research question about the effectiveness of institutional protection against victimisation. While the legal ban on victimisation serves to protect employees who experience unequal treatment and to prevent people from keeping silent about unequal treatment, in practice institutional protection has its shortcomings. The legal ban on victimisation has not resulted in employees who experience unequal treatment in practice being sufficiently protected nor in them feeling sufficiently protected.

How can victimisation be avoided or reduced? This second main research question can be interpreted at an individual and supra-individual level.

As regards avoiding victimisation in individual cases this study has generated a lot of information about factors that play a role as regards victimisation. This knowledge can be used in practice. There is now a greater insight into the risks of victimisation in different circumstances and into the way in which processes of unequal treatment and victimisation develop. As regards the latter, the interaction between employee and employer appears to be more and more crucial and, although unequal treatment appears to be less serious in first instance, escalation is likely as soon as external parties become involved and the conflict becomes formalised. This knowledge can be used in practice to estimate and limit the risks of victimisation in concrete cases of unequal treatment, for example by avoiding actions that can easily lead to an escalation. In that sense, employees and employers, as well as actors with an intermediary role, do well to seek solutions for unequal treatment in low-threshold approaches. The parties directly involved can often be called to account as regards their responsibility with mediation also being an option.

At the supra-individual level measures can be taken which stimulate the use of risk-avoidance strategies in connection with specific advice given to an individual. Employers and employees both have an interest in policy that facilitates and stimulates openness about unequal treatment at the workplace, such as courses and training for all staff and for managers in particular.

However, at the supra-individual level, work also has to be done to ensure better protection for employees who (have to) invoke more drastic procedures, for example because a previous low-threshold approach offers no solution. Victims of unequal

treatment must be given the guarantee of free access to actors such as internal and external complaints committees, the CGB and the court. Measures in this field are also possible. Examples include improving the awareness of employers and employees as regards the ban on victimisation, measures which increase the alertness to victimisation of the actors involved and the development and application of instruments to take enforcement measures in the event of victimisation.

When considering formal measures, it is also important to bear in mind that this research shows that the risk of victimisation is linked primarily to characteristics of unequal treatment and less to the way in which the issue is raised or the degree of formal protection within an organisation. This implies that combating victimisation is by no means a simple matter. For example, not much can be expected of simply formulating supplementary formal rights and extra appeal options in cases of unequal treatment. After all, the core of the problem is that, in fact, invoking such rights often provides grounds for victimisation and that the fear of victimisation hampers the access and use of such rights.

When answering the third main research question about the role of the Equal Treatment Commission in combating victimisation a distinction is made between two CGB tasks, namely an opinion-giving and an advising task.

Following on from the phases of the research into the experiences of CGB petitioners, this question can initially be regarded in a narrow sense, with the focus on the protection of individuals who submit a petition for an opinion to the CGB. What this research has made clear is that victimisation frequently occurs in these cases and that this victimisation is often serious as well. It is desirable for the CGB to start playing more of an active role than has been the case up to now in reducing the victimisation of its own petitioners. The CGB can do this by, for example:

- ▣ By specifically (and personally) informing both the petitioner and the respondent, when starting to process petitions, about the ban on victimisation and about the supervision carried out by the CGB.
- ▣ By ensuring that the subject is on the agenda of every hearing.
- ▣ By including the legal ban on victimisation in each CGB opinion.
- ▣ Systematic monitoring of victimisation in relation to CGB petitions, in follow-up meetings which take place at a fixed moment some time after processing (with linking possible to the approach developed in this study, see also paragraph 7.3).

In addition, the question concerning the role of the CGB in reducing victimisation within the framework of its advising task must, of course, be examined from the perspective of the general social effect of the Equal Treatment Act (AWGB). The question is then to what extent, and how, the CGB can achieve more structural, supra-individual social protection against victimisation by advising, including for the very many people who (want to) raise the issue of unequal treatment somewhere other than with the CGB. It is clear that the issue of creating supra-individual protection involves a wide range of aspects which are not covered by the scope of this research. Nevertheless, this research can still be used to define a number of focal areas for advising on victimisation.

This research makes it clear that the effect of existing formal legislation on protection against victimisation is limited and that not a great deal can be expected from any broadening of this legislation. Advising which focuses purely on that legislation will have

little effect. It is a lot more probable that this research provides a basis for focusing the advice on the protection options outlined above at individual and supra-individual levels, which will primarily cover the following issues:

- ▣ Advising both employees and employers on the creation and use of low-threshold ways of raising the issue of unequal treatment (for example by appointing confidential advisers within the organisation).
- ▣ Advising various intermediary parties (such as confidential advisers, Art. 1 and the Legal Desk [*Juridisch Loket*]) on the high incidence of victimisation in practice, on the need to be alert to this, and on the way in which victimisation can be reduced;
- ▣ Advising policymakers, courts and also the Labour Inspectorate [*Arbeidsinspectie*]¹² on the nature and extent of the problem of victimisation and on the desirability of a more complete enforcement policy.

It would therefore be reasonable, during such advisory procedures, to involve representatives of the above-mentioned actors at an early stage.

7.3 Recommendations for follow-up research

This was a broad-based study and the four studies carried out provided answers to the main research questions asked. However, this does not mean that the subject of victimisation no longer needs to be researched. On the contrary. The outcomes of this research actually provide a good reason to initiate intensive follow-up research in the near future.

First of all, it is recommended that work should focus on a systematic periodical monitoring of this problem within the framework of the future efforts by the CGB to reduce victimisation. In that context, it is unacceptable for a period of around 10 years to pass again, after Jaspers and Kleinwee (1985) and Woldringh (1999), before starting a new, fourth study. The observation now that previous studies have not brought about many changes, combined with the intention to reduce victimisation, is a key argument for not just taking measures, but also to monitor the situation.

The obvious way in which the CGB can do this is by repeating the various quantitative phases of the research which have been carried out in this study at regular intervals. This would not, incidentally, require a particularly huge research effort. The research among intermediaries can be repeated quite simply. The research into the fear of victimisation can be replicated simply using the existing questionnaire and at relatively little cost, via the same or other Internet panels. The effort that went into the research among CGB petitioners during this study can, in the future, be considerably reduced if the CGB adopts the advice previously given to include the subject of victimisation in follow-up discussions with clients. The information from these discussions would then serve as a basis for a one or two-year monitoring report, like the one we presented in Chapter 3.

¹² Since July 2009 the making of a direct or indirect distinction, including sexual intimidation, has been added to the list of issues that make up psychosocial workload within the framework of the Working Conditions Act [*Arbowet*]. Supervision of this policy is one of the tasks of the Labour Inspectorate [*Arbeidsinspectie*].

It is also recommended, on the grounds of the findings of this study, that in-depth follow-up research be initiated in two areas.

In the first place, more in-depth research is desirable into victimisation experiences of employees from smaller minority groups. The research performed showed that these employees, who are often isolated at the workplace, are very vulnerable to social victimisation and that this problem requires specific attention. Following on from the study by Bochhah, this could take the form of in-depth research among black employees, as well as research among employees with a chronic illness or handicap, and among people who may be discriminated against on the grounds of their sexual orientation.¹³

In the second place it is recommended, on the grounds of the insights gained during the case studies, to perform in-depth research into processes of escalation relating to raising the issue of unequal treatment. For an effective approach to victimisation, supplementary knowledge is required about the way in which requests for equal treatment lead to an escalation and about the factors that play a role in this.

Lastly, the present study only concerned one of the CGB fields in which unequal treatment can occur. Now that the related outcomes are known, questions arise regarding the nature and extent of victimisation in other fields, for example in the education and care sectors.

¹³ This study also focused insufficient attention on the issue of victimisation in relation to unequal treatment on the grounds of sexual orientation. This is not just because this ground of unequal treatment only affects a limited proportion of the employee population, but also because, in recent years, the CGB has processed very few work-related petitions relating to this ground.