



## NEWS REPORT

<b>Date:</b>	3 September 2014
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<b>Title:</b>	Community sentence for discriminatory email
<b>Country:</b>	The Netherlands
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Community sentence for refusing an internship applicant on the ground of his skin colour
<b>Ground of discrimination:</b>	Race
<b>Source:</b>	National court decision
<b>Field:</b>	Employment
<b>Legislative provisions:</b>	Articles 90quater and 137g Criminal Code

### Content

**Decision of the court:** The District Court of Gelderland (location Arnhem) has rendered a verdict in a widely publicised discrimination case. In the case at hand, an applicant for an internship mistakenly received an email intended to be sent internally. In the email, the employee who had reviewed the applicant's CV advised his superior to refuse the application in the following way:

“Had another look, is nothing. Firstly a darkly coloured (nigger). And little to no experience with computers et cetera on his CV.”<sup>1</sup>

The applicant, who mistakenly received the email, immediately published it on his Facebook and Twitter accounts. His post was picked up by national media, which led to a wave of reactions and a public debate on racial discrimination on the labour market and – in particular – during recruitment processes. The applicant decided to report the incident to the police.

The Public Prosecution Service decided to press charges against the employee who sent the discriminatory email. He was prosecuted under the anti-discrimination provisions in the Dutch Criminal Code, as the Public Prosecution Office can only institute criminal proceedings on the basis of criminal law provisions. In the Dutch Criminal Code (“Wetboek van Strafrecht”), discrimination is defined in Article 90quater:

“Discrimination or discriminating shall mean any distinction, exclusion, restriction or preference which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of

<sup>1</sup> The Dutch text reads as follows: “Heb nog even gekeken is niks. Ten eerste een donker gekleurde (neger). En op zijn CV weinig tot geen ervaring met computer enz.”



human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

The Criminal Code, in addition, entails specific provisions criminalizing discriminatory speech and publications (Articles 137d-137f) and discriminatory acts in the performance of one’s job or one’s enterprise (Articles 137g and 429quater). Article 137c, moreover, forbids insulting groups of people because of their race, religion/belief and sexual orientation.

The District Court of Gelderland found that the email constituted discrimination as prohibited under Article 137g Criminal Code. The defendant’s argument that his email was in fact intended to be funny was rejected by the Court. He was sentenced to 40 hours community service, in conformity with the sanction proposed by the Public Prosecutor. The claimant, in addition, received a compensation amounting to EUR 485.67 for material damage as well as EUR 500 the immaterial damage suffered, to be paid by the perpetrator.

**Internet link source:** The Court’s judgment may be found at:  
<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBGEL:2014:5457>

**Additional information:** See on the lack of discrimination cases that are brought to criminal trial by the public prosecutor:

Chrisje Brants, Renée Kool, & Allard Ringnalda, *Strafbare discriminatie*, Willem Pompe Instituut commissioned by the Ministry of Justice, Boom JU: The Hague 2007