



## European network of legal experts in gender equality and non-discrimination

### NEWS REPORT

<b>Country:</b>	The Netherlands
<b>Title:</b>	Discriminatory remarks lead to dismissal
<b>Date:</b>	12 June 2015
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<b><u>Context</u></b>	
<b>Issue at stake:</b>	Discrimination and dismissal
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	National court decision
<b>Field:</b>	Employment
<b>Applicable law:</b>	Article 7:677, 7:678, 7:685(2) Dutch Civil Code

### **Content**

**Case / decision of the Court:** Recently, two different courts have decided on cases concerning dismissal because of discriminatory remarks. The first case concerned a shop manager who, as a reaction to several instances of theft, put up a short note in the staff room, which called upon all employees to be more attentive, and which amongst the characteristics of possible thieves mentioned "Antilleans / golden teeth". The employer, following complaints of other employees, decided to use the most far-reaching measure possible, and summarily dismissed the employee (with immediate effect). Such a dismissal (on the ground of Article 7:677 jo. 7:678 Dutch Civil Code) requires an urgent cause, which must be such that an employer cannot be expected to continue the contract.

The District Court Rotterdam, in summary proceedings brought by the employee against the dismissal, decided that the circumstances of the case did not justify such a strong measure, inter alia referring to the fact that the note had been in the staff room for weeks without any reaction whatsoever before complaints were made by other employees (which implied that the requirement of urgency had not been met). The Court decided that the employee was entitled to receive her salary from the date of the improper termination, and that the employer should allow her to start working again.

It is important to note in this respect that summary dismissals usually remove every right to severance/redundancy pay and, particularly, unemployment benefits (although welfare benefits, which are far lower, remain available). Courts are, partly for this reason, very reluctant to grant summary dismissal, and normally only allow it in very exceptional circumstances, such as fraud or theft.

In the second case, a security employee working for a casino had posted remarks on Facebook that were strongly discriminatory, for example referring to Muslims as an "enormous cancer tumour". This was against the official company policy as regards discrimination, which was laid down in its employment regulations. The employee, moreover, had a long history of conflicts with his employer, and had received official warnings before. Contrary to the first case, the employee was not dismissed with

immediate effect, but the employer did decide to go to court, requesting the court to dissolve the employment contract on the basis of an urgent reason or, alternatively, on the basis of a substantial change of circumstances (7:685(2) jo. 7:678 Dutch Civil Code).

The District Court Limburg found that the circumstances of the case did not justify dismissal for an urgent reason. However, the Court did grant the alternative request to dissolve the labour agreement on the basis of a substantial change of circumstances. In the Court's decision, the previous conflicts between the employee and the employer, as well as the former's refusal to follow an anti-aggression course, were considered to constitute important circumstances. The employment contract was therefore terminated, and the employee was not granted any compensation.

**Key points of analysis:**

- Employment contract dissolved due to discriminatory remarks made online by the employee;
- Summary dismissal for discrimination found unjustified.

**Internet link sources:**

District Court Rotterdam, 24 February 2015, ECLI:NL:RBROT:2015:2848.

<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBROT:2015:2848>

District Court Limburg, 31 March 2015, ECLI:NL:RBLIM:2015:2660.

<http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBLIM:2015:2660>