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NEWS REPORT

Country:	The Netherlands
Title:	NIHR: rejecting internship applicant on the basis of his sexual orientation is a forbidden distinction; Public Prosecution Service prosecutes firm's manager
Date:	15 March 2016
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<u>Context</u>	
Issue at stake:	Discriminatory rejection of an internship applicant
Ground of discrimination:	Sexual orientation
Source:	National equality body
Field:	Employment
Applicable law:	Article 1 and 5(1)(a) General Equal Treatment Act

Content

Case:

A student, enrolled in the course Small Business & Retail Management, applied for an internship with a wholesaler in the agricultural sector. The student was invited for a job interview with the firm. After this interview and a follow-up interview, he received an email rejecting him for the internship. The firm, in the email, stated to be unable to offer him the internship, since they had seen pictures of the applicant on his Facebook profile which indicated that he was homosexual. According to the firm, this was incommensurable with their Christian belief (the firm, in the message, made clear that it was not his orientation *per se* that resulted in the rejection, but the fact that he had a homosexual relationship). The applicant subsequently complained to the Dutch equality body, the Netherlands Institute for Human Rights (NIHR), and reported the case to the police.

Decision of the court:

In earlier case-law (Opinion 2015-112), the NIHR had already found that internships are included under Article 5(1)(a) General Equal Treatment Act (GETA), which prohibits unlawful distinctions in the context of employment (specifically in the areas of public advertising of employment and procedures leading to the filling of vacancies). Accordingly, the current case (Opinion 2016-10) fell within the scope the GETA. The NIHR subsequently found that a direct distinction had been made on the ground of sexual orientation. The NIHR therefore found that a forbidden distinction was made in rejecting the applicant for the internship.

The NIHR is a quasi-judicial body which issues non-binding Opinions. After it has issued an Opinion, a complaint may still be lodged before a conventional civil/administrative court if the applicant wishes to obtain a binding judgment. An Opinion of the NIHR is

usually followed by the conventional courts. In the case at hand, the applicant could decide to bring a civil claim under the tort provision in the Dutch Civil Code (Article 6:162 BW), for example if the rejection would delay his graduation.

In the current case, the applicant has, in addition to his complaint to the NIHR, also reported the case to the police. His university, moreover, also reported the case to the police. The Public Prosecution Service, in response to these reports, has recently announced its intention to prosecute the firm's manager for forbidden discrimination, on the basis of Article 429quater of the Dutch Criminal Code. The criminal case is expected to start soon.

The Public Prosecution Service has previously been criticised for the way it handles discrimination cases. In 2014, an internal report of the National Expertise Centre on Discrimination, which forms part of the Public Prosecution Service, was revealed by a television show. The report discussed the handling of discrimination by the Public Prosecutor, and concluded that out of 1 600 cases of discrimination reported to the police in 2013, only 83 were taken on by the Public Prosecutor. The decision to bring this case to court may therefore be welcomed.

Key points of analysis:

The NIHR finds that the rejection of an internship applicant on the basis of his sexual orientation constitutes a forbidden distinction under the GETA. The Public Prosecution Service has announced to prosecute the firm's manager.

Internet link source:

NIHR Opinion 2016-10 can be found at:

<https://www.mensenrechten.nl/publicaties/oordelen/2016-10/detail>

The Public Prosecution Service's press release is available at:

<https://www.om.nl/actueel/nieuwsberichten/@93221/vervolging-wegens/>

For the internal report on the handling of discrimination cases, see:

<http://www.nrc.nl/nieuws/2015/03/29/aangifte-van-discriminatie-belandt-vaak-niet-bij-om/>

All last accessed 24 February 2016.