



## NEWS REPORT

<b>Date:</b>	19 October 2010
<b>Expert:</b>	Rikki Holtmaat
<b>Title:</b>	Conditional Conviction in Criminal Proceedings for refusal to appoint applicants of Moroccan origin
<b>Country:</b>	The Netherlands
<b><u>Context</u></b>	
<b>Issue at stake:</b>	District Court judgement in criminal court proceedings against a supermarket manager who refused to appoint applicants of Moroccan origin
<b>Ground of discrimination:</b>	Race/ethnicity
<b>Source:</b>	District Court The Hague, 11 October 2010 <sup>1</sup>
<b>Field:</b>	Employment
<b>Legislative provisions:</b>	Criminal Code Article 137g.

### Content

**Case Law:** Three store managers and one member of the personnel department of a big super market chain in the Netherlands decided in 2009 no longer to appoint anyone from Moroccan background in their super markets that are located in the main railway stations (called: AH-to go). There was several evidence of this policy, in the form of oral statements and correspondence. After complaints were made from an anti-discrimination bureau, the Public Prosecutor of the District Court in The Hague decided to start a criminal procedure against these persons on the basis of Article 137g of the Criminal Code. This provision establishes that intentional discrimination against a person on the ground of race in the course of professional, occupational or commercial activities constitutes a criminal act. The maximum sanction is six months imprisonment or a third category fine.<sup>2</sup>

<sup>1</sup> Judgements are published under the numbers: LJN BN9971 / LJN BN9983 / LJN BO0022 and LJN BO0019, all of the same date (11 October 2010.) at the site: [www.rechtspraak.nl](http://www.rechtspraak.nl)

<sup>2</sup> Art. 137g: "Hij, die in de uitoefening van een ambt, beroep of bedrijf personen opzettelijke discrimineert wegens hun ras, wordt gestraft met een gevangenisstraf van ten hoogste zes maanden of een geldboete van de derde categorie." This intentional discrimination is a crime. In Art. 429quater there is also the offence of unintentional discrimination in the same area, but in that case the grounds are manifold (race, religion. Conviction, gender and



The Public Prosecutor asked for a conviction to a fine of 750 Euro and an additional conditional fine of 500 Euro. The Court decided that there was indeed sufficient proof of serious intentional discrimination. However, the Court also held that the sanction (a fine of 1250 Euro for each of them) would only be executed if the perpetrators within a period of 2 years, again commit a similar crime (in other terms, the Court rendered a conditional judgment).

The reasons for the Court for making the fine conditional are that the perpetrators had no past criminal record, that they had not shown a general attitude of discrimination or hostility towards Moroccans, and also that they had already been punished by the general management of the Company while at the same time the Company did not give them any guidance and support about how to deal with this issue.

**Internet link source and additional information:**

<http://www.rechtspraak.nl/default.htm> (Search the LJN number) Last accessed 18 October 2010.

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sexual orientation). The possible sanction is a maximum, of 2 months imprisonment or a fine in the 3<sup>rd</sup> category.