

LEGAL UPDATE

Dutch Supreme Court rules on transgressive behaviour in a dependency situation

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On 24 June 2022, the Dutch Supreme Court ruled ([ECLI:NL:HR:2022:950](#)) that there is no room for the general rule that sexually transgressive behaviour in a dependency situation, like that between a teacher and a student, in principle qualifies as seriously culpable conduct.

Case

The case decided by the Dutch Supreme Court involved the following. A teacher of the science of movement at the academy of dramatic arts had been guilty on several occasions of sexually transgressive behaviour towards his female students. Among other things, he had given a student a full body massage during a massage class and patted another student on the buttocks saying that he had wanted to do that for some time. The teacher had been warned twice for similar behaviour and the college had even forbidden him from engaging in any physical contact during class.

Course of the proceedings

As a result of these incidents, the college requested the Limburg subdistrict court to terminate the teacher's employment contract on the grounds of culpable conduct. The college also asked the subdistrict court to rule that the culpable conduct was *serious*, so that the teacher would not be entitled to the transitional compensation. The college won the case in the subdistrict court, but the teacher appealed.

The Den Bosch court of appeal ruled that the subdistrict court had correctly terminated the employment contract on the grounds of culpable conduct, but that there was no *seriously* culpable conduct. The teacher was therefore entitled to transitional compensation. The college disagreed and lodged an appeal in cassation.

The Advocaat-Generaal, advising the Dutch Supreme Court, advocated the general rule that sexual harassment in a dependency relationship is, in principle, except in special circumstances, seriously culpable. The Dutch Supreme Court did not explicitly address this in its judgment, but was critical of the court of appeal. The Dutch Supreme Court held that insufficient reasons had been given by the court of appeal as to why the teacher's conduct was culpable but not *seriously* culpable. The case had to be heard again by another court of appeal. With more extensive reasoning, the Arnhem-Leeuwarden court of appeal reached the same verdict as the Den Bosch court of appeal. This prompted the college to reinstate its appeal.

Dutch Supreme Court ruling

This case therefore came before the Supreme Court for a second time. The college believed, among other things, that the court of appeal had disregarded the general rule that, by today's social standards, sexually transgressive behaviour in a relationship of dependency, in principle, constitutes serious culpable conduct.

On 24 June 2022, the Dutch Supreme Court ruled as follows. The law sets out the cases in which the employee is entitled to transitional compensation and the exceptions to this. There is one such exception in the case of seriously culpable acts or omissions by the employee. This ground for exception should be applied with restraint and, in assessing whether it is applicable, *all* the circumstances of the case have to be considered. In view of that, in addition to the employee's acts or omissions, the employer's acts or omissions may also be taken into account. According to the Dutch Supreme Court, this situation

is inconsistent with obliging the court to assume, as its starting point, that specific conduct of an employee qualifies as seriously culpable acts or omissions, thereby limiting the investigation to whether there are exceptional circumstances that would mean that the employee's conduct is not in fact seriously culpable. According to the Dutch Supreme Court, adopting a general rule would impinge on the employer's responsibility to prevent transgressive behaviour in its organisation as far as possible.

Do you have any questions about (sexually) transgressive behaviour? Then check out [our theme page](#) or contact one of our specialists.

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