Max Planck Institute
for Social Anthropology
Department 'Law & Anthropology'

Protection Measures for Children Growing Up in Two Clashing Cultures

Question(s) at stake:

Whether the clash of two cultures in the upbringing of children may lead them to be placed under supervision and out of home.

Outcome of the ruling:

Where the difference in culture between children and their parents threatens the children's development, protective measures may be taken by the court, such as out-of-home placement or supervision.

Topic(s):

- Personal Status, Family and Inheritance

Keywords:

- Balancing act
- Best interests of the child
- Children's rights
- Kinship and filiation
- Limitations and justifications
- Measures and actions involving children
- Parental responsibility
- Parental rights

Tag(s):

- Islam
- Child protection measures
- Growing up between cultures

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Country:

Netherlands

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District Court Groningen, 12 August 2010 (Rechtbank Groningen 12 augustus 2010)

Link to the decision:

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ECLI:

ECLI:NL:RBGRO:2010:BN5853

Date:

12 August 2010

Jurisdiction / Court / Chamber:

District Court Groningen

Remedy / Procedural stage:

First instance

Previous stages:

No information found.

Subsequent stages:

No information found.

Branches / Areas of law:

Facts:

The present case concerns the parental responsibility of a man and a woman for their four children who are still minors, born respectively in 1993, 1995, 1997, and 2002. Besides that, they have two other children who are not minors anymore.

The family moved abruptly, according to assistance agencies, to France. A few months later, they all returned to the Netherlands, except for the oldest minor, who stayed a few months longer in France with an aunt. During her time there, she did not attend school. This oldest minor returned to the Netherlands in mid-2010. In light of these events, one of the adult children submitted a notification to the Advisory and Reporting Office for Child Abuse (Advies- en Meldpunt Kindermishandeling, AMK, nowadays Advies- en Meldpunt Huiselijk Geweld en Kindermishandeling).

By an order dated 24 June 2010 the minors were placed under temporary supervision by the Bureau Jeugdzorg (Youth Care Agency) for a period of three months. Additionally, the order included the authorization of custodial placement for four weeks.

The Court must now rule whether the minors should be put under “permanent supervision”, which commonly lasts one year (and can then be renewed every year). This means that the temporary placement under supervision which was ordered by the juvenile court will now be re-examined. If the court finds that the supervision should continue, the children will be placed under permanent supervision.

To determine this, the Child Care Protection Board was requested to provide a short-term report and advice to the court. In its advice, the Board pointed out that the oldest minor has conflicted feelings. On the one hand, she is very loyal to her parents, but on the other hand, she feels the urge to develop independently. Choosing for herself would, however, cause the bond between her and her parents to seriously deteriorate because her parents would feel betrayed. All

three daughters experience this same conflict of two cultures: on the one hand, the cultural background of their parents, and on the other hand, the culture they are confronted with on a daily basis in the outside world.

The youngest has no behavioural problems and comes across as mostly carefree, which is mostly due to his young age. Although he will have to deal with different problems than his older sisters because he is a boy, he too will have to find his way between the two different cultures.

The Child Care Protection Board concludes that in the present case, serious concerns exist about the children's development due to the conflict between their Islamic background and their Western cultural surroundings. This has proven to be very confusing for all the children, but especially for the oldest and the second-oldest minor daughter.

Ruling:

The Court must rule on the following issues:

1. Whether the four minors in the present case should be placed under permanent supervision.
2. Whether the oldest minor daughter should be placed out of home.

Both requests were granted by the Court.

As for the first legal issue, Art. 1:254 of the old Dutch Civil Code (old DCC) provides that a minor child can be placed under supervision if they grow up in such a way that their moral or mental interests or their health are seriously threatened, and if other means of averting this threat have failed or would foreseeably fail.

(N.B. The revised provision of Art. 1:254 DCC nowadays reads: placing a child under supervision is possible if a minor grows up in such a way that their development is seriously threatened, and if (1) the care that is necessary for the minor is insufficiently or not accepted by the parent exercising custody, and (2) there is a justified expectation that the parent(s) exercising custody will not be

able to bear the responsibility of the care and upbringing of the child within a period of time deemed acceptable in light of the care and development of the minor (Art. 1:255 (1) DCC).)

To determine whether these conditions are fulfilled, the Court has regard to the following information.

The past year has been marked by particular unrest within the family. This concerns their sudden departure to France. Furthermore, over the past few years several of the children have made statements to third parties relating to the state of affairs within the family. However, afterwards, these statements were retracted or put in a different light. This made it difficult for the social workers to determine what the exact situation is like within the family.

As regards the family dynamics, the court acknowledges that the family is close, but also warm. The children love their parents and are loyal to them. The father is characterized as a dominant man who practises Islam and has a Moroccan cultural background. In light of this, the children have limited opportunity to develop their own identities.

The development of the identities of the minors is characterized by a conflict of two different cultures. Within the family, the norms and values of Islam prevail, but outside of the family they grow up in a Western culture. This can be confusing for children, especially girls in their puberty. This in turn creates a threat to their development.

It has been found that in general parents need help in removing this developmental threat to their children in order to prevent them from growing apart, which in turn is also harmful to the development of the children. However, although the parents have voluntarily accepted social care, this has not proven to be sufficient to avert the threat.

A family guardian has already been appointed to help with the psychological, emotional, social, and cognitive development of the minors, taking into account the religion of the parents.

During the hearing, the parents agreed to the supervision order and indicated that they would fully cooperate. Furthermore, the father emphasized that he and his family would continue to live in the Netherlands and their children could continue to attend school there.

Based on the aforementioned information, the Court concludes that the requirements of Art. 1:254 (1) DCC have been fulfilled: other means in a voluntary framework have failed to prevent the minors from being threatened in their moral and mental interests.

As for the second legal issue, i.e. the request that the oldest minor be placed in a 24-hour care home, this is determined in light of Art. 1:261 old DCC. The provision provides that out-of-home placement must be necessary in the interests of the minor's care and education or for the purpose of examining their mental or physical condition.

The Court holds that the minor should receive the opportunity to develop mentally and emotionally in a healthy way towards independence, which is currently not possible at home. This is held *inter alia* in light of the not necessarily voluntary choice of the minor to stay in France, during which she did not attend or barely attended school. Consequently, the court grants the authorization for out-of-home placement of the daughter, the oldest minor. At least until she has reached the age of 18 years, she should be supported and guided in this by the social services.

Main quotations on cultural or religious diversity:

- "The development of [the minors] is characterized by growing up in two cultures. Within the family, the norms and values of Islam prevail, but outside they are growing up within a Western culture. This is very confusing for them, especially for girls in their puberty."
- "The aforementioned children love their parents and are loyal to them. However, in developing their identities, [the minors] come into conflict due to growing up in both cultures. This creates a threat to their development. It

has been found that parents need help in removing that developmental threat to the children […] and to prevent the parents and children from growing apart, which is also detrimental to the children's development."

- "As regards the request that the oldest minor be placed in a 24-hour care home, the Court holds that the minor should receive the opportunity to develop mentally and emotionally in a healthy way towards independence, which is currently not possible at home."

Main legal texts quoted in the decision:

- Art. 1:254 (1) DCC (old – until 2015)
- Art. 1:261 DCC (old – until 2015)

Cases cited in the decision:

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Commentary

Protection Measures for Children Growing Up in Two Clashing Cultures

Description of the issue

Whereas first-generation migrants in the Netherlands often still adhere to their culture of origin as their primary reference point, younger generations tend to also comply with norms, values, and expectations of other groups: other young people, school, and other social environments. As a result, they may have to navigate between two cultures. The same goes for children of asylum seekers. Especially minors who have reached the age of puberty seem to be more clearly aware of discrepancies between the different cultures they have to live in. The mental struggle of coping with those different cultures may lead to hiccups and obstacles in a child's development. In those situations, child protection organizations may request a court to apply a child protection measure. The question is how Dutch courts assess those requests: how does growing up between two cultures affect the interest of a child? Every now and then such a case pops up in a Dutch court. The decision of the District Court of Groningen of

2010 (District Court of Groningen, 12 August 2010, ECLI:NL:RBGRO:2010:BN58532010) was selected for this template/case report because it very clearly demonstrated the conflict faced by the children and how it affected their well-being. The District Court clearly identified and acknowledged this conflict. It argued, “Within the family, the norms and values of Islam prevail, but outside they are growing up within a Western culture […]. The aforementioned children love their parents and are loyal to them. However, in developing their identities, [the minors] come into conflict due to growing up in both cultures”. The Court recognizes the harm this conflict caused to the children: “This is very confusing for them, especially for girls in their puberty” and “This creates a threat to their development”. As a result, the Court agreed with a supervision order for all the children in this family and with an out-of-home placement of the oldest minor, a girl who was 16 or 17 years old at that time.

Below, the published Dutch case law on this issue is briefly discussed. It is will be examined how judges assess the interest of a child growing up in two cultures and which aspects they include in their judgment on a requested intervention in the upbringing.

Struggle with two cultures

The above-mentioned conflict, i.e. that children have to cope with, on the one hand, the norms and values of their family and, on the other hand, the norms and values of a Western society, can also be identified in other court cases (District Court of Amsterdam, 23 April 2019, ECLI:NL:RBAMS:2019:2924 (Yezidi Iraq); District Court of Rotterdam, 10 July 2020, ECLI:NL:RBROT:2020:6495; District Court of Limburg, 22 January 2021, ECLI:NL:RBLIM:2020:1778 (Somalia); District Court of Rotterdam, 10 June 2021, ECLI:NL:RBROT:2021:7835 (Muslim); Court of Appeal of ‘s-Hertogenbosch, 10 March 2022, ECLI:NL:GHSHE:2022:772 (Syria); Supreme Court, 1 July 1982, NJ (Nederlandse Jurisprudentie) 1983, 201 (Moroccan)). Girls, especially as soon as they have reached puberty, may be expected to wear a headscarf (District Court of Rotterdam, 10 July 2020, ECLI:NL:RBROT:2020:6495), to not have contact or a relationship with people of the other gender (District Court of Rotterdam, 10 July 2020,

ECLI:NL:RBROT:2020:6495; District Court of Rotterdam, 10 June 2021, ECLI:NL:RBROT:2021:7835), to marry the man the parents have chosen for her (District Court of Rotterdam, 10 July 2020, ECLI:NL:RBROT:2020:6495), and to accept the authority of the parents. Boys can be expected to have a certain role within the family (District Court of Rotterdam, 10 June 2021, ECLI:NL:RBROT:2021:7835), for example protecting the female family members and protecting the good name or honour of the family. Children have to cope with conflicting feelings: being loyal to the parents or choosing to develop independently, develop their own identity, and comply with rules that are less strict and offer more freedoms (District Court of Rotterdam, 10 July 2020, ECLI:NL:RBROT:2020:6495; Supreme Court, 1 July 1982, NJ 1983, 201).

Assessment of serious threat to the development of the child

Dutch Courts have to assess whether the problems the child faces, partly or fully caused by navigating between two cultures, may cause a serious threat to the development of the child. In a number of cases the court concluded that the circumstances had resulted in such a threat. More concretely, courts considered that the differences between both cultures had led to feelings of insecurity at home (District Court of Rotterdam, 10 July 2020, ECLI:NL:RBROT:2020:6495; District Court of Rotterdam, 10 June 2021, ECLI:NL:RBROT:2021:7835), maltreatment (District Court of Rotterdam, 10 July 2020, ECLI:NL:RBROT:2020:6495; District Court of Rotterdam, 10 June 2021, ECLI:NL:RBROT:2021:7835; Court of Appeal of ‘s-Hertogenbosch, 10 March 2022, ECLI:NL:GHSHE:2022:772), isolation (District Court of Rotterdam, 10 July 2020, ECLI:NL:RBROT:2020:6495), tensions and collisions (District Court of Limburg, 22 January 2021, ECLI:NL:RBLIM:2020:1778), transgressive and oppositional behaviour (District Court of Rotterdam, 10 July 2020, ECLI:NL:RBROT:2020:6495; District Court of Rotterdam, 10 June 2021, ECLI:NL:RBROT:2021:7835; Court of Appeal of ‘s-Hertogenbosch, 10 March 2022, ECLI:NL:GHSHE:2022:772), school absenteeism (District Court of Rotterdam, 10 June 2021, ECLI:NL:RBROT:2021:7835), parentification (boys) (District Court of Rotterdam, 10 June 2021, ECLI:NL:RBROT:2021:7835), psychological and physical harm

(Supreme Court, 1 July 1982, NJ 1983, 201), self-mutilation (Court of Appeal of ‘s-Hertogenbosch, 10 March 2022, ECLI:NL:GHSHE:2022:772), and runaway behaviour (Court of Appeal of ‘s-Hertogenbosch, 10 March 2022, ECLI:NL:GHSHE:2022:772; Supreme Court, 1 July 1982, NJ 1983, 201). In such cases, a child protection measure is justified if the parents are not capable of dealing with their child’s problems and removing the threat or are unwilling to accept the help that is necessary to do so. In that respect, courts sometimes explicitly considered that parents could not offer their child what was needed to deal with their mixed feelings toward having to meet the expectations of various cultures (District Court of Limburg, 22 January 2021, ECLI:NL:RBLIM:2020:1778; District Court of Rotterdam, 10 July 2020, ECLI:NL:RBROT:2020:6495). For example, children tend to obey their parents, as the District Court of Groningen observed: “the father is characterized as a dominant man who practises Islam and has a Moroccan cultural background” and “within the family, the norms and values of Islam prevail, but outside the children are growing up within a Western culture”. “The children love their parents and are loyal to them. However, in developing their identities, they come into conflict due to growing up in both cultures”; “Parents need help in reversing this developmental threat to their children”. Or, another example of parents who do not offer the required needs, if it is self-evident to the parents that the norms and values of their culture of origin are the ones that apply (e.g. District Court of Limburg, 22 January 2021, ECLI:NL:RBLIM:2020:1778 (Somalia) (Advisory Council); District Court of Rotterdam, 10 June 2021, ECLI:NL:RBROT:2021:7835 (Advisory Council); Supreme Court, 1 July 1982, NJ 1983, 201). This may result in parents overlooking or even denying the existing problems that their children cope with (District Court of Limburg, 22 January 2021, ECLI:NL:RBLIM:2020:1778 (Advisory Council)). This may be intensified if parents have to deal with their own adult problems resulting from cultural differences (District Court of Limburg, 22 January 2021, ECLI:NL:RBLIM:2020:1778 (Advisory Council).

Various institutions are available in the Netherlands that offer culturally sensitive assistance. However, this does not always have the desired effect. Situations can

be characterized by other serious circumstances like domestic violence or having gone through very harsh and traumatic times, e.g. coming from a war zone (e.g. District Court of Amsterdam, 23 April 2019, ECLI:NL:RBAMS:2019:2924; District Court of Rotterdam, 10 June 2021, ECLI:NL:RBROT:2021:7835; District Court of Zeeland-West-Brabant, 18 June 2021, ECLI:NL:RBZWB:2021:3146. The court considered that it was essential, in order to achieve a lasting improvement with the parents, to work (by employees with knowledge about the culture of the family) towards participation in Dutch society out of understanding for the cultural differences.)

Best interest of the child

Under Dutch substantive child protection law, the interest of the child is the main legal criterion. However, fundamental rights of the parents may be at issue as well, especially the right of parents to family life and their right to raise their children in accordance with their own religion (protected by Article 2 of the first Protocol to the ECHR, Article 18, paragraph 4 of the International Convention on Civil and Political Rights (ICCPR), and Article 13, paragraph 3 of the International Convention on Cultural and Social Rights). In its decision of 1982, the Supreme Court referred to those rights and balanced them with the rights and freedoms of the child. It concluded that the latter ones had to prevail. It follows from the case law that this line is consistently applied in later decisions (which are discussed in Template CUREDI076NL006).

However, how to determine the best interest of the child? Whereas 40 years ago courts tended to give priority to Western values (e.g. Supreme Court, 1 July 1982, NJ 1983, 201), in more recent decisions courts have concluded that the effects of growing up in two cultures and the mental struggle that accompanies this for the child can cause a serious threat to their development. In this manner, courts avoid having to express a preference for one of the two cultures.

Literature related to the main issue(s) at stake:

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- Distelbrink, Marjolijn, Paul Geense, and Trees Pels. 2005. *Diversiteit in vaderschap. Chinese, Creools-Surinaamse en Marokkaanse vaders in Nederland*. Assen: Koninklijke Van Gorcum.
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- Keskiner, Elif. 2019. *Youth Transitions among Descendants of Turkish Immigrants in Amsterdam and Strasbourg: A Generation in Transition*. Cham: Springer Open.
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- Rutten, Susan. 2012. "Vervreemd van thuis". In J. Claessens & D. de Vocht (eds), *Humaan Strafwerk*, 331–343. Oisterwijk: Wolf Legal Publishers.
- Visser, Kirsten. 2016. "'You Shouldn't Blame Religion … But the Person'. The Ethnic Boundary Work of Young Second-Generation Migrants in Rotterdam". *Children's Geographies* 14 (6): 670–684.
- European Court of Human Rights. 2015. "Handboek over het Europese recht inzake de rechten van het kind". Bureau van de Europese Unie voor de grondrechten en Raad van Europa.
- European Court of Human Rights. 2015. "Guide on Article 2 of Protocol No. 1 ECHR".

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