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

Harmful Religious Upbringing When Parents Rely on God

Question(s) at stake:

Whether the orthodox religious convictions of parents may lead the court to deprive them of their parental authority over a minor.

Outcome of the ruling:

Where parents are unable or unfit to ensure the mental and physical well-being and safety of their child, which may derive from their religious convictions, and the best interests of the minor do not oppose it, they may be deprived of their parental custody ex Art. 1:266 DCC.

Topic(s):

- Personal Status, Family and Inheritance

Keywords:

- Balancing act
- Best interests of the child
- Children's rights
- Limitations and justifications
- Measures and actions involving children
- Parental responsibility
- Parental rights
- Freedom of thought, conscience and religion

Tag(s):

- Child protection measures

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Country:

Netherlands

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Court of Appeal The Hague, 4 August 2010, (Gerechtshof ‘s-Gravenhage, 4 augustus 2010)

Link to the decision:

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ECLI:

ECLI:NL:GHSGR:2010:BN9246

Date:

04 August 2010

Jurisdiction / Court / Chamber:

Court of Appeal ‘s-Gravenhage

Remedy / Procedural stage:

Second instance

Previous stages:

- District Court of ‘the Hague, 3 June 2009, ECLI:NL:RBSGR:2009:BJ7665 (Rechtbank ‘s-Gravenhage, 3 juni 2009, ECLI:NL:RBSGR:2009:BJ7665)
- Court of Appeal of The Hague, 10 June 2009, ECLI:NL:GHSGR:2009:BJ5115

Subsequent stages:

- Supreme Court, Judgment of 8 July 2011, ECLI:NL:HR:2011:BQ7061 (Hoge Raad, 8 juli 2011, ECLI:NL:HR:2011:BQ7061)

Branches / Areas of law:

Family law

Facts:

The present case concerns the transfer of parental authority over a minor from her legal and biological parents to the Youth Care Bureau (Bureau Jeugdzorg) Drenthe due to the parents' religious convictions. The parents had several children, almost all of whom had been placed out of home at the time the Court of Appeal ruled on the case.

After the minor was born, the mother could produce insufficient breastmilk. On the basis of their religious convictions, the parents refused to give the minor supplementary food. The ruling stated that this created a life-threatening situation for the child. By the order of 13 June 2006, provisional guardianship was subsequently granted to Youth Care to allow the minor to be fed in the hospital. On 15 August 2006, the measure was converted into an order to place the child under supervision, authorizing the Youth Care Bureau to place the minor out of the home both by day and night. This decision was not founded on the basis of a medical report, but rather on a declaration of the eldest brother of the minor.

During the hearing, the father stated that his convictions had not changed. Although he did feel guilt with regard to the minor, he mentioned that he had continued to hope that more nutrition would become available to the minor via breastfeeding. Furthermore, according to pedagogical reports, all of their children had been emotionally harmed. However, the mother argued that out-of-home placement would also cause harm.

From the moment the minor was placed out of home, due to the difference in views between the family guardian (the Youth Care Bureau) and the parents, communication proved to be extremely difficult. Furthermore, the parents

continued to place the responsibility of their decisions and actions solely in the hands of God. As a consequence, the basic care that the child needed could not be guaranteed according to the Child Protection Board.

From February 2007 onwards, the minor resided with the family of her maternal uncle and aunt as a foster child, where she was doing well. Visiting arrangements were made for the parents. However, from 2007 until the case was heard, they had only seen the child once. Although they did want to stay in contact with their child, they left it up to God to take the initiative.

The minor had been doing well with her foster parents. Her development was in line with children of the same age, and she lived in a structured and safe environment. Furthermore, she was in contact with her siblings on a regular basis.

On 3 September 2009, the District Court of The Hague granted the request of the Child Care and Protection Board for the parents to be deprived of parental authority over the minor.

The special guardian (*bijzondere curator*), who was separately appointed by the District Court in order to legally represent the child, filed an appeal against the judgment of the District Court before the Court of Appeal of The Hague, requesting the Court to overrule the judgment of the District Court and to deny the request of the Child Protection Board. The Court of Appeal denied the request and upheld the ruling of the District Court.

Subsequently, the special guardian lodged an appeal in cassation against the judgment of the Court of Appeal before the Supreme Court. The Advocate General provided the Supreme Court with an opinion on this appeal, concluding that it should be dismissed (Opinion of the Advocate-General to the Supreme Court, 8 July 2011, ECLI:NL:PHR:2011:BQ7061). In line with this conclusion, the Supreme Court rejected the applicant’s appeal (Supreme Court, 8 July 2011, ECLI:NL:HR:2011:BQ7061).

Ruling:

The Court of Appeal of The Hague upheld the decision of the District Court, as a consequence of which the parents were deprived of their parental authority.

When assessing whether the District Court had validly ruled that parental authority of the minor should be removed from the parents and granted to the Youth Care Bureau Drenthe, the Court of Appeal started by stating that parents have the primary obligation to take care of their children and to educate them. This includes the care and responsibility for the mental and physical well-being and safety of their children. Where a parent is unable or unfit to provide this care and the best interests of the minor do not oppose it, the parent may be deprived of custody by the Court under Art. 1:266 of the Dutch Civil Code (DCC).

It appeared to the Court of Appeal that the parents, on the basis of their religious convictions, placed the responsibility for making decisions or performing actions not on themselves, but exclusively on their faith. They adopted a fatalistic attitude in the sense that they waited for indications from God to make it clear what they should do in a certain situation. Consequently, in situations where quick and adequate action was necessary, the parents were not able to take action accordingly. For example, even though the mother could not sufficiently nourish the child through breastfeeding, the parents did not provide the minor with any additional nutrition. By not taking action, the Court believed that they took an unacceptable risk. At the time, the minor received supplementary food after provisional guardianship was granted to the hospital in 2006. In the period following the hospitalization of the minor, the parents could not provide guarantees concerning the feeding of the minor, as a consequence of which the health of the minor was seriously threatened.

Additionally, the Court acknowledged that a cooperative relationship between the parents and the special guardian appeared impossible because of the difference in views between the two. As such, the objectives of the supervision order were not achieved. In its request for the judgment of the District Court to be overturned, the special guardian representing the child claimed that insufficient efforts were made by the social workers to find a connection with the religious background of the parents. The Court held that this was not the case. Due to the

fact that the father had not joined any religious community, it was not possible to bring about a change in his view of the situation with the help of a theologian.

The supervision order had therefore proven insufficient to avert the developmental threat to the minor, as a consequence of which the minor was placed out of home. Since 2007, she had stayed with the current foster family, where she was doing well.

Even though almost all the parents' children had been placed out of home, it appeared to the Court, based on the submitted documents, that the parents had not brought about any change in the situation.

Furthermore, although the parents contended that they wanted to stay in contact with the minor, this had only once taken place since she was placed out of home in September 2007. The parents again left it up to God to take the initiative. On the basis of this information, the Court concluded that the parents had not been able to fulfil their parental responsibility, nor did it expect changes to be made in the foreseeable future.

As such, in line with the judgment of the District Court, the Court of Appeal was of the opinion that it could not be assumed that the parents would act in the interests of the minor, that they would take decisions in a rational and well-considered way, and that they would be able to meet the basic needs of the minor.

In order for the Court to reject the parents' appeal and confirm their loss of parental authority, one of the exceptions listed in Art. 1:268 DCC must be found to apply. The question therefore had to be answered whether an out-of-home placement would be necessary to remove a serious threat to the moral and mental interests and health of the minor. Up to this moment, the parents had not made any changes to their lifestyle, nor could this be expected based on their statements during the hearing. As such, the Court found that there was no prospect of the child being placed back with her parents within the foreseeable future. Meanwhile, the minor was doing well with her foster family. Having the minor stay with her foster parents would thus be in her best interests.

To conclude, the Court held that the parents were incapable of fulfilling their parental duty and that this was not expected to change in the foreseeable future. Measures such as placing the child under supervision or placing the minor out of home would therefore be insufficient to avert the developmental threat to the child. This fulfils the requirements of Art. 1:268 DCC, allowing the parents to be deprived of their parental authority.

As for the subsidiary request to grant guardianship to the Reformed Youth Care, the Court noted that the intention of the applicant was to ensure the religious background of the parents would be taken into account. Based on the submitted documents, the Court found that it was sufficiently clear that this had been the case.

Main quotations on cultural or religious diversity:

- “It appeared to the court that the parents, on the basis of their religious convictions, place the responsibility for making decisions or performing actions not on themselves but exclusively on their faith. They adopt a passive attitude in the sense that they wait for an indication from God to make clear to them what they should do in a certain situation. As such, a situation has been created where, if quick and appropriate action is required from the parents, they are not in a position to act accordingly.” (para. 13)
- “Additionally, [the parents] have not had contact with the minor since September 2007, except on a few occasions. Although they want contact with the minor, they leave the initiative to God. In view of the above, the Court of Appeal is of the opinion that the parents have

Main legal texts quoted in the decision:

- Art. 1:266 Dutch Civil Code
- Art. 1:268 Dutch Civil Code

Cases cited in the decision:

Commentary

Harmful Religious Upbringing When Parents Rely on God

Description of the issue

Parents have a right to raise their children according to their religion or belief. This right, which follows from the protection of the freedom of religion, is enshrined in various human rights conventions (Art. 2 of the 1st Protocol to the ECHR; Art. 18, para. 4 ICCPR; and Art. 13, para. 3 ICESR). However, respecting those religious norms and traditions sometimes may be at odds with the best interests of a child. In those situations, state authorities may consider taking away parental responsibility (custody) from the parents or taking another child protection measure. Below it will be assessed if and how Dutch courts balance the right of the parents to raise their children in accordance with their religion or belief, on the one hand, and the best interests of the child on the other hand. Various categories of harmful practices will be elaborated on. The decision of the Hague Court of Appeal of 2010 falls under the first category.

1. Neglect of care for children

Reliance on God

The first subcategory concerns cases where children are neglected because their parents rely on God instead of taking the responsibility to act. In the present decision of the Hague Court of Appeal, the parents continued to place the responsibility for their decisions and actions solely in the hands of God. This was illustrated by two specific examples. After the minor was born, the mother could produce insufficient breastmilk. However, on the basis of their religious convictions, the parents refused to give the minor supplementary food. Instead of taking action, the parents waited for indications from God to make clear to them what they should do, and furthermore, as the father argued, continued to hope that more nutrition would become available to the minor via breastfeeding. The second example concerned the lack of contact between the parents and their

children (who lived in foster families). Also in this respect, the parents left it to God to take the initiative. The Court considered that in situations where quick and adequate action was necessary, the parents were not able to take action accordingly. By not taking action, the Court believed that they took an unacceptable risk, including a serious threat to the health of the minor. The Court also did not expect changes in the future, and therefore concluded that the parents were not able to meet the basic needs of the minor. In a – to a certain extent – comparable case before the District Court of Groningen, the parents did not take action either because they relied on God (they were Seventh-day Adventists) and did not accept the intervention of worldly emergency services (District Court of Groningen, 28 October 2009, ECLI:NL:RBGRO:2009:BK2838). As a result, the pets of the child had died; the child was left alone for 11 days in a hut in a park, and after being placed in a youth care facility, there was no further contact with the parents and other siblings. Here, too, the court ruled that the parents had seriously failed in their care for the child.

Refusal of medical treatment

A specific variant of the category “Reliance on God” concerns cases in which parents, based on their religion, do not allow their children to be vaccinated or to receive a necessary blood transfusion in cases of medical treatment. Two cases of blood transfusion were identified. One case concerned a minor with Down syndrome and a congenital heart defect that had to undergo heart surgery. Without a blood transfusion, there was a real risk that the boy would die during or after surgery (District Court of Zeeland-West-Brabant, 30 November 2016, ECLI:NL:RBZWB:2016:7795). The second case concerned a 15-year-old girl who was about to give birth to a child (District Court of Rotterdam, 3 November 2020, ECLI:NL:RBROT:2020:10737). Doctors had indicated that the risk of excessive blood loss in the case of a 15-year-old girl was greater than in an adult woman, and that therefore a blood transfusion during childbirth may have been necessary to avert serious danger to the health of both mother and child. In both cases the court followed the position of the doctors and temporarily removed the minors from the custody of their parents in order to enable the required medical

treatment. In a case where a mother did not allow her child to be vaccinated because she relied on God, the required consent of the mother was replaced by a permission for the treatment given by the court, but only after judging – with reference to scientific knowledge – that the vaccination was necessary in order to prevent serious danger to the minor's health (District Court of Gelderland, 3 June 2020, ECLI:NL:RBGEL:2020:3699).

1. Religion and violence

Violence prescribed by religion

This subcategory concerns cases in which the religion of the parents explicitly allows or prescribes the use of violence in raising their children. Sometimes, parents refer to their religion to justify such violence. In a number of cases parents chastised their child by beating them with a stick or rod or throwing them against a wall, stating that this was required according to their faith or that their religion explicitly allowed physical punishment (District Court of Noord-Nederland, 19 October 2021, ECLI:NL:RBNNE:2021:4450; District Court of Utrecht, 8 January 2010, ECLI:NL:RBUTR:2010:BK8714; District Court of Groningen, 28 October 2009, ECLI:NL:RBGRO:2009:BK2838). In those cases, courts considered that children from families where violence is used in parenting have an increased risk of problems in their development. If the parents are not prepared to renounce their parenting method, which they consider to be part of a loving education, a child protection measure may be required.

Violence as the result of an orthodox upbringing within a shame culture

The second subcategory concerns cases where an orthodox religious upbringing carries the risk of violence against the child, without parents explicitly referring to their religion to justify their behaviour. Orthodox religions or orthodox branches of a certain religion usually have strict rules which are thought to reflect the one and only truth, and give their followers instructions on how to behave. The followers are expected to respect those rules and prescribed practices and traditions. If parents adhere to such a religion or belief, they tend to be very strict in their

practice of the corresponding rules, including in how they raise their children. High demands are placed on the children, and deviating from the rules of the faith and therefore of the parents is not tolerated. In practice, if those rules are not respected, the child faces the threat of punishment or the actual use of violence.

A Muslim (female) minor can be threatened with murder or abduction abroad if she has contact with the other gender without the permission of the parents, if she refuses to cooperate with a marriage that was arranged by the parents, or if she protests against being forced to marry the candidate chosen by her parents (e.g. District Court Amsterdam, 23 April 2019, ECLI:NL:RBAMS:2019:2924 (Yezidi); District Court Rotterdam, 10 June 2021, ECLI:NL:RBROT:2021:78359). In these situations, there is often also a culturally determined expectation that the authority of the father is undisputed.

Minors with homosexual feelings can be threatened with special religious treatment because they are considered to have a disease, or can be threatened with (other) forms of violence (e.g. District Court Rotterdam, 21 May 2021, ECLI:NL:RBROT:2021:5087).

In all those cases, children can be restricted in their contact with the outside world and feel unsafe, threatened, and isolated at home. Because of an existing risk of violent punishments and of a need to relax after an unsafe situation, courts may agree to an out-of-home placement in view of securing a healthy and safe development for the child. In cases where there is a risk of honour-related violence, the decision is often taken after consulting the National Expertise Centre for Honour-Related Violence (LEC-EGG) (District Court Amsterdam, 23 April 2019, ECLI:NL:RBAMS:2019:2924; Court of Appeal Arnhem-Leeuwarden, 21 October 2021, ECLI:NL:GHARL:2021:10077).

Balancing of interests

Our conclusion based on the reviewed Dutch case law is that the best interest of the child is always given priority over the fundamental rights of parents. The latter include the right to family life, the freedom of religion, and the freedom to

raise children in accordance with religion. In most of the cases, those rights are not balanced or even mentioned at all. However, in a few cases courts did in fact show how they balanced the interests. A few examples: the court of Noord-Nederland considered "*that everyone has the right to freely perform his religion or belief, but that that freedom does not go so far as to allow children to be mistreated in any way on the basis of that belief*" (District Court Noord-Nederland, 19 October 2021, ECLI:NL:RBNNE:2021:4450). The Hague court considered that the rights to family life and freedom of religion are not absolute, and that in the case at issue "*the minor's right to life and his right to the greatest possible degree of health take precedence over the interest that parents attach to an Islamic upbringing*" (Court of Appeal of The Hague, 4 November 2009, ECLI:NL:GHSGR:2009:BK3527). The Gelderland also referred to Article 3 of the Child Convention (District Court of Gelderland, 3 June 2020, ECLI:NL:RBGEL:2020:3699).

Remarkably, except in one case (Court of Appeal of Arnhem-Leeuwarden, 21 October 2021, ECLI:NL:GHARL:2021:10077), Dutch courts did not refer in their decisions to the case law of the European Court on Human Rights, even though the European Court sets strict requirements for taking custody from parents. (Termination of parental authority is only permitted in very exceptional circumstances (ECtHR, 6 October 2015, application no. 58455/13, *N.P. v Moldavia*), and religion alone can never be sufficient reason to take away parental authority; the consequences of a religious upbringing must always be assessed *in concreto* (e.g. ECtHR 1993, application no. 12875/87, *Hoffman v Austria*; ECtHR 2003, application no. 64927/01, *Palau-Martinez v France*; ECtHR 2007, application no. 37614/02, *Ismailova v Russia*).)

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

- Jonker, Merel, Rozemarijn van Spaendonck, and Jet Tigchelaar. 2015. "Religie en cultuur in familierechtelijke beslissingen over kinderen". *Familie & Recht*, Boom Juridische uitgevers.

- Rutten, Susan. 2023. “Familie en culturele praktijken”. In S. Rutten. E. Ramakers, and Annick van den Eshof (eds), *Culturele diversiteit en recht*, 339–377. Antwerpen, Gent, Cambridge: Larcier Intersentia.
- 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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