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

Roma Traditions of Child-Rearing and Child Protection

Question(s) at stake:

Whether customs prevalent in Roma culture may influence the out-of-home placement of a child from a Roma family.

Outcome of the ruling:

Customs characteristic of Roma culture may result in the child not receiving the required care and/or protection, which may lead to the out-of-home placement of a child.

Topic(s):

- Personal Status, Family and Inheritance

Keywords:

- Kinship and filiation
- Measures and actions involving children
- Parental responsibility
- Parental rights
- Children's rights
- Limitations and justifications
- Balancing act

Tag(s):

- Roma culture
- Roma traditions
- Child protection measures

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Country:

Netherlands

Official citation:

Court of Appeal Arnhem-Leeuwarden, 8 November 2016 (Gerechtshof Arnhem-Leeuwarden, 8 november 2016)

Link to the decision:

https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:GHARL:2016:9071&showbutton=true&keyword=ECLI%3aNL%3aGHARL%3a2016%3a9071

ECLI:

ECLI:NL:GHARL:2016:9071

Date:

08 November 2016

Jurisdiction / Court / Chamber:

Court of Appeal Arnhem-Leeuwarden

Remedy / Procedural stage:

Second Instance

Previous stages:

- District Court of Midden-Nederland, 26 July 2016 and 13 September 2016, ECLI:NL:RBMNE:2016:6635 (Rechtbank Midden-Nederland, 26 juli 2016 en 13 september 2016, ECLI:NL:RBMNE:2016:6635)

Previous proceedings on a temporary and provisional authorization for out-of-home placement in a closed youth care facility; proceedings which preceded the present proceedings: District Court of Midden Nederland, 19 April 2016 and 12

May 2016, and Court of Appeal Arnhem-Leeuwarden, 5 July 2016, ECLI:NL:GHARL:2016:5631

Subsequent stages:

No information found.

Branches / Areas of law:

Family law

Facts:

The present case concerns a minor born in Serbia in 2002 to a family that follows Roma customs. At the time the decision was taken, the minor was pregnant and had recently turned 14 years old.

In January 2016, she was found in the Netherlands along the highway with no parents, legal guardian, or residence permit, after which a provisional guardianship order was given to place her in a closed facility for youth care for a short while.

From the age of nine until the out-of-home placement, the minor had not attended school.

Furthermore, the minor had had a sexual relationship with man X when she was 13 years old, as a result of which she became pregnant. The minor was considered to be married to this man according to Roma traditions.

According to the Institution for Youth Protection (in this case, the Salvation Army Youth Protection and Probation Service (*Leger des Heils Jeugdbescherming en Reclassering*), one of the Dutch family guardian institutions (*Gezinsvoogdij-instellingen, G.I.'s*)), where the child was placed, it remained unclear how and why the minor ended up in the Netherlands. According to submitted documents, she had married man X; however, it also could have been a case of kidnapping, human trafficking, or sexual exploitation.

On 19 April 2016, the child was put under supervision and placed in youth care on the basis of a preliminary and an emergency order, respectively, of the District

Court of Midden-Nederland at the request of the Child Protection Board. This decision was prolonged and upheld by the Court of Appeal until 12 August 2016.

Furthermore, in the main proceedings, on 26 July 2016 the District Court of Midden-Nederland granted an authorization for the minor to be placed in a closed facility for youth care until 15 September 2016, which was prolonged to 12 November 2016 by the same court on 13 September 2016.

Lastly, on 20 September 2016 the District Court of Midden-Nederland granted guardianship of the unborn child of the minor to the Institution for Youth Protection, which is also the respondent in the present case.

The extension of the authorization for closed youth care to 13 September 2016 was challenged by the applicant in the present case. She wished to stay with the family of man X, which was the reason she did not want to go back to Serbia with her mother. According to her, there is no danger of her evading the required care or being deprived of it by others.

Ruling:

The Court of Appeal upheld the decision of the District Court, placing the minor in the closed facility for youth care.

Under Art. 6.1.2., para. 1 of the Dutch Juvenile Law (Jw), a juvenile court can authorize a minor to be placed in a closed facility for youth care. According to subsection 2, such an authorization may only be granted if necessary, i.e. if parenting-related problems are identified that would seriously impair the young person’s development towards adulthood, and if the admission and stay are necessary to prevent the young person from evading youth care or being withdrawn from it by others.

In line with the decision of the District Court, the Court of Appeal held that the mother of the minor had not fulfilled her parental obligations. The 14-year-old pregnant minor continued to live without a guardian or residence permit in the Netherlands. The mother was not with her, and from mid-September 2016 onwards it had not been possible to contact her via phone. Due to this lack of

parental support, the minor was not offered a safe and stable environment by her parent(s) or caretakers, which constituted a serious threat to her development towards adulthood.

The minor wished to reside with the family of man X or with man X alone, with whom she was married according to Roma traditions. The Court, however, held that such a placement was ill-advised in light of several indicators. Man X had been placed under supervision from the age of 13 until he became an adult. This was due to his absence from school in addition to personal traumas he had experienced at home. The state had intervened, and he had received convictions and punishments due to his absence from school. His parents were also not able to sufficiently stimulate him to attend school.

The argument of the family in law that they would allow the minor to go to school was therefore not convincing according to the Court. According to the Roma customs a person ought to stop going to school once he or she is married. Additionally, the Court did not trust the claim that the parents of the men would provide the minor and her future baby with the necessary care, since they had not been able to do so for man X himself.

Furthermore, placing the minor with the family of the man might imply a continuation of their sexual relationship, which had begun when she was 13 years old. This constitutes a criminal offence according to Dutch law.

As such, placing the minor with the family of man X or with man X alone would not remove the previously mentioned threat to the minor, even without taking into account the family’s history concerning the absence of children from school.

The fact that, according to Roma custom, the minor is considered to be married to the man did not constitute sufficient grounds for the decision to be different, taking into account the actual age of the minor.

Considering that the minor only wished to live with the man or family of the man, the risk existed that she would withdraw from the necessary care. As such, the authorization for closed juvenile care was meant to prevent this from taking place. For the time being, the extension therefore ought to stay in place.

Main quotations on cultural or religious diversity:

Considerations of the Court at first instance, District Court of Midden-Nederland, 13 September 2016, ECLI:NL:RBMNE:2016:6635:

- “The safety and development of [minor] and her unborn child are not ensured with [the family of man X], seeing as the family leads their lives according to the norms and values that are common in Roma culture. The views on parenting, schooling, and marriage diverge too much from the principles of the provided assistance and the requirements set for a parenting environment that meets the developmental needs of [minor] and her unborn child.”

Considerations of the Court of Appeal:

- “The family’s assertion that they will allow [the applicant] to attend school is therefore not wholly convincing, even apart from the possible tradition of the Roma – to which [the applicant] and the family belong – that when a child is married according to Roma custom, he/she no longer attends school.” (para. 5.6)
- “[P]lacement with the family would be a placement with [man X], who had a sexual relationship with [the applicant] when she was only 13 years old, which is a punishable offence under Dutch law. Therefore, the Court does not consider a placement with the family and/or [man X] an appropriate solution to remove the aforementioned serious threat, leaving aside the non-school-related incidents in the family’s past. The fact [that applicant] is seen as married to man X according to Roma custom constitutes, in the opinion of the Court of Appeal, insufficient justification to come to a different conclusion, considering the current age of [applicant].” (para. 5.6)

Main legal texts quoted in the decision:

- Art. 6.1.2. Juvenile Law (Jw)

Cases cited in the decision:

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Commentary

Roma Traditions of Child-Rearing and Child Protection

For the present commentary, additional published Dutch court decisions on child protection measures in Roma families were collected. The findings of those decisions are incorporated into the commentary.

The present case concerns the questions of whether and when Dutch authorities may intervene in the upbringing of children if they are raised in accordance with existing traditions of the Roma community. The present judgment was selected because the parenting situation in question involved several elements that can be attributed to Roma traditions. Furthermore, the decision contains considerations of the court that show how Roma culture plays a role in the decision-making process. Several judgments were made in earlier stages of this particular case, which were also taken into account.

In addition to specific child-rearing practices that are characteristic of Roma culture, it is important to emphasize that the Roma community in Europe is a vulnerable group for whom a special protection policy is being developed both at the European and international level. It is therefore important to examine not only whether and, if so, how Roma culture plays a role in the decisions of Dutch courts to intervene in the upbringing of a child, but also whether judges attach significance to the specific position of Roma minorities.

Harmful educational elements from Roma culture

In child protection cases involving Roma families, it can be observed that a number of harmful practices seem to be quite common to Roma culture (e.g. Bradford 2018). For the Roma, family and lineage form the basic structure of their communities. The father (the head of the family) and his wife usually live together with their sons, daughters, daughters-in-law, and grandchildren. In the present case, the married minor girl also became part of the family of her husband.

Marriages are usually arranged, and child marriages are quite common. Dutch child protection case law on Roma minors has often dealt with marriages that are concluded at young ages (present case - Court of Appeal Arnhem-Leeuwarden, 8 November 2016, ECLI:NL:GHARL:2016:9071); District Court of Oost-Brabant, 24 December 2019, ECLI:NL:RBOBR:2019:7586), marriages that were not official civil marriages but concluded according to Roma traditions (present case; District Court of Oost-Brabant, 24 December 2019, ECLI:NL:RBOBR:2019:75869), and in which the woman becomes pregnant at a young age (in the present case at the age of 14; District Court of Oost-Brabant, 24 December 2019, ECLI:NL:RBOBR:2019:7586). Apart from that, minors do not always go to school (present case; Court of Appeal ‘s-Hertogenbosch, 2 November 2017, ECLI:NL:GHSHE:2017:4736); after marriage, young people are no longer expected to go to school, and more generally compulsory education seems to be given less importance (District Court Gelderland, 11 September 2017, ECLI:NL:RBGEL:2017:4911). In some cases it can be observed that girls (after being kidnapped) are sold, that there is child trafficking, and that girls are enlisted as prostitutes, against whom violence is condoned (Court of Appeal ‘s-Hertogenbosch, 26 October 2017, ECLI:NL:GHSHE:2017:4666 (16-year-old girl); in the present case, the Court suspected kidnapping, human trafficking, or sexual exploitation of the girl; Court of Appeal Arnhem-Leeuwarden, 5 July 2016, ECLI:NL:GHARL:2016:5631. Also in the case decided by the District Court of Amsterdam, 20 December 2019, ECLI:NL:RBAMS:2019:10059, the Child Protection Board feared that minor children would be trafficked and exploited). Such practices may conceal extensive networks that exploit young girls, in which Roma families (read: parents) may cooperate (Court of Appeal ‘s-Hertogenbosch, 26 October 2017, ECLI:NL:GHSHE:2017:4666). In some of the cases, children were dragged into a criminal circuit (e.g. Court of Appeal ‘s-Hertogenbosch, 2 November 2017, ECLI:NL:GHSHE:2017:47369). Although nowadays most Roma have settled into houses, a number of cases involve situations in which there was not a fixed place of residence (Court of Appeal ‘s-Hertogenbosch, 2 November 2017, ECLI:NL:GHSHE:2017:4736; Court of Appeal Amsterdam, 1 June 2006, ECLI:NL:GHAMS:2006:AY3592).

It should be noted that the selected case law concerns situations that are or appear to be so serious that an intervention in the upbringing is considered necessary. In many other situations, this is not be the case. Furthermore, research shows that the Roma community tends to attach increasing importance to education, with the additional consequence that not all parents want their children to marry at a young age anymore (Rutten et al. 2015, 62–63).

Vulnerable position of Roma minorities

With a population estimated between 10 and 15 million, the Roma are the largest ethnic minority in Europe (with more than 6 million in the EU). The Roma encompass a variety of groups from different regions, who sometimes remain in their new state and sometimes continue travelling.

At the same time, the Roma are the most marginalized, discriminated against, and socially excluded community in Europe, whose human rights are (seriously) violated.

Between 2005 and 2015, 12 European countries made a commitment to eliminate discrimination against the Roma. In 2011, via a Roma Strategic Framework (reinforced and reformed in 2020), the EU called upon each member state to produce a concrete plan to improve the situation of the Roma in order to secure their equality, inclusion, and participation in society. In these plans, the states should specifically focus on housing, education, healthcare, employment, poverty, and discrimination. All member states have to report on the implementation of this strategic framework.

Assessment by Dutch courts of whether the child's upbringing seriously impaired her development

In the present case of the Arnhem-Leeuwarden Court of Appeal, the question was whether a minor married girl could be placed out of home or whether she could remain with her family-in-law. The court decided that placing the minor with her family-in-law would not be a suitable option (Court of Appeal Arnhem-Leeuwarden, 8 November 2016, ECLI:NL:GHARL:2016:9071). The court did not expect the parents-in-law to motivate the minor to visit school, since they had

previously accepted the chronic school absenteeism of their own son and since the parents-in-law belonged to the Roma community, for whom married children traditionally no longer have to go to school.

With regard to minor girls who marry at a young age according to Roma traditions and/or minor girls who get pregnant and become a mother at a young age, a specific clash of cultures can be identified. According to Roma values, the girl is no longer considered to be a child. She starts living with her husband and becomes part of her family-in-law, and she is no longer expected to go to school. From the Dutch perspective, the marriage will not be recognized (because of the age of the girl and because it is not a civil marriage, as required by Dutch law); the girl is still considered to be a minor child who can be subjected to a child protection measure. In the present case, the Court explicitly considered that the fact that the minor had been (traditionally) married could not justify a placement with the family-in-law, also since the minor had had sexual intercourse with the son at the age of 13, which under Dutch law was seen as a criminal act.

In situations where girls were left alone by their parents, having been kidnapped or sold, and enlisted as prostitutes, against whom violence was condoned, courts feared that their development and upbringing were seriously threatened and seemed eager to take urgent protection measures (e.g. Court of Appeal ‘s-Hertogenbosch, 26 October 2017, ECLI:NL:GHSHE:2017:4666).

In a number of the selected Dutch court decisions, it seemed that the parents themselves did not enact their parental obligations. Often they continued to live abroad and neither took care of their children nor took responsibility for their upbringing (present case (mother); Court of Appeal ‘s-Hertogenbosch, 2 November 2017, ECLI:NL:GHSHE:2017:4736 (father; child grew up with grandmother). Children grew up with their grandparents or were left alone in the Netherlands, often without a residence permit (present case; Court of Appeal ‘s-Hertogenbosch, 2 November 2017, ECLI:NL:GHSHE:2017:4736; Court of Appeal Amsterdam, 1 June 2006, ECLI:NL:GHAMS:2006:AY3592). Combined with other circumstances, for example children no longer visiting school and not or hardly mastering the Dutch language (District Court Amsterdam, 20 December 2019,

ECLI:NL:RBAMS:2019:10059; Court of Appeal ‘s-Hertogenbosch, 2 November 2017, ECLI:NL:GHSHE:2017:4736), courts considered those situations to be characterized by a lack of sufficient stimulus for the child. As a result, courts decided that the child could no longer remain in that situation (present case; Court of Appeal ‘s-Hertogenbosch, 2 November 2017, ECLI:NL:GHSHE:2017:4736). In a number of cases, courts explicitly considered that Roma traditions would not change their decision. In this way, the fact that Roma traditions allowed families and children to lead a wandering existence (Court of Appeal ‘s-Hertogenbosch, 2 November 2017, ECLI:NL:GHSHE:2017:4736) or that according to Roma traditions married girls become part of a family-in-law at a young age (present case), for example, did not affect their judgment. Therefore, one may conclude that Dutch law and the best interest of the child, as interpreted by the courts, were given priority over Roma traditions.

In several cases, it was argued that the mother lacked insight into the problems of the child and could not meet the child’s need for a stable parenting environment (Court of Appeal Amsterdam, 25 June 2019, ECLI:NL:GHAMS:2019:2204; Court of Appeal Arnhem-Leeuwarden, 9 January 2018, ECLI:NL:GHARL:2018:350; Court of Appeal Arnhem-Leeuwarden, 1 September 2020, ECLI:NL:GHARL:2020:6974). A link between this lack of parenting qualities and the mother’s Roma background was not explicitly made. However, the complaints of the mother regarding the importance of maintaining the child’s connection with Roma culture were rejected and overthrown.

Parentage and custody

The absence of the parents also gave rise to other (preliminary) legal issues concerning filiation and custody of the child. In a case decided by the Amsterdam District Court, it was found that the children in question suffered severely from the closed character of the facility where they were placed (District Court of Amsterdam, 20 December 2019, ECLI:NL:RBAMS:2019:10059). The question was whether they could be placed with the man who claimed to be their father, who lived in France. However, certainty about his legal parentage and about his custody could not be obtained. Based on the circumstances presented and the

documents submitted, the court accepted the parentage and allowed the children to be placed in the custody of the father. In another case, the Oost-Brabant District Court had to decide on a child's parentage according to Czech law (District Court of Oost-Brabant, 24 December 2019, ECLI:NL:RBOBR:2019:7586). Since the wife had been a minor at the time of the marriage and remained so at the time of the proceedings, the marriage of the (expecting) parents, which had been entered into in the Czech Republic according to Roma traditions, could not be recognized as a valid marriage in the Netherlands (see also CUREDI076NL004 (child marriage) & CUREDI076NL002 (customary marriage)). It followed from the Hague Child Protection Convention that neither of the parents possessed custody. Therefore, the court assigned the guardianship to a youth protection authority.

Balancing of interests?

Little can be said about the courts' balancing of interests. They primarily focus on the development of the child and whether a healthy development is at risk. The best interests of the child were given the predominant weight. In a few cases courts referred explicitly to Roma traditions. However, it was always conveyed that those traditions could not change the decision of the court (Court of Appeal 's-Hertogenbosch, 2 November 2017, ECLI:NL:GHSHE:2017:4736; present case; Court of Appeal Amsterdam, 25 June 2019, ECLI:NL:GHAMS:2019:2204; Court of Appeal Arnhem-Leeuwarden, 9 January 2018, ECLI:NL:GHARL:2018:350; Court of Appeal Amsterdam, 1 June 2006, ECLI:NL:GHAMS:2006:AY3592). The case law also contains little reference to European efforts to strengthen the position of and to improve education for Roma communities.

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

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