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

# Religious and Cultural Matching in the Dutch Foster Care System

## Question(s) at stake:

Whether and to what extent, in the case of the out-of-home placement of a child, the wishes of the parents concerning the religion of the prospective foster family are taken into account.

## Outcome of the ruling:

Although the Court understands the parents' wish for the child to be placed in a family of the same religion, the best interests of the child are of primary importance. In the present case, it is in the best interests of the child to remain in the residential care home where he currently resides.

## Topic(s):

- Personal Status, Family and Inheritance

## Keywords:

- Best interests of the child
- Foster care
- Freedom of thought, conscience and religion

## Tag(s):

## Author(s):

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## Country:

Netherlands

## Official citation:

Court of Appeal ‘s Hertogenbosch, Judgment of 18 February 2021, Case nr. C/01/361674 / JE RK 20-1292, ECLI:NL:GHSHE:2021:493 (Uitspraak Gerechtshof ‘s-Hertogenbosch 18 februari 2021, ECLI:NL:GHSHE:2021:493).

## Link to the decision:

https://uitspraken.rechtspraak.nl/#!/details?id=ECLI:NL:GHSHE:2021:493

## ECLI:

ECLI:NL:GHSHE:2021:493

## Date:

18 February 2021

## Jurisdiction / Court / Chamber:

Court of Appeal

## Remedy / Procedural stage:

Second instance

## Previous stages:

- Judgment of the District Court Oost-Brabant, 13 October 2020, C/01/361674 / JE RK 20-1292

## Subsequent stages:

-

## Branches / Areas of law:

Family law

## Facts:

The child was born in 2012. The parents later separated. Parental authority rested with the mother at the time of the ruling.

The child was first placed under the supervision of a Certified Institution for Child Care on 25 October 2012. Since then, the order has been repeatedly extended, most recently until 25 October 2020. On 23 October 2019, the District Court Oost-Brabant also granted an authorization to place the child in residential care (“*gezinshuis*”) until 25 October 2020. The minor has been residing in this home since 24 October 2019.

At first instance, the District Court Oost-Brabant ruled on 13 October 2020 that both the supervision and the placing of the child in residential care ought to be extended until 25 October 2021. The mother does not agree with the out-of-home placement and filed an appeal.

She argues that the District Court wrongly considered that she is no longer capable of caring for the minor, and therefore that the minor should be returned to her care. Furthermore, the mother disagrees with the Court’s consideration that in the residential care home the minor has the best chance to achieve a balanced development. In the residential care home, he has only one peer. Furthermore, she argues that his identity is denied there; he was raised religiously by the mother and grew up within the close-knit community of their church group until 2017. According to the mother, the residential care home is dismissive of his religion. She is concerned about the well-being of the minor.

As such, alternatively, if the Court deems an extension of the out-of-home placement in the best interest of the minor, the mother requests the Court to place the minor in another foster home where there is room for his religious beliefs and that is closer to the mother.

The Certified Institution argues in defence that although various efforts have been undertaken by the mother to improve, the minor needs more support and care than what the mother can offer. They do not see any possibilities for a home placement of the minor.

The Certified Institution also mentions that the residential care parents accept the minor’s faith and are open to suggestions as to how this can be given more substance. The mother could for example play a role in this regard during her

visitation periods; however, she has not done so. The youth care worker will therefore take a more leading role in this.

Finally, the Certified Institution points out that there is no evidence whatsoever that the minor does not enjoy living in the residential care home.

## Ruling:

On similar grounds as the District Court, the Court of Appeal concludes that the requirements for an out-of-home placement are met in the current case (Art. 1:265b (1) DCC). It therefore rejects the request of the mother and reinforces the decision taken by the District Court.

Although the mother is a gentle woman who always puts the interests of the child first, due to her limitations she has insufficient insight and skills to perform the developmental tasks of raising the minor. She needs intensive outpatient pedagogical support as well as help with keeping her home in order and other practical matters.

The mother took part in a mother-child counselling program offered by the Certified Institution (in August 2015), which aimed to provide guidance to ensure that the minor grows up in a safe, clean, stable, and structured living environment. After she returned home, however, she was unable to implement this guidance in her own home. As such, intensive outpatient support was offered to the mother to meet the minor’s needs. At that time, however, it was already apparent that the mother had difficulties learning how to take care of the minor. It was clear that – given the permanent nature of her limitations – she would always need some form of (pedagogical) support to carry out her task as educator and caregiver of the minor.

Although the efforts from the foundation and the school did help the minor develop according to his age, his development fell short of his capabilities. As the minor grew older, he outpaced the mother and accepted her authority less and less. Additionally, the minor’s personal hygiene was poor; there were concerns about his nutrition and problems with his stools; and there was insufficient structure in his life.

All things considered, the placement of the minor in a professional parenting setting was necessary to prevent him from growing up with too much self-determination and to ensure that he could begin to develop optimally in cognitive and social-emotional areas.

Since moving to the family home, he has blossomed in many areas. He is experiencing positive growth and has largely made up for his deficits in the areas of potty training, self-care, and general knowledge. Nevertheless, the minor continues to require more attention and direction at school to complete his tasks.

The Court is therefore of the opinion that a prolongation of the authorization is necessary in the interest of his care and education.

Regarding the mother’s subsidiary request to place the minor in another foster family where there is room for his religious beliefs and which is closer to the mother’s place of residence, the Court rules as follows.

First and foremost, the minor enjoys living in the family home and is developing well there. Although the foster family is not religious, they have adopted a positive stance regarding the minor’s religious beliefs. The Court therefore sees no reason to place the minor in another foster family on that basis.

Moreover, the mother can – during visitation periods – give substance to her religious convictions herself and may in time take him again (during visitation periods) to family gatherings of the religious group.

The Court therefore rejects the requests of the mother and reinforces the decision of the District Court.

## Main quotations on cultural or religious diversity:

- The mother’s point of view: “Finally, the mother disagrees with the court’s consideration that [the minor] has the best opportunity in the family home to achieve a balanced development. In the family home, he has only one peer. Furthermore, his identity is denied there; he was raised religiously by the mother and grew up within the close-knit community of the [church group]

as of 2017. The family home is dismissive of his religion." (para. 3.5)

- The Court considers the following in response to the mother's request: "Regarding the mother's subsidiary request to place [the minor] in another foster family where there is room for his religious beliefs and which is closer to the mother's place of residence, the court rules as follows. First and foremost, [the minor] enjoys living in the family home and is developing well there. Although the foster family is not religious, they are positive about [the minor's] religious beliefs. The court therefore sees no reason to place [the minor] in another foster family on that basis. Moreover, the mother can – during visitation periods – give substance to her religious convictions herself and may in time take him again (during visitation periods) to family gatherings of the church group." (para. 3.7.5)

## Main legal texts quoted in the decision:

### Domestic law

- Art. 1:265b (1) Dutch Civil Code
- Art. 1:265c Dutch Civil Code
- Art. 1.1 of the Youth Act

## Cases cited in the decision:

- Judgment of the District Court Oost-Brabant, 13 October 2020, C/01/361674 / JE RK 20-1292

## Commentary

#### Religious and Cultural Matching in the Dutch Foster Care System

*Legal framework*

Special circumstances may require a child to be placed out of home. According to Art. 1:265b (1) of the Dutch Civil Code (DCC), the Court may request the Certified Institution which is charged with the execution of the supervision order to place the minor out of the home day and night if this is necessary in the interests of the

care and upbringing of the child. The duration of this home placement can be extended by the judge one year at a time, provided the grounds of Art. 1:265b (1) DCC continue to be met.

When placing a child out of home, the interests of the child have primary importance. In most cases, the placement of a child in a foster family is aimed at restoring the original parenting situation as quickly as possible or obtaining clarity in the short term regarding its feasibility (Day and Bellaart 2015: 6). A suitable match is essential to ensure successful placements in family foster care (Zeijlmans 2018: 458). Various factors play a role when determining which family the child ought to be placed with, varying from the age of the child, ethnicity, siblings of the child, geography, the needs of the child, etc. (Day and Bellaart 2015: 6).

According to the Guideline on Foster Care for Youth Aid and Youth Protection, as published by the Netherlands Youth Institute (Nederlands Jeugdinstituut 2019: 42), no empirical evidence exists as to the positive effects of matching children with foster families on the basis of ethnicity. However, academic literature does recognize various positive effects of the placement of a child in a family that corresponds to the child's own cultural and religious background. In a foster family with a similar background, the foster child has shared experiences such as cultural identity and language, and there are similar beliefs and values. As a consequence, the difference in daily practice (norms, manners) is often less. Furthermore, ethnic matching can contribute to parental acceptance of the placement, which is a key factor in the overall successfulness of a match (Day and Bellaart 2015: 6).

The importance of cultural and religious matching is also reflected in international legal instruments. Article 30 of the UN Convention on the Rights of the Child provides among other things that a child belonging to an ethnic or religious minority has the right to enjoy his or her own culture and to profess and practise his or her own religion. Similar rights are included in other legal instruments, such as Art. 18 ICCPR and Art. 8 ECHR. The European Commission of Human Rights also recognized that parents' wishes as regards the upbringing and education of a

child should be taken into account during a foster home placement in the case *Tennenbaum v. Sweden* on the basis of Art. 9 ECHR and Art. 2 of Protocol No. 1 (App. no. 16031/90, 3 May 1993, para. 3) (hereafter *Tennenbaum v. Sweden*).

Although Dutch law does provide legal criteria as to the screening and preparation phase of foster families, no national policy is in place concerning the matching and placement process. Article 2.4 of the Youth Act 2015 does provide that the religion and cultural background of both the minor and the parents ought to be taken into account to a reasonable extent when taking any child protection measures; however, no obligation exists regarding this. Due to the lack of guidance on the national level, foster care institutions each take a different approach regarding the matching procedure, including the way in which the cultural and religious background of the foster family is taken into account (Day and Bellaart 2015).

In practice, research shows that foster care providers do prefer to place the foster child with a like-minded family in terms of ethnicity, culture, and religion, especially when the biological parents specifically consider this relevant. However, the affiliation of religion or culture itself is not a determining factor; the most important criterion for a good match seems to be the “click” between the foster child and the foster family. The general lack of available foster families with a religious or cultural minority background should be noted as well (Day and Bellaart 2015). Consequently, matching decisions are in practice not based on the ideal situation but rather the possibilities at hand (Zeijlmans 2018; Degener 2021). These struggles were also recognized by the European Court in the previously mentioned case *Tennenbaum v. Sweden* (para. 3).

*Case law*

In the present case, the Court of Appeal exercises an explicit and clear balancing of interests as regards the role of the cultural and religious background during the foster family matching procedure. The mother wishes the child to be placed in a different foster family which has the same religious background as her. She argues that the child’s identity is being denied by having him grow up in a non-

religious family. Even though the Court of Appeal understands the mother's wish for the child to grow up in a family with the same religion as her and thus for him to be placed in a different family, it is held to be in the best interest of the child to remain with his current foster family. The minor enjoys living in the family home and is developing well there. Even though the foster family is not religious, they are positive about the child's religious belief. Furthermore, the mother could give substance to her religious convictions during visitation periods, e.g. by taking him to family gatherings of the church group.

A similar approach by Dutch courts can be seen in other cases. Although the courts have acknowledged in various cases that growing up in your own culture is important and can be seen as essential for the development of the child's identity, in many instances it is deemed not to be in the child's best interest for him or her to move to a different foster family (District Court Rotterdam 5 January 2022, ECLI:NL:RBROT:2022:165, but see also ECLI:NL:RBMNE:2021:1990 and ECLI:NL:RBROT:2020:3495).

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


- Day, M. and H. Bellaart. 2015. *De rol van etniciteit, cultuur en religie in de pleegzorg. Een verkenning.* Kennisplatform Integratie and Samenleving.
- Degener, C.J. 2021. *Ethnicity Reflections in Foster Families: The Complexity of Transculturally Placed Foster Youth's Ethnic Identity and the Way They Are Ethnically Socialized by Their Primary Carers*. Rijksuniversiteit Groningen.
- Degener, C.J. et al. 2022. *Grasping Ethnic Identity Fluctuations of Transculturally Placed Foster Youth: A Longitudinal Study*. Kenniscentrum Talentontwikkeling.
- Nederlands Jeugdinstituut. 2019. *Richtlijn Pleegzorg voor jeugdhulp en jeugdbescherming* (Guideline on foster care for youth aid and youth protection).

- Zeijlmans, K. et al. 2018. "'Nothing Goes as Planned': Practitioners Reflect on Matching Children and Foster Families". *Child and Family Social Work* 23 (3): 458–465.

## Disclaimer

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