

Paucity and the Need for Value Sensitivity in Dealing with Youth Care

Why legal and youth professionals should take cultural and religious considerations seriously

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1. Introduction

Consider the following situation: a young underage Dutch Muslim girl has a boyfriend who has no Islamic background. She is afraid that her parents will forbid her from seeing him, hence she keeps the relationship secret. When her parents find out, she is seriously threatened, and she suspects that she will be married off to a cousin in her parent's home country. She tells a teacher that she is afraid to go home. She is placed in a safe house after the intervention of the childcare service.

Situations like these occur in the Netherlands, yet their prevalence is unclear. The girl described in this case will deal with both legal and youth professionals. It is also likely that a special Dutch police Task Force on honour-related violence will discuss her situation.¹ This case is illustrative of situations that set alarm bells ringing with the authorities. They know that within certain minority groups a situation like this brings shame on the family, and feelings of shame sometimes incite violence. In a similar manner the alarm is rung when symptoms of radical Islam and jihad are observed, for example when in 2014 two families were suspected of intending to travel to Syria, their passports were seized and their children were taken into child care.² The number of adolescents travelling to Syria, either to fight for IS or to live in the Caliphate, seems to be increasing.³ It seems that in both situations (honour-related violence and radicalisation) cultural and religious aspects are being taken quite seriously by the authorities. Legal professionals and youth workers are warned to be alert to signals and to use legal measures to protect children from serious harm. Viewed in this way, it might seem that cultural and religious aspects are at the forefront of professionals working in the field of youth protection. Yet, at the same time, popular media have presented us with a situation where the exact opposite was the case, namely that the cultural and religious background of a child was not taken into account at all. In 2013, the mother of Yunus, who has a Turkish background, complained that a lesbian couple had become the foster family of her son. The Turkish government made an official complaint to the

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1 Since 2008 the Netherlands has a National Centre of Expertise on honour-related violence. Many local police forces employ experts on honour-related violence. See <<https://www.politie.nl/themas/eergerelateerd-geweld-voor-professionals.html>> (only in Dutch; last visited 7 May 2016).

2 <<http://nos.nl/video/692863-gezinnen-huizen-opgepakt-vanwege-jihad.html>> (last visited 19 April 2016).

3 See <<http://icsr.info/2016/02/icsr-insight-german-jihadists-syria-iraq-update/>> (last visited 9 June 2016) and the NCTV report by S. Sieckelinck & M. de Winter, *Formers & families, Transitional Journeys in and out of extremisms in the United Kingdom, Denmark and The Netherlands* (2015).

Dutch government, claiming that the Muslim background of the family had been neglected and that the child's right to a religious identity had not been respected.⁴ This led to a fervent debate in the media on the proper care for children when taken into foster care.⁵

Thus, we are confronted with opposite types of cases that receive media attention; those where the authorities themselves are alarmed by diverging cultural or religious customs and viewpoints and hold this of the utmost importance in their decisions, while in other cases these considerations seem to be ignored or overruled. What about cases that are dealt with on a more routine basis in youth care agencies and in the courts? Daily practice in youth protection shows a high percentage of minority families.⁶ One could therefore expect that professionals working in this field, being either a practising lawyer, a judge, or a youth worker (our term for all professionals who interact with families in court, the Child Care and Protection Board, Youth Care, probation officers etc.), will be trained to recognize and balance aspects and arguments of families with different religious or cultural backgrounds. And if they are trained to take such aspects and arguments into account, how is this done in practice? As part of a larger interdisciplinary study on the prevalence of and the substantive considerations deriving from different cultural and religious backgrounds in the field of youth protection, we conducted a study to get a better understanding of the question of how professionals in that field signal, balance and decide on considerations that derive from a cultural or religious background.⁷ We realize that a demarcation like 'field of youth protection' is rather vague, but this is intentional. Our study is largely bottom-up because we wanted professionals in the field to come up with as many examples as possible without this being hindered by strict definitions. With 'protection' we mean those measures and interferences that (semi-)state agencies use in order to protect the best interests of the child even if this goes against the wishes of a parent. In this contribution, we present the results of a combined interdisciplinary study amongst legal professionals and professional youth workers. We conclude that there is a paucity of knowledge and sensitivity amongst professionals on this topic. We claim that there is a sense of urgency in acknowledging that large areas of relevant considerations are still unexplored. We therefore suggest a framework to help determine omissions in current professional practices and argue that the legitimacy of the legal institutions will diminish if these problems are not addressed. In Section 2 we will first discuss the legal historical context in which a reference to culture and religion came into existence, before we turn to the field of youth protection. This historical context is relevant because professional behaviour does not exist in a vacuum, but is grounded in the institutional regime that for a large part determines this behaviour and its professional standards. This institutional regime can be partly made visible by analysing the reactions in professional journals to ethnic and religious minorities who bring new and different practices and values. Even though the discussion started in the area of criminal law, as we show in Section 2, our assumption is that this will have slowly spread to other legal fields like family law and labour law. In Section 3 we present a three-step approach to better understand the question of how professionals signal, discuss and balance the relevance of culture and religion in their professional practice. In Section 4 we will discuss our findings.

2. Historical legal context: discovery of the problem in criminal law

'Culture' and 'religion' as substantive circumstances and arguments relating to ethnic and religious minorities in the Netherlands entered legal discourse in the 1970s, and mainly in the area of criminal law. The debate was triggered by some legal cases but also because judges and lawyers started to describe

4 See <<http://nos.nl/artikel/482057-turken-druk-met-homo-pleeggezin.html>> (last visited 13 January 2016). According to the Convention on the Rights of the Child Art. 20, the parents were right in asking that due consideration be paid to the child's cultural and religious background.

5 See <<http://www.volkskrant.nl/buitenland/waarom-yunus-bij-zijn-pleegmoeders-blijft~a3421492/>> (last visited 18 April 2016).

6 CBS, *Jeugdbescherming en Jeugdreclassering 1^e kwartaal 2015* (2015). In this report it is explicitly mentioned that the percentage of non-Western youths present in youth protection is high.

7 The project was connected to the Utrecht University strategic theme 'Dynamics of Youth', see <<http://www.uu.nl/en/research/dynamics-of-youth>> (last visited 1 May 2016). Our co-researchers were Prof. Katharina Boele-Woelki (family law), Dr. Jet Tigchelaar (legal theory), Dr. Christoph Baumgartner (Humanities, Philosophy and Religious Studies), and Dr. Jan Boom (Social and Behavioural Sciences, Developmental Psychology).

their personal encounters with minority defendants. Despite sometimes heated debate on the culture defence, up to 2005 only a small number of cases (15 to 20), where judges had explicitly decided on the culture defence, circulated in discussions in the literature. In other fields of law the picture was bleaker. Contract law, for example, hardly saw any cases in which culture or religion played a role, and the same held true for administrative law. In family law, there were two cases on whether a child should be circumcised considering the Muslim background of one of the parents, and one case in which the Moroccan father of his runaway daughter had argued that the 'best interests of the child' should be determined under Moroccan law, but most cases in family law were of a private international law nature.⁸ Earlier research had shown that 'culture' is not only about explicit arguments, but also about assumptions, stereotypes, and the ways people communicate. It relates to silences in communication, to different ways to ask and to answer questions, and to non-verbal behaviour.⁹ When 'culture' is considered broadly, including not only norms and values but also ways of communication, researchers were able to detect that cultural considerations play a very large, but also very diffuse role in legal cases and general practice in the form of interpretations, expectations and unspoken assumptions.¹⁰ Recent research into family law cases by Jonker, Van Spaendonck & Tigchelaar has shown that up until 2014, 130 cases involved issues concerning male circumcision, home schooling, blood transfusions, and general cultural differences in raising children.¹¹ The main criteria that judges seem to take into account in their legal reasoning are the health and well-being of the child, the child's continued relatedness to his or her social surroundings, and the child's freedom of choice.

From 1980 onwards and mostly in the field of criminal law, legal journals began to relate the socio-cultural backgrounds of those minorities who were first referred to as 'guest workers', and in the 1980s simply as 'foreigners', with specific, usually violent crimes, and with problems of communication in the courts. Concerned police officers published the first Dutch article addressing the issue of culturally-induced violence among Turks in 1978.¹² Later publications in, for example, the *Netherlands Law Journal* (*Nederlands Juristenblad* (*NJB*), a Dutch legal lawyers' periodical which is referred to, in English, as the *Netherlands Law Review* by its own Editorial Board), *Offence and Offender* (*Delikt en delinquent*), *Legal Proceedings* (*Proces*) and *Judicial Explorations* (*Justitiële Verkenningen*) also began to address the 'cultural (mis)communication in court'. One example is an article called 'The time for foreigners' by the Vice President of the court of Haarlem.¹³ The author draws attention to cultural differences being the 'main obstacle' to communication. Foreigners may have 'different expectations' towards a judge and the trial, based on 'feelings of insecurity, fear, and sometimes shame'. Judges apparently became frustrated by this miscommunication and did not understand 'why these foreign defendants did not simply talk honestly about the crime they had committed, so that we can get on with the more important phases of the trial and talk about things that really matter'. The Vice President advocated scheduling more time in cases involving a foreign suspect, and more time for case preparation in order to better put the spotlight on the cultural background of the accused.

Interestingly, 25 years ago 'culture' in debates in the Dutch legal literature focused mainly on factors such as low education, lower social class, the fact that most 'foreigners' came from the countryside, and the Islamic faith. The focus was not explicitly on 'different values' and Islam played only a minor role in explanations. Yesilgöz argued in 1995 that most of the 'first generation' Turks in the Netherlands had only finished primary school and were 'functionally illiterate', which should explain differences in attitudes and communication.¹⁴ Various researchers observed the low social class of Turks and Moroccans in the Netherlands and their origin

8 The main question in private international law is which national law should apply to the case, not whether religion or cultural arguments should or should not be relevant. See S.W.E. Rutten, *Muslims in de Nederlandse rechtspraak* (1988). We base our family law cases mainly on the article by S.W.E. Rutten, 'Cultuur en familierecht in eigen kring', in *Multiculturaliteit in het recht. Preadvies voor de Nederlandse Vereniging voor Rechtsvergelijking* (2005), pp. 39-94.

9 W. van Rossum, *Verschiijnen voor de rechter* (1998). H. Wiersinga, *Nuance in benadering* (2002); Y. Yesilgöz, *Allah, Satan en het recht. Communicatie met Turkse verdachten* (1995).

10 See note 9, supra and R. Ballard et al., 'Cultural Diversity: Challenge and Accommodation', in R. Grillo et al. (eds.), *Legal Practice and Cultural Diversity* (2009), pp. 9-26; W. van Rossum, *Gelet op de cultuur* (2007).

11 M. Jonker et al., 'Religie en cultuur in familierightelijke beslissingen over kinderen', (2015) *Familie en Recht*, <http://doi.org/10.5553/FenR/000020> (<www.familieenrecht.nl>).

12 P. van Dijken & A.H. Nauta, 'Bloed- en eerwraak onder Turken in Nederland', (1978) *Algemeen Politieblad*, no. 10, pp. 227-231.

13 T. van Daalen, 'De tijd voor buitenlanders', (1986) *Proces*, no. 11, pp. 316-318.

14 See Yesilgöz, supra note 9, p. 30.

from rural areas.¹⁵ Some researchers mentioned the fact ‘that Turks and Moroccans generally hold on to the Islamic faith’, while a few also report that some ‘superstitious beliefs’ may confront ‘us’ with behaviour we will not immediately understand.¹⁶ Furthermore, ‘culture’ was associated with ‘bad experiences’ with the police and the law in the country of origin. This may explain, it was suggested, why in general foreigners have difficulty in claiming their rights and generally show an ambivalent attitude towards authority, namely a mixture of fear, awe and reverence. Strict social control in one’s own group was furthermore seen as a hindrance to emancipation and integration.¹⁷ Articles also mentioned that immigrants were attached to the traditions and customs of the country of origin, such as a fairly strict separation between men and women and hierarchical relationships between the old and the young, superiors and inferiors, and the authorities and citizens. Due to (self-)isolation immigrants tended, researchers claimed, to hold on more strongly to their ‘culture’ compared to those growing up in the country of origin.¹⁸

In the last 10 to 15 years, most cases discussed in the legal literature and in the media involve ‘honour-related violence’ in Turkish, Moroccan, and sometimes Hindu communities.¹⁹ The Surinamese community sometimes demonstrates instances of violence related to Winti and Voodoo (folk religions with elements of magic and witchcraft).²⁰ Sometimes elopement among Turks is discussed, while the discussion on female circumcision – mostly suspected of being prevalent in the Somali immigrant community – is largely theoretical because, so far, with one exception, no legal cases exist.²¹ Criminal defence lawyers tend to use cultural arguments strategically and to focus on the common-sense notion that in all immigrant and minority cultures informal social control is strong and social pressure may thus partly present an ‘excuse’ for violations of Dutch law.²² The main possibilities for Dutch judges to take cultural arguments into account are to tailor the sentence to the circumstances of the case and to the personal identity of the accused.²³ In most instances this ‘tailoring’ cannot be traced in the wording of the judgement, since judges justify their verdict in rather general and abstract terms like ‘society has been severely shocked’ and ‘considering the personal circumstances of the defendant’. This then leads to a reluctance on the part of lawyers to use cultural arguments, since they cannot estimate the effects of their argumentation.

By describing and analysing the literature in which legal professionals and related experts react to their encounters with ethnic minority practices and values, we have partly made visible the routine reactions and values of the dominant institutional regimes. The main focus of these professionals is on finding pragmatic solutions to certain problems, and to avoid a principled discussion on whether and how to take minority values and religion into account. Having given an impression of when and how the discussion on cultural and religious backgrounds has entered the courts and legal discourse in the Netherlands, we now want to turn to the field of youth protection. Given the number of minority families that are confronted with the legal system, we expected that such considerations would be frequently brought to the fore and balanced against

15 J. Doomen & R. Kötting, ‘Gearrangeerde en geforceerde Turkse huwelijken’, (1983), *Nederlands Juristenblad* no. 45-46, pp. 1409-1415, on p. 1410; A. Eppink, ‘Verburgerlijking. Een hypothese over verschillen in criminaliteit van Turkse en Marokkaanse migranten in Nederland’, in J. Fiselier & F. Srijbosch (eds.), *Cultuur en Delict* (1992), pp. 121-122.

16 H. Kummerer & L. Meyer, ‘Buitenlanders en justitie. De culturele factor’, (1979) *Proces*, no. 5, pp. 123-129, on p. 128; R.H. Wormhoudt, ‘Culturele achtergronden: strafuitsluitingsgronden?’, (1986) *Proces*, no. 12, pp. 329-336, on p. 335; See Yesilgöz, supra note 9, p. 93.

17 Kummerer & Meyer, supra note 16, p. 125; G.D. Melk, ‘Enige kenmerken van mensen uit andere culturen in het strafproces’, (1985) *Proces*, no. 8, pp. 216-222; A. Rasche, ‘Turken en tolken in het Nederlandse strafproces. ‘Een beetje verstaan, een beetje niet verstaan.’’, (1991) *Proces*, no. 2, pp. 39-45, on p. 44; Yesilgöz, supra note 9, p. 134.

18 Doomen & Kötting, supra note 15; Th. Hasselo, ‘Sociaal culturele achtergronden van de Turken’, (1980) *Proces*, no. 7/8, pp. 139-147; C.E.G. v.d. Weetering, ‘Voorlichtingsrapport over een Turk’, (1981) *Proces*, no. 6, pp. 168-171, on p. 168.

19 H.B. Ferwerda & I. van Leiden, *Eerwraak of eengerelateerd geweld?* (2005); M. Siesling, *Multiculturaliteit en verdediging in strafzaken. Een onderzoek naar de manieren waarop in het Nederlandse strafrecht ruimte wordt gevonden voor het verwerken van de culturele achtergrond van de verdachte* (2006); J.M. ten Voorde, *Cultuur als verweer. Een grondslagetheoretische studie naar de ruimte en grenzen van culturele diversiteit in enige leerstukken van materieel strafrecht* (2007).

20 I. van de Wetering, ‘Winti en Voodoo’, in F. Bovenkerk et al. (eds.), *Multiculturaliteit in de strafrechtspleging* (2003), pp. 85-99.

21 M. Exterkate, *Vrouwelijke Genitale Verminking in Nederland. Omvang, risico en determinanten* (2013), p. 11 (downloaded from <<http://www.pharos.nl/documents/doc/webshop/vrouwelijkegenitaleverminkinginnederland.pdf>>, last visited 20 April 2016); W. Limborgh, ‘Dient meisjesbesnijdenis op culturele gronden te worden getolereerd?’, (2008) *Nederlands Juristenblad*, pp. 2514-2517; A Moroccan man was prosecuted but not convicted in 2009 (District Court Haarlem 11 September 2009, ECLI:NL:RBHAA:2009:BJ7447).

22 Siesling, supra note 19.

23 Dutch criminal law has no formal ‘culture defence’; cases are argued under ‘duress’. See also H.C. Wiersinga, *Nuance in benadering. Culturele factoren in het strafproces* (2002).

other considerations.²⁴ In the next section we describe how we empirically approached this expectation both with regard to lawyers and judges who work in the field of youth protection, as well as guardians, social workers, psychologists etc. who work in this field.

3. Assessment of the interpretative framework of professionals in family law practice

The case of the Muslim girl in the Introduction would be determined under family law, and those who threatened her under criminal law. Now, we turn to family law and more broadly to the domain of youth protection measures, where both legal and youth professionals are active. The Muslim girl in the Introduction will not only be confronted with lawyers and the Child Care and Protection Board, but also interdisciplinary teams that include the police, social workers and other youth professionals. As part of the research project on cultural and religious considerations in the field of youth protection, we used the findings of the online search of legal cases²⁵ as a starting point to get a better understanding of the way professionals signal, discuss and balance considerations that relate to the cultural or religious background of minority families. We decided to use a three-step approach to discover if and how those considerations play a role in professional practices. We looked at journals and professional courses on the topic, and interviewed both legal professionals and youth workers.

We consulted the literature that we may expect legal professionals and professionals in youth care to read frequently (so-called occupational journals). Academic journals were not included, nor were books and dissertations. We decided to focus on occupational journals for several reasons: first, these are frequently read and are well known among professionals in the field, and they can be considered to be peer-to-peer journals and present and influence the common outlook among professionals. We chose to analyse journals in a five year range from 2011-2015, using the keywords culture, religion, minorities, and ethics (all aspects of migrations, culture and religion were taken into account). The results are discussed in Section 3.1. Next to that, we made an inquiry into the domain of professional training. Are religious and cultural circumstances and aspects in youth care addressed, and if so, how? This will be discussed in Section 3.2. Finally, we conducted interviews with professionals in the field and we report on these findings in Section 3.3.

3.1. Literature reviews

Reading for legal professionals

A review was made of recent volumes (2011-2015) of the three most important Dutch legal journals that family lawyers and judges may be expected to read or at least to glance over: the monthly *Journal of Family and Juvenile Law* (*Tijdschrift voor Familie- en Jeugdrecht*), the *Divorce Bulletin* (*EB/Echtscheidings Bulletin*), and the *Netherlands Law Journal* (*Nederlands Juristenblad*).²⁶ The reviews leave the impression of scattered attention to multiculturalism and the law. We did take a look at other possibly relevant journals, such as on immigration law, that sometimes pay attention to the vulnerable position of women and children, but largely focus on changes in immigration law and policy and tracking legal decisions. In the field of family law the monthly *Journal of Family and Juvenile Law* is the most important journal we may expect lawyers and judges who work in the field of family law to read.²⁷ Our research reveals that 37 items in this journal can be scored on legally relevant issues concerning ethnic minority families from 2011 to 2015, of which some pertain to youth protection measures (we did not include articles and items that were strictly on private international law issues). A few larger articles (covering several pages) were on the rights of the child, domestic violence in Moroccan families, pluralistic education, and Islamic marriages. Shorter columns were on child and forced marriages (with references to a new bill in the making), jihad, the closed Roma family culture, male circumcision, sharia, and violence in orthodox protestant families. None of the articles during

24 See CBS, *Jeugdbescherming en Jeugdreclassering 1^e kwartaal 2015* (2015).

25 See note 11, *supra*.

26 We thank the student assistant Ana Goessens who helped us with the reviews.

27 Our expectation is based on the fact that the journal is connected to the Association of Family and Juvenile Law of which many if not most of the family law lawyers are members.

these years addressed cultural or religious aspects of legal developments in international child abduction, polygamy, child custody and gender inequality connected to *wilaya* and *hadana* in Islam, or *kafala* (Islamic ‘adoption’). We have not found articles that specifically address the balancing of religious and cultural arguments in youth protection measures against other arguments.

The second journal we have analysed is the *Divorce Bulletin*. In this five-year period, we have found 16 references to religion and culture. All but one were on court decisions in private international law concerning applicable marriage law in cases of marriage and divorce in Morocco, Egypt, Turkey etc., whether the court could accept *talaaq*, and one case was on child abduction to Israel. The one item not on marriage and divorce was an announcement that a database on Turkish family law had been made available.

The third journal we have analysed is the *Netherlands Law Journal*. This journal outnumbered the other two as regards the number of items. We scored a total of 92 items between 2011 and 2015. We included items on, for example, the *Lautsi* case (the Crucifix in Italian schools), the debate on Black Pete, a debate on freedom of expression after the terrorist attack on Charlie Hebdo, and ethnic profiling by the police. We have included these in our review because the purpose of our review is to reconstruct (part of) the common-sense mind-set of the legal professional. The debate on Black Pete, for example, adds information about resistance in society toward some cultural traditions that are felt to be discriminatory, but also whether this situation should be addressed in the law.

Dominant in the selected articles is that the religion and culture of ethnic minorities can be problematic if viewed from a legal point of view. Religious freedom needs to be balanced against freedom of expression and counter-terrorism in situations of Salafism (fundamentalist Islam). Religious freedom needs to be balanced with the protection of family life and the best and fundamental interests of the child in the case of the circumcision of boys. Honour-related violence begs the question whether it is motivated or reinforced by religion and/or by culture. Forced marriage is an item that returns on several occasions, and in the literature it is linked to ethnic minorities. The French burka ban is debated several times as well, as is the decision of the European Court of Human Rights on that issue. Some legal decisions are highlighted because of the persecution of gays and lesbians in Islamic countries, which can be a valid argument for asylum. On the other hand, quite a few items mention research that discusses whether the Dutch police use the ethnic profiling of suspected criminals. For an overview of scored items in our review of the three journals, see Table 1.

Table 1

	<i>Items total</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
<i>Journal of Family and Juvenile Law</i>	37	4	11	10	6	6
<i>Divorce Bulletin</i>	16	3	3	5	3	2
<i>Netherlands Law Journal</i>	92	8	22	21	21	20
Total	145	15	36	36	30	28

In summarizing our restricted literature review concerning religious and cultural issues in child protection measures and in general, we have to assess that the problems discussed are presented in stronger antagonistic terms when compared to the 1980s and 1990s.²⁸ The discussion seems to have shifted from social background, language and communication problems, and low educational standards, to fundamental value differences with modern European societies. The discussion is also framed in terms of fundamental rights. These may be short references to, for example, a new book on ‘Male circumcision analysed from a human rights perspective’, to an article on ‘Boy circumcision as seen from fundamental rights’, or a full

28 We realize that the literature only partly influences the knowledge and attitudes of professionals in the field. They read much more than just the journals we have selected, and are also influenced by e.g. the media. Still, we think our selected journals form a good starting point, since peers in these journals speak out and we expect that their opinions have authority.

article on boy circumcision analysed from the dilemma of self-determination versus freedom of religion.²⁹ Other examples are an article on the clash between universal human rights and Sharia, and the fundamental and cultural arguments against the ban on polygamy.³⁰ We may expect knowledge and the opinions of legal professionals about Islamic family law, arranged and forced marriages, international child abduction, gender distinctions, and honour-related violence to be partly formed and moulded according to this ‘fundamental problems’ framework. In earlier research we found that the dominant approach among lawyers and judges is to solve problems pragmatically, and to ‘bypass’ religious and cultural hot spots. We wondered in our interviews whether this had changed.

Reading for professionals in youth care

We searched for professional journals via the web (e.g. the Netherlands Youth Institute, NJI) and in libraries for higher education. We decided to include journals for psychologists, professionals in education, family coaches and social workers to comprise the most prominent occupations within the field of youth care in the Netherlands. The following journals were selected: *Balans (Balance)*, *Jeugd en co (Youth and Co)*, *Kind en Adolescent (Child and Adolescent)*, *Kind en Adolescent Praktijk (Child and Adolescent Practice)*, *Pedagogiek (Pedagogy)*, *Pedagogiek in Praktijk (Pedagogy in Practice)*, *Psychopraktijk (Psychopractice)*, *Sozio, Tijdschrift van de Orthopedagogiek (Journal of Orthopedagogy)* and the website of the NJI and the Verweij/Jonker Institute. The articles were scanned based on titles, using key words that include any reference to culture, religion or ethics (all aspects of migration, culture and religion were taken into account). Books and reports were also included if these were announced in the journals. Table 2 shows the results of our search. Three journals included none of the items we were looking for, and a total result of 43 items was found in all journals.

Table 2

	<i>Items total</i>	2011	2012	2013	2014	2015 (Jan-July)
Balance	None	-	-	-	-	-
Youth and Co	9	2	-	3	4	-
Child and Adolescent	None	-	-	-	-	-
Child and Adolescent Practice	None	-	-	-	-	-
Pedagogy	1	1	-	-	-	-
Pedagogy in Practice	3					3
Psychopractice	2	2	-	-	-	-
Journal of Orthopedagogy	1: only 2014-2015 issues available	-	-	-	1	-
Sozio	14	4	4	3	3	-
NJI	8	1 (2010)	-	4	3	
Other (i.a. Verweij-Jonker institute)	5	-	1	2	2	
Total	43	10	5	12	13	3

A total of 43 contributions is not abundant and is considered to be low compared to the total number of articles that are published in these same journals, which runs into hundreds if not thousands within

29 The first reference mentioned is in (2015) *Nederlands Juristenblad*, p. 2198, the second one in (2014) *Nederlands Juristenblad*, p. 954, and the third is S. Wahedi, ‘De wederrechtelijkheid van jongensbesnijdenis. Een ethische uitdaging voor het strafrecht?’, (2012) *Nederlands Juristenblad*, pp. 3097-3105.

30 M. Chepti, ‘Het systeem van universele mensenrechten en de sharia’, (2014) *Nederlands Juristenblad*, pp. 319-325, and R. ten Cate, ‘De ratio van het polygamieverbod’, (2013) *Nederlands Juristenblad*, pp. 2250-2254.

the time range of our search. The results show a wide variety; they include lengthy reports (5 items over 50 pages), blogs and columns (3 short contributions), advertisements (2) and news items (10). Interestingly, only one item seemed to be directly related to the *Yunus* case, namely a one-page debate on the necessity for Muslim youth care facilities in the Netherlands. The debate gives the floor to both an opponent and an advocate, and remains neutral on the subject.³¹ In another journal item, experiences with an institutional facility for Muslim youth care are discussed: after two years it was still not full, hence its necessity was put into question.³² Seven contributions focus on the relevance to train professionals in intercultural skills.³³ The authors argue that it is necessary that youth workers learn how to approach and deal with families from different cultural and religious traditions, but also need to develop sensitivity regarding the question of what adequate youth care looks like in families with different origins, cultures and religious traditions. It is emphasized that in the voluntary areas of youth care ethnic minority families are hesitant to accept care compared to Dutch families, while the number of immigrant families represented in the involuntary areas is relatively high.³⁴ A frequently mentioned explanation for this is that immigrant parents may not acknowledge the behaviour of their children to be problematic, or they might be 'ashamed' to seek help.³⁵ Another frequently mentioned explanation is that many migrant families distrust governments, thus are not inclined to ask for help.

Another explanation for the misbalance in voluntary and non-voluntary youth care facilities is suggested in one column: some child protection measures ordered by the courts might be an overreaction, especially in contexts where communication with parents is difficult. The title of the column says enough: 'Language problems a cause of custodial placement authorization' (*Uithuisgeplaatst door taalprobleem*).³⁶ The low representation of migrant families in psychiatric youth care could also be explained by other factors; in one report it is explicitly suggested that children of migrant families can show different symptoms of mental illness, hence it might not be easily diagnosed.³⁷

According to the findings in the literature, youth professionals often do not feel equipped to deal with migrant families. Youth workers are often unaware of the possible influence of their own cultural background and those of their clients on the interpretation and evaluation of certain events. They lack sufficient knowledge of other cultures. As a result, it is more difficult to provide adequate care.³⁸ Seven articles address the need to train the intercultural skills of youth professionals. Such skills involve an awareness of one's own cultural biases as well as ways to deal with other customs and lifestyles. A few items address initiatives to bring perspectives of migrant families to the fore. If one comes from a social context where many people outside the nuclear family are involved in raising one's children (like extended family members and even people in the street), it is more difficult to be and to be seen as the primary parenting person. Youth professionals also have to balance new customs and to relate these to Muslim traditions like Ramadan. Parental values can differ: honour and respect can be of the utmost importance in Muslim immigrant families and Roma families are known for their group solidarity and distinct social norms for women and men.

Finally, increased attention (10 items) in the literature is being paid to jihad. The courts are confronted with parents who try to prevent youngsters from travelling to Syria and youth services that try to contribute to the prevention of radical fundamentalism. 'Young people report a lack of support from their parents in their religious/cultural identity which is related to the low education of parents or the challenge these

31 S. Verhulst, 'De Stelling. Islamitische jeugdzorg voorziet in behoefte', (2014) 8 *Jeugd en Co*, no. 3, p. 7.

32 M. van Dorp & E. Prins, 'Wat speelt. Nauwelijks draagvlak voor islamitische jeugdzorg', (2014) 8 *Jeugd en Co*, no. 3, p. 4.

33 E.g. NJI, <[http://www.nji.nl/nl/\(302196\)-Naar-interculturele-competentieprofielen-in-het-preventieve-en-ontwikkelingsgericht-jeugdbeleid.pdf](http://www.nji.nl/nl/(302196)-Naar-interculturele-competentieprofielen-in-het-preventieve-en-ontwikkelingsgericht-jeugdbeleid.pdf)> (last visited 21 January 2016); K. van Rooijen & D. Ince, *Wat werkt bij migrantenjeugd en hun ouders?* (2013), <<http://www.nji.nl/nl/Databank/Databank-Wat-werkt/Wat-werkt-onderwerpen/Wat-werkt-bij-migrantenjeugd>> (last visited 21 January 2016).

34 CBS, supra note 6.

35 H. Bellaart, *Diversiteit in transitie, aandacht voor effectief bereik van migrantengezinnen in de transitie van de jeugdzorg* (2014).

36 N. Swart, 'Uithuisgeplaatst door taalproblemen?', (2012) 6 *Jeugd en Co*, no. 3-4, p. 31.

37 G. van den Berg et al., *Een betere match tussen vraag en aanbod* (2015).

38 A. Van den Broek & E. Kleijnen, 'Voorzieningen bereiken migranten niet altijd', (2011) 5 *Jeugd en Co*, no. 1, pp. 37-48.

parents face as migrants: in a context where Islam is not the majority religion uncertainty about Islamic education increases.³⁹

What can we conclude from this journal search? First of all, the relative paucity that we observed in legal journals seems to be confirmed in occupational journals in youth care. Given the number of minority families that are confronted with youth protection measures, this is surprising. Secondly, we did not find anything on the question of how to balance religious or cultural considerations against other arguments and facts in youth care practice. Instead, it is emphasized that youth workers need to be trained in intercultural skills and need to learn to understand the perspective of immigrants better. Given this recommendation, we can safely conclude that this is lacking in current youth care. Another striking observation is that no articles were found that pay attention to religious differences among native Dutch families (like Jehovah's witnesses who may refuse to have blood transfusions, or orthodox protestant families that may refuse to have vaccinations for their children or have different views on the physical disciplining of children). Only one report was found on Roma families. It seems that the topic is not really on the agenda of editors of journals for youth professionals.

3.2. Professional training

Several articles in (youth) journals indicated the relevance of improving the 'intercultural skills' of youth professionals. One would expect such appeals to be supported with training for professionals in practice. In our view, training and courses are ways in which today's pluralist society may enter the interpretive framework of professionals. A search amongst courses for legal and youth professionals showed the following picture.

Lawyers generally (there are some exceptions) do not specialize in specific countries and therefore do not orient themselves towards, for example, the Turkish, Egyptian, or Moroccan legal systems and culture. The common notion is that when they are confronted with a problem, they will look for a solution to that concrete problem. They do attend the courses which are required by the Bar Association on recent legal developments and new Supreme Court decisions, and they do attend a workshop or lecture here or there if the Bar Association has credited it with some 'educational points'.⁴⁰ None of these is on ethnic minority issues, however.⁴¹ Very few lawyers and judges attend academic lectures, that is to say lectures that more broadly reflect on current developments. The dominant perspective of Dutch lawyers concerning their attitude towards cultural and religious issues (and probably in general), one may conclude, is pragmatically on ad hoc problem solving.

When we turn to the training of judges and prosecutors, the most important player in training for the Dutch judiciary (the Study Centre for the Judiciary, SSR) according to our search seems to be only marginally important in influencing the interpretive framework of Dutch legal professionals on cultural or religious issues. The SSR provides courses on specific fields of law and on 'legal knowledge updates' for Dutch judges and prosecutors. Several courses focus on multicultural issues. Only some 20 to 40 judges (mostly criminal law but also family law judges) attend these courses each year.⁴² Interviews with several judges who attended these courses in 2012 learned that many see the courses on multicultural issues as 'an extra', as 'important but not concerned with the hard-core business of law'. Many use these courses as a platform for debates with colleagues, because they have already developed a sensitivity to these issues, for example in their previous career (working as a judge on the Antilles, for example). However, some judges said that they followed a course like this because there were no other courses available.

39 T. Pels et al., *Opvoeding in de migratiecontext: Review van recent onderzoek naar de opvoeding in gezinnen van nieuwe Nederlanders*, in *opdracht van NWO* (2009).

40 Dutch practising lawyers need to collect a certain amount of educational points per year, and they can do so by following courses and attending workshops and conferences.

41 We included private companies (for example, OSR Juridische Opleidingen, <www.osr.nl>) and universities that organize courses and training (so-called PAO) in our search.

42 In 2015, the Netherlands had around 2.360 judges. See the most recent file on <<https://www.rechtspraak.nl/Hoe-werkt-het-recht/Rechtspraak-in-Nederland/Rechtspraak-in-cijfers>> (last visited 10 June 2016).

SSR courses in the field of criminal law obviously pay attention to honour-related violence, to the culture defence, to organized crime by Turkish criminal organizations, and to family structures and their relation to Moroccan juvenile crime. Courses in the field of family law cover the content of Moroccan and Turkish family law, Islam and private international law. These courses have had the same content and teachers for years. Courses in intercultural communication are apparently difficult to set up to the complete satisfaction of the participants, since in December 2010 a new course had started after a break of a few years. This was a 2½ day intensive course for criminal and private law judges who already had extensive practical experience in dealing with multicultural issues. Topics on which the course focused were the ‘dimensions of culture’ by Geert Hofstede, intercultural communication, intercultural aspects of probation reports, and ‘cultural barriers and fair trial’.⁴³ The course, which one of us attended as an observer, was much more reflective on the behaviour of the judges themselves and was meant to make them aware of their own biases and assumptions, with the purpose of improving the day-to-day tools of communication in court. There was plenty of room to discuss personal experiences. The course was evaluated rather well because of the opportunities for actual role playing and discussion. However, due to a restructuring of the SSR the course was cancelled the following year. The SSR further offers no courses for legal professionals that specifically address the balancing of religious and cultural arguments in youth protection measures against other arguments.

The disciplinary backgrounds of youth professionals are very diverse; hence it is not easy to grasp the training courses which are available to them at the postgraduate level. We carried out a websearch to find out what is on offer. At the website of NJI, nothing of any relevance on the topic could be found, while at the *Jeugdacademie* (Youth Academy), one course on the sexual abuse of children in migrant families is addressed in a one-day course. It is claimed that migrant families are less willing to seek professional help. Other organisations like the Netherlands Institute for Psychologists, *platform jeugd* (youth platform), BPSW (the professional association for social workers), or the GITP do not offer courses on the topic on their website. We did find some courses on professional ethics, which could address intercultural issues, but these were not mentioned in the descriptions. We conclude, therefore, that courses that address religious and cultural issues when dealing with minority families in the area of youth care and interventions either do not exist or are very hard to find (also for professionals).

3.3. Exploratory interviews with youth workers and legal professionals

After discussions with the joint researchers in our project that analysed online published legal decisions, we initially decided to follow their threefold categorisation of problematic situations.⁴⁴ They found that judges seem to distinguish (a) situations in which state organs like youth care agencies opposed families, from (b) situations in which disagreement over children between parents (for example, after divorce) were placed before the court, and from (c) situations in which a child had a disagreement with his or her parents. However, since our respondents did not recognize these categorisations in the individual cases they told us about, we decided to conduct the interviews with more general questions: What are your experiences with religious and cultural issues in child protection measures, what is your (moral and legal) judgment on specific cases, and which main factors influenced your actual behaviour? We planned to interview ten youth workers, five family lawyers, and five family law judges over a period of six months (in the autumn and winter of 2014-2015). The results of our efforts to find professionals willing to be interviewed were disappointing. Only four of the interviews with youth workers could actually be conducted. Youth organisations were at that time involved in a major reorganisation and on several occasions interviews were cancelled because of a lack of time. However, other reasons for not participating were also given. An interviewee in one organisation showed the results of responses that colleagues gave in answer to the request to be interviewed. Several mentioned ‘never having to deal with these issues of religion or culture’, or ‘I don’t recognize the issues in

43 The model of Geert Hofstede seems to be growing in popularity at least in Dutch legal circles. See his website <<http://www.geert-hofstede.com/>> and the third edition of the book *Cultures and Organizations: Software of the Mind* (2010).

44 As we explained in the Introduction (see also note 7, supra) this article is part of a larger research project that is connected to the Utrecht University strategic theme of Dynamics of Youth.

daily practice'. In the advertisement for the interviews, the *Yunus* case was mentioned; it is possible that employees only thought that these kinds of conflicts were relevant for the interviews. However, it would be strange if legal guardians would never encounter issues that are related to other religious or cultural customs and traditions.

Lawyers were more easily contacted. Thanks to our network which had been built up in previous research, we were able to interview four lawyers and one prosecutor in criminal youth law who were experienced in this specific field. One lawyer was interviewed after a public call on LinkedIn. Some other lawyers also offered an interview, but had no real experience with minority cases. We turned these offers down. As for judges, despite our network none of them was willing to be interviewed. Some judges who we know well said that many judges feel enormous work pressure, and moreover there was a transition going on in diminishing the number of courts which also contributed to their stress levels. We were able to use interview data with judges, that one of us conducted a few years ago, as a background check.

Our interview data is thus rather small, but since no other data on the topic exist as yet, we present the results of the interviews realising that this only gives a small sneak preview and is not representative in any way. This time, we start with the youth professionals and then turn to the legal professionals.

Youth professionals

What did professionals in the field of youth care bring to the fore? One respondent was part of an interdisciplinary Taskforce that deals with honour killings. Every month the group meets and discusses several cases. This is interesting in itself, as it shows that such cases apparently occur on a regular basis. The moment that a problem by a Muslim girl is reported, professionals pay extra attention to the possible risks involved. 'Our differences of opinion mostly vary on how strict we should intervene in families: we need to balance the risk for a young girl with the family that she is part of. You do not simply want to take her away from her family.' Professionals are alerted because the girl might be seriously harmed, even though the chances that this will occur are not always that high. This respondent is also quite clear about her motivation to take cultural or religious aspect in youth care into consideration:

'The government determines the ground rules for youth work: children should be able to participate in society when grown up. This also determines our moral framework: we look after the safety of children and secondly we see to it that they develop themselves in ways that they can participate in our society when they have grown up. These are the compasses in our work. Parenting in minority families should not jeopardize these general aims that all children are entitled to.'

Interestingly enough, these moral compasses represent democratic values which are considered to be neutral to religious or cultural backgrounds. Safety, both physical and social, is taken as a basic premise that applies to children from all backgrounds. Thus, cultural or religious aspects are in general not relevant, and are therefore not taken into account. Only cases like honour killings, where this cultural tradition is strongly related to one's background, tend to stimulate youth organisations to pay more attention to signals of possible serious harm to a child. The suggestion as found in the literature, namely that communication problems lead to much stricter measures among immigrant families, is not recognized. 'Communication is not our biggest issue. We hire interpreters quite often. Instead, we often encounter parents who simply deny the problems or are not willing to cooperate.' Thus, communication is not perceived as a relevant topic, instead the uncooperative attitude of parents is problematic.

A guardian, who explicitly stated that communication *is* a big issue, contradicted this: 'If you don't speak a language fluently, you often do not fully understand what is expected.' She pointed out that quite often parents are illiterate or have a low education and more than once they are mentally disabled. They often simply do not understand what is expressed and is expected of them in the process. Interpreters translate, but do not check if parents really understand the information. 'I often offer help to translate, also because translations are often not correct.' In the organisation of this guardian, a flyer has been developed to help youth workers to communicate with immigrant families. It offers pictures and simple explanations of

procedures to help them understand the situation and what steps will be taken to help their children. Yet, this flyer is not implemented in the organisation, and colleagues hardly use it. Her explanation is that culture and religion are ignored as relevant aspects and guardians instead focus on 'neutral' aspects like safety and child development. Yet, the cultural background of parents explains their reluctance to cooperate and their unwillingness to acknowledge that their children are not doing well. If you would pay more attention to their background, she said, their motivation will certainly increase. She is surprised by the number of cases that have escalated due to the uncooperative attitudes of parents. 'They end up with restrictions (a family supervision order after an illegal absence from school) that were completely unnecessary in my view and are really difficult to undo.' A respondent working in a youth care facility deals with cultural and religious aspects on a daily basis. Children with Muslim backgrounds that want to keep to Ramadan are not unusual. This is something you simply facilitate. According to him it is important to be sensitive to their background. A boy coming from the Caribbean was not used to the Dutch fast pace, he told us. Slowing down was necessary for him to keep up, but this should not be interpreted as laziness. He emphasizes that youth workers need to be respectful and sensitive to religious and cultural differences, but in their approach to children it does not really make a difference: the moral compass is to help children develop themselves in order to be able to participate in our society.

'We often work with mentally disabled children who come from complex families and where parents have seriously failed to raise their children. We are often the first ones who ask them what they desire in life. In that respect, culture or religion is not a distinguishing factor; it is the fact that you pay attention to the individual child.'

Yet, at times, conflicts arise because of different cultural backgrounds.

'We once had a Roma adolescent at our Institute, who had serious problems with housekeeping or in obeying female coaches. He had to learn to live in a collective where exceptions cannot easily be made. This particular teenager became so confused and caught up between two cultures that his family decided to take him home.'

Thus, living together in an institutional context has implications for the customs and habits that one was used to. One has to adjust, and if that is really problematic, as with the Roma family, it is not that easy to turn a blind eye as a youth organisation.

All respondents agree that the *Yunus* case is not ideal. Of course, one wants to find a perfect match between a foster family, the child involved and his or her parents. Yet, in reality, there is a lack of foster families and other criteria are also taken into account, like the 'safety' of the child and the ready availability of foster parents. Thus, in the case of *Yunus* it could have been in the best interest, overall, to decide that *Yunus* was entrusted to a lesbian family. In these situations, the alternatives available determine what will be decided. So in practice, other considerations might prevail.

Legal professionals

Our interviews with lawyers did not yield outcomes, which were very different, with one interesting exception. The lawyer is a Dutchman who converted to Islam and has many clients who – in his words – are 'enthusiastically practising the Muslim religion'. During the interview he recounted a case of a Moroccan couple of whom the woman was much younger than the man, and who had divorced. The main reason for the divorce was that the man was too dominant towards his wife and child with regard to his religion. Even after the divorce, he regarded himself as the rightful – Islamic – husband of the wife, and claimed his rights to the child. According to the lawyer, who could understand the man's position and arguments, professionals at the Child Care and Protection Board were much too soft towards him. 'They gave him too much leeway in claiming his rights, but they should have been firmer. They should position themselves behind the Dutch legal system, and defend its values. Be professional, be strong, be academic.' The lawyer recounted another, rather similar, case involving Turkish parents. The man also argued that he still had a right to his wife, because of Islamic marriage rules. According to the lawyer, the Child Care and Protection

Board had adopted too much of a soft approach, resulting in the fact that – according to the lawyer – a very particular interpretation of Islamic family law was allowed in the Netherlands. ‘The state should somehow make clear, however, that some of these personal convictions should be tempered, because they should have no place in Dutch society.’

Another lawyer, who has a Turkish background and a large network of Turkish families who know how to find him when necessary, takes a rather different but familiar stance. He advocates taking religious and cultural arguments more into account, and complains that this does not happen. For example, he argues that the ‘extended family’ in Turkish cases is not taken into account:

‘The Dutch have an unhealthy amount of individualism. Not so in Turkey. In Turkey the family is the harbour of safety and social cohesion. So, children are taken care of within the extended family. I have to see the day that youth care workers say ‘let’s knock on the family door’. That is the central issue. If that would be built into jurisprudence and policy, much of the problem would be solved. It would ask for a culture change within youth care in order for them to know ‘okay we have our rules, but exceptions should be possible’. It would diminish conspiracy theories in the Turkish community, because nowadays many perceive it as a secret ‘forced assimilation policy’ of the Dutch state.’

According to this lawyer, youth care agencies turn a blind eye to cultural differences, or they do not dare to take them into account. He said he had clients who came with family support, the family arguing to be able to take care of the children who were in danger of being placed in a foster family. Youth care, however, kept to their original advice. When we asked how judges would react to his argument to take the extended family into account, he said he would get ‘insufficient reactions’. He therefore argued for a ‘curator’ especially for children in plural cultural and religious situation. That ‘in between’ professional should be able to win both sides for a best solution.

Our interview with a prosecutor in criminal youth cases taught us much about the standard approach. Criminal law, according to her, leaves room for few exceptions. The law merely stipulates the elements of a crime, so when families are suspected of going on ‘jihad’, the criteria to judge the case are just there.

‘Of course the Child Care and Protection Board advise us. They do take the cultural and religious background of the child into account. What does a child need? What is the situation at home? How is it at school? What I do not see in their reports are thoughts about religion and culture. In criminal law, we look at what is possible given the system. They do not focus on ‘this is a religious family, things might be different’. They do not even get to that point.’

The interviewee explicitly stated that she has not yet encountered in her 20-year career that the ‘extended family’ is considered to be a solution to problems. Culture is a relevant factor when problems of honour-related violence come to the fore. ‘However, in the end the question is whether they will be able to live as responsible adults in our society. It is about how we live in the Netherlands.’

What can we learn from these interviews? It is apparent that the primary concerns in professional youth care are child safety and child development (well-being). These guiding principles represent values in democratic society and seem to be neutral to religious or cultural considerations. Thus, if parents harm their child, or if the child’s development is seriously jeopardized, this also suffices to intervene, without any specific reference to e.g. culture or religion. In most cases, it seems irrelevant to pay attention to cultural habits or religious identity. Only in exceptional situations, like honour-related violence (including forced marriage), is the cultural tradition considered to be highly relevant and is a distinguishing factor in decisions to intervene. A native Dutch girl would never be treated in a similar manner, as the risk that her parents will seriously harm her is simply much lower. At the same time, one respondent claims that what is now often considered as an ‘unwillingness to cooperate’ could just as well be interpreted differently, since the cultural background of immigrant families also influences their perceptions of how serious their situation is. And if cultural differences and interpretations of simple facts and more complex situations are so intertwined, professionals should pay more attention to them if only to intervene effectively. Moreover, the example suggests that some

restrictive measures could be avoided and that immigrant families may be confronted with legal restrictions for trivial child care issues. Whether these effects actually occur would require ethnographic research.⁴⁵

4. Discussion

We want to discuss and theorize two observations based on our empirical explorations amongst legal and youth professionals. The first concerns the fact that little can be found on the topic of religion and ethnic minority culture in the field of youth protection, both in the selected journals, as well as in professional training programmes or interviews. We will suggest some tentative explanations for this relative paucity on the topic. Secondly, we want to discuss whether our findings fit in a more general shift in the dominant Dutch discourse in which ‘religion’ and ‘culture’ are increasingly conceived as problematic, as a consequence of which the private (family) realm of ethnic and religious minorities is under pressure from the widening scope of the public realm. If our argument makes sense, this needs to have ramifications for the professional attitude in the field.

4.1. Paucity of the topic

Earlier socio-legal research showed the paucity of Dutch legal cases in general that explicitly refer to ethnic minority cultural and religious backgrounds.⁴⁶ Jonker, Van Spaendonck & Tigchelaar have found 130 legal decisions on youth protection published in more than a decade in which religion or culture played a role.⁴⁷ In only 79 (on average this is less than 10 per year) of these cases did judges explicitly refer to those factors. Tentatively we can think of several reasons to explain this relative paucity of explicit legal cases.⁴⁸ First, we suspect that professionals see religious and cultural arguments and circumstances as ‘soft information’ and as ‘legally not really relevant’, comparable to other social factors like one’s level of education, social-economic position etc. These factors are often helpful to understand the case, but are not considered decisive. Judges and lawyers may thus use ‘legal relevance’ as a filter for circumstances and arguments based on the cultural background of the parties. These arguments fit very well in our historical literature review, which shows that in the past religion was not much of an issue and culture was largely understood as low education, a stronger hierarchy, bad experiences with the law in the country of origin, and communication problems. Related to the idea that ‘legal relevance’ works as a filter is that the expectations of legal actors about what other legal actors in the process may find relevant will influence their legal argumentation.⁴⁹ For example, a lawyer may estimate that the court is not open to soft and vague arguments related to culture, while judges may assume that it is the responsibility of the lawyer to bring these considerations to the fore when he or she will find these relevant for the case at hand. This leads to a situation of mutual silence: a judge will not ask too many questions about the cultural background of the case or the parties, and the lawyer will not make any reference to the ethno-cultural background.

A second explanation for the paucity on the topic is that lawyers will use cultural arguments strategically and thus only when in the interests of their client. Knowing that the courts will attach a great deal of value to the principle of equality, lawyers feel that they should use cultural arguments with caution.⁵⁰ We recognize this in our interviews with lawyers, and we suspect that the more antagonistic framing of these issues in the legal literature has made lawyers even more reticent in the use of these arguments. They will probably think twice before initiating a fundamental legal debate on freedom of religion in a case of a Muslim family suspected of raising their children in a (too) orthodox fashion.

Compared to legal professionals and especially lawyers, professionals in youth work have different tasks. One may expect that culture and religion play a larger and more objective role in assessing what is in the

45 T. Verhallen, *Disentangling an Invisible Trade: state interventions in Dutch and Dutch-Curaçaoan single-mother families* (2015).

46 Van Rossum, supra note 10.

47 Jonker et al., supra note 11.

48 We cannot argue for more than ‘relative paucity’, because this judgment is largely guesswork. We would have to know the number of actual legal cases, and more importantly, what percentage of these cases are published online, and how these cases are selected for publication. This information is unexplored as yet.

49 W. van Rossum, ‘Dutch judges deciding multicultural legal cases’, (2007) *Recht der Werkelijkheid*, no. 3, pp. 57-74.

50 Already in Siesling, supra note 19.

best interests of the child. However, as is the case with the legal profession, not much specific research in this area has been carried out. Our selective literature reviews revealed that the focus of the debate is on miscommunication, frames of reference and different customs and habits. Youth workers need to be trained in intercultural skills. Balancing religious and cultural considerations against other arguments and facts in youth care practice, however, is not addressed. We concluded that the topic does not seem to be very high on the agenda of youth professionals. Our interviews with some of them confirm this observation. Their approach is a general one, i.e. not specifically tailored to ethnic and religious minorities, and conceived as unproblematic. The assumed to be objective concept of ‘the best interests of the child’ is their guiding principle. Interestingly, our interviewed lawyers and prosecutor confirm this observation.

4.2. Shifting the private and public realm in relation to cultural and religious considerations

Our second reflection on our findings concerns our perception that issues that were formerly considered to belong to the private realm have become part of public discourse and are more explicitly debated in the legal literature. This legal debate, we observed, seems to be increasingly couched in terms of (a clash of) fundamental rights. The influence of the public realm seems to be growing, and new topics are considered to be open to public discussion. Legal discourse in this sense mirrors society’s discourse at large: both have become more antagonistic.⁵¹ This has ramifications for legal professionals and professional youth workers who deal with problematic situations in ethnic and religious minority families. Their ‘private’ religious upbringing of their children, their ‘private’ gender role preferences, their preference for non-vaccination, are increasingly considered problematic because of this shift in the discourse as to what belongs to the public sphere in which the state may legitimately interfere, for example based on individual human rights. In this article we do not take a normative stance either for or against this development, but take it as a given that such shifts occur. Our argument is rather that professionals need to be more aware of the different normative frameworks represented in private and public realms and need to be (or to become) aware that a concept like the ‘best interests of a child’ can be evaluated differently in different spheres.

In the daily life of professional interactions, it is a fact that people have different habits, religious beliefs and customs. People want to fast during Ramadan, want to wear headscarves, want to follow a certain diet, want to raise their children in a particular way etc. People in general were and still are tolerant towards these practices if nobody is harmed or hindered. Tolerating these different habits and beliefs used to be seen as a precondition for finding a *modus vivendi*, as is probably the case in many Muslim family cases in which a child needs to be placed with foster parents. At this daily level, finding a *modus vivendi* for adapting to cultural and religious habits was usually not very problematic, and was mainly dealt with pragmatically. However, it seems that in recent years – especially when voiced in the media but also in academic literature – these issues are not only claimed with reference to fundamental rights, but often also generate heated opposition based on fundamental principles like equality or the secular state. In this last case we recognize our point: issues that were formerly dealt with informally and were regarded as private, are today voiced as public claims and framed in fundamental terms with references to legal principles. This bounces back to the claimants and reverberates in minority groups that consequently find their religion and values underappreciated or misunderstood.⁵²

4.3. A modest proposal

Based on our findings so far, we want to propose the following. We argue that it is much better if legal and youth professionals would be more sensitive to cultural and religious differences. This would include an understanding of non-cooperative attitudes, miscommunication and different cultural habits and beliefs.

51 E.g. P. Jonkers, ‘Hoe zal de rechter dat oplossen? Lastige kwesties rond godsdienst’, in WRR, *Geloven in het publieke domein. Verkenningen van een dubbele transformatie* (2006), pp. 473-509.

52 E.g. B.M. Oomen et al., ‘CEDAW, the Bible and the State of the Netherlands: the struggle over orthodox women’s political participation and their responses’, (2010) 6 *Utrecht Law Review*, no. 2, <http://doi.org/10.18352/ulr.129>, pp. 158-174; B. Oomen et al., ‘Van Walswetten en de Wil van God. Orthodox-protestantse perspectieven op de gelijkebehandelingszaken’, (2010) *Nederlands Juristenblad*, pp. 216-222.

The historical review of the legal literature in Section 2 showed that authors in the past had an open mind to the fact that some people emanate from non-democratic societies, in which governments are often not trusted and corrupt, have different views on 'good parenting' in which responsibilities were not solely in the hands of the nuclear family, and were not highly educated. At the same time, we noticed that legal professionals find it rather problematic to explicitly address these differences in court proceedings. Moreover, many legal professionals seem to be hesitant to address them because of their complexity; much of the behaviour in minority groups is not (only) explained by the fact that people were used to living in different environments or were not educated.

What is also relevant today is that we increasingly realize that people's identity is strongly related to the life patterns, life views and values that are shared in their community. Attitudes towards young and old, a non-individualistic approach, or so-called shame culture are relevant expressions for how people think, live, and the values they hold. The area of religion and culture shows a wide variety of situations and possible clashes with professionals in the Netherlands: of non-communication, of body language, of distrust in governmental organisations, of different views on parenting.⁵³ When legal and youth professionals would acquire a deepened knowledge of ethnic and religious minorities and reflect on their own cultural assumptions, that would enable them to assess situations better, to offer help more efficiently, and to take better informed and better argued legal decisions. Interestingly, the interviews indicate a systematic lack of such knowledge and the few articles in the literature study also stipulate that youth professionals do not feel at ease with the situation as it stands. We feel that in our exploratory research we have only touched upon the tip of the iceberg; only few aspects have been recognized so far, but most of the customs, habits, and their relevance to people seem to be not properly addressed by professionals in youth protection practices. Minority families, however, seem to feel a mismatch between their perspective and that of the professionals who are there to help them.⁵⁴

Today's dominant discourse on religious and ethnic minorities does not seem to give much room for building cultural sensitivity in order to efficiently address the issues sketched above. The dominant discourse holds that values like safety and well-being for children is the primary concern of youth professionals, hence cultural and religious considerations regarding private family life lose argumentative ground. Public discussion on values like a neutral and secular state has consequences for the way youth workers, lawyers and judges do their work. Lawyers will be reluctant to raise religious values as legal arguments if they feel that this will weaken their case. The increasing importance attached to public domain values calls for resistance and counter-arguments from minority groups. The public domain is dominated by the shared values of the largest groups in society, and today is set off against other values in a rather antagonistic tone. The resistance of minorities who feel excluded will also be formulated in a combative fashion. We feel that this is not beneficial for the well-being of children, and for society as a whole. We therefore argue that professionals in the field of youth protection should address this challenge and start working on reforming their institutional regime. Such a reform can start modestly. We do not aim for a top-down approach in which managers change rules and protocols that need to be followed. We consider it intrinsic to professional ethics that professionals learn to reflect on their own position in the debate between the private and public realm. Practice will benefit if a reflection on cases like *Yunus* would have been shared with colleagues and within the literature, as well as on honour-related violence, cases of non-vaccination, home schooling, the role of extended families, gender roles and their cultural and religious background etc. Reflection stimulates one to critically rethink one's role and one's professional practice. Reflection almost automatically leads to the recognition of knowledge gaps, and the need to fill them. We argue that this bottom-up approach in which professionals themselves take up the challenge is the way to go forward in a context where they apparently feel uneasy in addressing the possible relevance of cultural and religious diversity in their work.

53 E.g. a Turkish toddler who was seriously overweight was not 'neglected' in the eyes of youth professionals, but should probably be better seen as 'spoiled', because young boys are like 'princes' in the family. A discussion of the case can be found in C.J. Kessler & M.A. van den Hoven, 'Een schepje erbovenop... Redelijke culturele verschillen in het geval van obesitas bij jonge kinderen', (2007) 10 *Ethiek en Maatschappij*, no. 2/3, pp. 87-94. Even one's food patterns can express one's identity and cultural diversity, see for example F.L.M. Meijboom et al., 'You eat what you are: moral dimensions to diets tailored to one's genes', (2003) 16 *Journal of Agricultural and Environmental Ethics*, pp. 557-568.

54 See for example Van den Berg et al., *supra* note 37.

We would like to conclude with our assumption and gut feeling that actual interactions and communications between (legal) professionals in youth care and citizens are crucial to support a willingness on the part of citizens to participate in society. We argue that the subjective feeling of inclusiveness of (any, but most certainly) ethnic minority families in the workings of the state's institutions should be seen as an important aspect of citizenship. Permanent work on the edifices of our legal order is critical in today's globalized society. Migration and globalization have made state law more vulnerable. Mere attention to the formal structures of the law is not enough, since concepts like that of the best interests of the child are 'open' in the sense that the content will be based on dominant cultural values in a society. Legal and other professionals who work with these open concepts need to be able to work as brokers and translators of the law, especially in their connections with minority families.⁵⁵ Their 'acting out in practice' the formal structures of the law, showing that they know what they are talking about and that they recognize the religious and cultural aspects of cases influence the justice perceptions of ordinary citizens and thus contributes to a sustainable legal system. ■

55 We see a parallel here with the translators of human rights law who work in non-Western local communities. See S.E. Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle', (2006) 108 *American Anthropologist*, no. 1, pp. 38–51.