

## LEGAL UPDATE

### No nonpecuniary damages for unlawful act by Child Care and Protection Board

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Unlawful acts by the Child Care and Protection Board (hereinafter referred to as 'RvdK': *Raad voor de Kinderbescherming*) towards a mother on account of issuing a careless report does not lead to nonpecuniary damages. This was the [ruling](#) handed down by the Court of Appeal of The Hague on 26 November 2019.

In the appeal proceedings, the mother requested a change of her son's principal residence and a change of the contact arrangements. Such requests are only granted if, in the circumstances of the case, they are considered to be in the best interests of the child. In this context, the RvdK was asked to investigate the best interests of the child in the requested changes. Based on this investigation, the RvdK introduced a board report. Besides establishing a healthy mother-child relationship, the report included a recommendation for the mother to seek psychological help to come to terms with past events. However, the reason for this reference was not further substantiated.

The mother filed a complaint with the external complaints committee about the acts of the RvdK and more specifically about the content of the report. After the complaints committee declared some of the complaints to be well-founded, the RvdK decided to rectify the report. The paragraph containing the advised assistance to the mother was deleted and the rectified report was introduced in the proceedings. The Court of Appeal of Amsterdam subsequently gave a [ruling](#) confirming the order in the first instance, insofar as it provided that the son's principal residence was with the father. There was no contraindication whatsoever suggesting that the son was not happy staying with his father and it would not be in his interest to break the structure and continuity in his life. With regard to the contact arrangements, the Court of Appeal ordered a more liberal contact arrangement for the mother.

After two disciplinary complaints against the experts involved in the board's investigation had been declared well-founded, the mother brought a civil action against the RvdK. She claimed a declaratory decision that the RvdK was liable for all damage suffered and yet to be suffered by her and her son. A sum of €65,000 was claimed for both pecuniary and nonpecuniary damage. The court ruled that the RvdK had violated its (high) standard of due care by insufficiently substantiating the conclusion regarding the psychological condition of the mother. With regard to the pecuniary damage, a small amount was awarded for the costs of challenging the original report. Compensation for nonpecuniary damage was rejected by the court.

On appeal to the Court of Appeal of The Hague, the case focused on the question of whether nonpecuniary damages should be awarded. Under Section 6:106(1)(b) of the Dutch Civil Code, compensation for nonpecuniary damage, to be determined equitably, may be awarded if the injured party has suffered bodily injury, has been defamed or has otherwise suffered personal injury. According to the Court of Appeal, there was no question of defamation, which left the question as to whether there was any personal injury. The mother had not substantiated the existence of a psychiatric syndrome, which, according to established case law, is in principle required to qualify as personal injury. The fact that the mother had become involved in 'gruelling proceedings' was considered insufficient by the Court of Appeal in that context. Consequently, the claim for compensation for nonpecuniary damage on account of unlawful conduct by the RvdK could not be upheld on appeal either.

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