

Rights and the city: does the localization of human rights contribute to equality?

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1. Introduction

One interesting new development in human rights law is the explicit local engagement with international human rights.¹ The city of San Francisco, for instance, passed a CEDAW ordinance in 1998 promoting the equitable treatment of all persons by the city government.² As a result, labour conditions for women improved and streets were made safer.³ Other American cities, like Portland, Oregon and Berkeley California, have followed suit.⁴ A part of the rationale behind these developments is to stimulate nation states to ratify unratified treaties, as is the case with the CEDAW in the United States. An important reason, however, is a desire to strengthen the meaning of international human rights at the local level.⁵

In line with Professor Loenen's long-standing interest in the practice of human rights law, this note will sketch how local authorities increasingly engage with international human rights to subsequently explore the relationship between the localization of human rights and equal treatment. Here, it is necessary to first give a brief overview of the increasing relevance of international human rights at the local level in general, and to offer specific Dutch examples pertaining to the UN Convention on the Rights of Persons

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2 With this ordinance, the city expressed commitment to realize the CEDAW rights at the municipal level and put in place a number of measures to achieve this. LOZNER 2004; WEXLER 2006.

3 SINGH 2005, at p. 547.

4 SOOHOO, ALBISA and DAVIS 2007.

5 OOMEN and BAIMGARTEL Forthcoming.

with Disabilities (CRPD). This, then, forms the basis for an assessment of the extent to which such developments strengthen equal treatment.

Before this, however, it is necessary to dedicate a few words to the interrelationship between human rights and equal treatment, and their institutional rapprochement. The complex relationship between human rights in general, and equal treatment in particular, has often been explored.⁶ Equality, like human dignity, is one of the pillars of the entire human rights system. As such, it is connected to all other rights. This is in line with the approach, for instance, initially taken in the European Convention on Human Rights, in which Article 14 prohibits discrimination with respect to the rights and freedoms in the Convention.⁷ Similarly, virtually every human rights treaty includes a specific non-discrimination clause, as does the Universal Declaration of Human Rights. Over the years, the principle of equal treatment and the right to non-discrimination have increasingly grown into independent rights.⁸

The crowning glory of this development in the Netherlands was the inclusion of a non-discrimination clause as Article 1 of the Dutch Constitution of 1983, its specification in the Equal Treatment Act and its institutionalization with an Equal Treatment Commission, causing some observers to speak of a 'super-right'.⁹ Over the years, however, there seems to have been a tendency to institutionally reconnect equal treatment and other human rights. The Dutch Constitutional Review Commission, for instance, proposed to commence the Constitution with a general provision stating, amongst other things, that the government respects and guarantees human dignity, fundamental rights and fundamental legal principles.¹⁰ The Equal Treatment Commission became a general National Human Rights Institution in 2012. It could well be that, in the foreseeable future, local anti-discrimination

6 See, for instance, HIRSCH BALLIN 2009.

7 It has been long-standing case law that Art. 14 can also be infringed when there has not been a substantive breach of another Convention article, cf. ECtHR, *Relating to certain aspects of the laws on the use of languages in education in Belgium v. Belgium*, 23 July 1968 (Appl.no. 2126/64).

8 LOENEN and RODRIGUES 1999.

9 VAN BERKUM 2002.

10 STAATSCOMMISSIE GRONDWET 2010, at p. 40. It is not yet clear whether, and how, the Dutch government has indicated that it will follow this proposal. See, for instance, *Kamerstukken I* 2013/14, 31570, I. and *Kamerstukken I* 2013/14, 31570, J.

bureaus will also be transformed to include attention for all human rights. Whereas there are no explicit policy proposals to this effect, this would be in line with the increase in the explicit local engagement with human rights to be discussed in the following sections.

2. Rights and the city

Out of all the actors that can play a role in implementing human rights, local authorities are a surprising new ‘kid on the block’. After scholarly and policy emphasis on the role of NGOs, businesses and other non-state actors in rights implementation, there is an increased recognition at both the international and the local level of the potential that explicit attention to human rights at this local level holds for their realization. The Congress of Local and Regional Authorities of the Council of Europe, for instance, passed a resolution on the local and regional implementation of human rights in 2010, emphasizing how ‘The state as a whole is not the only guarantor of human rights. Local and regional authorities also deal with human rights issues on an everyday basis and politicians and civil servants at the local or regional level are closer to citizens’ everyday needs.’¹¹ The EU Fundamental Rights Agency, in turn, issued a toolkit on implementing human rights at the local level. Teaming up with local actors allows international bodies to bypass nation states and to work directly with those authorities that, as a result of decentralization policies, are more and more often in a position to directly realize these rights. Cities, in turn, engage with human rights in a variety of ways and for a variety of reasons. Some of them, as described above, symbolically ratify a specific human rights charter or pass a local ordinance to this extent. Chicago, to give one example, passed a resolution in which the city council resolved to take the Convention on the Rights of the Child as a basis for its policy-making, just like Graz is an active member of ECCAR, the European Coalition of Cities against Racism that works towards the implementation of CERD.¹² Other cities adopt the label of being a ‘human rights city’ and

11 CG 18(6), 2010, The role of local and regional authorities in the implementation of human rights, at para. 79.

12 The Convention on the Elimination of All forms of Racial Discrimination. On Chicago, and other US examples, see: THE HUMAN RIGHTS AT HOME CAMPAIGN 2012.

engage with the whole catalogue of international human rights. Utrecht, for instance, wrote a policy report in which it compared ten policy fields, dealing with topics ranging from poverty to gay rights, with treaty obligations in the fields concerned.¹³ In some cases the development is strongly NGO-driven, and follows the methodology of the People's Decade on Human Rights Education (PDHRE) in setting up a human rights council with all stakeholders as a first step.¹⁴ Cities often also take the step of signing the European Charter for the Safeguarding of Human Rights in the City.¹⁵ In terms of the practical implementation of the commitments there are cities with human rights commissions, but also with human rights budgeting or another form of monitoring.¹⁶

Urban actors propose a variety of reasons for turning towards human rights. For one thing, they consider human rights to be a promising, inclusive standard on which to base urban policies.¹⁷ They also find, in human rights, a discursive umbrella under which to unite a variety of actors and interests.¹⁸ Another motivation for explicit local engagement with international human rights can be that reference to international obligations strengthens the local position in deviating from national policies, for instance in the field of immigration law.¹⁹ The Hague, for instance, refused to implement national budget cuts on domestic support for people with disabilities in referring to the European Convention on Human Rights, the European Social Charter and the CRPD.²⁰ Through an emphasis on human rights cities also access international networks, engage in city marketing, open the way to sources of funding and give their cities a more cosmopolitan appeal.

A key question in these developments is to what extent the fact that some cities, these days, explicitly engage with human rights whilst others do not contributes to equality in general and to what extent these policies exacerbate

13 GEMEENTE UTRECHT 2011.

14 PDHRE 2007.

15 European Charter for the Safeguarding of Human Rights in the City, Adopted at St Denis, 18 May 2000, available at: www.idhc.org/cat/documents/Carta_ingles.pdf.

16 VAN AARSEN et al. 2013.

17 INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY 2005; MEYER 2009.

18 MERRY et al. 2010.

19 See, for instance, HOFF, VAN AARSEN and VAN GERVEN 2013 and chapter 7 of OOMEN 2014.

20 BAATS 2013.

differences between urban and rural areas. In order to make this assessment, the following section will first focus on one case in particular.

3. Dutch cities and the rights of the disabled

One specific subset of rights, closely related to equal treatment in general, is that of disability rights. The Convention on the Rights of People with Disabilities, adopted in 2006, embodied the conceptual shift from a social-welfare to a rights-based approach to the rights of the disabled.²¹ It also introduces substantive equality measures, like the obligation to make reasonable arrangements for impairment and disability-related needs. In defining disabled people as those with ‘long-term physical, mental, intellectual or sensory impairments’ States ratifying the CRPD take on the obligation to ‘promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by *all* persons with disabilities...’ (Art. 1). This has to be done by reasonable accommodation: necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights (Art. 2). General principles here include respect for the inherent dignity of persons with a disability, non-discrimination, and the full and effective participation of persons with a disability in society (Art. 3). States agree to work on changing social attitudes (Art. 8) and the environment in the broadest sense (Art. 9). In addition, the Convention sets out specific obligations in the field of civil, political, social, economic and cultural rights.

Whereas States become a party to the Convention, the CRPD came about with the realization that its implementation is strongly dependent on stakeholders other than States alone.²² As with many other human rights treaties, the Convention came about largely as a civil society initiative. In addition, the Convention monitoring process provides for regional engagement and stimulates cooperation with NGOs. The Dutch Coalition

21 KAYESS and FRENCH 2008.

22 STEIN and LORD 2010.

advocating the ratification of the Convention in the Netherlands involved many stakeholders, and followed an essentially local strategy, with meetings on the meaning of the Convention in every province.²³ In the meeting in the province of Zeeland, for instance, a motion was adopted urging municipalities to bring their policies into line with the treaty.

All this took place before the ratification of the CRPD. Even if the Dutch government indicated that it wanted to ratify the treaty in 2012, it has still not done so.²⁴ On the contrary: in the process of decentralization and passing key tasks in the field of social support, child care and education for children with disabilities onto municipalities, the CRPD played virtually no role as a frame of reference.²⁵

In line with the trends described above, a number of Dutch cities have explicitly taken the Convention as a basis in the implementation of changes. Zwolle and Wierden, for instance, symbolically ratified the Convention.²⁶ As part of the ratification, the municipalities organized a discussion on how to implement the CRPD locally, and decided to focus upon accessibility, awareness raising, communication, getting to know each other and demonstrating the costs of exclusion. Another municipality, Middelburg, referred to the Convention in drawing up its policies on the disabled, but also the elderly and other vulnerable people. It also put in an extra effort to enable people with (mental) disabilities to vote in referring to the Convention.²⁷ In addition, the municipality resolved to move towards inclusive education as part of a broader commitment to becoming a human rights city.²⁸ This

23 See www.vnverdragwaarmaken.nl.

24 The CRPD did lead to an amendment to the Elections Act (Kieswet) and the Equal Treatment of People with a Disability and a Chronic Disease Act (Wet Gelijke Behandeling op grond van Handicap of Chronische Ziekte), cf. Concept Wet tot uitvoering van het op 13 december 2006 te New York tot stand gekomen Verdrag inzake de rechten van personen met een handicap (Trb. 2007, 169). See for the consequences of ratification: *STUDIE- EN INFORMATIECENTRUM MENSENRECHTEN* 2012.

25 See the lack of any reference to the CRPD in the advice given by the Council of State on the Participatiewet, the Wet Maatschappelijke Ondersteuning and the Jeugdwet and the critique by, for instance, the Coalition for Inclusion on www.vnverdragwaarmaken.nl.

26 PLATFORM VG 2013.

27 Motion 10-104, 2a, 7 June 2010, on implementing the right to vote for persons with a mental disability.

28 This was decided via motion 11-143, point 22, on 7 November 2011.

entailed a visit, together with stakeholders, to Graz, in Austria, as a city in which inclusive education has largely been realized, and implementing the ‘Wet Passend Onderwijs’ (the Suitable Education Act) in the light of the CRPD obligation to progressively realize inclusive education.

4. Human rights and equal treatment

How, then, do such developments relate to the principle of equal treatment? It is clear that an explicit focus on human rights can lead to more equality *within* cities. Looking at local policies through the lens of human rights obligations and the obligation of respecting, protecting and promoting human rights can force local authorities to include the most vulnerable people in a municipality in these policies. This includes undocumented migrants, who might well suffer from the austerity of national immigration policies, but can benefit when their rights as human beings are recognized at the local level. On the other hand, a movement in which some cities become human rights cities and others do not runs the risk of contributing to inequality *between* cities. It could well be that these movements, in combination with the expansion of municipal functions in a number of social domains, leads to a situation in which the disabled, migrants, children and women, but also other minorities, are much better off in one city than they are in a neighbouring municipality, or in an urban area than in the countryside.

There is also potential, however. The fact that municipalities rally in ratifying and implementing human rights treaties can create bottom-up pressure on the national government to truly realize the rights concerned for all treaties. The process also adds to the legitimacy of human rights: instead of being ‘international’ impositions, agreed upon in Geneva or New York, they become the demands of the local population. Another distinct promise of implementing human rights at the local level is very pragmatic. Cities often comment on how difficult it is to turn abstract statements into specific realities. In doing so, however, they also give real meaning to these rights at the local level, and thus make equal treatment a reality in places in which it matters most. The road to realizing both equal treatment and human rights is, after all, not international but essentially local.

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