Introduction

Marjolein van den Brink, Susanne Burri and Jenny Goldschmidt

1. Introduction

On 18 November 2013 a seminar was organised at Utrecht University on the occasion of the departure of Titia Loenen from the Utrecht School of Law to Leiden Law School. While Titia Loenen also has a reputation as being an excellent teacher and, among other things, as the PhD Dean and Director of Research, the focus of the seminar was on the areas of her research during the almost 25 years she worked in Utrecht. Titia Loenen's publications cover a wide range of legal research areas, including legal theory, gender and the law, human rights and international law. We selected a theme that can be seen as a common denominator in her work: the principle of equality and its relation to (other) human rights. Thus the title of the seminar was 'Equality and Human Rights: Nothing but Trouble?'

Lucy Vickers and Eva Brems delivered keynote speeches at this seminar, which are included in this volume. Moreover, we invited Titia's (former) colleagues, students and PhD candidates to contribute to this volume on the theme, offering a choice between either a peer-reviewed longer article or a short 'note' or column on the topic. We are very pleased that so many people accepted the invitation, even though some of them finally had to decline because of too many other commitments (a feature that is increasingly common among academics today). The editors were assisted by Eva Visscher-Simon, Charlotte Mol, Peter Morris and Klaartje Hoeberechts without whom the end result would not have been possible: we thank them very much for their contributions. Similarly, the anonymous peer reviewers contributed to the quality by providing critical feedback, and we are most grateful to them, too.

The resulting volume includes eleven peer-reviewed contributions (these are marked with an asterisk in the table of contents) and eleven shorter papers.

Together they not only honour Titia Loenen but also offer a challenging perspective on a number of related human rights debates that are closely linked to fundamental challenges in today's world. These debates can be divided into several themes. The first theme refers to the contents and essence of the principle of equality and the relation between this principle and (other) human rights in general. It includes the debate on the meaning of the universality of human rights in a 'world of conflict and diversity' (which was the title of the human rights research programme that Titia Loenen directed in Utrecht). The second theme deals with the relation between human rights and democracy, and between human rights and sovereignty. The third theme reflects more specific debates on the position of religion in human rights law, which protects religion as an autonomous fundamental right (the freedom of religion) and protects individuals against discrimination because of their belief. The fourth theme deals with the increasing complexity of the debate itself, resulting from a number of factors, such as the emergence of new human rights systems and institutions, the development of new technological options and of new concepts. Finally, the last theme considers the shift from standard setting and monitoring to the effective implementation of both equality and (other) human rights.

All contributions deal with one or more of these issues. Rather than providing summaries or a comprehensive overview of the debate, we present a bird's-eye view of the debates with the aim of increasing the interest and curiosity of the reader.

2. Equality and (other) human rights in general

2.1. Universal protection of rights

Equality is not only an independent autonomous right guaranteed in all national and international legal systems, but is also an inherent element of all other human rights. Article 1 of the Universal Declaration of Human Rights holds that all human beings are born free and equal and Article 2 reaffirms that everyone is entitled to the rights and freedoms set forth in the declaration. Human rights do not make sense when they do not include entitlements for all human beings. In this way equality is closely related to the universality of

human rights. Universality should not be understood as uniformity. On the contrary, it can be related to the 'dynamic potential' of international human rights law, as explained by Bas de Gaay Fortman in his contribution. He sees the Declaration as an expression of *faith* in fundamental human rights. And, as Hana van Ooijen mentions in her contribution: 'it takes faith for someone to work on equality and human rights as long as Professor Loenen has done'. Conceiving human rights as a reference to the inherent worth of all human beings equally, *equal in dignity*, they are intrinsically linked to liberty and solidarity. De Gaay Fortman develops this idea in his Golden Triangle model, whereby equality (both formal and substantive) is included in human rights-based principles of legitimacy. In this line of thought, human rights criteria should also be applied to budgeting rights, for example, or the organisation of public finance. Thus 'equal in rights' may become a 'crowbar to true universality'.

Philosopher Jos Philips' contribution deals with a related topic, the equal protection of urgent interests, which, he argues, is an implication of fundamental equality. Philips looks at this protection from a global perspective. He sets out to show that the persisting significant inequalities between different states in the protection of very important interests, such as health and education, are incompatible with the notion of fundamental equality that underlies human rights. He draws the protection of this type of urgent interests beyond the level of the state, in an attempt to overcome the conflict between values such as political self-determination and the protection of very urgent interests (related to life and health), by giving a greater role to NGOs and international organizations as well as interstate assistance. In his opinion institutional transformation is essential for the future of human rights.

2.2. Equality and the human rights of others: cultural dimensions

In the ongoing debate on the universality of human rights the perceived tension between cultural rights and identities and equal rights for all is one of the hot issues. This debate is closely linked to religion, in particular but not only minority religions, and more in particular manifestations thereof. Religious and cultural norms may conflict with the equality claims of specific,

often less powerful groups within a religious community. The question whether (groups of) individuals have the right to choose for a practice or rule based on their religion which from a different perspective can be seen as discriminatory or humiliating for those individuals is closely related to this aspect. Does universality allow such exceptions to the principle of equality, on the basis of other human rights such as the freedom of religion?

This debate is also relevant with regard to the position of less powerful groups, who may be disproportionally affected by the denial of the freedom to manifest their religion or culture, as well as by the fact that exceptions to general equality obligations are permitted on the basis of religion. The contribution of Eva Brems deals with the first category. She discusses the Belgian 'burqa ban', in particular the arguments of the Belgian Constitutional Court for considering this ban to be compatible with the Belgian Constitution. She recognizes that the realization of the emancipation rights of less powerful groups requires a cultural change both within majority and minority cultures, and discusses the role of law in this process. She bases her findings not only on legal arguments but also on empirical research, which leads her to the conclusion that the veil is not conceived as an aspect of male dominance by the women who wear it. Brems points to the risk that the gender equality argument, as emphasized in Belgium, can easily be abused for the purposes of a racist, Islamophobic agenda.

In his comment, Rob Widdershoven raises some fundamental points. He discusses the issue of national identity, the margin of appreciation that is left for a court when there is an almost absolute parliamentary majority (as was the case in the burqua ban legislation in Belgium), and the decisiveness of the views of the less powerful group itself, since these views are often rejected by feminist scholars as being detrimental to women's emancipation.

Peter Cumper deals with another type of conflict between equality and religious freedom: the claim that human rights, including equality, are a threat to religious freedom. He focuses on the concern of some religious leaders that the rights of believers are violated when sexual minorities (lesbian/gay/bisexual/transgender, LGBT) are given (equal) rights. From this perspective he analyses a judgement of the European Court of Human Rights (ECtHR)

regarding a marriage registrar who refused to officiate same-sex partnerships (*Ladele*).

Cumper presents an overview of the different approaches that are available, including the possibility to distinguish between the freedom of religion and the individual´s freedom of conscience. He suggests an alternative approach: in his view it should be possible to allow a 'reasonable accommodation' in order to take the individual needs of religious persons into account. Allowing for exceptions concerning individuals, instead of accommodating general exceptions because of a religious conviction, may be an effective instrument to include individuals belonging to religious minorities.

The contributions we have classified under the relation between equality and (other) human rights already refer to the following aspect of the discourse: the interaction between human rights (including equality) and democracy and sovereignty.

3. Human rights, equality, democracy and sovereignty: inclusion and exclusion at different levels

As indicated above, the relation between democratic decision making and (restrictions of) human rights at the national level, on the one hand, and the relations between international monitoring instruments and national sovereignty at the international level, on the other, is a recurring theme in the human rights discourse. This theme is touched upon by several authors in this volume.

3.1. Majority and minority

In human rights law many cases that are related to the scope of the power of the majority to determine the rights of minorities are framed in the context of the margin of appreciation that courts have to respect. Lucy Vickers states this clearly in her contribution on the increasing number of non-discrimination grounds: 'allowing the majority to determine the rights of the minority via a reliance on political consensus can lead to a diminution of protection for disadvantaged groups'.

The protection of minorities can be seen as the other side of the majority rule in a democracy. This aspect plays a role in the contributions by Brems and Widdershoven, the latter attaching more importance to the parliamentary majority in a democratic society, which should be accorded sufficient weight by the courts when balancing the interests involved. Brems, on the other hand, emphasizes the protection of minorities to avoid exclusion.
Marloes van Noorloos' contribution deals with an aspect related to that of Cumper, mentioned in the previous section: she refers to the use of criminal law in cases of offences based on the conscience of the actor. She explains that the challenge for liberal states 'is to retain a common idea of justice, but to accept that people have different conceptions of a good life'. And even when criminal law is regularly shaped in very general terms, not all situations can be anticipated. Sometimes exceptions are accepted, so as to include conceptions of the good of a particular minority group, provided that these exceptions do not affect majority rules or open the door to more general exceptions. This brings us to another dimension of the democratic discourse.

3.2. General rules versus individual justice

Jeroen Kiewiet takes up an issue that Titia Loenen raised in 1996: the virtue of the generality of rules, equally applied to all. Titia Loenen's approach relied on the division of powers and on the dependency of individual applicants on the judge. She refers to the boundaries of the law when it comes to doing justice in every individual case. Kiewiet discusses and challenges this approach. Although he generally supports her point of view, he adds a theoretical constitutional perspective on the prerequisite of the generality of rules under the rule of law doctrine. He concludes that the supremacy of general rules is intrinsically linked to the foundations of solidarity in society. These foundations must be transformed from their traditional arrangement into more inclusive forms of solidarity so as to do justice which cannot be achieved on a case by case basis.
This seems to be in line with the views of Widdershoven, and also with those of Cumper, who likewise emphasize the urgency to reveal values that are generally shared between groups which, in specific cases, may be adversaries.

3.3. Global developments, sovereignty and citizenship

National sovereignty is affected by legal and other developments. The role of international organisations, in particular the European Union, decreases the autonomy of the nation state. One of the core elements of national sovereignty is the power to differentiate between nationals and others and to grant or refuse aliens the right to enter the country.

Increasing migration puts pressure on state boundaries. Criminal organisations and terrorist movements operate beyond the borders of individual states. These developments imply new challenges for democracy, the legitimacy of the State as a central actor and for human rights. This issue features clearly (albeit not only) in the contributions related to migration and citizenship issues.

Betty de Hart and Ashley Terlouw discuss legislation which has been proposed in the Netherlands to allow the withdrawal or automatic loss of Dutch nationality for people involved in terrorist organisations or participating in (the preparation of) terrorist acts. After tracing the history of Dutch policies in this regard, they indicate some complications that may occur, for example when the perceptions of former enemies and allies are refuted by the course of history and nationalities have to be restored. In evaluating the Dutch proposals, their most pressing argument is based on equality and non-discrimination: because the deprivation of nationality will inevitably be restricted to persons with more than one nationality to avoid statelessness, these people will be affected disproportionally in comparison to others with just one nationality. De Hart and Terlouw cannot find a sufficient justification for this difference in treatment.

Evelien Brouwer and Karin de Vries concentrate on third country nationals and discrimination on the ground of nationality. Their starting point is the power of states to define the conditions for national citizenship and to grant citizenship, which is a pillar of national sovereignty and includes the power to differentiate between the state's nationals and aliens. This power is restricted by the prohibition of discrimination in human rights law. In the European Union, the freedom of movement of EU citizens, which is related to the aim of economic integration, has led to a new form of citizenship, namely EU citizenship, that includes the prohibition of discrimination

between EU citizens on the basis of nationality. This provision creates a privileged status for EU citizens as compared to other foreigners in a particular member state, which may lead to differential treatment that might not always be justified. On the basis of recent case law the authors argue that the principle of non-discrimination, one of the fundamental rights of the EU, requires a reconsideration of the exclusive interpretation of EU citizenship. The protection of other nationals has to be expanded beyond EU nationalities in cases where the 'nationality-based discrimination presents an obstacle to the enjoyment of equality and fundamental rights (including the right to family life, data protection and the right to effective remedies)'. This approach seems to offer useful tools to find a balance between state sovereignty and human rights. Moreover, the relatively recent emergence of EU citizenship and the human rights aspects connected thereto are also aspects of another dimension of the democracy dimension in the discourse: the fact that the protection of human rights, which traditionally depends on the State, *de facto* becomes part of the responsibilities of other actors as well, such as international organisations and NGOs. Moreover, the monitoring of human rights compliance is increasingly a task for international institutions, and here we see, in particular at the European level, emerging competition between different institutions, such as the ECtHR and the Court of Justice of the EU (CJEU), which also affects the autonomy of the state.

3.4. A changing role of the state amongst other actors

As already mentioned, Philips advocates a transnational approach of equality regarding the protection of urgent fundamental interests: he proposes to extend the obligations of the state to protect these interests beyond national borders, attributing a more powerful role to NGOs and international organisations. Brouwer and De Vries advocate granting specific rights also to non-(EU)-citizens and this affects the state's autonomy in a different way, since the decision which individuals are entitled to cross borders and enter a state's territory is one of the most fundamental aspects of state sovereignty. Restrictions on states' sovereignty in this field are not easily accepted. In this context the contribution of Hana van Ooijen throws an interesting light on the implications of religious freedom at the immigration stage, referring to

the connection between religious freedom and non-refoulement, in cases where someone's religion increases the risk of ill-treatment or torture.

4. The dual dimension of religion in equality and human rights

Several contributions to this volume focus on religion. Freedom of religion plays a major role in Titia Loenen's work, as is also evident from her inaugural lecture at Leiden University. The freedom of religion and belief (including the right not to believe) is one of the oldest and most fundamental human rights, granting citizens the right to follow their own beliefs, notwithstanding the beliefs of the dominant or ruling class. But the scope of this freedom is not always clear. It includes the protection of the confession itself as well as the protection of crucial manifestations of religion. However, the scope of the latter is debatable, and the admission of restrictions may lead to discussions. More often than not the restrictions are also justified by the protection of fundamental rights (of others). This may not fundamentally differ from other human rights but the discussion is complicated by the fact that religion is also one of the non-discrimination grounds in many national and international equality provisions. This dual dimension explains why many contributions deal with religion or aspects thereof. We will briefly distinguish several of these aspects.

4.1. The mergence of other religions

Whereas European societies more or less accommodate the traditional religious pillars, the growing Muslim population has evoked new manifestations of the tensions between religion and (other) human rights such as equality. The 'burqa ban', as discussed by Brems, has already been mentioned. But the emergence of other religions also seems to have given rise to new debates on fundamental aspects of the more familiar religions of Judaism and Christianity. This has arguably been influenced by increasing secularism, but also by the idea that critics, who qualify certain unfamiliar religious manifestations, such as the veil, as intolerant or discriminatory, must apply the same standards to more familiar religious. Thus not only the burqa and the veil are criticised, but the autonomy of other communities

to apply their own norms is challenged too. Matthijs de Blois suggests in his contribution on standards of admittance as applied by orthodox Jewish secondary schools that the debate on possible human rights risks caused by more orthodox and fundamentalist aspects of religious multiculturalism has also affected the religions that have been present for a long time. There is a substantive difference in the legal reasoning in a case that was decided by the Dutch Supreme Court and in a judgment which was delivered by the UK Supreme Court almost 20 years later. In 1988 the Dutch court legitimized the admission policy of a Jewish School, which was based on a strict matrilineal test as prescribed by orthodox Jewish law. The court accepted the school's refusal to admit a pupil whose mother was not regarded as Jewish under this policy. The court based its ruling on the right of parents to choose an education in conformity with their religion, thus basically on the freedom of education and the freedom of religion. The school had been consistent in this policy. The Supreme Court of the UK in 2009, on the other hand, based its decision on the Race Relations Act. The British Court accepted the argument that the school's admissibility test was based on ethnic origin. De Blois argues that these different outcomes can possibly be explained by the influence of the increasing debate between 1988 and 2009 on the human rights implications of the 'new' religions.

4.2. Freedom of religion and freedom of conscience

Several authors elaborate on the difference between collective and individual aspects of the freedom of religion. Whereas general exceptions to the principle of equality based on the freedom of religion are not so easily justified, many authors, such as Widdershoven and Cumper, see more room for (strictly demarcated) exceptions in individual cases, based on the freedom of conscience rather than on the freedom of religion.

4.3. Religion versus other grounds of discrimination

The fact that non-discrimination on the basis of religion may conflict with the right to non-discrimination on other grounds is clearly illustrated by the case of civil servants who have conscientious objections to officiate

same-sex relationships. Cumper's analysis of this case shows that solutions are not impossible. Lucy Vickers also deals with an aspect of this problem, concluding that the 'rhetoric of both human rights and equality is much stronger if they are seen as two sides of the same coin'. At the same time she emphasizes that equality is not a unitary concept, and that different grounds should not necessarily be treated the same in all cases.

5. The increasing complexity of issues related to equality and (other) human rights

From the issues mentioned thus far it has already become clear that the debate on equality, and human rights and on the intersection between the two is becoming increasingly complex. We have already mentioned the internationalisation, globalisation, and the presence of 'new' (unfamiliar) religions in Europe, and these are only a few aspects. Several authors discuss the implications of these and other developments such as the divergence of different international interpretations, the growing number of options made possible by technological and medical possibilities, the new ways of communication, cyberspace, and, finally, the fact that the phenomenon of a 'difference' itself is more complicated that a one-dimensional difference between members of two groups.

5.1. Interaction between different legal systems

Whereas the European Convention on Human Rights (ECHR) was for a long time the European human rights instrument with the ECtHR as the supervisory institution, since the Lisbon Treaty the EU has become a full player in the European human rights field, a role that was gradually developed during the decades before this Treaty. Kees Waaldijk manages to bring 'system in the madness' of a European reality where many legal 'family formats' have been recognised and created for both same sex and different sex couples, under a range of names such as joint household, cohabitation, civil partnership, registered partnership etcetera. Not only the formats differ, the legal consequences do too and the two European Courts do not have an easy job in dealing with them and, in their turn, do not show a very consistent

approach. With painstaking precision Waaldijk has drawn up schematic depictions of the classifications of non-marital couples by academic authors, the EU terms used and the restrictions imposed in EU law as well as the challenges that occur from the cases of the ECtHR and the CJEU. This is already a major achievement. However, the conclusion is not so optimistic from a human rights and equality perspective: so far, European law is not very receptive to the recognition of equal protection to non-marital families: this becomes easier when the national law already recognizes some other kinds of partnerships. A stricter application of the comparability test might increase the protection of non-marital couples.

Brouwer and De Vries highlight the difference in approach between the two European Courts and suggest that a complementary role for the ECtHR rights may contribute to a better protection of third country nationals in the EU. Van Ooijen discusses the reverse situation. She explains that the case law of the CJEU may strengthen the protection of the position of refugees who claim that their religion is the cause of their persecution or ill-treatment.

Thus it cannot be said that the existence of two different European systems creates 'nothing but trouble': a certain competition between the two may have a levelling-up impact on the protection of human rights including equality.

5.2. Complexity of categorisation

Where more choices and options can be realised in the lives of individuals, the law has to develop new categories.

As mentioned above, Waaldijk discloses the complexity of and the lack of a systemic format in the categorisation of family patterns. Marjolein van den Brink and Jet Tigchelaar zoom in on one aspect of LGBTI family patterns, that is the possibilities for trans women – male to female transsexuals – to obtain legal parenthood of any children they 'father' after their transition. This has become possible in the Netherlands since the 'sterilisation requirement' as a condition for a legal sex change was dropped in July 2014, because it was considered to be no longer compatible with human dignity. The comparison of this group of trans parents' legal position vis-à-vis their children with other both biological and social parents is bewildering, but clearly shows

that trans women / parents are not treated equally. Thus, in the short term, human rights have led to 'equality trouble' in the area of affiliation law. In the long term, however, it is to be hoped that changes in the system and terminology of this legal area will be beneficial to both human rights and equality.

Also in the area of the reconciliation of work and care, new categories are emerging. Susanne Burri discusses the relevant EU legislation and case law. She shows how parents in what looks like very similar situations, are sometimes nonetheless treated differently. Burri argues that this is primarily due to issues of comparability and a lack of specific rights that are geared toward specific new groups, such as the commissioning parents in cases of surrogacy arrangements.

5.3. Intersectionality

A topic related to the complexity of categorisation, and the resulting risk of reaffirming difference and exclusion, is the recognition of intersectionality, that is the fact that in many cases more than one ground of discrimination is at stake. Individuals combine characteristics such as sex, race, disability and religious beliefs, and people may be discriminated against because of a combination thereof. Merel Jonker analyses different forms of multiple discrimination and the differences in the approaches taken by the CJEU and some selected national institutions. Tackling this form of discrimination is seen as a challenge because the instruments developed to establish whether alleged discrimination has actually occurred cannot be applied so easily: this is especially so because of the practice of looking for an appropriate comparator. Jonker explains how contextual approaches, used for example by the CJEU and by the Dutch national equality body, can be helpful to overcome this challenge.

Also the contributions by Van Ooijen (religion and other grounds) and Brouwer and De Vries (third state nationals versus EU nationals) reflect the need for a less dichotomous and more inclusive approach.

5.4. Trouble in the cloud

Tina van der Linden-Smith's contribution deals with the challenges related to the internet. This opens up new ways of communication, including anonymously, with a global range and without relevance to national borders. This cyberspace demands a rethinking of human rights which she illustrates with the right to privacy and the freedom of expression. She emphasizes the need to pay specific attention to aspects of equality and the protection of vulnerable groups.

6. Evolving concepts of equality

In her dissertation Titia Loenen developed a conceptual approach to the principle of equality,[1] and since then the development of the concept and meaning of equality has been developed further, both by herself and others, taking into account the position of less powerful groups. Several aspects are discussed in this volume.

6.1. Stereotyping

Ineke Boerefijn investigates the contribution of the UN Women's Rights Committee (the CEDAW Committee) to a gender-sensitive interpretation of the human rights related to the issue of violence against women, such as the right to be free from ill-treatment and the right to a fair trial. She sketches a picture of the progressive development of the definition of duties and responsibilities to protect and guarantee the rights of women in case of violence, both in the reporting procedures and in the individual complaints procedure of (especially) CEDAW. One of the aspects she highlights is the consideration of the impact of stereotyping on the right to a fair trial if a decision or judgement reflects inflexible standards in the consideration of how women should behave.

Stereotyping is also an aspect of the critical reflection by Fleur van Leeuwen on the first judgement of the ECtHR on the right to home birth, conceiving the possibility of gender discrimination as a root cause for the denial of the

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1 Loenen, T., *Verschil in Gelijkheid*, W.E.J. Tjeenk Willink, Zwolle, 1992.

possibility for women to give birth at home. Childbirth is of course not a gender-neutral phenomenon and thus gender stereotypes underlying laws and practices in this field have to be disclosed. Also Goldschmidt refers in her contribution on positive discrimination to the persistence of stereotypes that hinder the full realisation of equality. Burri assesses in her contribution whether and to what extent the case law of the CJEU on reconciliation of work and care reinforces stereotypes regarding the role of men and women in relation to care.

6.2. New conceptual elements

Boerefijn underlines the relevance of cross-fertilisation between different human rights treaties and monitoring bodies: this enables a progressive interpretation of old provisions. It is clearly illustrated by the impact of the UN Convention on the Rights of Persons with a Disability (CRPD), which does not introduce new rights for people with disabilities, but uses different concepts. By emphasizing, for example, the aspect of reasonable accommodation as inherent in the principle of equality and the prohibition of discrimination, the CRPD strengthens not only the rights of disabled people but can also contribute to the equal protection of others by reading the concept into the equality principle in other treaties. This is illustrated by the application of the concept of reasonable accommodation in case of conscientious objections by civil servants in the contribution as discussed by Cumper.

7. Effective implementation

The need to find effective ways to implement the human rights and equality norms is dealt with in several contributions from different disciplinary perspectives. Now that the codification of the norms has been realized in so many national and international documents and monitoring and supervisory institutions, like treaty bodies, courts and national human rights institutions, have been established, the emphasis is on what is needed to turn these norms, reports and decisions into reality.

Boerefijn points out that the existence of a variety of procedures, both within a system (such as the reporting and the complaints procedures) and in different systems, reinforce each other.

In order to obtain an insight into the effectiveness of legal and policy measures, it is necessary to have more information on what happens *de facto*, that is the situation 'on the shopfloor'. Such knowledge has to include the reactions that can be expected from all actors involved in the implementation. Only then may the conditions for the effective implementation of norms and decisions become clear. This kind of information cannot be collected depending on legal research only. As Goldschmidt explains in her contribution, norm addressees may be more persistent in maintaining the old situation and in resisting the imposition of new norms than foreseen. The expectations that a solid system of equality law, a transformation of legislation such as labour law, a policy to encourage the (higher) education of women will entail a proportional increase of women in higher positions, including the universities, has not become true in the Netherlands. Social scientists can provide information on the causes of this gap between law and reality.

This kind of information can also be used in the mobilization of the law in strategic litigation for example. Wibo van Rossum focuses on the role of several actors in legal proceedings. In analysing the first case against the Netherlands at the ECtHR (Engel) in 1976, he provides an insight into the role of activist lawyers, academics and interest groups in the framing of a case on the significance of human rights for conscript soldiers. His analysis reflects elements that are crucial for effective strategic litigation: the framing of the case by outsiders, the mobilization of human rights specialists and the fact that the case uses human rights law 'at the right time'. Moreover, the Court itself was supportive and enabled an effective procedure in this case. Whereas in the Engel case the conscript soldiers themselves supported the case, this was different in the case regarding a Dutch political party, the SGP, that was initiated by, among others, a feminist association more than 30 years after Engel, to force this orthodox Christian party to give women the right to be elected on its list. The Dutch Supreme Court decided this case in favour of the applicants. The complaint lodged in Strasbourg by the SGP was declared inadmissible. This outcome was certainly not unanimously seen as positive

by SGP women. Research has shown that the women involved conceived the external pressure as detrimental to the process of emancipation.
This is what is also reflected in the contribution of Brems, on the basis of her interviews with women affected by the burqa ban, despite the fact that the ban itself was also based on emancipatory arguments raised by others. The women themselves did not perceive the ban as a contribution to their autonomy. Thus, the framing of a case by outsiders can have different kinds of impacts.
A particular aspect in the debate over effectiveness has to do with the role of the different actors. We have already mentioned that the co-existence of several legal fora can provide opportunities for 'forum shopping' and thus may have a levelling effect when the different institutions subsequently incorporate the findings of the others. An interesting aspect in the debate on the practice of human rights law is the increasing role of local governments in the realisation of (international) human rights law: this is analysed in the contribution of Barbara Oomen. She sees cities as important stakeholders in the implementation strategy. Initiatives to organise 'Human Rights Cities', to incorporate human rights awareness at the local level and to use the knowledge of the citizens themselves to set up effective policies, can be seen as positive achievements. However, as Oomen explains, it may create new inequalities between cities that do have such a policy and cities that do not. In the latter, in particular, less powerful groups such as disabled people, migrants, women and children may be worse off. Despite this risk, there seems to be a great potential in the development of local strategies to concretise abstract human rights norms. The local experiences also show, as emphasized by Van Rossum, the importance of the involvement of *all* actors in the field: public institutions, private actors, NGOs and experts.

8. To be continued…

Above an impression has been given of the different perspectives on equality and (other) human rights discussed in this volume. The contributions tackle some of the major themes in the current debate, reflecting different perspectives applied to different topics. The question whether there is 'nothing but trouble' can easily be answered with a positive reply, because

there is a great deal of trouble, not only where the fundamental rights conflict with each other, but also where the increasing complexity of both human rights systems and the world around us add new dimensions to old questions. Human rights will never be an easy possession. But there are also positive developments, such as the recognition of same-sex relations, the recognition of violence against women as a serious violation of equality as well as of other human rights of women. The issues have become more complex, and we can only hope that it is the confusion related to the new circumstances that causes the negative consequences and that here too, a fair balance will be developed.

The realization of human rights demands the involvement of all actors, public and private institutions, NGOs, academics and independent institutions at all levels.

Academics have a role to play: this volume raises at least as many questions as it answers. Therefore, we are confident that Titia Loenen is certain to take up some of these in her future research, thus she will remain the source of inspiration she has been thus far, as is clearly reflected in this volume.