



Gemeente Utrecht

Human Rights in Utrecht

How does Utrecht give effect to international Human Rights Treaties?

An urban quest for social justice.

Cover photo: Willem Mes

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Abbreviations

| | |
|------------------------|--|
| ESC | European Social Charter |
| ECHR | European Convention on Human Rights |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| CAT | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| CERD | Convention on the Elimination of All Forms of Racial Discrimination |
| UN Disabilities Treaty | Convention on the Rights of Persons with Disabilities |
| UN Refugee Treaty | Convention Relating to the Status of Refugees |
| CEDAW | Convention on the Elimination of All Forms of Discrimination against Women |
| CRC | Convention on the Rights of the Child |
| UDHR | Universal Declaration of Human Rights |

Introduction

The study "Human Rights in Utrecht" lies before you. The reason for carrying out this study was the European Union's Fundamental Rights Agency's (FRA) international cooperation project 'Joined-up Governance'. The FRA approached six countries and asked a ministry and a municipality in each to study how human rights can strengthen local policy. The project aims to provide insight into which role the national and local governments play in using human rights in local policy and how this is coordinated between these levels of government. This study focuses on the manner in which municipal policy contributes to the protection of the human rights that are part of international treaties. The goal of this study is to make an inventory of the ways in which the municipality's policy gives effect to international human rights treaties. The study is a first investigation into the intersection between human rights and municipal policy and, as such, will indicate which areas deserve further attention.

Human rights are individual rights that can be invoked against the government (and thus also against the municipality). Governments are dealing with increasing positive obligations to promote, protect and fulfil the rights set down in treaties. For the municipality of Utrecht this means that the municipality must realise an active policy in the area of human rights. This also fits well within the municipality's 2010-2014 programme, in which the municipal board indicated its dedication to a social and just Utrecht. Moreover, Utrecht's attention to human rights policy connects well with the celebration of the 300 year existence of the Peace of Utrecht that will take place in 2013, the presence of the Netherlands Institute for Human Rights (Studie- en informatiecentrum mensenrechten, SIM) in the city and the provisional residence of the National Institute for Human Rights (College voor de rechten van de mens) in Utrecht. Interest for the protection of human rights at a local level has been strongly increasing in different European organisations. The Congress of Local and Regional Authorities of the Council of Europe and the Committee of the Regions of the European Union are working on memoranda to raise awareness of and strengthen the role of municipalities in this regard.

In order to find an answer to the central question this study addresses, this study focuses on ten different policy areas of the municipality of Utrecht. These are areas that can be seen as directly related to human rights treaties. Within these ten policy areas, this report will attend to one specific case study so as to ensure the concrete and accessible nature of the information presented in this study. There are naturally other areas that are worthy of such investigation; however, this study's aim is to make an initial framework and inventory and will thus only focus on these ten.

| Policy Areas | Case study |
|------------------------------------|--------------------------------|
| 1. Anti-discrimination | Homosexual Emancipation Policy |
| 2. Poverty Reduction | U-Pass |
| 3. Immigrant Policy | Shelter for Asylum Seekers |
| 4. Inviolability of the Person | Domestic Violence |
| 5. Social Care | Shelter for the Homeless |
| 6. Human Trafficking | Prostitution Policy |
| 7. Public Order | Camera Policy (Privacy) |
| 8. Social Corporate Responsibility | Fair Trade |
| 9. Human Rights Education | Peaceful School |
| 10. Health Care | Elderly Policy |

In order to map the relation between the municipality of Utrecht's current policy and the international human rights standards, this study will compare the ten policy areas to a number of important international human rights treaties. Some treaties protect human rights that are relevant for nearly everyone, such as the International Covenant on Civil and Political Rights. Other treaties focus on protection of specific groups, such as children or refugees. There are also general rights that are elaborated on for specific groups. An example of this is the prohibition of discrimination on the basis of ethnicity. Conversely, there are also more specific rights that are often elaborated on for different groups, such as specific rights to health in relation to violence against women and genital mutilation. Human rights treaties that contain provisions which bind every individual and which create direct rights and obligations for citizens have direct effect in the Dutch legal order, according to Article 93 of the Constitution of the Netherlands. According to Article 94 of the Constitution, national legal provisions (including the Constitution itself) must be held inapplicable if they conflict with a treaty provision that binds every individual.

This study will focus on 12 important human rights treaties that have been adopted under the auspices of the United Nations, the Council of Europe or the European Union (EU):

- The Universal Declaration of Human Rights of 1948 (UDHR)
- International Covenant on Civil and Political Rights of 1966 (ICCPR)
- International Covenant on Economic, Social and Cultural Rights of 1966 (ICESCR)
- Convention Relating to the Status of Refugees of 1951 (UN Refugee Treaty)
- Convention on the Elimination of All Forms of Racial Discrimination of 1965 (CERD)
- Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (CEDAW)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (CAT)
- Convention on the Rights of the Child 1989 (CRC)
- Convention on the Rights of Persons with Disabilities of 2006 (UN Disabilities Treaty)
- European Convention on Human Rights of 1950 (ECHR)
- European Social Charter of 1961 (ESC)
- Charter of Fundamental Rights of the European Union of 2000
- Treaty of Lisbon of 2007 (Treaty on the Functioning of the European Union)

The non-binding Universal Declaration of Human Rights is included in this list because it is used as a source of inspiration for many of the binding international treaties and national constitutions. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) flow from the Declaration. Many see the Declaration as binding international customary law. The UN Treaty on the Rights of Persons with Disabilities has at the moment of this report not yet been ratified by the Netherlands, but preparatory measures are being taken in that regard. Moreover, this treaty has been signed by the Netherlands and this act creates obligations for the Netherlands. It is important to note that the Constitution of the Netherlands, the General Equal Treatment Law (*Algemene wet gelijke behandeling*) and the Law Personal Data (*Wet persoonsgegevens*) are national provisions which are also important in regard to the matters dealt with in this study.

In addition to the human rights that can be found in treaties, there is also a large number of international norms that have been set down in consensus documents. In this case, no legally enforceable binding obligations are created, but we can speak of a declaration, a resolution, or another document in which norms and obligations are set out. Despite the fact that these obligations are less 'hard' (they are not legally enforceable) than those that are set out in treaties, States that have agreed to them are bound by the promises they made by taking part in the creation of such documents. Moreover, country commentaries by treaty bodies, general recommendations regarding the implementation of treaties, and individual complaint procedures are important in creating such 'softer' obligations. The Netherlands' implementation of human rights obligations is evaluated in other ways as well, for example by rulings from international tribunals and reports from international organisations. Although these consensus documents and evaluations are important for the determination of international human rights obligations and the implementation thereof, these will not be considered in this study because of restrictions of time and space.

We hope that this study contributes to the analysis of the current human rights policy and the formulation of new policy in conformity with the international agreements. The results of this study are subject to change and the study cannot give a complete picture of all the human rights themes that are relevant to the municipality; however, it is hoped that this study is able to make a first step toward further thought on these issues. We would like to thank Professor Jenny E. Goldschmidt and Professor Barbara Oomen of Utrecht University for reading and commenting on this document.

Executive Summary

Anti-discrimination Policy – Homosexual Emancipation Policy

Although most treaties do not specifically mention discrimination on the basis of sexual orientation, soft-law documents do recognise it as a base of discrimination. The municipality of Utrecht uses this interpretation in its homosexual emancipation policy. The municipality expresses that homosexual individuals enjoy equality under the law and it does not distinguish between groups on this ground. Moreover, Utrecht is undertaking action to prevent the discrimination of and offer protection to homosexual individuals. Nevertheless, the present policy is not yet sufficient. The municipality of Utrecht is using a variety of measures in an attempt to remedy this.

Poverty Reduction – U Pass

In regard to the U-Pass, the municipality acts in compliance with the treaty articles. The U-Pass is a(n additional) measure to prevent social exclusion and to improve the welfare of people. Children are central to this policy. The municipality of Utrecht gives the U-Pass to everyone who is entitled to it. However, it is difficult for the municipality to reach every person in Utrecht who is so entitled. The municipality of Utrecht is trying to remedy this with a variety of measures.

Immigrant Policy – Shelter Asylum Seekers

The municipality of Utrecht acts in accordance with the treaties by offering emergency shelter to asylum seekers in distressing circumstances who have exhausted all legal remedies to obtain a residence permit and to whom the central government does not offer shelter. However, it is not possible for the municipality of Utrecht to shelter all asylum seekers who have exhausted their legal remedies. Yet, the central government is not sufficiently complying with the obligations set down in human rights treaties and, thus, is insufficiently fulfilling its responsibility.

Inviolability of the Person – Domestic Violence

Utrecht's approach to domestic violence is generally in conformity with treaty obligations. Different legal measures have been taken to investigate perpetrators of domestic violence and protect victims. It is possible that support for children could be strengthened by having help services continue to monitor under-age victims after the end of a temporary restraining order.

Social Care – Shelter for the Homeless

The municipality of Utrecht complies with the treaty obligations to promote the right to housing and to prevent, reduce and eliminate homelessness. Additionally, the municipality works to improve the living conditions for the homeless, in accordance with treaty obligations. In this way, the municipality seems to be adhering to the obligations that flow from the treaties.

Human Trafficking – Prostitution Policy

The municipality of Utrecht has a broad packet of measures at its disposal that work as well as possible to combat human trafficking and forced labour. The municipality expresses that human trafficking is prohibited and takes, in conformity with treaty articles, diverse measures to prevent human trafficking or economic exploitation. The chain-approach between the municipality and different partners illustrates this. However, measures that combat human trafficking can also lead to a reduction of the choices and rights of the target group. Thus, it is important to ensure the proportionality of measures and to take into account these side-effects when taking measures against human trafficking.

Public Order – Camera Policy (Privacy)

Considering the goal that Utrecht's camera policy aims to achieve, it can be said that the use of cameras is in accordance with treaty obligations. Moreover, and in accordance with treaty obligations, people are protected from an interference with privacy that is too extreme. In specific cases, the camera policy has not worked as well in preventing criminal acts. This is the case for example in situations where there is (youth) nuisance and crimes where alcohol and drugs play a role.

Social Corporate Responsibility – Fair Trade

Social corporate responsibility is a high priority in the municipality of Utrecht. The municipality was named Fair Trade Town for a good reason. In accordance with treaty obligations, the municipality works

within the framework of international cooperation and aid to achieve free and fair trade between States and to prevent the exploitation of peoples.

Human Rights Education – Peaceful School

At first sight, the municipality of Utrecht seems to be doing relatively well in the area of human rights education. 70% of the schools in Utrecht use the Peaceful School programme.¹ The curriculum is focused on understanding, tolerance, friendship and safety at school. One of the problems with the content of good-citizenship education is that the emphasis is placed on social citizenship and less on human rights and rights of the child. The link to these rights still has to be made.

Health Care – Elderly Policy

In general, Utrecht's elderly policy complies with the most important treaty obligations. The municipality has an eye for the well being and standard of living of its elderly and is especially committed to preventive health care. The municipality aims to pay more attention to social isolation, groups that are at risk of missing out on care because of changes within the General Law on Special Health Care Costs (*Algemene wet bijzonder ziektekosten*), and culture-sensitive care. This is done with the goal of ensuring that Utrecht's elderly not only enjoy equal access to health care but also that they receive care that is attuned to individual needs and cultural backgrounds.

¹ Ricus Dullaert, 'Wordt een kind vreedzaam van een 'vreedzame school'? ['Does A Child Become Peaceful from A Peaceful School?'], in: *Trouw* (16 November 2010) pp. 22.

Anti-discrimination – Homosexual Emancipation Policy

Introduction

The municipality of Utrecht is working to combat discrimination in the city. The approach to anti-discrimination focuses on different aspects. The programme Diversity and Integration that ran until the spring of 2010 aimed to increase tolerance in Utrecht and combat discrimination. This programme was used to stimulate and support social organisations, to raise discrimination as an issue and to combat discrimination. Article 1 Office the Netherlands (*Art. 1 bureau Nederland*) is an organisation that anyone can appeal to when one feels discriminated against. This office is subsidised by the municipality of Utrecht. Campaigns that are organised within the framework of combating discrimination in Utrecht are the campaign to increase reporting of discrimination *Discriminatie? Ff melden!*, the public campaign from the *Panel Deurbeleid* (which combats the unjustified refusal of admittance to restaurants and bars) and the campaign *RU4REAL doe normaal op internet* which promotes a tolerant climate on the internet.

The special Agenda 22-group is active in the area of anti-discrimination on the basis of physical limitation and works to promote the idea that all people with and without a disability should be able to take part in society. The homosexual emancipation policy is active in the area of anti-discrimination on the basis of sexual orientation. The homosexual emancipation policy will serve as a case study in this report to show in which ways the municipality's approach to discrimination contributes to the enjoyment of human rights.²

Municipal Homosexual Emancipation Policy

The municipal homosexual emancipation policy is a policy that has existed for quite a few decades. The policy was given shape in the municipality of Utrecht for the first time in the 1970s. At the time, the essence of the policy was the emancipation of homosexual individuals. Currently, the policy is aimed more at teaching the society to accept homosexual individuals. The homosexual policy is formulated particularly to meet the needs of the city and not so much in terms of legal rules or legal frameworks. The homosexual emancipation policy serves especially as a signal and as prevention against the hardening of society.

Policies for promotion the emancipation of homosexual individuals exists at both the central government level and the municipal level. In 2008 the action plan *Just Be Gay (Gewoon homo zijn)* was released at the central government level. This was plan was to be valid until 2011. In the framework of this plan, and almost immediately after its release, the G4-cities (the four biggest cities in the Netherlands: Amsterdam, The Hague, Rotterdam and Utrecht) signed the Leaders' Agreement (*Koplopersovereenkomst*). Following this, the municipality of Utrecht formulated the action plan *Just Be Gay in Utrecht (Gewoon homo zijn in Utrecht)*. This action plan will run until the end of 2011 and is being adjusted for the following years. The programme Diversity and Integration also paid attention to the emancipation of homosexual individuals. The programme aimed to provide information about homosexuality in the education and (health) care sectors, to combat violence and discrimination against homosexuals, and to improve the visibility of homosexuality in the city.

Leaders' Agreement

The Leaders' Agreement is meant to improve the social acceptance of homosexuality and to support homosexual individuals in “coming out of the closet.” The agreement has three goals:

1. Make homosexuality an acceptable thing to talk about.
2. Make homosexual individuals feel safer at school, on the street and at work.
3. Combat discrimination, intimidation and violence against homosexual individuals.

² The following sources were used for this case-study Leaders' Agreement Lesbian and Homosexual Emancipation Policy (2008), Action Plan Just Be Gay in Utrecht (2008), Just Be Gay, Lesbian and Homosexual Emancipation Policy 2008-2011 (Ministry of Education, Culture and Science), interview with Kees van den Berg and Abdilaziz Musa Ysef (held on 13 September 2010), news reports from www.utrecht.nl and on the intranet about the homosexual emancipation policy.

In the municipality of Utrecht, the action plan Just Be Gay in Utrecht elaborates on the goals that were set in the Leaders' Agreement.

Action Plan “Just Be Gay in Utrecht”

In the municipal action plan, attention is paid to four important points:

1. Homosexuality and safety.
2. Homosexuality in education and youth welfare.
3. The visibility of homosexuality.
4. Care for homosexual elderly.

Concrete action has been linked to these four points. These action points are based in part on the pre-advice given by the Utrecht advice commission Homosexual and Lesbian Emancipation. The advice commission gives advice upon request and on its own motion to the board of mayor and aldermen (*College van burgemeester en wethouders*) on the issue of the municipality of Utrecht's homosexual emancipation policy.

In regard to the first of the four points, the following concrete steps have been taken: barriers to reporting discrimination have been reduced, the ease of referral to help-giving organisations has been increased, surveillance of gay meeting places, restaurants and bars has been improved, law enforcement agents have been trained to recognise homophobia, and campaigns have been conducted to promote alertness for discrimination of homosexuals. The following action belongs in the framework of the second action point: integrating homosexual emancipation into education policy and certain school projects (also during teacher trainings at *Pabo's*), developing a code of behaviour for diversity in Utrecht education, conducting trainings at elementary schools to reduce the taboo around relationships and sexuality, training youth workers in identification and proper ways to communicate and provide guidance, organising city debates, and developing a menu (see box below). The third action point was approached with more general action, such as financial support for infrastructural, cultural and promotional projects. The fourth action point focuses on general policy development and support projects aimed at strengthening homosexual elderly people.

Human Rights Example

Within the municipality of Utrecht there are different examples that can be used to show how the homosexual emancipation policy and the topic of human rights connect. Although it is impossible to prevent all problems, the municipality remains determined to combat them when they do arise. By collecting reports about discrimination of homosexual individuals and providing information at schools and to youth workers, the municipality tries to combat discrimination. Moreover, Mayor Aleid Wolfsen has recently set up the gay-alert. Homosexual individuals that feel threatened in their residential environment can call a special telephone number. On November 4, 2010 the municipal council adopted a motion in which the board of mayor and aldermen was called upon to take even more action to combat discrimination on the basis of sexual orientation and to contribute to the acceptance of homosexuality.

Another example can be given in regard of specific groups that are disapproving toward homosexuality. Research shows that it is particularly groups with lower levels of education, groups who are strictly religious, and youth with a (partially) non-Dutch ethnic background that have trouble with homosexuality.³ The municipality of Utrecht has consciously chosen to refrain from creating policy for specific target groups. In this way, the municipality hopes to prevent that measures are taken only in respect of one specific group.

Result

The result of Utrecht's homosexual emancipation policy can be seen particularly well in the measure with which it has succeeded in gaining the participation of schools, institutions, police and other organisations in the policy.

Good Practice

- Within the civil service sector, there existed resistance against the homosexual emancipation policy. However, currently everyone participates in the policy Just Be Gay in Utrecht. Moreover,

³ Just Be Gay, Lesbian and Homosexual Emancipation Policy 2008-2011 (Ministry of Education, Culture and Science) p. 43.

- many different departments have contributed to the content of the document.
- The development of a menu with an overview of eleven organisations that can help Utrecht's schools improve the social acceptance of homosexual youth.

Points of Attention

- Being aware of the roll of the municipality and working to increase participation of people/institutions in the homosexual emancipation policy.
- The difficulty of proving discrimination against and harassment of homosexual individuals.

Treaties and Anti-discrimination

Article 2, Universal Declaration of Human Rights

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 2(1), International Covenant on Civil and Political Rights

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 26, International Covenant on Civil and Political Rights

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 14, European Convention on Human Rights

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 1 bis, Treaty of Lisbon (Article 2, Treaty Establishing the European Union)

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

Article 2(3), Treaty of Lisbon (Article 3, Treaty Establishing the European Union)

(...) [The Union] shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. (...)

Article 5 (b), Treaty of Lisbon (Article 10, Treaty on the Functioning of the European Union)

In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 1, Constitution of the Netherlands

All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, or sex or on any other grounds whatsoever shall not be permitted.

Explanation

The Netherlands is party to different international treaties in which the prohibition on discrimination is set out.⁴ Some treaty provisions, like the provision in the above-cited Article 26 of the ICCPR protect everyone

⁴ The prohibition on discrimination is part of other international treaties that apply in the Netherlands than just those listed above. For example, the UN Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Elimination of All Forms of Discrimination against Women, the UN Disabilities Convention, Art. 2 of the ICESCR, Protocol 12 of the ECHR, Art. 20, 27 and Art. E Part V of the ESC, Art. 21 of the Charter of Fundamental Rights for the European Union.

from discrimination on all grounds. Other treaties, such as CERD, focus on the protection of specific groups from discrimination. In order to fulfil these obligations, there are Dutch laws and regulations that prohibit discrimination, such as the General Equal Treatment Act (*Algemene wet gelijke behandeling*). The prohibition on discrimination also entails the obligation to take measures that prevent discrimination and that remove restrictions on the exercise of equal treatment rights.⁵ The EU equal treatment directives are also important to the Netherlands, particularly Directive 2000/78/EC of the Council of the European Union establishing a general framework for equal treatment in employment and occupation.

The Balance

The issue of homosexual emancipation and discrimination against homosexual individuals is often not explicitly mentioned in treaties. An exception to this is Article 2(3) of the Treaty of Lisbon, which specifically mentions “sexual orientation.” In the EU's equal treatment Directive 2000/78/EC, the prohibition of discrimination in relation to sexual orientation is named. Although this prohibition is not named in the Constitution of the Netherlands, it is stated in the General Equal Treatment Act. In the other cases, despite the fact that the term homosexuality is not mentioned as such, authoritative UN treaty body committees and 'soft law'⁶ do most often consider homosexual emancipation to fall under 'other grounds' or 'other status.'⁷ Sexual orientation is also acknowledged as a ground of discrimination in the case law of the European Court of Human Rights.

The treaty texts and the description of the municipality of Utrecht's homosexual emancipation policy lead to the following determinations:

- In the municipality of Utrecht, no selection is made based on target audiences for the granting of rights and freedoms. Homosexual individuals are not deprived of any specific rights. All are equal before the law.
- The municipality of Utrecht has formed a policy to combat discrimination on the basis of sexual orientation – in accordance with the agreements made in treaties to offer everyone an equal and effective protection against discrimination and to combat social exclusion. The action plan Just Be Gay in Utrecht serves to promote the safety and social acceptance of homosexual individuals. The municipality has elaborated on this plan by focusing on a variety of action points and by taking concrete action.
- Despite the fact that the municipality of Utrecht has proactively developed policy to prevent discrimination of homosexual individuals, the question was raised during the council meeting of November 4th, 2010 whether the current policy offers sufficient protection. It has appeared difficult to deal with discrimination against homosexual individuals at an early stage.⁸ The municipality is trying to identify discrimination at an earlier stage with the recently created gay-alert.

Conclusion

Although most treaties do not specifically reference discrimination on the basis of sexual orientation, 'soft law' does recognise sexual orientation as a prohibited ground of discrimination. The municipality of Utrecht uses this interpretation for its homosexual emancipation policy. The municipality expresses that homosexual individuals are equal before the law and does not make any distinction on this basis between different groups. Moreover, Utrecht undertakes action to prevent discrimination of homosexual individuals and to offer protection to homosexual individuals. Yet, the existing policy is still not sufficient according to the municipality's council. The municipality of Utrecht is implementing different measures in an attempt to remedy this.

5 Amnesty International, *Approach to Discrimination by Dutch Municipalities: 443 Opportunities for Improvement*, Amsterdam, April 2007, available at <www.amnesty.nl> (visited on 3 August 2010).

6 'Soft law' refers to the rules that are not legally binding but that do have authority.

7 Michael O'Flaherty and John Fisher, 'Sexual Orientation, Gender Identity and International Human Rights Law: Contextualising the Yogyakarta Principles', *Human Rights Law Review* 8:2 (2008) 207-248, at 8-14.

8 ANP, 'Van Bijsterveldt positief over gay-alert' ['Van Bijsterveldt is Positive about Gay-Alert'], *NRC Handelsblad* (17 November 2010).

Poverty Reduction – U Pass

Introduction

The municipality of Utrecht is taking diverse measures to combat poverty in the city. By way of financial support, the municipality aims to improve the purchasing power of households with low incomes and to promote the participation in society of those who are entitled to welfare benefits. To strengthen purchasing power, measures such as welfare benefits (*bijstandsuitkering*), prolonged low-income allowances (*langdurigheidstoeslag*) and housing cost funds (*woonlastenfonds*) have been implemented. The U-Pass is the main measure that has been introduced to stimulate participation. The U-Pass makes it possible for households with low incomes to take part in courses, sport and recreation at attractive prices. Moreover, the U-Pass offers a collective health insurance, so that health care is accessible and affordable for welfare beneficiaries. The municipal policy regarding the U-pass will serve as a case study in this report in order to research the ways in which Utrecht's poverty reduction programme is connected to human rights.⁹

The U-Pass

About 7,000 people are on welfare in the municipality of Utrecht. An even larger number of people use the U-Pass because this pass is offered Utrecht inhabitants that earn up to 125% above the welfare level.¹⁰ Poverty reduction in Utrecht is aimed at improving the financial position and societal participation of those who live on a minimum income. The municipality has a particularly clear vision regarding this societal participation: in order to fully function within society, more than a minimum income is necessary; social participation is also imperative. The U-Pass can be seen as a direct consequence of the municipality's desire for participation. The U-Pass reduces the financial barriers to participation.

Poverty Reduction and Employment

Welfare benefits are provided subject to conditions. Since the implementation of the Law on Employment and Welfare (*Wet werk en bijstand, WWB*), priority is given to finding work instead of to providing welfare benefits. An active attitude is expected from the client; if the client does not try hard enough to find work a sanction can follow. If a client is not able to find work, the client will receive welfare benefits.

The municipality can offer the client support and has available an extensive re-integration tool-box that it can use to this end. An example of this is Work Pays! (*Werken loont!*). When someone requests welfare benefits from the municipality and is able to work, that individual is referred to Work Pays!. The individual receives a salary that is at least as high as the welfare benefit that the individual would have otherwise received. Work Pays! lasts for a maximum of three months. The client works and additionally receives training and guidance. If at this point the client still does not succeed in finding work, the client will receive a welfare benefit in conformity with the WWB.



Picture made by Willem Mes

Youth who are able to work, receive a work-study offer from one of the contract parties that offer guidance to youth, in the framework of the Law Investing in Youth (*Wet investeren in jongeren, WIJ*). The provision of work-study lasts six months and is supplemented with training and guidance. The youth receives an internship stipend. If this youth is unable to find work and if a second work-study offer is not deemed useful, the client will receive welfare benefits at that stage within the framework of the WIJ. Welfare beneficiaries who work at a participation place do this while retaining their welfare allowance. They do appropriate work that is supplemented with training and guidance. A participation place lasts for a maximum of two years.

⁹ For this case-study, the following sources were used: Extra Participation in Utrecht 2007-2010 (2007), Actively on the Way to Work. Information from Service Societal Development, Department Social Affairs and Labour Market (2007), Law on Employment and Welfare. Information from Service Societal Development, Department Social Affairs and Labour Market (2008), interview with Janny Udo and Nienke Horst (held on 18 October 2010), news reports from www.utrecht.nl and on the intranet about poverty reduction and the U-Pass.

¹⁰ Interview with Janny Udo and Nienke Horst (held on 18 October 2010).

Poverty Reduction and Participation

The municipality of Utrecht has offered the U-Pass for the past 16 years.¹¹ The U-Pass is meant for all inhabitants of the municipality of Utrecht (and some neighbouring municipalities) who have an income that is no more than 125% of the welfare level. The purpose of the U-Pass is to allow people with a low income to participate in society through sport, culture, courses and recreation. Inhabitants of Utrecht who have a U-Pass are also able to access collective health insurance, so that health care is affordable and thus accessible. The U-Pass has a large reach. People who receive welfare benefits get sent the pass automatically; others can request the pass themselves. Potential providers of services also know how to find the U-Pass. The organisations can sign themselves up but the municipality also has a special acquisition team that specifically searches for service providers with whom the participation goal can be achieved.

The U-Pass places emphasis on children. Children cannot be excluded from society because of the income position of their parents. With the U-Pass, the municipality aims to allow these children to participate as much as possible in school excursions, sport and events. The municipality spends about two million euro on the U-Pass per year. An interesting fact is that, in the framework of the U-Pass, the municipality of Utrecht financially supports many branches of sport for 95% and sport associations contribute the other 5%.¹² Because of this, sport is often free for children.

Human Rights Example

There are a number of examples that can be used to show how the Utrecht poverty reduction policy is connected to the subject of human rights. The municipality tries to ensure that every inhabitant of Utrecht who is entitled to the U-Pass receives it; yet it is difficult for the municipality to reach each such inhabitant because the municipality does not know everyone who has a minimum income. The municipality tries to reach this target audience by providing information in locations such as community centres, schools, elderly care homes and at events. Moreover, the municipality distributes folders and organises other activities that promote the U-Pass. But even with this, it is still not possible to say with certainty if the entire target audience has been reached. Additionally, there are also people who are entitled to the U-Pass but do not feel the need for it. A second example regards the children of parents with a low monthly income. With the U-Pass, the municipality offers these parents the possibility to have their children participate in society.

Result

A customer satisfaction study showed that the U-Pass is on average valued at a 7.7 (out of 10). Moreover, the U-Pass has a large reach, both among the service users and service providers.

Good Practice

- Free sport
- The U-Pass is offered to people that make up to 125% of the welfare benefit level
- The Work Pays! project

Points of Attention

- Despite the municipality of Utrecht's efforts, it is uncertain if every inhabitant who is entitled to the U-Pass is reached. The municipality does not know everyone who has a minimum income.

¹¹ Interview with Janny Udo and Nienke Horst (held on 18 October 2010).

¹² Interview with Janny Udo and Nienke Horst (held on 18 October 2010).

Treaties and Poverty Reduction

Article 25(1), Universal Declaration of Human Rights

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 11(1), International Covenant on Economic, Social and Cultural Rights

The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right (...).

Article 30, European Social Charter (Part II, 1996 revised version)

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;*
- b. to review these measures with a view to their adaptation if necessary.*

Article 34, Charter of Fundamental Rights of the European Union

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 20, Constitution of the Netherlands

1. It shall be the concern of the authorities to secure the means of subsistence of the population and to achieve the distribution of wealth.

2. Rules concerning entitlement to social security shall be laid down by Act of Parliament.

3. Dutch nationals resident in the Netherlands who are unable to provide for themselves shall have the right, to be regulated by Act of Parliament, to aid from the authorities.

Explanation

The right to an adequate standard of living for one and one's family demands that everyone has a right to adequate housing, food and clothing. The Committee of the ICESCR has determined that this also means that people have a right to social security,¹³ such as set out in, among others, Articles 12, 13 and 14 of the ESC and Article 34 of the Charter of Fundamental Rights of the European Union. Article 20 of the Constitution of the Netherlands is comparable in this respect. The right to an adequate standard of living is set out in various human rights treaties, whereby this right is given to specific groups in certain circumstances, such as women,¹⁴ disabled,¹⁵ asylum seekers,¹⁶ children,¹⁷ and the family.¹⁸ Article 11 of the ICESCR determines that everyone has a right to an increasingly improving standard of living and that the State must take appropriate measures to insure this right. The ESC is more specific and names the right to remuneration that is sufficient for a decent standard of living. Article 30 of the ESC entails that the Netherlands must take measures to protect people against poverty and social exclusion. Although most

13 Committee on Economic, Social and Cultural Rights, *General Comment 19; The Right to Social Security (art. 19)*, 23 November 2007, para. 22, 28, 40, 52. In Art. 9 of the ICESCR is the right to social security also acknowledged.

14 Art. 14, CEDAW.

15 Art. 28, UN Disabilities Treaty.

16 Art. 21 and 23, UN Refugee Treaty.

17 Art. 27, CRC.

18 Art. 10 ICESCR.

articles in the ESC and the ICESCR have been held by the Dutch legislature and judiciary not to be binding provisions, the Netherlands is obliged to 'take steps (...) to the maximum of its available resources with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means (...)' (Article 2(1) ICESCR).¹⁹ This means that the Netherlands, and thus also the municipality, must constantly take measures that contribute to the realisation of a decent standard of living for everyone. Moreover, it means that no intentional measures can be taken that reduce the protection of the rights in the ICESCR.²⁰

The Balance

In the above-named treaty articles it is stated that everyone has a right to protection from poverty and social exclusion. Inhabitants must be offered a certain certainty of existence, a dignified existence and a continuously improving standard of living. States must take care for a decent standard of living that is high enough to ensure the health and wellbeing of inhabitants and their family. Wellbeing, a dignified existence, and good living circumstances are indications that can be interpreted broadly. It seems that there are, therefore, many different measures that can fall under these terms.

The treaty texts and the description of Utrecht's U-Pass lead to the following determinations:

- The municipal U-Pass falls predominately under the treaty obligation to offer people wellbeing, better living conditions and a dignified existence. The U-Pass is in that regard mainly a supplementary measure and does not directly belong to the same category as welfare benefits that are provided in order to ensure individuals' certainty of existence. An exception to this is the collective health insurance that is offered through the U-Pass. This is a typical measure suited for providing medical assistance and to guarantee individuals' certainty of existence.
- The municipal U-Pass is predominantly a measure that protects people against social exclusion. With the pass, the municipality aims to increase participation.
- Within the U-Pass, the child enjoys a central place. This connects well to the treaty obligation that children in particular are entitled to a decent standard of living.
- Despite efforts from the municipality of Utrecht, it is uncertain whether every inhabitant who is entitled to the U-Pass is actually reached. However, since the problem has to do with the accessibility and not with whether or not a right is acknowledged, the municipality is still acting in accordance with treaty obligations.

Conclusion

In regard to the U-Pass, the municipality of Utrecht is acting in accordance with the relevant treaty articles. The U-Pass is a (supplementary) measure that aims to prevent social exclusion and to improve the wellbeing of individuals. The child has a central role in this. The municipality of Utrecht will give the U-Pass to everyone entitled to it. It has appeared to be difficult at times to reach all of the entitled in Utrecht. The municipality of Utrecht is trying to remedy this with different actions.

¹⁹ Section I of the ESC, it reads as follows: "The Parties accept as the aim of their policy, to be pursued by all appropriate means (...) the attainment of conditions in which the following rights and principles may be effectively realised (...)."

²⁰ Committee on Economic, Social and Cultural Rights, *General Comment 3; The Nature of States Parties' Obligations*, 14 December 1990, para. 9.

Immigrant Policy – Shelter for Asylum Seekers

Introduction

Preventing irregular resident status, sheltering asylum seekers and providing housing for those with status are deemed of essential importance within the municipality of Utrecht's immigrant policy. Based on its duty of care, the municipality of Utrecht aims to realise emergency shelter for immigrants with an asylum background. This is especially important when asylum seekers are still involved in a legal procedure for a residence permit or have exhausted their legal remedies and end up on the street as a consequence of the central government's policy. Sheltering the asylum seekers can prevent them disappearing into illegality. The municipality of Utrecht's policy in regard to the shelter of asylum seekers will serve as a case study in this report so as to research in which ways the municipal immigrant policy contributes to the protection of human rights.²¹

Municipal Policy on Sheltering Asylum Seekers

In 2001, Utrecht's board of mayor and aldermen decided to provide emergency services for regularly resident homeless people who did not have access to services and for asylum seekers who had exhausted their legal remedies and who wanted to go back to their land of origin but were unable to. Emergency shelter was not offered to irregularly resident immigrants and asylum seekers who impeded their own removal from the Netherlands and/or their regularisation. This was because the services were temporary, sober and problem-oriented in nature. The ex-Amas are a special group of asylum seekers.²² These are former unaccompanied, minor asylum seekers (*Alleenstaande Minderjarige Azielzoekers*) who came to the Netherlands as minors but who have since then turned eighteen. The municipality of Utrecht feels that its duty of care makes the municipality responsible for the shelter and integration of these ex-Amas.

Shelter Asylum Seekers

The central government holds primary responsibility for letting asylum seekers into the country, sheltering them and removing them. The municipalities agreed to end the existing emergency shelter under the condition that the central government would



Picture made by Willem Mes

implement certain improvements in the immigration policy. This agreement was connected to the execution and completion of the general pardon arrangement the government implemented in the framework of the Immigrant Law 2000 (*Vreemdelingenwet 2000*). The central government was to shelter all asylum seekers who were currently involved in legal procedures and was to ensure a proper return policy for asylum seekers who had exhausted their legal remedies. However, at the moment, the central government's return policy still does not entail a comprehensive approach.²³ This causes many asylum seekers who have exhausted their legal remedies to end up on the streets. According to the letter of the law of the Immigrant Act 2000, these individuals are not to be sheltered by the government anymore (the administrative removal of asylum seekers who have exhausted their legal remedies is sufficient, according to the central

21 In this case-study, the following sources were used: Perspective for Ex-Amas. Frameworks and Starting Points for the Experiment Perspective Ex-Amas (2009), Evaluation of Shelter and Integration of Asylum Seekers and Refugees in the Municipality of Utrecht (2010), Life Goes On (2008), Letter to the Second Chamber Chairperson about the Execution of the Spekman Motion (2009), From Beginning to End off(f) the Street. Execution Memo on Legally Resident Asylum Seekers Who Have Exhausted Their Legal Remedies in Utrecht (2002), Eurocities Awards Entry Form (2007), interview with Niene Oepkes and Jan Braat (held on 14 September 2001), news reports from www.utrecht.nl and from the intranet about shelter for asylum seeker.

22 Presently, (ex)Amas are called (ex)Amvs: Single Minor Foreigners (*Alleenstaande Minderjarige Vreemdelingen*).

23 The central government decided that asylum seekers who had exhausted their legal remedies must return to their country of origin within 28 days. However, for many (for example for people from Somalia) this is impossible because of the lack of a central authority in Somalia and thus the lack of official travel documents. Because of this, these asylum seekers end up on the street. Another example is the case of asylum seekers with exhausted legal remedies who have a right to stay in the Netherlands on medical grounds, but who end up on the street anyway. The Spekman motion and the Anker motion called for an end to such situations.

government's policy). However, this is contradicted by the European Return Directive (2008/115/EC), which is to be considered implemented since the 24th of December 2010. The Directive obliges States to take into account the vulnerable immigrant who cannot leave the country for technical or other reasons.

The municipality of Utrecht finds it unacceptable that asylum seekers who have exhausted their remedies end up on the street in dire circumstances. The municipality has decided, in accordance with its duty of care, aspects of public health and public order, to nevertheless continue creating emergency shelter for groups that the central government does not shelter. The primary aim of this emergency shelter is preventing rejected asylum seekers from ending up in criminal circles. Once an asylum seeker is in the system of emergency shelter, the municipality of Utrecht tries to regularise him/her or to guide him/her into a voluntary return to his/her country of origin. Asylum seekers are offered a bed, sanitary facilities, simple food, and assistance.

It is possible that the introduction of a national police force will lead to the loss of the local character of the municipal's ability to create emergency shelter. Until now it has been the case that Utrecht's immigrant police have executed the immigration policy within the municipality. The possible national police force will influence how a balance will be made in local policy in the area of the individual duty of care and public order. This fact has consequences for the asylum seekers in Utrecht. An evaluation of the emergency shelter in Utrecht between 2001 and 2009 showed that there are about 390 asylum seekers who have used the emergency services. They would have ended up in criminal circles without the emergency shelter.

Shelter and Ex-Amas

A special group of asylum seekers are the (ex-)Amas. The central government is responsible for the custody and shelter of these minor, unaccompanied asylum seekers (Amas). The central government's policy entails that this shelter ends when the Amas turn eighteen. From that moment on, the Amas become ex-Amas and they end up on the street. The municipality of Utrecht finds this unacceptable. Ex-Amas often do not (yet) have a residence permit that covers them after they turn eighteen, nor do they have travel documents, such as a passport for their country of origin. There is thus a large chance that these youth end up in criminal circles after they turn eighteen. In order to prevent this, the municipality of Utrecht started a special support point in 2003. This Support Point Perspective (*Steunpunt perspectief*) aims to create prospects of a dignified future for these individuals.

The Support Point Perspective helps those ex-Amas without residence permits to regularise their residence in the Netherlands, in as far as is possible. For example, it has sometimes been seen that ex-Amas were not able to make their motives for taking asylum or residence in the Netherlands clear at the time they requested asylum as a child. This possibility is the reason the central government is acting to improve the asylum procedure in this regard as soon as possible. The central government is considering introducing a longer consideration and rest period before the actual asylum request is submitted and thus also before the hearings that form part of that procedure. If it is not realistic or necessary to get a residence permit, the Support Point will support ex-Amas during the process of voluntary return to the country of origin. Moreover, the Support Point Perspective helps ex-Amas who do have a residence permit become independent, get education and get employment. Also, the municipality of Utrecht has agreed with the Minister of Social Affairs that ex-Amas who do not have a residence permit can, under certain circumstances, do an internship while they are in the Netherlands.

Human Rights Example

One of the issues that concerns the municipality of Utrecht is the balance between the central government's policy and the municipal duty of care and public order. Municipalities are directly confronted with the consequences of the lacking immigrant policy of the central government that occur within the boundaries of the municipalities. The duty of care, as well as diverse human rights treaties and other State-binding obligations, entail that the municipality should realise shelter for the asylum seekers who have exhausted legal remedies and are within the scope of the municipality's boundaries. Municipalities have a responsibility in this regard; however, ideally municipalities should only offer supplementary measures when these do not contradict the policy of the central government. This would mean that the municipalities should not create emergency shelter. It is hard for the municipalities to determine how to make the balance between their local duty of care and national policy.

Result

The most important result of the municipal immigrant policy is the fact that for 96% of the people that leave the emergency shelter, a solution in the form of a residence permit, return, or a renewed right to care from the central government is found. Only 4% of the individuals that leave the emergency shelter

have disappeared. This means that a comprehensive policy has been achieved at the local level.²⁴ Another result is that the successful model of the Support Point Perspective has been adopted by nineteen other Dutch municipalities since 2009. Since October 1, 2009 this Support Point has become part of a nationwide experiment in cooperation with the central government. Moreover, the Support Point was elected best social project of the municipality of Utrecht in 2004 and it won the Utrecht Safety Award in 2005. In 2007, the municipality of Utrecht won the Clara Meijer Wichmann medal from the League of Human Rights (*Liga van de rechten van de mens*) for its prominent human rights policy in this policy area and the Support Point was nominated for a prestigious Eurocities Award.

Good practice

- Support Point Perspective
- The emergency shelter has prevented asylum seekers from falling into dire situations on the streets.

Point of Attention

- Within the municipality of Utrecht, a relatively large amount of attention is paid to vulnerable asylum seekers who have exhausted their legal remedies and to ex-Amas. However, the group of (vulnerable) irregular immigrants is broader.

²⁴ Letter from Utrecht's Mayor and Aldermen to the members of the Commission Person and Society, Subject Evaluation Emergency Shelter, 1 December 2009.

Treaties and Immigrant Policy

Article 1, Constitution of the Netherlands

All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race, or sex or on any other grounds whatsoever shall not be permitted.

Article 2, Universal Declaration of Human Rights

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 2(1), International Covenant on Civil and Political Rights

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2(2), International Covenant on Economic, Social and Cultural Rights

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 21, Convention Relating to the Status of Refugees

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

Article 23, Convention Relating to the Status of Refugees

The Contracting States shall accord to refugees lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

Article 1, European Convention on Human Rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Explanation

As appears from Article 2 UDHR, Article 2(1) ICCPR, Article 2(2) ICESCR and Article 1 ECHR, immigrants are entitled to the same human rights as all others who are present on Dutch territory. The rights of refugees are set out in the UN Treaty on the Status of Refugees and Stateless Persons that was adopted in 1951 and in force since 1956. The treaty was originally only meant for people in Europe who had fled because of the events during and directly after the Second World War. Since the addition of the 1967 protocol, the treaty has become applicable to other refugees as well. The treaty protects refugees or those with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” (Article 1(A2)). The treaty determines that refugees may not be sent back to a country in which they can fear persecution or in which their lives or safety are in danger (prohibition on expulsion or *non-refoulement*, Article 33). The treaty is not applicable to suspects of serious crimes (Article 1(f)). This principle of *non-refoulement* is also set out in Article 3(1) of the CAT, Article 13 of the ICCPR and by way of Article 2 in conjunction with Article 3 of the ECHR.²⁵ Additionally, refugees are entitled to the rights belonging to the rights to a decent standard of living that guarantee health and wellbeing of oneself and one's family, as listed in the sections on poverty reduction and social care. These rights include food, clothes, housing, and increasingly better living conditions and social assistance (Article 25 UDHR, Article 11 ICESCR, Article 30 ESC). Directive 2011/36/EU on preventing and combating human trafficking and protecting victims of human trafficking (OJ 2011 L101/1) also provides for such measures. In paragraph 12 of the preamble of the European Return Directive 2008/115/EC (OJ 2008 L348/98) it is stated that the provision of basic conditions of subsistence to immigrants staying illegally should be arranged in national legislation.

²⁵ Maarten den Heijer, 'Whose Rights and Which Rights? The Continuing Story of Non-Refoulement under the European Convention on Human Rights' in *European Journal of Migration Law* (vol. 10, 2008, pp. 277-314).

In the shadow report of the ICCPR, NGOs criticised the Netherlands because of the country's alleged failure to provide decent housing,²⁶ food,²⁷ clothes,²⁸ and social security to asylum seekers and undocumented immigrants, despite the Netherlands' obligation to do so.²⁹ Defence for Children International submitted a complaint against the Netherlands at the European Committee for Social Rights because the Netherlands had stopped providing shelter to undocumented children. The Netherlands argued that section 1 of the ESC held that the relevant rights are not applicable to undocumented individuals. The Committee decided that the Netherlands does have a duty to protect children who lack the support of their family when these children are within the jurisdiction of the Netherlands (Article 17(1c) ESC). Moreover, the Netherlands is obliged to provide shelter for undocumented individuals in order to prevent homelessness (Article 31(2) ESC). The way in which the Netherlands deals with the children of asylum seekers who have exhausted their legal remedies has also been criticised by the UN Committee on the Rights of the Child³⁰ and Council of Europe Commissioner for Human Rights Hammarberg.³¹ Although the *demissionair* Minister of Justice at that time, Hirsch Ballin, did not see any reason to change the policy,³² the Netherlands, and thus also the municipalities, are indeed obliged under international law to provide undocumented individuals with shelter. There have been many judicial decisions that order the municipalities to provide shelter to vulnerable ex-asylum seekers, despite the central government's policy as based on the Immigrant Law. These judicial decisions refer to the Law of Social Support (*Wet maatschappelijke ondersteuning, WMO*) and/or the Law on Employment and Welfare (*Wet werk en bijstand, WWB*) as the basis for the municipalities' obligation in this regard.³³ While the execution of the Immigrant Law is primarily the responsibility of the central government, the duty to execute the WMO and the WWB lies with the municipalities. This led to a new roll for the municipality.

The Balance

The treaty parties are obliged to protect certain essential rights for every person who is within the territory of the State. This obligation holds regardless of the national origin or status of the individual within the country. Thus, immigrants and asylum seekers are also entitled to the above-mentioned treaty rights. In any case, shelter must be provided to vulnerable undocumented individuals (who are, for example, waiting for a decision in their residence permit procedure).

The treaty texts and the description of the shelter the municipality of Utrecht provides to asylum seekers lead to the following determinations:

- The municipality of Utrecht provides shelter to vulnerable asylum seekers who have exhausted their legal remedies and to ex-Amas. This is because the central government does not provide a comprehensive return policy. In accordance with the local duty of care and public order, the municipality has decided to offer emergency shelter to these people. This emergency shelter is in accordance with the treaty obligations, which clearly hold that everyone has a right to a decent standard of living, such as sanitary facilities, a place to sleep and basic food.
- The municipality of Utrecht cannot and does not want to offer shelter to all undocumented persons and asylum seekers. This is because, on the one hand, the municipality has to deal with limited capacity and means, and on the other hand because of substantive choices regarding vulnerability and personal responsibility. Another point of consideration in this regard is the connection to the region.

26 See for more information Committee on Economic, Social and Cultural Rights, *General Comment 4; The Right to Adequate Housing*, 13 December 1991 and *General Comment 7; The Right to Adequate Housing: Forced Evictions*, 20 May 1997.

27 See for more information Committee on Economic, Social and Cultural Rights, *General Comment 12; The Right to Adequate Food*, 12 May 1999.

28 See for more information Committee on Economic, Social and Cultural Rights, *General Comment 5; Persons with Disabilities*, 9 December 1994, *General Comment 6; The Economic, Social and Cultural Rights of Older Persons*, 8 December 1995 and *General Comment 14; The Right to the Highest Attainable Standard of Health*, 11 May 2000.

29 The Netherlands' Committee of Jurists for Human Rights, *Joint Parallel Report to the Combined Fourth and Fifth Periodic Report of the Netherlands on the International Covenant on Economic, Social and Cultural Rights*, Leiden, 28 October 2009, available at <www.njcm.nl/site> (visited on 9 August 2010), pp. 8-10, 22-25.

30 Committee on the Rights of the Child, *Concluding Observations: Netherlands*, CRC/C/NLD/CO/3, 27 March 2009.

31 The commissioner for human rights Mr. Thomas Hammarberg, *Report on his Visit to the Netherlands*, Strasbourg, 11 March 2009.

32 J. Witteman, 'Hirsch Ballin Wants To Keep Current Asylum Policy the Way It Is', *Volkscrant*, 17 July 2010.

33 See for example the following cases: *Rechtbank Assen* 24 March 2011, *LJN BP9010*; *Rechtbank Utrecht* 17 February 2011, *LJN BP8084*; *Rechtbank Breda* 24 December 2010, *LJN BQ0032*; *Rechtbank Utrecht* 4 April 2010, *LJN BM0846*.

Conclusion

The municipality of Utrecht acts in accordance with the treaties by providing emergency shelter to asylum seekers who have exhausted their legal remedies, and who find themselves in dire situations that the central government does not remedy. However, the municipality of Utrecht cannot shelter all such asylum seekers. The central government is failing to sufficiently adhere to the obligations that flow forth from human rights treaties and, in this way, fails to sufficiently take its responsibility in the area of immigrant policy.

Inviolability of the Person – Domestic Violence

Introduction

For a number of years now, extra attention has been paid to domestic violence, both at a national and local level. One can speak of domestic violence when violence is committed by someone who belongs to the victim's domestic life. (Ex-)partners, family members and friends of the family are all considered as belonging within the domestic life of an individual. At a national level there is the memo Private Violence – Public Matter (*Privé geweld – Publieke zaak*) and the Plan Domestic Violence 2008-2011 (*Plan van aanpak huiselijk geweld*). As an extension of this, the municipality of Utrecht has taken measures to combat domestic violence. These measures will be dealt with in the following case study, so as to investigate the ways in which the municipality contributes to combating domestic violence and to protecting human rights.³⁴

Municipal Approach Domestic Violence

In 2002 a change was made to the national approach to domestic violence.³⁵ Since that year, the victim is no longer required to report domestic violence him/herself before the prosecution of the perpetrators can take place. A consequence of this new policy for the local governments is that it has become easier for municipalities to deal with these perpetrators. However, the municipality of Utrecht feels that this repressive approach alone is not enough. Thus, Utrecht is working hard on a preventive and care-driven approach. Moreover, in 2008 the municipality entered into a cooperation agreement with the other G4 cities in order to develop an integral approach to domestic violence.

Approach Domestic Violence

The criminal and care-driven chain approach of the municipality of Utrecht leads to close cooperation between the municipality and the police, justice (the public prosecutor), other partners in the Safety House (*Veiligheidshuis*), and different local aid organisations. These cooperation agreements have various aims.



Picture made by Sietse Brouwer

They aim to increase the effectiveness of police and public prosecutor action, to increase the speed with which complaints are dealt with, to initiate aid provision to perpetrators, to provide victim help, to increase the willingness of the victim to report the crime, and to prevent recidivism. The municipality is the director of the approach to domestic violence, while the other partners are the executors of the decided upon plans. The foundation of Utrecht's approach to domestic violence is the Covenant Domestic Violence (*Covenant huiselijk geweld*). The Covenant was signed in 2006 by the municipalities, the Safety House and local social and aid organisations.

Covenant Approach to Domestic Violence

The cooperation between the municipality of Utrecht and different aid organisations results from a covenant that was signed by the municipality of Utrecht, the police, the public prosecutor, the municipalities in the region and the aid organisations in 2006. The aim of the Covenant was to organise a common approach to domestic violence, so that a comprehensive net was created around (potential) perpetrators, victims and witnesses of domestic violence. The Covenant ran from September 1, 2006 to December 31, 2009. Currently, attempts are being made to design a new covenant that reaches further than just the partners in and around the city of Utrecht. The idea is to agree on cooperation between Utrecht (and surrounding regions) and Amersfoort (and surrounding regions).

34 The following sources were used for this case-study: Covenant Cooperation Partners Domestic Violence (2006), Monitor Domestic Violence (2010), Evaluation of the Law Temporary Restraining Order (2010), interview with Fadua Azrar (held on 1 October 2010), news articles about domestic violence from www.huiselijkgeweld.nl, www.utrecht.nl and the intranet.

35 Ministry of Justice, Private Violence – Public Matter. A Memo on the Joint Approach to Domestic Violence (2002).

Law Temporary Restraining Order

The local execution of the Law Temporary Restraining Order (*Wet tijdelijke huisverbod*) is a special form of preventive action. This law entered into force on January 1, 2009 and gives mayors the power to issue a temporary 10-day restraining order to the perpetrator of domestic violence. The period of 10 days can be extended to a maximum of 28 days. The aim of the temporary restraining order is to create peace and safety and to facilitate the speedy provision of aid to the entire family. In 2009, 64 such temporary restraining orders were issued in the region of Utrecht.³⁶ Since the implementation of the Law Temporary Restraining Order, the Advice and Support Point Domestic Violence (*Advies en steunpunt huiselijk geweld*), the municipalities in the region, and the police have been registering all imposed restraining orders and the relevant background characteristics of the perpetration and the victim(s). This data is shared among the partners only if those individuals involved consent to this and if the rules from the privacy covenant are taken into account.

Action Programme G4 (2008-2011)

In 2008, the G4-cities set up an action programme to give form to the integral approach to domestic violence. The G4 want to offer more than just aid and shelter. They want to make domestic violence visible and they aim to put an end to it for good. The action programme pays special attention to children and the intergenerational transmission of domestic violence, to taking stronger measures to reduce the recidivism rates, and to the modernisation and professionalisation of the shelter organisations.

Human Rights Example

A good example of how the approach to domestic violence and human rights are connected can be found in the first aid standard procedure. In Utrecht, whenever a child is brought to a first aid centre, it is standard practice to subject parents to a survey intended to detect child abuse. In this policy, the rights of the child are deemed to weigh more heavily than the government's reluctance to interfere with a family's right to privacy.³⁷

Result

An evaluation or monitoring of Utrecht's approach to domestic violence is conducted on a regular basis. The results from the most recent monitoring show that the municipality is focusing more and more on prevention and care. It is remarkable that the monitor also showed that both the number of reports of domestic violence and the rate of recidivism have increased. Different explanations can be given for this. It is standard practice for the police to register domestic violence with the 'code domestic violence.' Domestic violence is becoming more and more visible in society. The more attention paid to domestic violence, the larger the chance that reports of domestic violence are made. This visibility can make the approach to domestic violence more efficient. At this moment, research is being done by the G4 on the way domestic violence is approached in the four big cities. The national evaluation of the Law Temporary Restraining Order, conducted by the Ministry of Justice, has recently been released.

Good practice

- Utrecht's structural approach to domestic violence: cooperation between municipality, police, the public prosecutor, and the care sector.

Points of Attention

- Het Getting a better picture of those individuals who experience domestic violence but do not report it to the police.
- Keeping families in the system of aid provision after the acute provision of aid has stopped.

36 Municipality of Utrecht, Evaluation of the Law Temporary Restraining Order (June 2010) p. 5.

37 For more information on Utrecht's approach to child abuse, see: <www.alleato.nl/organisatie/medewerkers/pauline-van-der-loo/leer-van-utrechtse-aanpak-kindermishandeling-utrecht> and <www.alleato.nl/ons_werk/projecten/jeugdzorg-en-jeugdbeleid/signalering-kindermishandeling-ziekenhuizen-utrecht>, visited on 31 May 2011.

Treaties and Domestic Violence

Article 3, Universal Declaration of Human Rights
Everyone has the right to life, liberty and security of person.

Article 5, Universal Declaration of Human Rights³⁸
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 16, Universal Declaration of Human Rights
(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
(2) Marriage shall be entered into only with the free and full consent of the intending spouses.
(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 24 (1), International Covenant on Civil and Political Rights
Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Article 1, Convention on the Elimination of All Forms of Discrimination against Women
For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 19, Convention on the Rights of the Child
1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 6, Charter of Fundamental Rights of the European Union
Everyone has the right to liberty and security of person.

Article 24(1), Charter of Fundamental Rights of the European Union
1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

Explanation

Domestic violence is violence that takes place in the private sphere, perpetrated by partners, parents, children and other family members and friends of the family. It occurs in all socio-economic classes and in all cultures in Dutch society. Victims of domestic violence are in most cases women and children, but it also affects men, parents and the elderly.³⁹ The government has an obligation to take all reasonable

³⁸ 'Torture must be interpreted broadly, considering the second part of the sentence. In the UN Treaty against Torture (1984), torture is defined as something that agents of the government do, but in this article such a limitation is not made,' in: Amnesty International, *Universele Verklaring van de Rechten van de Mens: Toelichting op Artikel 5* available at <www.amnesty.nl> (visited on 20 October 2010). NGOs, including Amnesty International, argue that domestic violence against women can be seen as torture but this is not generally accepted.

³⁹ Movisie, *Fact Sheet Domestic Violence: Facts and Numbers*, November 2009, p. 1, available at: <www.huiselijkgeweld.nl> (visited on 13 October 2010). 'The term domestic violence in Dutch is a umbrella term for a number of different forms: physical, mental, and sexual violence committed by someone from the domestic life. *Huiselijk geweld* [literally: home violence] is the - actually incorrect - translation from the English/American term 'domestic violence' and was introduced as a term in the Netherlands at the end of the 1990s. In the Anglo-Saxon

efforts to protect, to the greatest extent possible, all inhabitants, both through legislation and through policy.⁴⁰

Although CEDAW does not explicitly name violence against women, the CEDAW Committee has indicated in its general comments⁴¹ that prohibition of violence against women is included in the prohibition against discrimination that is found in Article 1 of CEDAW. Domestic violence against women is a gender⁴² problem; violence against women is one of the serious consequences of the unequal power relations between men and women and at the same time a phenomenon that helps to sustain those unequal power relations.⁴³ It is a serious violation of women's human rights.⁴⁴ In the case *Opuz v. Turkey*,⁴⁵ the European Court of Human Rights determined that the government has a responsibility to act when there is a realistic chance of domestic violence, to take preventative measures and to act in the interest of the child.⁴⁶ Moreover, the Court determined that States have an obligation to investigate and that the police and the public prosecutor must collaborate in this regard. The Netherlands' lack of gender specificity, the registration of domestic violence, a national action plan, attention for the position of minority women and a coherent approach have all received criticism from, for example, the CEDAW Committee,⁴⁷ the CRC Committee, and the UN Rapporteur on violence against women.⁴⁸ The State is obliged to pursue by all appropriate means a policy aimed at eliminating all discrimination against women (Article 2, CEDAW).

The Balance

It follows from the treaty articles that everyone should be able to live in freedom and with the inviolability of their person respected. Thus, the State must use legislation, measures and procedures to protect the family, and in particular the child, against domestic violence. The State must prevent and investigate domestic violence and meet the needs for aid the victims and perpetrators have.

The treaty texts and the description of Utrecht's policy on domestic violence lead to the following determinations:

- The change in the national approach to domestic violence in 2002 made it easier for the municipality of Utrecht to deal with perpetrators of domestic violence. This allows the municipality to better fulfil the treaty obligation to protect victims of domestic violence and to investigate and prosecute perpetrators. In this regard, the municipality works in close cooperation with the police and the public prosecutor, among others.
- In addition to a repressive approach, the municipality of Utrecht also focuses on a preventive and care-drive approach to domestic violence. This is in accordance with the treaty obligation to take measures to prevent domestic violence.
- The use of the first aid survey also contributes to the compliance with the above-mentioned treaty obligations, since the State is obliged to take measures to protect children against domestic

language area, domestic violence is understood to mean abuse of women. That is the reason why in governmental policy, but also more and more in the aid organisations, the term 'violence in dependency relationships' is used. This term is understood as meaning: all violence in case of a dependent relationship between victim(s) and perpetrator(s). Thus, in addition to domestic violence/ violence in the private sphere, this term is also used to talk about violence committed by aid workers, trainers, priests, bosses and teachers (idem). In this study, we will limit ourselves to violence in the private sphere.

40 Amnesty International, *Encyclopaedia: "Nalatigheid"* available at <www.amnesty.nl > (visited on 27 October 2010).

41 Committee on the Elimination of All Forms of Discrimination against Women, *General Comment 12; Violence against Women*, 1989.

42 Gender is 'a denotation of the social, cultural and societal construction of men and women' in: Rikki Holtmaat, *Towards Different Law and Policy*. Ministry of Social Affairs and Labour Market, 2004, The Hague, p. 85.

43 Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85, E/CN.4/1996/53, 5 February 1996 and European Parliament, Resolution on the Need to Establish a European Union Wide Campaign for Zero Tolerance of Violence against Women, 1997/10/06.

44 Margreet de Boer, *CEDAW, A Practical Guide for Public Interest Organisations*, Clara Wichmann Instituut, Amsterdam, 2003, p. 9.

45 *Opuz v. Turkey*, 9 September 2009, Application No. 33401/02.

46 R. Roemkes, 'Controversial Equality. About the Construction of the (In)Equality of Women and Men in Partner Violence' in *Justitiele Verkenningen*, vol. 36, nr. 8, 2010 Huiselijk Geweld.

47 *Concluding comments of the Committee on the Elimination of Discrimination against Women. The Netherlands. CEDAW/C/NLD/CO/4*, 2007 and *Concluding Observations of the Committee on the Elimination of Discrimination against Women. The Netherlands CEDAW/C/NLD/CO/5*, 2010.

48 Yakin Ertürk, *Report of the Special Rapporteur on Violence against Women, its Causes and Consequences. Mission to Netherlands*, UN General Assembly/Human Rights Council, A/HRC/4/34/Add.4, 7 February 2007.

violence. Although at first sight the survey might seem to infringe upon the right to privacy,⁴⁹ this assumption is shown to be incorrect upon further consideration. Interference in the private sphere can be justified when it protects the health, rights and freedom of another (in this case, of the child).⁵⁰

- The 2010 evaluation of the Law Temporary Restraining Order showed that aid organisations lost sight of 37% of the victims who were minors after a temporary restraining order ended.⁵¹ Article 19 of the CRC indicates that the support for the child can be strengthened if victims who are minors remain a consideration of the State even after the temporary restraining order has ended.

Conclusion

Utrecht's approach to domestic violence is generally compliant with the treaty obligations. Diverse legal measures have been taken to investigate perpetrators of domestic violence and to protect victims. Support for children can possibly be strengthened if aid organisations were to keep an eye on victims who are minors even after a temporary restraining order has ended.

⁴⁹See for example Art. 12 UDHR, Art. 17 ICCPR, Art. 8 ECHR, Art. 7 Charter of Fundamental Rights for the European Union.

⁵⁰ Art. 8(2) ECHR.

⁵¹ Municipality Utrecht, *Evaluation Law Temporary Restraining Order* (June 2010), p. 27.

Social Care – Shelter for the Homeless

Introduction

The municipality of Utrecht has the legal obligation to care for public mental health, safety, and the division of living space in the city. In this regard, the municipality also has the obligation to develop sufficient facilities for the shelter and support of the socially disadvantaged. Within the group of socially disadvantaged, the municipality of Utrecht pays special attention to homeless individuals, people who are threatened with becoming homeless and inhabitants with a home that cause nuisance. In the specific case of shelter for the homeless, the municipality is particularly attentive to providing care for homeless individuals and to preventing the nuisance homeless individuals can cause. The municipality's policy in this regard, will serve as a case study to research the way in which the municipal approach to social care contributes to the protection of human rights.⁵²

Municipal Policy for the Shelter of the Homeless

Utrecht's policy regarding the shelter of homeless individuals was deemed particularly important around 2002. Many homeless people who had addiction problems were gathering around Hoog Catherijne. This led to such unsafe situations that the municipality started developing policy targeted specifically at getting homeless individuals off the street and into shelter. The municipality chartered the covenant Nobody Belongs on the Street! (*Niemand hoort op straat!*). Moreover, the municipality, together with the other G4-cities and the central government, designed a Plan on Social Care (*Plan van aanpak maatschappelijke opvang*). Finally, a special Task Force Activation (*Taskforce activering*) was established that helps homeless people in their daily lives or in their re-integration trajectory.

Covenant Municipality Utrecht

In 2005, the municipality of Utrecht, the Driving Group Public Mental Health Care (*Stuurgroep Openbaar Geestelijk Gezondheidszorg, OGGZ*), the board of the Foundation for Utrecht's Housing Corporation (*Stichting Utrechts Woningcorporatie, STUW*), and various client organisations signed the covenant Nobody Belongs on the Street! In this covenant the agreement was made to cooperate in order to prevent homelessness and promote reintegration into society of those being sheltered. The coalition partners worked toward a chain approach to prevention, shelter, and recovery. It was aimed to provide as many as possible homeless individuals with shelter and appropriate guidance on the path toward independent living. This was done by ensuring sufficient supply of differentiated housing, care and guidance. Moreover, the covenant aimed at ensuring that inhabitants who were being threatened with losing their house were kept in those houses.

In regard to the preventive approach, measures such as preventing evictions, offering aid in dealing with debt, and debt relief are important. The Team Flow (*Team doorstroom*) dealt with sheltering homeless individuals. Through this team, homeless individuals were sheltered in a night shelter, voluntarily and step-by-step,⁵³ eventually leading to 24-hour shelter.⁵⁴ The housing facilities that the municipality can offer are hostels, a care centre, supervised living projects, independent housing with the obligation to accept care and supervision. The most important thing in the recovery process is supporting homeless individuals in progressing through the 'ladder' designed by the OGGZ⁵⁵ and encouraging homeless individuals to eventually leave the shelter. This takes place with the help of process managers who act as contact people for the homeless individuals who end up living independently.

By now, the execution of the 2005 covenant has come to an end. In 2010 a new covenant, Toward Citizenship and Employment, Activating Socially Vulnerable Groups in the Municipality of Utrecht 2010-2013 (*Naar burgerschap en baan, activering van sociaal kwetsbare groepen in de gemeente Utrecht 2010-2013*). This covenant focuses mainly on the recovery process because the shelter of homeless individuals has already been successfully taken care of in Utrecht.

52 For this case study, the following sources were used: *Covenant from the Municipality of Utrecht, Nobody Belongs on the Street!* (2005), Plan on Societal Care (2006), Interview with Jan Braat (held on 14 September 2010), news reports from www.utrecht.nl and from the intranet about shelter for homeless individuals.

53 The mayor has the authority to have people taken into mandatory shelter, but this authority is more closely related to individuals with limited mental health.

54 At this moment, starting immediately with a 24-hour shelter is being experimented with.

55 The OGGZ-ladder has different phases, with as the highest rung independent living and providing for one's own life necessities.

Plan Social Care

In 2006, the municipality of Utrecht and the other G4-cities, the Balkenende II Cabinet, diverse health insurers, and housing corporations designed the Plan Social Care. This plan aims at improving the living situation of those individuals who are homeless (or who are threatened with homelessness). The eventual goal of the plan is to have a largest possible number of homeless individuals living independently. The cooperating partners hope that this will reduce the nuisance and criminality homelessness can cause. The execution of the Plan lasts until 2013.

The Plan Social Care is characterised by a person-oriented approach, an earlier and more effective signalling of problems, an improved lead-up to shelter and care, an adequate level of shelter facilities, a sufficient provision of debt relief assistance and a collective health care insurance. In 2009, within the framework of the Plan Social Care, the municipality of Utrecht developed its local approach, focussing on a shorter stay of homeless in accessible shelter and a faster guidance to care, housing and daytime activities. The municipality of Utrecht developed this approach together with various shelter organisations. However, achieving the aims of this approach is only possible when there is a clear picture of the group of homeless individuals. This demands more than just a registration of some basic personal data.

Task Force Activation

The mission of Task Force Activation Utrecht is to ensure that every client within Utrecht's social and mental (health) care programmes are kept busy with daily activities or with a re-integration process. This aim is in accordance with the focus of Utrecht's new 2010 covenant. The accent that had previously been placed on care has been shifted to activation. The Task Force will be active realising the goals in the covenant until 2013.

Human Rights Example

Human rights are implicated in Utrecht's cold weather arrangement because all homeless individuals in Utrecht have a right to free place to sleep when this arrangement is in force. During these times, there is no limit to the number of times one can spend the night at a specific organisation and extra beds are made available for homeless individuals. The cold weather arrangement only enters into force when the wind chill temperature during the day is below freezing and the expectation is that this will last for some time. The opening times at the Catharijnehuis and the Sleep-Inn are extended so that there is no gap between the opening times of these facilities. Because of this, everyone is prevented from having to wait outside on the street. The Catharijnehuis, the Smulhuis, the NOIZ and care centre de Singel provide free meals when the cold weather arrangement is in force.

Result

In the municipality of Utrecht, most homeless individuals are sheltered or placed in housing. Some important points of attention remain preventing people from needing to resort to shelter, the focus on appropriate care and living supervision, and the issue of whether groups are kept in Utrecht's shelters too long.

Good practice

- Hostels
- Heroine Project (free heroine is given to homeless individuals)

These two measures combat criminality. The creation of care facilities and shelter also does this. Thus, this policy cares both for homeless individuals and for society.

Points of Attention

- The organisations the municipality cooperates with to provide for shelter and re-integration of homeless individuals are in principle independent. Although the municipality can exercise some control, for example by providing or stopping subsidies to a certain organisation, the organisations have a certain margin of appreciation within which they determine how to deal with homeless individuals. Therefore, the municipality has only a limited grip on the execution of the policy.

Treaties and Social Care

Article 25(1), Universal Declaration of Human Rights

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 11(1), International Covenant on Economic, Social and Cultural Rights

The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right (...).

Article 31, European Social Charter

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

- 1. to promote access to housing of an adequate standard;*
- 2. to prevent and reduce homelessness with a view to its gradual elimination;*
- 3. to make the price of housing accessible to those without adequate resources.*

Article 34(3), Charter of Fundamental Rights of the European Union

In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

Explanation

In addition to the general provisions on the right to a decent standard of living, including housing, there are also provisions that ensure this right specifically for women,⁵⁶ children,⁵⁷ disabled people,⁵⁸ and everyone without distinction as to race, colour or national or ethnic origin.⁵⁹ The provisions on the right to a decent standard of living entail that everyone and everyone's family has a right to housing. Article 11 ICESCR obliges treaty parties to take "appropriate steps to ensure the realisation of this right." The European Social Charter (Article 31) and the Charter of Fundamental Rights of the European Union (Article 34(3)) include more specific demands. Treaty parties must promote affordable and adequate access to housing, must take preventative measures against homelessness, and must offer welfare aid for housing. These rights all flow forth from the core principle of respect for human dignity.

The Balance

The treaty parties are obliged to guarantee certain essential rights for everyone within the territory of the State. The State must offer homeless individuals housing and must promote access to housing. Moreover, the State is obliged to prevent, reduce and eliminate homelessness. It is important that States ensure a decent standard of living, continuously improving living conditions, and a dignified existence for their inhabitants. These terms are capable of being broadly interpreted. Thus, it seems that many different types of measures can fall under these obligations.

The treaty texts and the description of Utrecht's policy on homelessness lead to the following determinations:

- When dealing with homelessness, the municipality of Utrecht works together with other organisations in the areas of prevention, sheltering, and recovery. Assistance with debt, shelter, and guidance in the process of living independently is offered to homeless individuals. Promoting housing and preventing and reducing homelessness has a central place of importance. This is in accordance with the treaty obligations.
- The municipality works towards moving homeless individuals up the OGGZ 'ladder.' In this way, the municipality aims to improve the living conditions and living situation of homeless individuals. This aim is completely in accordance with the made treaty agreements.

56 Art. 14(2) CEDAW.

57 Art. 27(3) CRC.

58 Art. 28 UN Disabilities Treaty.

59 Art. 5 CERD.

- The municipality of Utrecht offers shelter to homeless individuals, in compliance with its legal duty of care and because of safety considerations. The cold weather arrangement ensures that all homeless individuals have a place to sleep when the wind chill temperature is under freezing for a considerable period of time.
- The municipality of Utrecht has to deal with the independent status of the organisations that are responsible for the shelter and re-integration of the homeless individuals. It is because of this that the municipality has a limited ability to influence the exact form and effect of the local shelter policy. This is not a problem in so far as the treaty obligations are concerned, since the treaties do not contain specific obligations as to result.

Conclusion

The municipality of Utrecht complies with the treaty obligations of promoting housing and preventing, reducing and eliminating homelessness. Moreover, the municipality is actively involved in improving the living conditions of homeless individuals, in accordance with the treaty obligations. Considering this, the municipality of Utrecht seems to be complying with the treaty obligations.

Human Trafficking – Prostitution Policy

Introduction

Combating human trafficking has enjoyed high priority nation-wide during the last few years. It was in relation to this development that the prostitution sector also received attention. Despite this specific focus, there is no law regulating prostitution at the national level (yet).⁶⁰ Because of this, municipalities are the most important designers of policy on prostitution. Municipalities can take local circumstances into account and can set their own demands in respect of the acceptability of local brothels and prostitution. The core of Utrecht's prostitution policy is a legal prostitution sector, with a combination of measures that form a barrier against human trafficking. The municipality of Utrecht's prostitution policy will serve as a case study in this report to research the way in which the municipal approach to human trafficking contributes to the protection of human rights.⁶¹

Municipal Prostitution Policy

Up until October 1, 2000 a general brothel prohibition was valid in the entirety of the Netherlands. After that date, it was decided to end the general prohibition.⁶² Since that time, it has been the municipalities which have the ability to regulate prostitution. For Utrecht, this meant that a further expansion of the



Picture made by Sietse Brouwer

number of prostitution companies was banned and that a permit system was established. In 2008, it became apparent that there was a structural presence of human trafficking in the prostitution sector in Utrecht.⁶³ The municipality of Utrecht, the police and the public prosecutor decided at that point to act jointly to combat human trafficking in prostitution. Administrative instruments (such as a permit system, oversight and enforcement) create a barrier against human trafficking in the prostitution sector. This helps support the investigation and prosecution of human trafficking. As part of this movement, the Permit System Window Prostitution (*Vergunningstelsel raamprostitutie*) was amended.

Utrecht's Prostitution Policy

In Utrecht, permits can be given for any of three types of prostitution: window prostitution, street prostitution and prostitution within a sex organisation or escort service. In regard to window prostitution, all entrepreneurs with a window prostitution company must have a permit. The prostitutes then rent work space from these entrepreneurs. In contrast to this system, prostitutes who are active within areas zoned for street prostitution receive the permits themselves. It is estimated that there are 1,000 prostitutes in Utrecht with permits and 200-300 prostitutes without permits.⁶⁴

The municipality of Utrecht's prostitution policy is characterised by five themes: limiting nuisance; ensuring the health, well-being and safety of the prostitutes; combating human trafficking and permit-less, forced prostitution; taking preventative measures; and supporting those who wish to leave prostitution. A combination of safety and care is an important aspect of the policy. The aim is to improve

60 The legislative proposal 'Law Regulating Prostitution and Combating Abuse in the Sex Industry' is at the moment of writing this report being dealt with by the First Chamber. This proposal provides for a mandatory permit system for municipalities that would count for all sex companies. This proposal also holds that independent prostitutes must register themselves and that clients of the illegal provision of prostitution will be criminally liable.

61 For this case study, the following sources were used: Human Trafficking – Seventh Report National Rapporteur (The Hague, 2009), Evaluation of Utrecht's Prostitution Policy (2009), Proposal to the Council: Amendment Permit System Window Prostitution in the General Local Regulation (2010), interview with Jennifer Hofland (held on 8 October 2010), e-mail contact with Jennifer Hofland, news reports from www.utrecht.nl and from the intranet about Utrecht's prostitution policy.

62 Municipality of Utrecht, Evaluation of Utrecht's Prostitution Policy (2009) p. 15.

63 Proposal to the Council: Amendment Permit System Window Prostitution in the General Local Regulation (2010).

64 Municipality of Utrecht, Evaluation of Utrecht's Prostitution Policy (2009) p. 3, 4.

the liveability and safety of neighbourhoods but also to optimise the safety and quality of health and living conditions of the prostitutes themselves.

Three services are responsible for the prostitution policy: Administration and Corporate Services / Department Public Order and Safety (*Bestuurs- en Concerndienst / Afdeling Openbare Orde en Veiligheid, BCD/OOV*), the Municipal Medicinal and Health Service (*Gemeentelijke Geneeskundige en Gezondheidsdienst, GG&GD*) and the Service Societal Development (*De Dienst Maatschappelijke Ontwikkeling, DMO*). The municipality and the police work together in the supervision of the prostitution branch. Moreover, the foundation Living Room Service for Prostitutes (*Huiskamer Aanloop Prostituees, HAP*) is active in Utrecht. HAP offers prostitutes easily accessible health care. Prostitutes can also go to HAP for food, drink, and sanitary facilities. Finally, HAP fulfils an important function by providing information and advice to prostitutes. Municipality wide, preventative initiatives provide information about the prostitution sector and human trafficking at school. Boys are a new target audience for these initiatives.

Research shows that almost half of all prostitutes want to stop working as a prostitute. It appears that, in practice, this is difficult for a prostitute to do by herself. Often the individual in this situation lacks education, professional skills and a social network. In 2008, the municipality of Utrecht started exit-programmes to help in this regard. These exit-programmes offer a personal assistance programme, including crisis shelter, psycho-social care, debt assistance and housing.

Barrier Effect of the Broad Packet of Measures

After becoming aware of a structural presence of human trafficking at the Zandpad, the municipality of Utrecht decided, together with the police and the public prosecutor, to set up a joint approach to combat this crime. The tax department also became an important partner in this approach. A broad packet of measures was proposed as part of this approach. This packet included: amending the permit system; getting more information from the police and the public prosecutor in order to investigate and prosecute human trafficking; combined enforcement actions; cooperating with those who run prostitution companies; a larger presence of aid services, improving the resilience of prostitutes, using exit policy and giving clients information about what to do when human trafficking is noticed.

The amended Permit System Window Prostitution entered into force on November 1, 2010 and includes the following provisions:⁶⁵

1. A duty for prostitutes to register themselves. In this way, the GG&GD are able to see how many individuals are involved in prostitution and the GG&GD are better enabled to recognise indications of human trafficking. Moreover, the GG&GD can directly alert the women about (medical) care, assistance and exit possibilities. The registration is valid for two years. The data is accessible by a limited number of people.
2. Prostitutes may work no more than 12 hours per day. This prevents women being forced to work extremely long hours. During a prostitute's working hours, the attempt is made to make assistance available as much as possible.
3. The minimum rental period of a work space is four weeks. In this way, police, the tax department, inspectors and aid providers can build contacts with the prostitutes. Moreover, this rule aims to prevent prostitutes from being rotated as fast as possible, since this is a tactic often used by human traffickers.

B9 Permit

Human trafficking is not limited to Dutch prostitutes. It is often immigrants who end up in prostitution via human trafficking. For this group of people there is the B9-arrangement. Illegal prostitutes who are (possible) victims or witnesses of human trafficking can receive a temporary residence permit. They may then remain in the Netherlands during the investigation and prosecution of the perpetrator.⁶⁶

Human Rights Example

A general problem that arises when combating human trafficking in the prostitution sector is that the actual existence of human trafficking is very difficult to investigate and prosecute. In 2000, the general brothel prohibition ended in the Netherlands. Thus, prostitution is legal in Utrecht. On the one hand, it can be argued that the legalisation of prostitution has a large negative impact on a broad series of rights. On the other hand, and this is argued by the Dutch government, it can be said that regulating the sex industry allows the government to exercise more control over the sex industry and to prevent abuse. The

65 Proposal to the Council: Amendment Permit System Window Prostitution in the General Local Regulation (2010).

66 Human Trafficking – Seventh Report National Rapporteur (The Hague, 2009) p. 166.

Dutch government believes that this approach is in the benefit of the sex workers and that legalisation facilitates action against sexual violence, sexual abuse and human trafficking.

Result

The exit programme that the municipality of Utrecht started enjoyed success in 2009. Fifty women were involved in the guidance process and 11 of them eventually quit their jobs as prostitutes. In 2010, 50 places will also be created in this programme for women who want to leave the profession.⁶⁷ Only time will tell what the results of the new local regulations (APV) will be. In any case, it is clear that the municipality is committed to inspection and enforcement.

Good practice

- The HAP-Project and the exit projects

Points of Attention

- Measures that are used to combat human trafficking could sometimes lead to a reduction of the choices and the rights of the groups for which the measures are meant. For example, the right to freedom of movement and the right to employment can be limited. Proportional measures and an eye for these 'side effects' remain important when taking measures against human trafficking.
- The future will show whether the new local regulations (APV) have the intended effect.

⁶⁷ Municipality of Utrecht, 'Utrecht's Exit Programme Prostitutes Has Success' (23 February 2010), <http://www.utrecht.nl/smartsite.dws?id=12564&persberichtID=330164&type=pers> (visited on 4 May 2011).

Treaties and Human Trafficking

Article 4, Universal Declaration of Human Rights

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 8 (1, 2), International Covenant on Civil and Political Rights

- 1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.*
- 2. No one shall be held in servitude.*

Article 6, Convention on the Elimination of All Forms of Discrimination against Women

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Article 32, Convention on the Rights of the Child

- 1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.*
- 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:*
 - (a) Provide for a minimum age or minimum ages for admission to employment;*
 - (b) Provide for appropriate regulation of the hours and conditions of employment;*
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.*

Article 36, Convention on the Rights of the Child

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 4 (1, 2), European Convention on Human Rights

- 1. No one shall be held in slavery or servitude.*
- 2. No one shall be required to perform forced or compulsory labour.*

Article 5, Charter of Fundamental Rights of the European Union

Prohibition of slavery and forced labour

- 1. No one shall be held in slavery or servitude.*
- 2. No one shall be required to perform forced or compulsory labour.*
- 3. Trafficking in human beings is prohibited.*

Explanation

Human trafficking and slavery that exploits people and engages them in forced labour happens on a large scale, worldwide.⁶⁸ Women and young girls are often forced into prostitution but it also happens that they are forced to work as au-pairs or domestic workers. The group of male victims is becoming more visible in the Netherlands, for example victims who are forced to work in agriculture, construction, and restaurants and cafés. Article 273f of the Dutch Criminal Code criminalises exploitation in labour and services in sex industry, slavery, practices that can be considered slavery, and organ trade.

Diverse international human rights treaties oblige States to prevent human trafficking, to punish traffickers and to provide adequate solutions to trafficking.⁶⁹ In the first place, most instruments are focused on enforcing the law. The UN Office of the High Commission of Human Rights' (UNOHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking and the Council of Europe's Convention on Action against Trafficking in Human Beings pay more attention to a human rights approach that takes side effects into account.⁷⁰ The Convention focuses on preventing human trafficking, protecting victims and prosecuting perpetrators. Moreover, the Convention sets up an independent

⁶⁸ See the commentary on Art. 4 of the UDHR at <www.amnesty.nl> (visited on 5 January 2010).

⁶⁹ For more information see: Factsheet 6: Human Rights Standards for Preventing and Combating Trafficking and the Protection of the Rights of Trafficked Persons van Aim for Human Rights.

⁷⁰ It can be seen whether the human trafficking policy is in line with human rights, with help from the following instrument: Aim for human rights (the Netherlands), La Strada Czech Republic and La Strada International and SCOT-PEP (UK), *The Right Guide. A Tool to Assess the Human Rights Impact of Anti-Trafficking Laws and Policies*, the Netherlands: 2010.

mechanism that sees to the effective implementation of the Convention. The judgment of the European Court of Human Rights in the case *Rantsev v. Cyprus and Russia*⁷¹ was an important turning point in the combating of human trafficking. In this case, the Court used a human rights approach to human trafficking. The Court indicated that in addition to having a positive obligation to criminalising and prosecuting, the State also has an obligation to protect the victim of human trafficking.⁷² Moreover, the UN Trafficking Protocol and a number of EU decisions⁷³ and directives⁷⁴ play an important role in the approach to human trafficking.

The Balance

In the above-mentioned treaty articles every form of slavery, forced labour and human trafficking is prohibited. Therefore, States must take (legal) measures and must apply punishments in order to comply with this fact. Moreover, the State must set minimum ages for paid labour and provisions for working times and working conditions in order to prevent people from economic exploitation.

The treaty texts and the description of Utrecht's policy on prostitution lead to the following determinations:

- The municipality of Utrecht uses a permit system for work in the prostitution sector.
- The municipality of Utrecht has, in accordance with treaty obligations, set maximum working times and ensures that prostitutes work in healthy and safe conditions.
- Combating human trafficking is a central theme within Utrecht's prostitution policy and within the amended Permit System Window Prostitution. Human trafficking is very difficult to detect and prosecute. That fact makes preventing human trafficking even more important. The municipal prostitution policy focuses on raising barriers against human trafficking so as to support investigation and prosecution of human trafficking.
- Measures that are taken to combat human trafficking can have adverse effects on other human rights of the target audience, such as the right to freedom of movement. It is important to take this, and the proportionality of the measures, into account.

Conclusion

Utrecht's prostitution policy is characterised by a broad packet of measures that combats human trafficking and forced labour as much as possible. The municipality expresses that human trafficking is prohibited and acts in conformity with treaty obligations by taking diverse measures to prevent human trafficking and economic exploitation. The chain approach between the municipality and the different partners illustrates this. However, measures that are taken to prevent human trafficking can lead to a restriction of the choices and rights of the target audience. Proportionality of the measures and an eye for these side effects remain important when taking measures against human trafficking.

71 *Rantsev v. Cyprus and Rusland*, 7 January 2010, Application No. 25965/04.

72 For an explanation, see Chris Sent, *Rantsev, A Human Rights Approach to Human Trafficking*, 15 December 2010, available at <www.humantrafficking.info> (visited on 1 June 2011).

73 The Framework Decision 2002/629/JHA of the Council of 19 July 2002 on Combating Trafficking in Human Beings; The Framework Decision 2001/220/JHA of the Council of 15 March 2001 on the Standing of Victims in Criminal Proceedings.

74 Directive 2004/81/EC of the Council of the European Union, 29 April 2004 *On the Residence Permit Issued to the Third-Country Nationals Who Are Victims of Trafficking in Human Beings or Who Have Been the Subject of An Action to Facilitate Illegal Immigration, Who Cooperate with the Competent Authorities*; Directive 2011/36/EU from the European Parliament and the Council of the European Union, 5 April 2011 on preventing and combating human trafficking and protecting victims of human trafficking, replacing Framework Decision 2002/629/JHA of the Council of the European Union.

Public Order – Camera Policy (Privacy)

Introduction

In the Netherlands, the municipalities are responsible for the enforcement of the local public order and safety. In order to fulfil this task, more and more municipalities are deciding to use closed circuit television (CCTV) in the (inter-)cities. The use of cameras is seen as a solution to a lack of supervision in areas where there is a lot of (violent) crime. For these reasons, the municipality of Utrecht started using cameras ten years ago. Because the privacy of individuals can be affected by camera surveillance, the municipality must ensure that its camera policy complies with the national privacy law (Law Protection of Personal Data, *Wet bescherming persoonsgegevens*) as well as with the local General Local Regulation (*Algemene Plaatselijke Verordening, APV*). Utrecht's camera policy will serve as a case study in this report to research in which ways the municipal enforcement of public order contributes to the protection of human rights.⁷⁵

Municipal Camera Policy

The reason for Utrecht's camera policy was the increasing violence during the end of the 1990s in the intercity of Utrecht, specifically taking place in Utrecht's night-life. In the framework of the project Go Out Safely (*Veilig uitgaan*), the municipality decided to experiment with camera supervision in 2001. The cameras, placed in the areas where Utrecht's nightlife takes place the most, were meant to reduce violent crime and to improve Utrecht's inhabitants' feeling of safety. Because of the positive experience with the use of cameras, camera surveillance was later also allowed to be used in neighbourhoods where youth nuisance was experienced as being a big problem. Utrecht's camera policy is bound by diverse rules regarding the approval of camera use, the designation of the camera areas and attention to privacy.

Approval of the Camera Policy

The aim of Utrecht's camera policy is enforcing public order (both in a preventive and repressive way) by using police and other services more efficiently. Camera supervision contributes indirectly to the investigation of crimes when the footage is watched in the framework of criminal investigations. In the Board's 2010-2014 programme, specific mention is made that cameras can only be used in instances where it can be specifically shown that cameras can help with the enforcement of the public order and safety. In these cases, camera supervision can be useful to gain a better picture of violent situations and to ensure a faster and more appropriate response from police. Moreover, camera footage is an important piece of evidence when dealing with violent crimes between groups or where alcohol and drugs play a role.⁷⁶

In Utrecht, it has been agreed that camera supervision can never be a stand-alone measure. Cameras should always be only a supplementary part of a packet of preventive and repressive measures that ensure safety in the city. Other measures that can be used to ensure safety are, for example, more effective use of youth workers and police, structural meetings with clubs' doormen and police, clubs' entrance policies and the collective refusal of entrance into all bars, clubs and cafés in Utrecht. The municipality of Utrecht has placed a total of 87 cameras in the city.⁷⁷ This number has been frozen for the moment.



Picture made by Sietse Brouwer

75 For this case study, the following sources were used: Factsheet Camera Surveillance Public Order (2010), Decision Designation Areas Camera Surveillance (2009), Study on Camera Policy in the Intercity (2009), Evaluation of the Camera Surveillance in Utrecht (2008), interview with Wout van Leeuwen and Ati van Linschoten (held on 12 October 2010), news reports from www.utrecht.nl and from the intranet about camera surveillance policy.

76 There are also some objections to camera supervision, but this case study will not deal with that further (with the exception of the privacy issues).

77 Utrecht and Safety. Camera Surveillance in Utrecht, <http://www.utrecht.nl/smartsite.dws?id=267207> (visited on 11 October 2010).

Decision Designation of Areas of Camera Supervision

In 2009, the mayor of Utrecht decided to allow cameras in only a few neighbourhoods, in addition to the cameras that were already placed in the inter-city. The neighbourhoods where cameras were additionally to be allowed were Kanaleneiland Noord, Bernhardplein and Zuilen-Oost, Lombok-Oost, Maria van Hongarijedorf Overvecht, and Hoograven. Moreover, the mayor decided that, in principle, the cameras could only be placed there for one year, with a possibility of extension. Each year, per location, it is decided whether extension is necessary.⁷⁸ Finally, it was determined that an extensive analysis of camera supervision had to be made before cameras could be placed in the city.

Privacy

The use of camera supervision entails the risk of an unacceptably large interference with the privacy of inhabitants. However, it seems that the municipality of Utrecht has dealt with the privacy issue appropriately. The Law Protection Personal Data and Utrecht's APV provide different privacy criteria that the municipality must adhere to. First, the cameras can only be placed for one year (extension is possible under certain circumstances). Second, the placement of cameras has to adhere to the demands of proportionality and subsidiarity. Third, the presence of camera supervision in a certain area has to be made clear to the public. Fourth, the police must have operational direction of the camera supervision. Finally, the footage may be stored no longer than 28 days.

Camera supervision in the inter-city of Utrecht is used actively during the evenings and during the nights in the week that are popular for going out. In Utrecht's neighbourhoods, footage is watched from the end of the school day to late in the evening. The images are watched live by a small group of functionaries who are trained and screened for that purpose. The camera footage can be kept for no more than 28 days and falls under the Law Police Data (*Wet politiegegevens*). The police can only search old footage within those 28 days for criminal facts and may only use footage for further investigation when this has been requested by the public prosecutor.

Human Rights Example

An obvious example of when human rights are implicated in Utrecht's camera policy is the municipality's dealing with the privacy issue. On the one hand, there is mostly (academic) literature that raises objections to camera supervision because of the privacy argument. On the other hand, it appears that in practice 80-90% of Utrecht's population has no problem with the placed cameras.⁷⁹ It is difficult for the municipality of Utrecht to find a balance between both approaches.

Result

In 2009 a study was done on the camera supervision in Utrecht's intercity. This study showed that cameras contribute significantly to the resolution of violent incidents. Moreover, camera supervision has lived up to expectations regarding the prevention of theft and vandalism. Camera supervision has contributed less well to preventing (youth) nuisance and to reducing feelings of insecurity. This is also the case in situations where alcohol and drugs play a role.⁸⁰ The reporting of crimes in Utrecht's intercity has gone down since camera supervision has started. However, it is unclear whether this is actually because of the camera policy or because of other measures taken in the framework of Go Out Safely.

Good practice

- The rule that camera supervision must always form a part of a broader packet of preventive and repressive measures when dealing with safety in the city.

Points of Attention

- The municipality of Utrecht must ensure that its camera policy adheres to many different privacy conditions. On the other side, the social trend of social media and, for example, Google Street View, does not always protect privacy. The municipality of Utrecht must figure out how to deal with these societal developments. There is a distinction between the rights of individuals

⁷⁸ The safety situation has already improved so much in the Maria van Hongarijedorf that an extension would be disproportionate. (Decision Designation Areas Camera Surveillance (2009)).

⁷⁹ Municipality of Utrecht, Study on Camera Policy in the Intercity (2009) p. 2.

⁸⁰ Municipality of Utrecht, Study on Camera Policy in the Intercity (2009) p. 2.

that the *government* must respect and those rights that hold between individuals and *organisations* such as Google.

Treaties and Public Order (Privacy)

Article 12, Universal Declaration of Human Rights

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 17, International Convention on Civil and Political Rights

*1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.*

Article 5(1), European Convention on Human Rights

Everyone has the right to liberty and security of person (...).

Article 8, European Convention on Human Rights⁸¹

*1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

Article 16b(1), Treaty of Lisbon (Article 16(1), Treaty on the Functioning of the European Union)

Everyone has the right to the protection of personal data concerning them.

Article 25bis, Treaty of Lisbon (Article 39, Treaty on the European Union)

In accordance with Article 16 of the Treaty on the Functioning of the European Union and by way of derogation from paragraph 2 thereof, the Council shall adopt a decision laying down the rules relating to the protection of individuals with regard to the processing of personal data by the Member States when carrying out activities which fall within the scope of this Chapter, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.

Article 7, Charter of Fundamental Rights of the European Union

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8, Charter of Fundamental Rights of the European Union

*1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.*

Article 10, Constitution of the Netherlands

*(1) Everyone shall have the right to respect for his privacy, without prejudice to restrictions laid down by or pursuant to Act of Parliament.
(2) Rules to protect privacy shall be laid down by Act of Parliament in connection with the recording and dissemination of personal data.
(3) Rules concerning the rights of persons to be informed of data recorded concerning them and of the use that is made thereof, and to have such data corrected shall be laid down by Act of Parliament.*

Explanation

Different human rights treaties prohibit unlawful interference with someone's privacy, family, house of correspondence. Interferences with privacy by the government are only allowed under strict circumstances. First, interference is only allowed when this has been provided for by law. The UN Human Rights Committee has determined that the prohibition against arbitrariness can also prohibit interference that is provided for by law. The interference must thus also be in compliance with the provisions and aims of the ICCPR and has to be reasonable in all circumstances.⁸² Second, it has to be clear that the interference is in the interest of the safety of society. The European Court of Human Rights uses the proportionality test to see if the interference with the right to privacy in order to protect public order is

⁸¹ Art. 16 CRC protects children against arbitrary or illegal interference in his or her private life.

⁸² UN Human Rights Committee, *General Comment 16*, 23 March 1988.

proportional. Third, individuals must have optimal access to the data that is collected by the government. Finally, all data may only be made available to those who have a direct legal interest in it and the data must be destroyed as soon as that interest no longer exists.⁸³

The EU also has rules that provide for an independent authority which is supposed to supervise the compliance with privacy rules.⁸⁴ In the Netherlands, this function is fulfilled by the Board Protection Personal Data (*College bescherming persoonsgegevens*). Moreover, the State is obliged to prevent individuals from violating the right to privacy. In addition to the general prohibition against arbitrary or illegal interference in an individual's private life, there are also different international instruments that protect privacy in relation to the electronic processing of personal data.⁸⁵

The Balance

It appears from the treaty texts that the privacy of individuals is found to be very important. Individuals' personal sphere, rights, and freedoms must, in principle, be protected from interference by the public authorities. On the other hand, everyone also has a right to personal safety. Because of this, interference with privacy (such as in the case of the camera policy) is allowed when this is in the interest of national and public safety or if this is necessary to prevent disorder and crime.

The treaty texts and the description of Utrecht's camera policy lead to the following determinations:

- The aim of Utrecht's camera policy is ensuring public order, investigating and preventing crimes and using police and other services more efficiently. Moreover, the camera policy is intended to have a preventative effect. The cameras in Utrecht seem to contribute significantly to solving violent crimes and to the prevention of theft and vandalism. From this perspective it can be said that, in accordance with the treaties, cameras are used in the interest of public safety.
- The placement of cameras in Utrecht is bound by national and local privacy rules. This is in accordance with the treaty obligations that hold that everyone has a right to protection by the law against interference or violation of the right to privacy.
- In addition to the number of situations in which cameras work well, there are instances in which the camera policy has contributed less to prevention. This is the case in regard to (youth) nuisance, reducing feelings of insecurity, and reducing crimes in which alcohol and drugs play a role. In these specific situations, the question can be posed whether the camera policy is still necessary to ensure public safety and the prevention of crime.

Conclusion

Considering the aim of Utrecht's camera policy, the use of the cameras is in accordance with the treaty obligations. Moreover, and in accordance with the treaty obligations, people are protected by the law against an interference with privacy that is too severe. In specific cases cameras have contributed less well to the prevention of crimes. This is the case for situations of (youth) nuisance and crimes in which alcohol and drugs play a role.

83 See 'privacy' in Amnesty International's human rights encyclopaedia (www.amnesty.nl, visited on 1 December 2010).

84 Art. 25bis of the Treaty of Lisbon and Art. 8 of the Charter of Fundamental Rights of the European Union.

85 For example, the UN Declaration on Mass Media and Human rights and the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of the Council of Europe.

Social Corporate Responsibility – Fair Trade

Introduction

When a municipality is recognised as a Fair Trade Town, it means that both the municipal organisations and the entrepreneurs in the city are dealing with (small) farmers from developing countries in a manner that is as fair as possible. A Fair Trade Town pays a fair price for products, deals respectfully with people and the environment, and employs the principle of equality and partnership on all trade levels. Instead of development aid, it is fair trade that is supposed to contribute to the ability of producers in developing countries to build a better life.

Fair trade is a type of social corporate responsibility.⁸⁶ The first fair trade campaigns were held in 1992 in the city Garstang in the United Kingdom. In 2000, this city was declared first Fair Trade Town in the world. Since then other municipalities all over the world are working on making their trade as fair as possible. Between 2009 and 2010, the municipality of Utrecht worked toward getting the title of Fair Trade Town. This process will serve as a case study in this report to research the ways in which Utrecht's efforts to



Picture made by Hans Sakkers

comply with social corporate responsibility principles have contributed to the protection of human rights.⁸⁷

Fair Trade in Utrecht

In 2009 a number of volunteers came with the initiative to start a private working group with the aim of making Utrecht a Fair Trade Town. This initiative was noticed by two of Utrecht's municipal council members who then brought up the idea of fair trade in the council. Eventually, the council decided that the municipal organisation also wanted to support the aim of getting the title Fair Trade Town Utrecht. The municipality of Utrecht is, after all, a Millennium Municipality and fair trade would contribute to the realisation of one of the eight millennium goals.⁸⁸ However, before Utrecht

could get the title of Fair Trade Town, it had to fulfil a number of criteria. In order to achieve this, a number of actions were directed by the private working group.

Fair Trade Town

It is not simple to get the title of Fair Trade Town. The municipality has to fulfil six criteria. First, there must be a local working group to take the initiative to attain the title Fair Trade Town. Second, the municipality and the municipality's board must express their support for fair trade and they must buy fair trade products.⁸⁹ Third, fair trade products must be available in the local stores, supermarkets, cafés and restaurants. Fair trade products must be visibly sold and served. Fourth, a number of local organisations and companies must use fair trade products. Fifth, there must be sufficient media attention for the

⁸⁶ Social corporate responsibility is the process by which a company takes into account and takes responsibility for the effects its trade has on society, ecology and economy.

⁸⁷ This case study made use of the following sources: Annual Plan 2010. Utrecht, Fair Trade Town (2010), Fair Trade Original Special 11, Fair Trade Your Municipality! Guide and Backgrounds Campaign 'Fair Trade Town' (2009), Project Plan Utrecht Fair Trade City (2009), www.millenniumdoelen.nl, www.garstangfairtrade.org.uk, www.maxhavelaar.nl, www.utrechtfairtrade.nl, www.fairtradegemeenten.nl (all visited in October en November 2010), interview with Anneke van der Kluit (held on 21 October 2010), news reports from www.utrecht.nl about Fair Trade Town, Social Corporate Responsibility and the Millennium Goals.

⁸⁸ The United Nations Millennium Summit set eight millennium goals in 2000 that are meant to contribute to poverty reduction and sustainable development. The millennium goals are: elimination of extreme poverty and hunger, right to primary education, equal rights for men and women, lower child mortality rates, fewer deaths during childbirth, combating deadly diseases, care for a sustainable environment, and creating a worldwide partnership for sustainable development.

⁸⁹ Fair trade products can be recognised by the Max Havelaar label. The criteria that must be met in order to use the Max Havelaar label are, among others: a long trade relationship with (small) farmers in developing countries, stimulating social-economic independence of the small farmers, and the use of a minimum price for the products of the small farmers.

attempt to become a Fair Trade Town. Finally, within the government, the corporate sector and other organisations, special attention has to be paid for the overarching theme of social corporate responsibility.

Fair Trade Town Utrecht

Of the six criteria that a city must fulfil in order to become a Fair Trade Town, the second is directly applicable to the local government. In order to make the municipal organisation aware of corporate responsibility, the board of mayor and aldermen decided to initiate a new procurement policy. From that time on, the municipal organisation was bound to procure a specific number of fair trade products.

Aside from in the case of the second criterion, it is the local working group that holds responsibility for the realisation of the criteria that must be fulfilled in order for Utrecht to become a Fair Trade Town. The working group has defined two target audiences that should become aware of fair trade: the entrepreneurs in Utrecht and the consumers in the city. Regarding the entrepreneurs, it was determined that there already were a number of stores, restaurants and companies that bought fair trade products. It was remarkable to notice that there was no clear difference in this regard between large or small enterprises. There are small companies that make an effort to promote fair trade on principle, but there are also large companies that have a special budget post for social corporate responsibility.

In order to make the consumers in Utrecht aware of fair trade and fair trade products, a fair trade campaign has been started and run mostly in the (local) media and fair trade events are organised on a regular basis in the city. During these times, consumers are informed about the background of fair trade. Moreover, they are stimulated to choose fair trade products instead of products that are not gotten by way of fair trade.

Human Rights Example

In the case of social corporate responsibility and fair trade, the focus is human rights in developing countries and less so human rights within the municipality of Utrecht. However, at the Utrecht-level, this topic is about awareness raising and education of Utrecht's inhabitants and entrepreneurs about fair trade and human rights.

Result

It was uncertain for a while whether the municipality of Utrecht would receive the title of Fair Trade Town in 2010 but, in December of 2010, it happened. For a while, there was uncertainty about the number of fair trade companies in Utrecht (baseline). Now that the municipality has achieved the title of Fair Trade Town, the city must continue to invest in the publicity and awareness of fair trade.

Good practice

- The municipal organisation's fair trade procurement policy is now supported by the entire municipality.

Points of Attention

- The way the municipality will deal with the multiplicity of labels that promote fair trade but that do not use a minimum price. These labels are not officially seen as fair trade labels (see footnote 72).

Treaties and Social Corporate Responsibility

Preamble, Universal Declaration of Human Rights

Now, therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 2(1), International Covenant on Economic, Social and Cultural Rights

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

Article 1(2), International Covenant on Civil and Political Rights

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

Part I, European Social Charter

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised: (...)

Article 1(4), Treaty of Lisbon (Article 3, Treaty on the European Union)

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

Explanation

The preamble of the UDHR shows that the primary responsibility to protect human rights rests with States. However, individuals and other organs of society, such as companies, also play a role in promoting and applying human rights. This rule from the UDHR is often referenced by international companies abroad in the framework of social corporate responsibility.⁹⁰ In this study, a distinction will be made between what is expected from States and what is expected from companies. The above-mentioned articles show that States are expected to take measures that promote human rights at an international level. States are called to take measures in the framework of economic and technical international cooperation (Article 2 ICESCR⁹¹) and peoples are called to engage in international trade in a way that leads to mutual benefit (Article 1(2) ICCPR). The European Union aims to contribute to free and fair trade (Article 1(4) Treaty of Lisbon). Different human rights subjects are related to social corporate responsibility, for example non-discrimination, the rights of labourers and the protection of civilians in war time.⁹²

The Balance

The above-mentioned treaty articles show that States must take economic measures to benefit international aid and cooperation. Peoples must be treated with respect and economic relations must be mutually beneficial. States are meant to work to achieve international free and fair trade.

⁹⁰ See *Theme: Social Corporate Responsibility* available at <www.amnesty.nl>, visited on 4 January 2011.

⁹¹ See for more information on the interpretation and implementation of this article: Committee of Economic, Social and Cultural Rights, *General Comment 3 On the Nature of States Parties Obligations* (1990).

⁹² See for example UN Norms for Corporations <www.unglobalcompact.org>, visited on 4 January 2011 and the guidelines of UN Special Rapporteur John Ruggie, <<http://www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx>>, visited on 10 March 2011.

The treaty texts and the description of Utrecht's aim to adhere with the principles of social corporate responsibility lead to the following determinations:

- The fact that the municipality of Utrecht received the Fair Trade Town title says a lot about the way in which the municipality engages in trade with other countries and peoples. The municipality conducts trade based on the principle of partnership and pays a minimum price for products. In this way, the municipality adheres to the obligation to take economic measures that ensure fair and honest international cooperation.
- In addition to the official fair trade label, there are a many other labels that focus on fair trade. However, what characterises fair trade products is that they guarantee a minimum price. A point of attention for the municipality is how to deal with the multiplicity of labels that focus on fair trade but that do not guarantee such a minimum price.

Conclusion

The municipality of Utrecht pays sufficient attention to social corporate responsibility. After all, there is a good reason the municipality was named Fair Trade Town. The municipality is committed to achieving free and fair trade between States and preventing that peoples are exploited, in conformity with the treaty obligations and in the framework of international cooperation and aid.

Human Rights Education – Peaceful School

Introduction

In the Netherlands it seems self-evident that human rights are present in society. It is so self-evident, that most people think of countries far away when human rights are spoken of. In primary and secondary education, there was no mandatory curriculum that focused on human rights in the Netherlands. Since 2006, a legal duty was imposed from the national level to expose students to democratic citizenship and to proper social interaction. In order to comply with this law, more and more primary schools are using the didactic programme the Peaceful School (*Vreedzame school*). This curriculum guides schools in promoting democratic and (inter)active citizenship and in contributing to the social-emotional development of the child. The programme is subsidised by the municipalities. Peaceful Schools have also started developing in the municipality of Utrecht. The description of the Peaceful School in Utrecht will serve as a case study in this report in order to research the way in which the municipal human rights education contributes to the protection of human rights.⁹³

Peaceful School Utrecht

The Peaceful School has been used for the past ten years at primary schools. Originally, the course material was meant to improve the social and emotional atmosphere at schools. In the past few years, the programme has been expanded and strengthened in the area of democratic citizenship. Here, the focus is placed on encounters and interaction with each other. The aim is that children are raised to be socially responsible citizens. The Peaceful School is used in almost 400 Dutch primary schools.⁹⁴ In the municipality of Utrecht the curriculum is used in 70% of the schools.⁹⁵ The Peaceful School is now being adapted to Peaceful Neighbourhoods. The municipality of Utrecht has three such Peaceful Neighbourhoods at this moment.

Peaceful School

The Peaceful School aims to develop a democratic society in which individuals are heard and listen to each other, despite difference that can exist in a society. Attention is given to specific situations and needs at each primary school, after which a specific programme is made for each school. The basis curriculum has three aspects: student participation, group meetings and diversity. These aspects are meant to teach the students to interact with each other in a positive and caring manner, to create a pleasant atmosphere within the school, to make decisions democratically and to be open for differences between people. This is all done based on the own strength of the students.



Picture made by Willem Mes

The aspect student participation aims to promote the responsibility of students within the school. Students are appointed as mediators for conflicts and take part in commissions and student councils. In this way, they learn skills that are part of democratic citizenship. The students develop their voice and are made to feel responsible for the atmosphere at school. The aspect group meetings focuses specifically on democratisation within the school. The aim is to have students take part in the decision making process about matters that are directly relevant to the students. In order to achieve this, group meetings with the students are held every other week. In those meetings, and within pre-set boundaries, ideas and suggestions

93 In this case study, the following sources were used: Evaluation of the Peaceful School, Aspect Peaceful School Group 7, Folder the Peaceful School, Ricus Dullaert in *Trouw*: 'Does A Child Become Peaceful from A Peaceful School?' (16 November 2010) p. 22-23, website www.vreedzameschool.nl, interview with Corine Bont-Tiebosch (held on 21 September 2010), e-mail contact with Mohamed Jaater, Ger Roos, Caroline Verhoeff, news reports from www.utrecht.nl about the Peaceful School and the Peaceful Neighbourhood.

94 Eduniek, Folder the Peaceful School, www.devreedzameschool.net (visited 4 May 2011).

95 Ricus Dullaert, 'Does A Child Become Peaceful from A Peaceful School?', in: *Trouw* (16 November 2010) p. 22.

are discussed to change the school. Most decisions are taken based on consensus. The aspect of diversity uses two months to focus on differences between people, groups, families and neighbourhoods. The diversity theme is approached and looked at in a positive way.

De module leerlingenparticipatie heeft als doel om de verantwoordelijkheid van de kinderen binnen de school te bevorderen. Leerlingen worden aangewezen als mediator bij conflicten en nemen deel aan commissies en leerlingenraden. Op die manier leren ze vaardigheden die bij het democratisch burgerschap horen. De scholieren krijgen een duidelijke stem en zijn zelf verantwoordelijk voor de sfeer op school. De module groepsvergadering richt zich met name op democratisering binnen de school. Het is hierbij de bedoeling dat leerlingen kunnen meebeslissen over onderwerpen die specifiek op hen van toepassing zijn. Om dit te bereiken worden er om de twee weken groepsvergaderingen gehouden met de leerlingen. Daar worden voorstellen en ideeën besproken die binnen de vooraf gestelde speelruimte verandering teweeg moeten brengen binnen de school. De meeste besluiten worden op basis van consensus genomen. Met de module diversiteit wordt twee maanden lang ingegaan op verschillen tussen mensen, groepen, families en wijken. Het thema diversiteit wordt op een positieve manier benaderd en bekeken.

Peaceful Neighbourhood

Because of the success of the Peaceful School, an approach was developed to focus on peaceful neighbourhoods. In a Peaceful Neighbourhood, all organisations and institutions are instructed in the principles and goals of the Peaceful School. The idea behind this is that it is not only at school that children should focus on democratic citizenship and social interaction at school, but also outside. The first Peaceful Neighbourhood was started in the municipality of Utrecht in 2008 in Overvecht. The Peaceful Neighbourhoods have been expanded to Kanaleneiland and Zuilen. In every neighbourhood, the municipality has set two years aside for the implementation of Peaceful Neighbourhood. After that, the organisations must develop and train by themselves. Research conducted by Utrecht University shows that children benefit greatly from the Peaceful Neighbourhoods. Students notice that the peaceful conflict solution tactics they learned at school, can, and should, also be used in the neighbourhoods they live in.

Human Rights Example

The Peaceful School can be connected to local human rights. The curriculum helps children grow up to be democratic citizens who are involved with their society. Children start to feel responsibility to solve conflicts constructively and to contribute to a pleasant living environment. In this way, the right of every child to safe development and to developing their talents is expressed.

Result

Extensive evaluation data of the Peaceful Schools in Utrecht does not yet exist. In 2008, Utrecht University started a multiple year study of the effects of the Peaceful School. The results of this study will be published in the second half of 2011.⁹⁶ However, the yearly Safety Thermometer (*Veiligheidsthermometer*) shows that the feeling of safety experienced by Utrecht's teachers and students has become more positive at the primary schools that have been using the curriculum for more than two years. Moreover, the schools are enthusiastic about the improved atmosphere that is present in class after the course series.

Good practice

- The Peaceful School is based on children's positive power. Students themselves act as mediators to solve conflicts peacefully and contribute to a pleasant living environment.

Points of Attention

- The peaceful approach requires a change of culture. It takes time to get all involved enthusiastic and to bundle the peaceful activities.
- Because the temporary subsidies for Peaceful Neighbourhood end in 2012 it is uncertain whether the number of Peaceful Neighbourhoods will increase.

⁹⁶ This was apparent from e-mail contact with Corine Bont-Tiebosch (Senior Policy Advisor Education, Municipality of Utrecht) and Birgit Haberland (Policy Advisor Education, Municipality of Utrecht) on Friday 22 April 2011 and Tuesday 26 April 2011.

Treaties and Human Rights Education

Preamble, Universal Declaration of Human Rights

Now, therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms (...).

Article 26(2), Universal Declaration of Human Rights

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Article 13(1), International Covenant on Economic, Social and Cultural Rights

The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Article 7, International Convention on the Elimination of All Forms of Racial Discrimination

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

Article 10(c), International Convention on the Elimination of All Forms of Discrimination against Women

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(c)The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods.

Article 29(1b), Convention on the Rights of the Child

States Parties agree that the education of the child shall be directed to:

(b)The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations.

Explanation

In diverse international human rights treaties, the Netherlands has agreed to strive to promote respect for human rights and fundamental freedoms by way of education. Different General Comments from UN treaty committees highlight how States can fulfil this obligation.⁹⁷ Children must not only learn about human rights; children must also see human rights being applied in daily life at home, at school and in the society. Moreover, these values must be integrated into the education policy and curriculum. The UN Member States have set up the Plan of Action: World Program for Human Rights Education⁹⁸ in order to promote the implementation of human rights education. This national implementation strategy has four steps: an analysis of the place human rights education holds in education; making an action plan that leads to implementation of human rights education; execution of human rights education; and evaluation. Additionally, the plan sets up a coordination point so that the different organisations that play a role in

⁹⁷ See for example, UN Committee on the Rights of the Child, *General Comment 1; Article 29(1) Treaty on the Rights of the Child*, 8 February 2001 and Committee on Economic, Social and Cultural Rights, *General Comment 13; The Right to Education* 8 December 1999.

⁹⁸ United Nations, UNESCO and OHCHR, "Plan of Action: World Programme for Human Rights Education", New York, Geneva: UNESCO, 2006 (UN GA A/59/43).

this matter can come together and find each other.⁹⁹ The Council of Europe has set up the programme Education for Democratic Citizenship and Human Rights in order to protect and promote human rights in society.¹⁰⁰ At the moment, the EU's Fundamental Rights Agency (FRA) is working on developing a strategy and a programme to spread human rights education more broadly throughout the EU.¹⁰¹ The Netherlands has received criticism from social organisations, the Council of Europe, and in the context of the UN because of the Netherlands' lack of attention for human rights and the rights of the child.¹⁰²

The Balance

The treaty articles show that States must promote a number of things with education: respect for fundamental rights and freedoms; understanding, tolerance and friendship between citizens and a useful role for the citizen in a free society. Moreover, States must take effective measures in the area of education to combat stereotypes that lead to racial discrimination. It is not only at schools that these obligations must be fulfilled, but also at home and elsewhere in society.

The treaty texts and the description of Utrecht's local human rights education, lead to the following determination:

- The Peaceful School is focused on creating understanding, tolerance and friendship between citizens, in compliance with the treaty articles. Creating bonds among students and creating a code of behaviour is used to combat students' prejudices and unfriendly behaviour. The Peaceful School is a measure that is used to prevent human rights from being violated at a later stage - for example, because of discrimination or violence against individuals. Teaching responsibility and peaceful dispute resolution leads to a useful role for students in society.
- The Peaceful School contributes in a positive way to the right of each child to develop him/her self and his/her talents safely.
- In Utrecht, the principles of the Peaceful School are applied more and more often to the neighbourhoods where the students live, in accordance with the recommendation of the UN treaty committees.
- The Peaceful School curriculum emphasises social citizenship. A specific link to human rights and the rights of the child still has to be made.

Conclusion

In the area of human rights education, the municipality of Utrecht seems to be doing well, at first sight. About 70% of Utrecht's schools use the Peaceful School programme.¹⁰³ The curriculum is focused on understanding, tolerance, friendship and safety at school. A problem with the way in which citizenship education is executed is that emphasis is placed on social citizenship and less on human rights and the rights of the child. The link with these rights still has to be made.

99 See Bartels, R. & Brandt, T. van den & Oomen, B. 'Despite (Treaty) Obligations No Human Rights Education in the Netherlands?', *Nederlands Juristenblad (NJB)*, 2008, 83-43, pp. 2697-2698.

100 See the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education, Recommendation CM/Rec(2010)7 of 11 May 2010. See for more information <www.coe.int/t/dg4/education/edc/Default_en.asp> (visited on 8 December).

101 European Union Agency for Fundamental Rights, *Human Rights Education Mapping*, Report by the Change Institute, 16 March 2010, p. 6. Additionally, the FRA has material for children and adults about human rights, a handbook that connects human rights education with education about the Holocaust and a study on which role historical places can play in this (see for more information <www.fra.europa.eu>).

102 This is the case for the members of the Platform Human Rights Education, the Anne Frank Foundation, the Centre for Worldwide Education, the League for Human Rights, the NJCM, the NVVN, the Dutch Red Cross and UNICEF. See <www.mensenrechteneducatie.nl>; European Commission against Racism and Intolerance, Third Report on the Netherlands (3) Strasbourg, 12 February 2008, Recommendation 41; Speech of the Council of Europe Commissioner for Human Rights Hammarberg, Forum on "Civic Partnerships for Citizenship and Human Rights Education", Strasbourg, 9-10 October.

103 Ricus Dullaert, 'Does A Child Become Peaceful from A Peaceful School?' in: *Trouw* (16 November 2010) p. 22.

Health Care – Elderly Policy

Introduction

The municipality of Utrecht takes age groups less into account when dealing with the health of its inhabitants and focuses more on the measure in which people are either self-reliant or vulnerable. In Utrecht, 20% of the inhabitants can be characterised as vulnerable and 5% of the inhabitants as very vulnerable.¹⁰⁴ Specifically focusing on older inhabitants, it can be said that there are relatively many elderly in Utrecht that belong to the (very) vulnerable group. Because of this, the municipality of Utrecht pays attention to the health of its elderly in different ways. Utrecht's elderly policy will serve as a case study in this report in order to investigate the ways in which the municipal healthcare contributes to the protection of human rights.¹⁰⁵

Municipal Elderly Policy

The municipality of Utrecht's elderly policy uses an inclusive approach: there is no specific elderly policy but, instead, elderly issues are integrated into all of Utrecht's policy as well as the execution of that policy. An example of this is the separate section on elderly policy in the 2011-2014 draft memo Diversity Policy (*concept-Speerpuntennotitie diversiteitsbeleid*).¹⁰⁶ The municipality's starting point is that the elderly participate in the society and are self-reliant as long as possible. The municipality bases its policy on the power and potential of the elderly. The elderly policy is also aimed at providing elderly with information and at noticing problems early on and providing assistance. When developing the policy, elderly and institutions for the elderly are involved, such as the Advice Commission for Elderly Policy (*Adviescommissie voor het ouderenbeleid*) and the cooperating elderly groups (*Cosbo*).

Draft Memo Diversity Policy (2011-2014)



Picture made by Bert Spiertz

The memo Diversity Policy 2011-2014 follows the execution programme Diversity and Integration (*Diversiteit en integratie*) 2007-2010. The aim of this memo is to promote the participation of Utrecht's inhabitants and to combat exclusion and intolerance. In specific relation to the elderly, the municipality aims to ensure that this target audience can live in a safe and accessible environment with an immediate access to care when this is necessary. Vulnerable elderly individuals have to deal with two problems: they are lonely (15%)¹⁰⁷ and care is not in tune with the diverse composition of society. The municipality takes measures to combat these two problems by way of the Action Point Memo for the Elderly (*Actiepuntnotitie ouderen*).

Executing organisations, migrant organisations and private institutes hold an important place in Utrecht's elderly policy. They organise different activities for the (socially vulnerable) elderly. The neighbourhood wellbeing organisations have special elderly advisors who offer elderly individuals information, advice and client support. At the city level, the foundation *Stade* offers other types of informal care: from mediating new friendships between elderly to the composition of a Plus Guide, in which elderly are informed about activities and services in Utrecht they might be interested in.

Action Point Memo for the Elderly

104 Interview with Marianne van der Horst (held on 17 November 2010).

105 For this case study, the following sources were used: Draft Diversity Policy Memo (2010), Action Point Memo Elderly (2009), Elderly Persons in Utrecht, Active and Diverse (Municipal Advice Commission for Elderly Policy), Public Health Monitor Utrecht 2010 (2010), interview with Marianne van der Horst (held on 17 November 2010) and Machteld Hoekzema (held on 20 December 2010), news reports from www.utrecht.nl and from the intranet on elderly policy and elderly care.

106 This memo will be presented to the council during the first quarter of 2011. The municipality of Utrecht uses 65 years old as the lower age limit of the group "elderly" (Draft Diversity Policy 2010-2014 (main points)).

107 Municipality Utrecht, Action Point Memo Elderly (2009).

The Action Point Memo for the Elderly is an annex of the Diversity Plan (*Plan van aanpak diversiteit*) 2010-2014. The memo has four areas of attention. First, the municipality aims to make use of the experience and knowledge of elderly individuals by expanding the existing elderly network and volunteer network. Second, the municipality tries to combat loneliness with the Social Isolation Plan (*Plan van aanpak sociaal isolement*). Third, the municipality aims at improving the quality of the service provision by, for example, increasing the number of Social Support Offices (*Wet maatschappelijke ondersteuning loketten, WMO-loketten*) per neighbourhood. Finally, the municipality pays attention to the accessibility and safety of housing for elderly that comes with immediate access to care.

Utrecht's current board of mayor and aldermen has included an extra focus in the memo Diversity Policy. The board stimulates the expansion of culture-sensitive care. Utrecht's care institutions still focus too little on the cultural differences between elderly individuals. First generation immigrations are now becoming older and the municipality and its care institutions are now seeing the urgency of providing appropriate meals and daily activities for these individuals. In order to do this, a budget is necessary as well as a change in behaviour from the care institutions themselves. This also calls for a different manner of thinking and acting from the municipality and Utrecht society. Different pilot projects are currently being used in order to get a better picture of what first generation immigrant elderly individuals need and in order to adjust the supply to that demand.

Elderly Health Care

The municipality's GG&GD pays attention to promoting the health of Utrecht's inhabitants. The GG&GD have to contribute to a healthy, active and social city. Inhabitants must feel, be and stay healthy. However, the GG&GD does not only want to care, they also want to be aware of what the inhabitants of Utrecht think. Thus, the GG&GD take the concepts of care, health benefits, self-reliance and participation as starting points. The GG&GD uses a public health monitor every four years in order to further study this.

The public health monitor from 2010 showed that relatively many elderly can be qualified as vulnerable elderly. Although elderly individuals are not seen as a separate target audience, the GG&GD do pay attention to the elderly and elderly health care in different ways. Projects have been started in order to soften or combat the problems elderly have and to promote their health. This has especially taken place at the neighbourhood level.¹⁰⁸ In the case of access and availability of care and support, the GG&GD focus on care given by close relatives or friends and the approach Healthy Neighbourhood (*Gezonde wijk*).¹⁰⁹

Human Rights Example

When elderly policy is connected to human rights, it can be determined that it is difficult for Utrecht to determine which elderly are lonely. Moreover, the municipality is trying to figure out how to reach elderly immigrants. These individuals in particular are not used to going to care institutions or to receiving assistance from the municipality. The municipality is not investing any extra money in the availability of folders in different languages,¹¹⁰ thus the elderly immigrants must be reached in another way. The municipality aims to reach elderly immigrants and lonely elderly by creating culture-sensitive care and, more generally, through the Social Support Offices, networks in the neighbourhood and general practitioners. This is necessary because every (lonely) elderly Utrecht inhabitant has a right to the same care and municipal facilities.

Result

The culture-sensitive care is receiving more and more attention within the municipality of Utrecht. The new draft memo Diversity Policy 2011-2014 focuses on this issue as well. Time will tell whether the extra attention will lead to a larger accessibility of care for elderly immigrants. About 11% of Utrecht's adult and elderly population indicated in 2010 that their health was average and 3% of these groups indicated that their health was bad.¹¹¹ This is an average number; for people with a lower education and as people get older, problems increase in many areas of life, including health and self-reliance. The percentage is lower than it was in 2006 but must be reduced even more in the coming years.

108 Examples are the project Grosso in Ondiep and Transwijk, project Levenslust in Zuilen and the Beweegtuint in Overvecht.

109 Within this approach, general practitioners, pharmacists and the home care service (first line care) are supposed to cooperate more with each other and with the wellbeing organisations (zero line care).

110 This was apparent from an interview with Machteld Hoekzema (held on 17 November 2010). The municipality of Utrecht bases its policy on the own strength of the people or on the signals people give off themselves when they need help. Moreover, the municipality does not have a budget for this.

111 Municipality of Utrecht, Public Health Monitor Utrecht 2010 (2010) p. 9.

Good practice

- Utrecht has elderly advisors in every neighbourhood who provide information, advice and client support.
- The projects run by Stade have the clear function of signalling problems.
- Pilots in the area of care for elderly immigrants

Points of Attention

- Sometimes it is difficult for the municipality to reach all of the elderly who are lonely or who are first generation immigrants in need of assistance. In addition to its own commitment, the municipality relies on signals that the individuals themselves must send out when they need help. However, in reality, this independent signalling for help does not happen very often.

Treaties and Health Care

Article 25, Universal Declaration of Human Rights

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 12, International Covenant on Economic, Social and Cultural Rights

1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realisation of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Part I(11), European Social Charter

Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.

Article 35, Charter of the European Union

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Explanation

The right to physical and mental health of a highest possible level mandates that everyone has access to health care and related services in so far as the capacity of the country allows. In General Comment 14 from the UN Committee for Economic, Social and Cultural Rights, the Committee stated that everyone has the right to control over his or her own health and body (including sexual and reproductive freedom¹¹²).¹¹³ Everyone has the right to equal opportunity of obtaining access to the highest possible standard of care. Moreover, everyone must have access to care close by. Additionally, other aspects that can affect health play an important role, such as adequate sanitary facilities, safe food and a healthy environment. In relation to the elderly, the Committee recommended an integral treatment that combines prevention, care and rehabilitation.¹¹⁴ In addition to the above-mentioned provisions, there are also provisions that protect specific rights to health of women,¹¹⁵ children,¹¹⁶ disabled,¹¹⁷ and regardless of race.¹¹⁸

The Balance

In the treaties it is indicated that everyone has a right to a decent standard of living. States must ensure that elderly individuals have access to (social) facilities. Themes such as prevention, care and rehabilitation must be taken into account.

The treaty texts and the description of the municipality of Utrecht's elderly policy lead to the following determinations:

112 Art. 14(2b), Art. 11(1f) and Art. 12 CEDAW and Art. 24 CRC specifically list service provision in the area of birth, protection of the reproductive function and care during pregnancy.

113 See for more information on the application of the right to a physical and mental health of the highest possible level: Committee on Economic, Social and Cultural Rights, *General Comment 14; The Right to the Highest Attainable Standard of Health*, 11 May 2000.

114 See also Committee on Economic, Social and Cultural Rights, *General Comment 6; The Economic, Social and Cultural Rights of Older Persons*, 8 December 1995.

115 Art. 11(f), Art. 12 and Art. 14(2b) CEDAW.

116 Art. 24 CRC.

117 Art. 25 UN Disabilities Treaty.

118 Art. 5(e, iv) CERD.

- The municipality of Utrecht tries to ensure and maintain a decent standard of living for its elderly inhabitants by stimulating participation and self-sufficiency among the elderly. The municipality has taken different measures and started different projects in order to obtain this goal.
- The preventive measures the municipality takes can be seen in actions to encourage elderly participation and in the signalling function advisory and executive organisations have in the area of the elderly. Moreover, the municipality is committed to promoting health and ensuring the access and availability of care.¹¹⁹
- Each (elderly) inhabitant within the municipality of Utrecht has equal rights to health care. A problem with regard to these equal rights is that the municipality cannot reach every elderly person that needs help.
- Although every Utrecht inhabitant has an equal right to health care, it is not yet possible to deliver care in tune with everyone's cultural background. The extra attention that the municipality is paying to culture-sensitive care and social isolation is meant to change this.

Conclusion

In general, it can be concluded that Utrecht's elderly policy complies with the most important treaty provisions. The municipality pays attention to the wellbeing and standard of living of its elderly inhabitants and focuses particularly on the preventative side of health care. The increased attention the municipality wants to pay to social isolation, groups that are threatened with missing out on health care because of changes within the General Law Special Health Care Costs (*Algemene wet bijzondere ziektekosten, AWBZ*), and culture-sensitive care, is aimed at ensuring that Utrecht's elderly not only have equal access to care but that they also receive care that is in tune with their individual needs and cultural background.

¹¹⁹ This study has not focused on rehabilitation.

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