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Cities and non-discrimination. Theoretical, regulatory and practical considerations

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This text deals with discrimination in the urban space and the relationship between the right to non-discrimination (as a necessary ingredient in the right to the city) and local policies, with an emphasis on the specific roles of municipal governments and citizens in achieving truly inclusive urban spaces. First, discrimination is tackled on a more theoretical level, with a brief analysis of its polyhedral nature and its multiple manifestations in areas such as gender and sexual orientation, ethnic origin, religion, migratory and socio-economic status, age and state of health. These are areas that often overlap and reinforce each other within a framework of intersectionality. Then, different types of discrimination and of discriminating agents are explored: institutional, spatial, and systemic or structural discrimination. Next, different international approaches, regulations and case law regarding the right to the city and the principle of non-discrimination are examined, with a focus on the role assigned to cities and municipal governments. Finally, some specific initiatives for preventing and combatting discrimination at a municipal level are mentioned, and the conclusions section offers some recommendations.

Introduction

The principle of non-discrimination is an integral element in the right to the city (Harvey, 2013). The urban space becomes the stage for inequalities and discrimination, as it both reflects society's structure and dynamics and can reinforce and perpetuate them. Ultimately, the urban space is a product of social relations and, as such, it constitutes a physical or material expression of their dynamics and conflicts (Lefebvre, 2013). Following this premise, in a crisis context like that of the Covid-19 pandemic, inequalities in access to decent housing, to a clean, safe space, and to public services and facilities have become even more obvious. The solution to these shortcomings involves a collective call to transform cities and urbanisation processes in order to create spaces free from every kind of discrimination, in a constant battle that requires us to identify and combat the multiple forms it can take.

In parallel, cities have played a fundamental role as spaces where tools or experiences to fight discrimination can be developed. Just as the urban space reflects existing inequalities, intervention on this space can have an impact on these inequalities, at least partially. Cities are particularly predisposed to displaying new rationales that can later be extrapolated to other areas. In addition, from an institutional point of view, municipal administrations are the closest institutions to the public, and therefore are more able to make an impact than other institutions on a regional or state scale. For these reasons, city councils are at the heart of regulations and actions within the local and international human rights systems designed to help to achieve discrimination-free cities.

Some of these initiatives are detailed below, after an examination of the phenomenon of discrimination and its multiple facets.

1. Axes and forms of discrimination

Discrimination is the breakdown of the basic principle that states that all people must be treated equally, regardless of personal or social circumstances. A closer look at discrimination reveals that rights and freedoms have been recognised based on a hegemonic liberal model that persecutes, denies or devalues any expressions that do not fit into this model (Sousa Santos, 1997: 115-122). Within the framework of this hegemony, throughout history, groups like women, people with functional diversity, the LGBTQ+ community, migrants, minority ethnic groups and many more have experienced discrimination that translates as a lack of rights or as recognition based on devaluation, rejection or disdain (Young, 2011).

There are therefore many forms and axes of inequality and discrimination. For some of these axes – such as gender, skin colour and sexual diversity – social movements and struggles have made discrimination more visible and have forced the creation of new, more inclusive frameworks for action. For others, unequal relations in terms of power and resources mean that discrimination is still normalised and invisible, making it difficult for people to become more aware of it collectively and act. In Catalonia, the recent Law 19/2020 on Equal Treatment and Non-Discrimination includes nine axes of discrimination that had garnered little recognition until now. These include homelessness, incarceration, poverty (apophobia is the rejection or hatred of people in poverty), and HIV status. All of these forms of exclusion reveal deep-rooted, concealed discrimination.

Caused by patriarchal social structures, gender-based discrimination is evident in women's lack of access to resources and decision-making power: in the field of urban planning, for instance. This form of discrimination – closely linked to the division of labour between productive and reproductive tasks, the feminisation of poverty, and the wage gap – makes it particularly difficult for women to access decent, adequate housing. In addition, in spheres like mobility and transport, women are more exposed to harassment and aggressions, and are therefore less likely to be able to travel safely (Col·lectiu Punt 6, 2019). As for orientation and sexual identity, the LGBTQ+ community is more likely to receive aggressions of all kinds – both verbal and physical – in public spaces.

Racialisation, or the construction of phenotypes or other differentiating elements based on the sociocultural category of *race*, is also linked in many cases to a lack of access to adequate housing: a dynamic that regularly leads to residential segregation. Racialised communities are often relegated to the peripheral areas of cities, with less infrastructure and fewer facilities, and face greater difficulties in satisfying their housing needs. Among other consequences, segregation also entails an expensive commute to the place of work or education and the aforementioned lack of adequate services, such as healthcare, with the resulting repercussions on health and other areas of life.

Often, these axes of inequality and discrimination overlap and intertwine, reinforcing each other, in a phenomenon known as intersectionality. In other words, people can belong to more than one marginalised group at the same time, which exacerbates the specific discrimination they experience. Therefore, acting exclusively within one area or on one axis is not enough: the cumulative effects of different types of discrimination must be considered. Initially theorised by the black feminist movement (Crenshaw, 1989), the concept of intersectionality has since been used in international case law, for example in the Convention on the Elimination of All Forms of Discrimination Against Women (General Recommendations No. 25 and 32) and by the Inter-American Court of Human Rights, in cases such as *Gonzales Lluy et al. v. Ecuador*.

In line with this intersectionality and the complex, multi-faceted nature of the phenomenon, discrimination operates in different areas and takes different forms, which will be defined briefly below.

2. How does discrimination operate?

Discrimination can operate on an individual level, meaning that different expressions of inequality have an impact on a person, whether directly, indirectly, on a multiple basis or by association, among others. Nonetheless, the framework of discrimination also has collective effects that transcend an individual perspective. The roots and consequences of this collective dimension are deeper and often violent. In collective discrimination, unequal power relations boost the effects of the exclusion and result in a framework of action that normalises, legalises and perpetuates inequalities.

One of these forms is institutional discrimination, the framework of action for which is the power held by the state or institutions. This is the existence of regulations, policies and practices – implemented by both public and private entities – that harm certain groups in a situation of vulnerability. Examples of this would be:

- Statements by public authorities that incite or justify discrimination and criminalise certain uses of space attributed to vulnerable groups, such as homeless people or sex workers.
- The enactment of laws that deny these discriminated groups rights (civil, social and political), or only recognise them partially and subject to conditions, as in the case of immigration regulations.
- The design and implementation of policies that ignore the aforementioned groups or directly discriminate against them, such as education plans that pay no attention to gender or cultural diversity. This would include the paternalistic views and treatment promoted by certain public policies.

Another type of collective discrimination is spatial discrimination. Specifically, this is discrimination relating to the unequal territorial distribution of the resources and opportunities the city offers. It can materialise as a lack of access to an adequate public transport network, to green spaces, to a decent cultural and leisure offering, to quality public services or to affordable housing. In many cities, the best public services and spaces are concentrated in the higher-income areas, while more impoverished parts of the city are home to lower-quality, polluting infrastructures and services.

At the same time, spatial discrimination reinforces other types of associated inequalities, which leads to people experiencing discrimination just because they live in a certain location, in a phenomenon described as the “neighbourhood effect” (Nel-lo, 2021).

Finally, there is systemic or structural discrimination. It occurs when it is not a specific practice or law that is discriminating against a certain group, but rather a set of practices and norms that operate in various spheres (legal, social, political, economic, etc.), so that the group is put in a position of subordination and vulnerability. It is the manifestation of the power and oppression exercised by privileged groups (Young, 2011) over women, the LGBTQ+ community, Roma people, migrants, racialised people, older people, etc.

The existence of systemic discrimination is recognised by the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the UN (General Comment No. 20, 2009) and by the Committee on the Elimination of Racial Discrimination (General Recommendation No. 34, 2011).

3. Cities’ role in protecting human rights and combatting discrimination

In the same way that discrimination committed by institutional powers is far-reaching and generalised, policies and measures adopted to combat discrimination rely on collective change and the transformation of these institutions. In this regard, the fight against discrimination has mainly focused on the actions and obligations of states within the framework of international human rights law, and the role played by cities has often been disregarded. As mentioned above, cities are

predisposed to adopt new practices or policies that can subsequently be emulated by other spaces. They are also the setting where the repercussions and transformative capacity of social movements' struggles are at their strongest, given their proximity to power and their influence over it. In the vast majority of cases, the starting points for truly transformative actions or policies can be found in social demands at a municipal level, and city councils are the spaces where initiatives that constitute important steps forward in the fight against discrimination are adopted.

This perspective is reflected in the World Charter for the Right to the City, where the protagonists of social change are cities. Cities are where life is lived and developed, and where the most significant social transformations have taken place. The Charter begins, in Article 1, with the statement that "all persons have the Right to the City free of discrimination based on gender, age, health status, income, nationality, ethnicity, migratory condition, or political, religious or sexual orientation". In this same vein, the Global Charter-Agenda for Human Rights in the City orders municipal authorities to guarantee the exercise of the aforementioned rights without any kind of discrimination taking place. The New Urban Agenda also emphasises the challenge of achieving discrimination-free cities and lists a series of phenomena and groups that experience discrimination:

addressing multiple forms of discrimination faced by, inter alia, women and girls, children and youth, persons with disabilities, people living with HIV/AIDS, older persons, indigenous peoples and local communities, slum and informal-settlement dwellers, homeless people, workers, smallholder farmers and fishers, refugees, returnees, internally displaced persons and migrants, regardless of their migration status (New Urban Agenda, paragraph 20).

In cities all over the world, byelaws have been enacted to combat discriminatory action committed both by citizens themselves and by public and private agents, with a view to eliminating all kinds of discrimination from public spaces. Examples of this type of regulation include the byelaws passed in Lima (Peru) and Jackson (USA). Cities have also seen the use of affirmative action, or municipal laws that call for a certain percentage of staff hired, in both the public and the private sector, to belong to vulnerable minority groups. In South Africa, for example, the Employment Equity Act states that, in municipalities, the public sector and private companies with more than 50 employees must implement an equity plan to ensure that a certain proportion of the staff at all levels belongs to minority groups. Other similar instruments include the quotas for people with disabilities in effect in many municipalities. In Catalonia, a 2% quota for people with disabilities was introduced in 2015 and applied to companies with more than 50 employees.

The importance of cities in the fight against discrimination is also reflected in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which expressly includes cities in its call to review all governmental policies and reform or remove any laws or regulations that generate or reinforce discrimination (Article 2.c). Specifically, municipal governments are ordered to make sure their activity does not and cannot have discriminatory effects by reviewing the design and implementation of their policies, including supposed neutrality or non-intervention, which can also lead to certain types of discrimination. An example of a clearly discriminatory policy applied by local governments is the prohibition or restriction of street trade through municipal regulations. These regulations are discriminatory because they develop a concept of the right to work that is closely linked to the formal job market. By excluding other ways of exercising the right to work due to economic interests, these rules exacerbate the vulnerability and exclusion experienced by the groups who often turn to these forms of work – often, the migrant and racialised populations – and encourage exclusionary, criminalising discourses.

It is worth noting that, beyond the international documents that highlight the role cities must play in combatting discrimination, cities are also responsible for developing anti-discrimination tools and policies within the framework of obligations deriving from international law. Under both the ICCPR (International Covenant on Civil and Political Rights) and the ICESCR (International Covenant on Economic, Social and Cultural Rights), cities must guarantee civil, political, economic, social and

cultural rights through measures such as citizen participation in decisions and management of public infrastructures and services, including health and education. With this perspective of cities committed to the protection and development of human rights and the fight against discrimination, the reductionist view imposed by the delimitation of powers must be abandoned.

Even so, cities or municipal governments have not been considered directly responsible – but rather in an indirect, subsidiary way – for the agreements and commitments made by states. Cities must not only be in charge of management in the material areas indicated by the relevant regulation; on the contrary, the protection of human rights grants them universal power to act. In fact, many cities across the world have officially declared themselves “Human Rights Cities”, meaning they are committed to guaranteeing the principle of non-discrimination. In support of the argument put forward here, it is worth noting the position of the Committee on the Elimination of Racial Discrimination in its recommendation to Slovakia (CERD/C/SVK9-10): it deems that local and regional autonomy must not be used as an excuse for discrimination and non-compliance with the international obligations signed by the state regarding provision of social housing for the population of Roma origin.

Following in the same vein, international courts have started to issue recommendations and statements that directly link cities to anti-discrimination obligations. Local authorities all over the world have been urged to implement international mandates regarding the non-discrimination of people of disabilities, including the decisions CRPD/C/15/D/11/2013 and CRPD/C/20/D/35/2016 adopted by the Committee on the Rights of Persons with Disabilities relating to accessibility plans and Australian municipal governments. On the subject of the prohibition of the use of racial profiling by local police in Spain, the International Covenant on Civil and Political Rights issued decision CCPR/C/96/D/1493/2006 (the Inter-American Court of Human Rights Tribunal adopted a similar judgment in *Acosta Martínez et al. v. Argentina*). The CEDAW also issued a ruling in the *M.W. v. Denmark* case (CEDAW/C/63/D/46/2012), with a series of recommendations aimed at professionals in local authorities on the need to guarantee children’s rights and not to discriminate on the basis of characteristics such as gender and ethnicity in cases where custody is removed from foreign parents.

These decisions indicate an evolution towards a more central role for cities in guaranteeing the right to non-discrimination as part of the right to the city, along with recognition of the intersectionality of discrimination and municipal governments’ autonomy and capacity for action. For example, the CERD issued a ruling in the case *El Ayoubi v. Spain* (E/C.12/69/D/54/2018) highlighting local authorities’ obligation to guarantee that regulations governing access to social housing – or alternative accommodation – do not contribute towards the systemic discrimination and stigmatisation experienced by people in poverty. There are fewer occurrences of rulings and decisions defending city governments’ direct role in the protection of human rights and the right to the city. Nevertheless, some progress has been made, as seen in the commitment made by the municipal governments that have adopted the 2030 Agenda for Sustainable Development (UNDP) to offer services and develop policies that are free of discrimination, or the fact that one of the specific goals in the Agenda – the eleventh – is to “make cities and human settlements inclusive, safe, resilient and sustainable”. This calls for a more proactive role to be played by cities and local governments.

4. Some initiatives

Outside of the regulatory and legal sphere, networks and initiatives are developing the right to non-discrimination in a concrete way, as part of the right to the city. Initiatives such as the European Coalition of Cities Against Racism – part of the International Coalition of Inclusive and Sustainable Cities promoted by UNESCO since 2004 – include the creation of local anti-discrimination offices, among other tools, in their action plans. Another is the United Cities and Local Governments Committee on Social Inclusion, Participatory Democracy and Human Rights, which has been in place for 20 years.

It is also useful to examine some of the initiatives and policies developed by municipal governments worldwide to prevent and combat discrimination in their cities. These include the creation of specific units, offices and observatories to offer guidance and legal and social support to victims of discrimination. These entities can also assist in the task of raising awareness of discrimination and educating public employees and the general public, by publishing reports, participating in legal cases considered strategic and organising courses. In this regard, training courses focusing on non-discrimination have been developed for public employees and, specifically, for local police forces in cities like London and Buenos Aires.

Also relevant are the aforementioned specific byelaws that take action against all types of discrimination and seek to guarantee inclusive public spaces, as well as the affirmative action that aims to ensure equity in municipal public procurement. On a more symbolic level, city governments sometimes create memorial spaces, build statues and name streets to pay tribute to the victims of discrimination and to the defenders of the right to the city or of human rights, more generally. They also organise awareness-raising campaigns to promote a culture of non-discrimination. An example can be found in Barcelona, with the replacement of Plaça d'Antonio López (a slave trader) with Plaça d'Idrissa Diallo, an irregular migrant who died in an internment centre for foreigners as a result of a lack of medical care.

Regarding the specific axis of discrimination deriving from gender inequality, one recommendation is to involve women in the design of public spaces, making sure their experiences and needs are taken into account in order to make the spaces safer, more inclusive and more suitable for reproductive activities. In Catalonia, the policy implemented to combat gender inequalities specifically includes public spaces and women's particular perception of them, due to the way they use them and the violence they experience in some of them. This way, the gender perspective can be incorporated in the design and implementation of urban planning projects and in territorial planning more generally. A specific example of this can be found in Vilassar de Dalt (Barcelona), which implemented the Municipal Action Plan for Gender Equality 2011-2014.

As for spatial discrimination, it is important to encourage the construction of social housing outside the lowest-income neighbourhoods. With a view to combatting spatial discrimination and expanding the stock of affordable housing, and following pressure from social movements, a regulation has been introduced in Barcelona that requires 30% of the floor space in new apartment buildings and major building restoration projects on consolidated urban land to be reserved for this type of housing. Efforts are also being made to take action against discrimination committed by owners and estate agents against certain profiles of tenant: practices that often result in forms of spatial segregation.

Meanwhile, an example of action being taken against institutional and systemic discrimination is the aforementioned training being given to local police – alongside the ban on the use of racial or ethnic profiling during their activity – including specific training to combat stereotypes linked to phenotypes, ethnic origin and other characteristics, and the implementation of specific reporting and registering mechanisms for arbitrary arrests (in the city of Buenos Aires, for example). Other examples are the aforementioned equity plans for hiring staff in the public and private sectors.

With regard to institutional discrimination and the phenomenon of intersectionality, Terrassa City Council has incorporated this perspective in a more all-encompassing way, with the Igualtats Connectades project and the practical guide to promoting equality and non-discrimination in the city, published in 2019.

5. Conclusions

Evidently, the task of identifying and combatting discrimination entails certain difficulties, attributable to the fact that it often goes unnoticed, is connected to other types of discrimination, and gets reproduced and maintained by the design and execution of certain public policies. Even

so, the local government sphere offers opportunities to make a difference in this area and have a positive impact, through use of the powers assigned to municipal authorities.

In light of the above, some recommendations would be to:

- Tackle discrimination in collaboration with people who experience situations of discrimination and are therefore more able to detect them. This requires incorporation of real participatory processes into urban planning, so that these groups can be involved in designing and implementing programmes. Furthermore, this participation must include grassroots movements and community organisers, who have already identified situations of discrimination and expressed specific demands to tackle them.
- Enact laws that prohibit discriminatory behaviour and provide for adequate monitoring and regular compliance checks, with sanctions and penalties as deterrents. In terms of institutional discrimination, institutions and government bodies must review their discourse, plans and public policies to assess the effect they may have on minority and vulnerable groups. They should also act more proactively to develop campaigns that highlight the inequalities and discrimination experienced by these groups, such as street vendors, and that explain and dignify their work and their social and cultural contributions.
- Establish a specific budget for non-discrimination policies, while creating specialist units and carrying out studies on public spaces, in order to identify the places where discriminatory dynamics take place in cities.

It is worth noting, finally, that many of the initiatives mentioned, which can be emulated and expanded, are not just administrative or legal in nature. Instead, they involve symbolic elements or tools for drawing attention to discrimination – such as observatories, byelaws, memorials, etc. – that do not require any great budgetary effort. These initiatives simply call for the political will to put them in place.

Bibliography

COL·LECTIU PUNT 6. *Urbanismo feminista. Por una transformación radical de los espacios de vida*. Barcelona: Virus, 2019.

CRENSHAW, K. “Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics”. *University of Chicago Legal Forum*, 14 (1989), pp. 139–167.

HARVEY, D. *Ciudades rebeldes: del derecho a la ciudad a la revolución urbana*. Madrid: Akal, 2013.

LEFEBVRE, H. *La producción del espacio*. Madrid: Capitán Swing, 2013.

NEL·LO, O. (ed.). *Efecto barrio. Segregación residencial, desigualdad social y políticas urbanas en las grandes ciudades ibéricas*. Valencia: Tirant Lo Blanch, 2021.

SOUSA SANTOS, B. “Epistemología y Feminismo”. *Utopía y praxis latinoamericana*, núm. 2, 1997.

UNITED NATIONS, *Nova Agenda Urbana, Habitat III*, <http://habitat3.org/wp-content/uploads/NUA-Catalan.pdf> (last search date: 8/09/2022), 2016.

YOUNG, I.R. *Responsabilidad por la justicia*. Madrid: Ed. Morata, 2011.