Right to Cultural Life 06-03-23

INTRODUCTION

Welcome to Human Rights 2020s. This episode is a recording of a speech by Alexandra Xanthaki, the United Nations Special Rapporteur in the field of cultural rights. She spoke at our event, ‘The Human Right to Cultural Life in Scotland: Plans, Challenges and Impact’ on Monday, the sixth of March 2023. We hope you enjoy this episode.

Mhairi Snowden, Director

So, without further ado, we are delighted to welcome Alexandra Xanthaki, who is UN Special Rapporteur on the Right to cultural life. Alexandra is Professor of Laws at Brunel University in London, and is a leading expert in the whole area of cultural rights and indigenous rights in international law. I’d a quick list of publications and articles that Alexandra has written and contributed to, and it is really impressive. So it's so helpful as we start to look at this whole area in Scotland, to have Alexandra's input and wisdom and insights around this whole area. So Alexandra can I welcome you now, to speak.

Alexandra Xanthaki

Good morning, and a huge thanks for inviting me, I'm really excited about this process, and I want to learn more, but I also want to learn more about cultural rights in Scotland. So it is really significant that Scotland is thinking of recognising the right to culture. This is something that we can see a trend around the world, Latin American states often have the right to culture recognised in their constitution. However, other states and especially European states, we see that they're not there yet. So, for my mandate, it is delightful that there is something in the cards for to recognise such a right.

The right culture or the right to participate in cultural life is very much linked to identity. It is very much linked to the right to one's own vision about one's future. It is the right to dream and the right to aspire, and it is the right to use creativity and to hold on to your creativity and feel free. The right to culture is very much about bringing the past to the present in order to figure out the future. So it is very important that such a right is recognised at the domestic law.

Yet as I told you, this is not the case and there is a gap there. So another lawyer would ask me, ‘what added value would we get if we recognise this this right?’ And the reality is that through the Human Rights Act and through the legislation, not all aspects of this right are recognised. My mandate, some years ago, was very much involved in a case of Latin American migrants who have stalls in the Seven Sisters Mark market in London. Haringey council wanted to change the market. However these migrants had made the market their own, they use it as a cultural hub. If you're ever in London, seven sisters, it would be worthwhile to go and visit it. This is where their children learn their birth languages. This is where people meet to dance and to find food from Latin America. So it was very much part of their culture. And it was very much a tool for them to continue to maintain and develop their culture. But the state wanted to treat these markets as a place where enterprises could come, and could become like one of the markets that we see quite often in England with coffee shops, Costa etc. Latin American migrants had no real tools to actually claim their rights. So I think that it was a general understanding that indeed, this market, and them continuing to work and be in this market was part of their right to culture. There was recognition that this was an important element of their culture. However, the state did not have the tools, the legal tools, so that they could claim this right. And unfortunately, at the European level, these tools are also very difficult to use, because, as you have maybe read in the wonderful report that we're going to analyse later today, the European Convention on Human Rights does not have a provision on the right to culture. And really, one would have to focus on a very distinct way of life in order to really claim those rights. So you see, we know now that there is a gap. And we know that this gap unfortunately, is not filled by other legislation. So there is a very real need to recognise the right to culture.

Now, just in terms of in terms of language, using the language in the UK and in Anglophone environments, we call it the right to culture. Of course, we should call it the right to cultures, because there is no one culture, if anything, this is what the right is about, recognising the variety of cultures, and the right to the variety of cultures that exist. However, in Francophone environments, this does not translate well. So that's why we use the right to participate in cultural life. I just want to make sure that any discussion or any legislation recognises that whatever we use in drafting, we have to make sure that we're not talking about one culture, we're talking about the right to cultures, the right to cultural lives. And, as you may have read in the report, there is a very wide meaning of culture, which makes my mandate a very wide mandate. So just in two minutes, the UN special rapporteurs are called the jewels of the United Nations, because we are independent experts that focus on monitoring different rights, such as the right to life, the right to freedom of expression, etc. We hold the mandate for three and three years, so usually six years. And we issue thematic reports, but also we visit states, and we monitor the implementation of cultural rights in these states. So for example, I was in Germany in December, and my report on Germany is going to come out soon. And also we start communication. So we use your communications, when people send us even by email, their alleged complaints, and we ask the states on a confidential basis, what they're doing about these alleged violations and then we go public, so we name and shame. So, these are the tools that we have. and please feel free to use my mandate as we go on, in this collaboration together.

So, culture rights has a very wide aspect of rights. And because culture has a very wide meaning, it is really a way of life. A lot of states, and again especially European states, focus on the right to tangible culture. So protecting monuments and buildings etc, which is indeed a very important aspect, but another very important aspect is also the right to protect ways of life. So it is about protecting buildings, monuments, etc, but it is also about protecting values, the various values that exist within the state. And it is also about protecting the rights of someone to have the relationship that they choose with the environment, and to have this relationship with the environment protected. At the moment, some of the issues that we try to discuss and tackle at the international level, a big issue is who decides what to preserve, and how. And this idea of participation in these decisions is extremely important and very topical, in the decisions that relate to culture. So it's not only about access to culture, although unfortunately, we still see the more basic, if you wish, level that there are obstacles in accessing culture, including, of course, cultural actors accessing funding, etc. But it is also the right to participate in what we mean by cultural heritage, which parts of cultural heritage are going to be maintained, who decides on these parts.

At the moment, a current big discussion is whether the state also has to protect relics of a colonial or racist past. So it's very much about memorialisation. And this also goes to the living culture. Sometimes, and I see that maybe this is at times the debate in Scotland, we see culture as static, and I think it is extremely important to recognise that we are here to protect the right to cultures that evolve. And it is the people who have these cultures who are going to tell us how they want their cultures to evolve. So I suppose that the cultures in Scotland also evolve, and they mix and they mingle and they get influenced, and there is no purity in cultures because this is a globalised world. And I think that this is something that it's very important to be open and forward looking in the ways of life. And also, we also have to recognise that when we talk about the right culture, we also have in mind, the real possibility that the right to culture needs balancing with other rights. The rights of women, sometimes the rights of LGBT persons, the right sometimes of children. So there is no absolute right. But this cannot be used as ammunition not to recognise this right. So international law has amazing tools to deal with these situations. And this is what we lawyers do every day. So it's about balancing the different rights.

So, I did mention before that it is important to recognise the right to access and this is very important also for the cultural sector, the right to access of artists to the various opportunities that exist and to keep in mind especially the vulnerable or the marginalised artists, the right to access irrespective of what the style of culture, of creativity, and irrespective of how provocative such creativity may be. But it is also the right to participate, and this participation has to be effective. And ideally, if somebody asked me, I would really like legislation, or the explanation of legislation, to include an emphasis on participation. Participation is not tokenism. So it's not just to use one person from that culture or you know, from various cultures, etc. But it is about effectiveness to ensure that all voices are heard. And sometimes people say, but how can we ensure that all voices can be heard? So you know, it's difficult to try, and I think it is important to say that it is going to be in an anarchic way. We don't have a way to tick box every single different culture, but we are trying in good faith, it has to be in good faith, trying to find all the marginalised people and take their views and then take the views in order to reach consensus. And indeed, when we talk about participation, we also mean producing culture. So who participates in producing culture and who participates in having this culture highlighted within the state. And I think it is also very important in addition to access and participation to also talk about benefits, because I think that sometimes states, who knows why, tend to forget about these aspects. So, the right to culture also includes the right to participate in the benefits of culture, and the benefits of creativity. And this includes the benefits of innovation. So, for example, if Scotland has innovative ways to deal with the environment, that the whole of the UK benefits from, one would expect that people living in Scotland would benefit from that at the same level or even more. So, it is very much about participating in the benefits of culture.

And another aspect that at the moment is very topical, and which we focus on a lot is, as I mentioned several times, protecting the marginalised groups. So, when we talk about culture, we work with the Committee on the Elimination of All Forms of Racial Discrimination and the tools that they have to focus on non-discrimination in cultural matters. So, there are continuous hierarchies and sometimes in states, I see that we talk about very set hierarchies, but we tend to ignore that hierarchies are multiple, and they are ever changing and more vulnerability is created. So I think that it is very important to not just have a static eye on who is marginalised or who is vulnerable, but to recognise that this changes and also there are hierarchies, elites within the marginalised people. So for example, in the minorities that that I focus on, I know that although minorities are the marginalised groups, women within minorities are the marginalised group, and then LGBT women within minorities are the marginalised groups. So, you know, these multiple vulnerabilities, it’s important to recognise all marginalization. And I say this because intersectionality is very important, and something that has to be highlighted when we talk about the right to cultural life.

So I don't want to take too much of your time. So I'm just going to focus a bit on ways forward. So I think that first of all, it is great to have the right to culture or the right to participate in cultural lives, recognised, I think it is very important that we recognise the right rather than cultures. I think, a lot of states, and the UK, you know, they recognise cultures, but protecting cultures is different to protecting the rights of someone to the culture. So I think this is the first issue, I think it is very important. I think there really is a gap in the law that I would be delighted if Scotland managed to tackle, and I think also maybe you would like to discuss and recognise in the future, how the breadth of culture is going to be expressed. So we don't just talk about tangible culture, although we talk about that, we talk about intangible living culture and we also talk about natural culture.

And also I think it may be interesting for you to discuss whether it should be the right to culture in public, or also in private. So we see that some human rights are recognised only in the public sphere, but maybe you know, the right culture should be recognised in the private sphere as well. I think it would be great to keep in mind the balancing of rights. And I think it would be great if any legislation is flexible and open and allows itself to evolve by interpreting it to reflect the current realities every time. And finally, I think maybe it would be important, just on a more technical basis, it will be important to refer to international law because then by referring to international law, one has the backup of the international discussions and instruments etc. And on this, I have to emphasise that it is very important to repeat to states and state actors, that when we talk about the right to life, we talk about minimum standards. So, these are legal obligations that the UK has undertaken by signing and ratifying these instruments. They are not aspirations. They are not just aims. These are the minimum standards that must exist. And I think that, you know, states sometimes want to pretend that they're being the good entities, by recognising and implementing these rights. No, this is just international legislation, and these are just the minimum standards they have undertaken to respect. Thank you very much.

Outro

Thank you for listening to the Human Rights 2020s podcast. For more information about our work as Scotland’s civil society network for the protection and promotion of human rights, please visit our website at [www.hrcscotland.org](http://www.hrcscotland.org) or follow us on Twitter at @HRCScotland. Thank you.