Geschillen over bouwplannen. Een rechtssociologisch onderzoek naar de betekenis van regels en afhankelijkheid voor de beslechting van geschillen tussen burger en gemeente over bouwen en ruimtelijke ordening
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Summary

CONFLICTS OVER BUILDING PLANS

An empirical study of the influence of rules and dependency on conflicts between citizens and the municipality over building and land use

In the Netherlands a permit from the municipality is needed for nearly all building activities. In view of the far-reaching consequences of many building plans and the substantial interests at stake, many conflicts arise. This study seeks to describe the variation in the development and the outcomes of these conflicts and, as far as possible, to explain this variation.

Litigation theory

This research question belongs to the domain of "litigation theory". The more general goal of this study is to examine whether this theory is a good guide for research and to what extent it can be used as an analytical and explanatory instrument. Two aspects of the theory require refinement and adaptation for our purposes. This concerns in the first place the consequences of the involvement of organizations. In the sorts of conflicts studied, organizations play a key role. The greater part of litigation theory, however, is only suited to the situation of a relatively simple civil case, the model of which is limited to a conflict between two individuals. Complications result especially from the internal heterogeneity of organizations. Second, the assumption of litigation theory that the characteristics of actors and of their relations influence their conflict behavior needs to be refined, in order to elucidate the nature and limitations of this correlation.
In the conceptual model used in this study conflict processes are distinguished into two types: conciliation and fight. Conciliation can be defined as a process in which parties are willing to look for a resolution for the conflict and eventually work together to reach agreement. Unilateral and bilateral conciliatory strategies include prevention, avoidance and doing stepwise concessions: negotiations. There also are conciliatory forms of disputing in which an intervener is involved, typically someone with dependency-relations with at least one of the parties: a "mediator".

Fight is the anti-pole of conciliation. Parties act independently and try to frustrate each other's activities. Unilateral fight strategies often amount to capitulation: lumping it and endurance. A party can also choose to break off the relationship: exit. Finally, fighting manifests itself in the appeal to an relative external and independent intervener: a "judge".

Apart from conflict behavior there are two other indicators for the two types of conflict process: transformation and outcome. During the development of a conflict it can undergo different kinds of changes. Such transformations often concern the parties concerned and their characteristics, roles and relations. In this study the term transformation is used for specific changes, namely in the substance and number of claims.

Three types of results can be distinguished. A zero-sum solution is not approved of by both parties but is imposed on the loser. A compromise result is agreed upon by both parties and can be considered as a durable and final solution of the conflict. In the third type of result, parties are not able to make an end to the conflict and the status quo remains in existence. In such a situation, parties may have agreed upon a postponement, but there is also the possibility of an impasse.

There is a strong relation between the three indicators. Conciliatory behavior is associated with compromise or a postponement and relatively little transformation, whereas fighting is associated with a zero-sum solution or an impasse and relatively more transformation.

According to litigation theory, conflict processes are to be explained by the more permanent characteristics of the social field in which these conflicts take place. These characteristics are, in the first place, rules and institutions. Rules have great significance but they cannot entirely explain the disputing process. Apart from rules, litigation theory emphasizes the role of characteristics of actors and of their relations. In this research this relationship is elaborated and its importance is attributed to the dependence of actors on scarce resources. The resources needed for a building project are usually owned by different actors. The degree of dependence of one actor on another is determined by the importance of a resource and the possibilities of substitution.

The research

On the basis of the preceding carried out in the city of Groningen conflict processes, lead to the collected by direct observation, the applicable rules and depend three sorts of cases: small case, applies for a building permit, applicant.

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Results of the research

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The research

On the basis of the preceding theoretical ideas empirical research has been carried out in the city of Groningen. The object of study, the development of conflict processes, lead to the case-study as research method. The data were collected by direct observation, interviews and archival research. Differences in the applicable rules and dependency-relations between actors led to selection of three sorts of cases: small cases, cases in which a public housing association applies for a building permit, and cases in which a commercial developer is the applicant.

The analysis of conflicts in small cases is based on a description of the processes which take place in connection with the application for a building permit. The analysis of large-scale cases is based on two case-studies in which a public housing association applied for a building permit, and one case in which a commercial developer was the applicant. Within the three case-studies of large-scale cases, six conflicts are analyzed.

Results of the research

The analysis shows a striking regularity in the conflict processes studied. In the case of small-scale conflicts between building applicants and the municipality all the indicators point to conciliation while in the case of conflicts between the municipality and other parties, like neighbors, the indicators point to fight. In the latter situation parties confront each other with all kinds of complaints and actions and they also appeal to different sorts of third parties, amongst others by making use of internal appeal-procedures and administrative courts.

In the large-scale cases studied, two of the four conflicts between the municipality and other parties resulted in a defeat for the other parties. In the two other cases the result had compromise-like characteristics. In these four cases a specific type of transformation was observed. Initially there is a relatively limited number of substantial claims. But in the course of the conflict procedural claims get added to the dispute and in the course of the conflict these procedural claims increase considerably. The interactions between the parties concerned and the procedures followed apparently create a sort of "snow-ball effect" in the development of – especially procedural – claims.

The analysis leads to the conclusion that the distinction between fight and conciliation is quite manageable. The indicators, however, do not always point in the same direction and in the course of a conflict it can transform from one type to the other.
SUMMARY

In the cases we have observed different types of mediators. This variation particularly concerns mediators who belong to an organization which is at the same time party in the conflict, notably the municipality. This type of mediator can be subdivided into hierarchical mediators (superiors of one of the parties), executive mediators (mayor, aldermen, the executive committee of a public housing association) and political mediators (municipal council, political parties).

Supplementary quantitative research shows that the conclusion, that conflicts with other parties, like neighbors, usually can be characterised as fight while conflicts with building applicants come down to conciliation, not only holds for the case-studies but also for the whole city of Groningen. It also appears that of all granted building-licenses only a very small number of cases (4%) leads to the filing of a formal protest (first stage in the administrative review procedure). Of these requests a disproportionate number comes from large-scale building plans.

Explanatory factors: rules and dependency

In this study the theoretical expectation is that conflict-processes can be explained by rules and the dependency-relations between actors. Grosso modo, the results of the analysis contribute to the plausibility of this proposition.

Rules are mainly understood as the legal rules concerning building and land-use. In this respect a distinction can be made between substantive rules, procedural rules and rules distributing rights, duties and authorizations. The assumption is that the influence of a rule is dependent on its characteristics. The results of the analysis confirm this expectation. The influence of substantive rules depends on other factors, like interests of parties, degree of discretion and the way the rules are handled. Procedural rules and rules distributing rights and authorizations appear to influence the conflict process because they influence the dependency-relations between parties.

Substantive rules function as guideline and touchstone for decisions. From the case-studies it appears that the influence of this type of rule on the conflict process depends on whether the interests the rules are to serve correspond with the interests of the parties concerned. If so, conciliation is promoted. Otherwise, fight is more probable. The degree of discretion which a rule allows is also important. A limited degree of discretion appears to promote fight. In case of wide discretion the influence on the process depends on the way the rules are handled, particularly the degree of flexibility.

Procedural rules prescribe under which conditions and at what moment certain decisions can or should be taken. From this type of rule actors derive a specific type of resource: "procedural position". A favorable procedural position gives actors the opportunity to determine the speed and the length of the conflict by manipulating the dependency-relations with the actors (the municipality, public housing applicant) and with the other interested parties.

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actors the opportunity to determine the moment on which other actors must act and the speed and the length of the process. The procedural rules give certain actors (the municipality, public housing associations and, to a lesser degree, the building applicant), a much stronger procedural position than other actors, like neighbors and other interested parties.

Rights and authorizations appear also to function in conflicts as resources. The rules distribute the largest number of rights and authorizations to the municipality. This concerns in particular planning-authorizations and the authority to grant a building-permit. Public housing-associations have the exclusive authorization to build public housing. Finally according to the rules of rental-law, renters must give permission to building activities in their houses by the landlord. Applicants for building permits and other interested parties have a much weaker position in this respect. They have a right to be informed and to be heard. They can also file appeals and/or ask an administrative court to intervene.

Concerning the dependency of actors two basic theoretical theses can be formulated. The first states that, to the degree that the dependency of actors is balanced, the chance of a conciliatory approach to the conflict increases. The second thesis states that the degree of dependency is reflected in the results of conflicts: to the degree that dependency is balanced, the result will be more like a compromise and less like a zero-sum solution.

Theory and research about the building process and conflict processes give indications of the kind of resources that might be relevant for dependency-relations. In this respect a distinction can be made between resources necessary for building (a site, financial capacities, a building permit), and other resources, like knowledge and information, skills, the possibility of long term planning, durable and multiplex relations, etc.

The results of the analysis largely confirm the above formulated expectations concerning the influence of dependency. Conciliation usually is related to balanced dependency whereas fight is associated with unbalanced dependency. It appears that, in addition to the resources derived from rules, the distribution of resources necessary for building heavily influences the conflict process. Possession of land and of financial resources is especially important. Other resources – various capacities, relations and information – appear to have far less influence.

The explanation of the influence of rules and dependency must, however, be further specified in two ways. In the first place we should take into account the degree to which the relation between parties is characterised by opposing or corresponding interests. To the degree the parties have corresponding interests, conciliation is more probable, even in the case of unbalanced dependency. On
the other hand is fight more probable when opposing interests dominate, even when the dependency of actors is relatively balanced.

Second, the relation between dependency and conflict processes takes on specific characteristics resulting from the complications associated with the heterogeneity of organizations. Since within one organization different interests are at stake, the internal struggle between them can determine the organization's external conflict-behavior. Such internal division can be used by other actors as a resource.

Heterogeneity also offers the possibility of internal resolution of conflicts between the organization and external actors by procedures offered by "semi-autonomous" parts of the organization. Such internal conflict procedures function, at least partially, as barrier and filter for external procedures. As a consequence, opposing parties of organizations appeal less often to external intervenors, even when the dependency-relations are unbalanced. Moreover the organizations concerned can influence the results of such procedures to their own advantage. This situation can be expressed by stating that organizations have a special type of resource at their disposal: "conflict-absorption capacity". In the case-studies heterogeneity was manifested particularly as a characteristic of the municipality.

Finally, the relations of organizations differ qualitatively from those of individuals. More specifically, different parts and different levels of organizations have relations with external actors. Generally, multiplex and durable relationships between individuals prevent the involvement of external intervenors. Because of the semi-autonomous and impersonal character of the multiplex relations of organizations the involvement of an external intervenor, like a judge, is more probable, even in the case of balanced dependency between actors.

In cases of conflict with governmental organizations the chance that the opposite party appeals to an external legal intervenor is even greater. In the first place, because there often exists no exit option. Second, because of the bureaucratic structure of the governmental organization, other actors are often approached in a formal legal mode from the beginning. In such situations other parties mostly have no choice but to react in the same way. On the other hand, parties in a conflict with the government often can appeal to a special kind of intervenor, political bodies.

LIJST VAN AFKORTINGEN

AMvB Algemene Maatregelen van Bouwartikel
Arob Administratieve Rechtartikel
B.O.O.S. Bewoners Overleidingsbesluit
B&W Burgemeester en Woningwet
BBD Bureau Bewoners Overleidingsbesluit
BOK Bewoners Overleidingsbesluit
BRO Bouwraadsbesluit op de Ruimte en Verkeer
BТ Belasting Toezicht
BTIV Belasting Toegelatingen Vrijblijvend
BW Burgerlijk Wetboek
CAG-PTT Centrale Afdeling van de PTT
CD-PTT Centrale Directie van de PTT
GS Gedeputeerde Staat
HID Hoofd Ingenieur
IB Indische Buurt
MBV Model Bouw Veiligheid
NKS Norm Kosten Syndicaat
FCG Probleem Cumulatie
RO Ruimtelijke Ordening
S&V Stadsontwikkelingsverbond
v.v.g.b verklaring van gerealiseerde bouw
VDB Vereniging De Bouw
VNG Vereniging van Nederlands-Indische Bouw
WIB West Indische Bouw
WIB Woningwet