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WORKING GROUP ON THE EUROPEAN LANDSCAPE CONVENTION

LANDSCAPE AND DEMOCRACY

3rd Meeting

Conceptual report for reference

Landscape and the European Landscape Convention's contribution to democracy, human rights and sustainable development

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The Working Group of the European Landscape Convention on “Landscape and democracy” decided, at its 2nd Meeting (Cf. Report CEP-CDCPP-WG (2016) 6E), on the preparation of the following documents:

- 1) Issue paper (a conceptual report for reference) as asked for from the 8th Conference of the Council of Europe on the European Landscape Convention, on: Landscape and the European Landscape Convention’s contribution to democracy, human rights and sustainable development (CEP-CDCPP-WG (2016) 8E);*
- 2) Draft Recommendation on the contribution of the landscape approach, as defined in the European Landscape Convention, to the exercise of democracy and human rights, in a perspective of sustainable development, based on the issue paper (conceptual report for reference) (CEP-CDCPP-WG (2016) 9E).*

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Introduction

The close links between the notions of *landscape*, defined by the European Landscape Convention¹ as “an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors”², *democracy*, *human rights* and *sustainable development* deserve to be highlighted

Recommendation No. R (84) 2 of the Committee of Ministers to member States on the European Regional/Spatial Planning Charter already notes that citizens “should have the opportunity in an appropriate institutional framework *to take part* in the devising and implementation of all regional/spatial planning measures”³. Recommendation No. R (86) 11 on urban open space considers that the enjoyment of public open spaces “contributes to the legitimate aspirations of inhabitants for an improvement in their quality of life, as well as to increased social cohesion, feelings of security and *supports in this way the protection of the rights of man in his environment*”⁴.

The European Landscape Convention’s focus on all landscapes, without discrimination, and on everyone’s right to the enjoyment of landscape is implicitly based on the notion of “democracy”. It offers a practical illustration of democratic ideals, of public participation in landscape policies, of an emphasis on landscape as an aspect of cultural diversity and of respect for the subsidiarity principle, thereby strengthening local democracy. The explanatory report to the 2000 Landscape Convention emphasises the importance of the links between the Convention and democracy⁵.

Following the adoption of the European Landscape Convention, Recommendation (2002) 1 of the Committee of Ministers of the Council of Europe on the Guiding Principles for sustainable spatial development of the European Continent again stressed that social cohesion had to be based on a sustainable spatial development policy. The Appendix to the Guiding Principles refers to the European Landscape Convention and to the contribution of landscape to sustainable spatial development⁶. Resolution No. 1 on the contribution of essential services to the sustainable spatial development of the European continent, adopted on 9 July 2010 at the 15th session of the Council of Europe Conference

¹ European Landscape Convention of the Council of Europe (ETS No. 176) adopted by the Committee of Ministers of the Council of Europe on 19 July 2000, opened for signature by the member States of the Council of Europe in Florence on 20 October 2000 and entered into force on 1 March 2004, comprising 38 States parties and two signatory States (<http://www.coe.int/EuropeanLandscapeConvention>). See also the Protocol amending the European Landscape Convention, adopted by the Committee of Ministers on 15 June 2016 at its 1260th meeting and opened for ratification, acceptance or approval on 1 August 2016.

² Article 1 a.

³ The Recommendation considers a need for “a better general conception of the use and organisation of space, the distribution of activities, environmental protection and the improvement of the quality of life”. It states that regional/spatial planning gives geographical expression to the economic, social, cultural and ecological policies of society: “Man and his well-being as well as his interaction with the environment are the central concern of regional/spatial planning, its aims being to provide each individual with an environment and quality of life conducive to the development of his personality in surroundings planned on a human scale”. It points out that “any regional/spatial planning policy, at whatever level, must be based on active citizen participation. It is essential that the citizen be informed clearly and in a comprehensive way at all stages of the planning process and in the framework of institutional structures and procedures”. See *Council of Europe Conference of Ministers responsible for Spatial/Regional Planning (CEMAT) – Basic texts 1970-2010*, Council of Europe Publishing, 2010, Territory and Landscape Series, 2010, No 3. See also the Napfion Declaration “Promoting territorial democracy in spatial planning”, Council of Europe, 16th Session of the Council of Europe Conference responsible for Spatial/regional Planning, Resolution No 1, 16CEMAT(2014)5, 17 June 2014.

⁴ The Recommendation notes that open spaces form part of the urban heritage, contribute to the architectural and aesthetic form of towns and cities, play an educational role, are of ecological significance and are essential aspects of “social interaction”.

See “Public Space and Landscape: the Human Scale”, in Magazine *Futuroipa: for a new vision of landscape and territory*, Council of Europe, 2012, no. 3.

⁵ See paragraphs 7 and 23.

⁶ Paragraph 18 of the Appendix refers to the European Landscape Convention. See also paragraphs 49 and 50.

of Ministers Responsible for Spatial/Regional Planning (CEMAT), considers that *access to essential services* is a basic public policy aim and a crucial factor in spatial development policies, helping to reinforce social, economic and territorial cohesion and contributing to proper spatial planning⁷.

The Council of Europe's landscape and regional planning activities have always highlighted the significant interaction between democracy, human rights and sustainable development in the areas under consideration⁸. The "Evora Declaration on the European Landscape Convention", adopted at the Tenth Council of Europe Meeting of the Workshops for the Implementation of the European Landscape Convention, on "multifunctional landscape", stated that "the 'right to the landscape', should be considered a human right of the 21st century"⁹.

The Declaration considers the cultural, ecological and environmental, social and economic dimensions of landscape, and its governance, as a "common good and a collective interest". It highlights "the important role of the European Landscape Convention with its focus on all landscapes – and not just, as is more usual, focusing on the outstanding landscapes –, the important issue of ensuring landscape quality even for the common landscapes and the integration of 'landscape' in spatial development policy as a way to guarantee its adequate management" and notes that landscape forms part of the collective memory and identity of a community and that "*landscape quality is linked to human rights*".

The Declaration includes the following provisions:

- “– multifunctionality applied to the landscape is more than just the economic concept; the multifunctional landscape *relates to the individual and social wellbeing*; ...
- besides the natural and cultural dimensions, there is an economic and social dimension linked to landscape and in this sense *landscape is a resource and a potential for sustainable development*;
- the landscape can be considered an economic asset, but at the same time it should be considered a "*common good*", thus needing public intervention/regulation to avoid market distortion;
- *landscape, democracy, social and territorial cohesion and citizens' participation are fundamental and related themes*; ...
- landscape has the capacity to establish an emotional relationship (positive or negative) between man and natural and cultural resources; in this sense landscape can be *a vital experience*;
- the relationship of public and private stakeholders with the landscape and the territorial management systems is very important to ensure its quality;
- landscape reflects the changing processes of different economic and social models that humanity has experienced as a result of industrialisation, agriculture and urban policies, sectoral policies like tourism and public works (especially infrastructure networks), energy, and so on;

⁷ See also Council of Europe, Moscow Declaration on "*Future challenges: sustainable territorial development of the European continent in a changing world*", adopted by the Council of Europe Conference of Ministers responsible for Spatial/Regional Planning, in Proceedings of the 15th Plenary Session of the Council of Europe Conference of Ministers Responsible for Spatial/Regional Planning (CEMAT) (Moscow, Russian Federation, 9 July 2010), European Spatial Planning and Landscape Series, 2012, no. 94; Napfion Declaration "Promoting territorial democracy in spatial planning", Council of Europe, 16th Session of the Council of Europe Conference responsible for Spatial/regional Planning, Resolution No 1, 16CEMAT(2014)5, 17 June 2014.

⁸ See Proceedings of the Meetings of the Workshops for the Implementation of the European Landscape Convention, Seminars and Symposiums of the Council of Europe Conference of Ministers Responsible for Spatial/Regional Planning and other publications in the Council of Europe "Spatial Planning and Landscape" series, "European Regional Planning" series, and Council of Europe publishing: *Landscape and sustainable development: challenges of the European Landscape Convention*, 2006; *Landscape Facets: Landscape facets: Reflections and proposals for the implementation of the European Landscape Convention*, 2012; *Landscape Dimensions: Reflections and proposals for an implementation of the European Landscape Convention*, 2016 (<http://www.coe.int/en/web/landscape/publications>).

⁹ Council of Europe Document CEP-CDCPP (2013) 6E.

- landscape change as a result of man-made processes is increasingly faster especially if compared with the natural processes; at the same time, the scale and type of change is also changing, increasingly consuming more resources and simplifying landscape complexity and character;
- landscape change should be adequately managed and planned to guarantee landscape quality and social well-being; thus active citizens' participation is fundamental to take into consideration local needs and interests;
- both rural and urban landscapes are changing, although in different ways, but the end result should always be quality landscapes and well-being of the local communities;
- landscape policy cannot be considered a luxury, because it helps us to find ways to face the crisis, having the capacity to be the driver of social development initiatives, of mobilising society and of generating inter-community and intergeneration partnerships;
- the *economic sustainability of the landscape* is directly related to the services it produces;
- technology is not “everything” – landscape has material and immaterial, tangible and intangible values; thus quantity but also quality criteria need to be taken into consideration in landscape issues;
- landscape is a resource that produces well-being for man, as an economic and public good, by its biodiversity and as the support to human activities;
- landscape governance has to be comprehensive, inclusive, aimed at and sensitive to the quality of life of communities and people, whether man or woman, old or young;
- the European Landscape Convention is a good framework for landscape governance – it implements subsidiarity, defines principles and concepts, promotes citizens' participation and the co-operation of different administrative levels, but does not impose rules and methodologies;
- it is essential to ensure that landscape diversity, coherent with local identities, is maintained, at European, national, regional and local level, not as ‘museum landscapes’ but as ‘living landscapes’ even if it means ‘new quality landscapes’ adequate to the 21st century; ...
- the European Landscape Convention can provide an important contribution to the definition of sustainable development models in the different member States.”

The Council of Europe Parliamentary Assembly, Congress of Local and Regional Authorities and INGOs Conference have also drawn attention to the importance of the spatial planning and landscape dimensions of human rights and democracy.

In particular, certain non-governmental organisations have adopted formal documents that have subsequently been presented to Council of Europe conferences on the European Landscape Convention. One example is the “Landscape Democracy” Resolution, adopted by the International Federation of Landscape Architects (IFLA Europe) at its General Assembly in Oslo in October 2014¹⁰. The resolution highlights the links between landscape and democracy since the former is both integrative, in that it “functions as a platform to get people together to consider the future of the places where they want to live”, and participative, in that it “involves people and includes them in the decision making process”. Landscape offers a democratic vision of social relations through landscape education and training, based on collective interests that surpass cultural differences, thereby strengthening the links between people and their environment. At the same meeting, IFLA Europe decided to present its “Landscape and Democracy Award” to the Council of Europe¹¹.

Several academic institutions have also focussed attention on the relationship between the European Landscape Convention and democracy and human rights. In 2008 the Cambridge Centre for Landscape and People held an international workshop at which it launched its “Right to Landscape Initiative”¹². In 2014, an interdisciplinary research centre on landscape democracy was established in

¹⁰ Resolution presented to the 8th Council of Europe Conference on the European Landscape Convention (Council of Europe, CEP-CDPP (2015)34 E-Add 2).

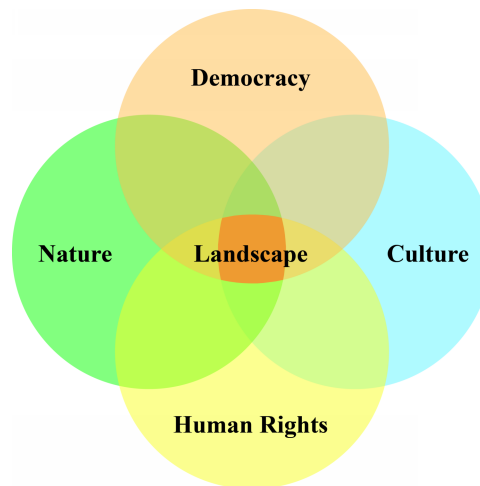
¹¹ Council of Europe, CEP-CDCPP (2015) 17E and 34E – Add. 2.

¹² “The European Landscape Convention: from Concepts to Rights”, *The Right to Landscape – Contesting Landscape and Human Rights*, Ed. Shelley Egoz, Jala Makhzoumi, Gloria Pungetti, Ashgate Publishing, 2011, pp. 51-56.

Norway in the Department of Landscape Architecture and Spatial Planning of the Norwegian University of Life Sciences¹³. In June 2015, it hosted a conference entitled “Defining Landscape Democracy”¹⁴. Finally, the non-governmental organisation Civilscape has stressed the need “to raise awareness for landscape as a holistic theme, highly political, at the core of our social, economic, ecological themes, closely tied to participative democracy, human rights and rule of the law”¹⁵.

Since the landscape is both a physical reality and a relationship¹⁶, this report sets out to clarify the forms of interdependence between landscape, democracy, human rights and sustainable development, with a view to submitting a draft recommendation focussing on the nature of these interactions to the 9th Council of Europe Conference on the European Landscape Convention (23-24 March 2017), the Council’s Steering Committee for Culture, Heritage and Landscape (CDCPP) and its Committee of Ministers.

Seen in these terms, landscape becomes a “spatial materialisation” of democracy, human rights and sustainable development¹⁷. With these considerations in mind, the following diagram shows how, from a scientific standpoint, landscapes are at the crossover between nature and culture while politically they reflect the interaction between democracy and human rights:



The “Landscape Award Alliance” of the Council of Europe notably, which gathers the exemplary achievements presented by the States Parties to the European Landscape Convention, show notably that it is possible to promote the territorial dimension of human rights and democracy improving the landscape features of people’s surroundings¹⁸.

This further stage in the implementation of the European Landscape Convention should increase its visibility and its political value, drawing on the Council of Europe’s intangible values of democracy and human rights, to coincide with the Convention’s opening to the rest of the world. It offers a unique opportunity to reaffirm these values and disseminate them more widely, as a basis for the sustainable management of these shared spaces, greater social cohesion and ways to live together, and a strengthening of democracy¹⁹.

¹³ 8th European Conference on the European Landscape Convention, Council of Europe CEP-CDCPP (2015) 3E.

¹⁴ Conference held in Oscarsborg Fortress, Oslofjord, 3-6 June 2015.

¹⁵ Contribution of Gerhard Ermischer, in Council of Europe CEP-CDCPP (2015) 17 E, p. 2.

¹⁶ The landscape is both a physical reality and a relationship. The interaction between the two is exemplified in the definition of landscape in the Convention, according to which it is “an area” (physical reality), “whose character is the result of the action and interaction of natural and/or human factors”.

¹⁷ See *Landscape and Sustainable Development: Challenges of the European Landscape Convention*, Council of Europe Publishing, *op.cit.*

¹⁸ See The Landscape Award Alliance of the Council of Europe, Council of Europe, Territory and Landscape Series, 2016, N°103.

This report has been prepared:

- in accordance with the terms of reference of the Steering Committee for Culture, Heritage and Landscape (CDCPP) from 1 January 2016 to 31 December 2017, namely to take the pertinent aspects of the European Convention on Human Rights into consideration in its thematic work, facilitate member States' use and implementation of tools and guidelines (including CM recommendations) on landscape, culture and cultural heritage policies at national, regional and local level, as appropriate, and prepare the 9th Council of Europe Conference on the European Landscape Convention (2017) (paragraphs IX, VI and VII);
- following approval of the 2016-2017 biennial programme at the 2nd meeting of the CDCPP, 27-29 May 2013 (CDCPP (2013) 29);
- in accordance with the 2015-2017 Work Programme for the implementation of the European Landscape Convention, as proposed by the 8th Council of Europe Conference on the European Landscape Convention (Strasbourg, 18-20 March 2015) (CEP-CDCPP (2015) 34E);
- following the establishment of the Landscape and Democracy working group by the CDCPP at its 4th meeting (Strasbourg, 1-3 June 2015) (CDCPP (2015) 15);
- in accordance with the Landscape and Democracy working group decision at its meeting of 17-18 March 2016 (CEP-CDCPP-WG (2016) 6E);
- having regard to progress on implementing the "Landscape and Democracy" work programme of 25 May 2016 (CDCPP(2016) 14).

The report is divided into three sections:

- Chapter 1. Landscape's contribution to democracy;
- Chapter 2. Landscape's contribution to human rights;
- Chapter 3. Landscape's contribution to sustainable development.

[Document CEP-CDCPP-WG (2016) 9E presents a draft recommendation to the Committee of Ministers of the Council of Europe, preceded by a brief explanatory report.]

¹⁹ See Michael Jones, "Landscape democracy and participation", in *Mainstreaming Landscape through the European Landscape Convention*, by Karsten Jorgensen, Morten Clementsen, Kine Halvorsen and Tim Richardson, London, Routledge, 2016.

Chapter I. Landscape's contribution to democracy

The relationship between landscape and democracy²⁰ became self-evident during the drafting of the European Landscape Convention, which is entirely in keeping with the spirit of human rights and democracy that form the Council of Europe's fundamental aims.

In its preamble, the Convention states that the signatory States wish to “respond to the public's wish to enjoy high quality landscapes and to play an active part in the development of landscapes”, believe “that the landscape is a key element of individual and social well-being and that its protection, management and planning entail rights and responsibilities for everyone” and have regard to “the legal texts existing at international level in the field of protection and management of the natural and cultural heritage, regional and spatial planning, local self-government and transfrontier co-operation”, particularly “the Convention on Access to Information, Public Participation in Decision-making and Access to Justice on Environmental Matters (Aarhus, 25 June 1998)”.

In Article 5.c, the Convention asks the Parties to “establish procedures for the participation of the general public, local and regional authorities, and other parties with an interest in the definition and implementation of ... landscape policies.” In this way, it formalises the relationship between democracy and landscape already spelt out in the Aarhus Convention referred to above. Article 6.C states that it is through landscape quality objectives that public participation in decisions to protect, manage and plan landscapes can be achieved: “Each Party undertakes to define landscape quality objectives for the landscapes identified and assessed, after public consultation in accordance with Article 5.c [of the Convention]”²¹.

The lines are traced out therefore. However, the implementation of this public participation in political decision-making on environmental matters and, in particular, the protection, management and planning of landscapes is not as straightforward and obvious as the texts would have us believe. For, to a non-specialist, investigating the relationship between landscape and democracy might seem incongruous on the face of it. Until recently, landscape issues were governed by political decisions taken in the context of representative democracy, but usually backed by expert opinion. Democracy seemed to be taken as read in this system, with the people's elected representatives taking the decisions for which the people had elected them. Quite soon, however, many questions arose, relating to methods of territorial governance, the place of academic knowledge relative to empirical know-how, the interest shown in landscape by the public, the relations between the political world and civil society and the spread of experiments in participation in political decision-making. These questions evoke whole swathes of European or even world political history. While it is crucial therefore for us to address the democratic process, as very many authors have done since Antiquity, it is more complex to investigate the links between democracy and landscape, even though many publications have attempted to unravel the ties and spell out the conditions under which the democratic process can be applied in the sphere of landscape.

This summary report on the links between landscape and democracy does not claim to cover all the questions that may be considered. It attempts to take stock of these links, open up lines of enquiry and set the terms of a debate which will inevitably arise at the Council of Europe Conferences on the

²⁰ Democracy, from the ancient Greek *δημοκρατία/dēmokratía*, meaning “sovereignty of the people”, a combination of the words *δῆμος/demos*, meaning “people” and *κράτος/krátos*, meaning “power” or “sovereignty”, from the verb *kratein*, “to command”, is the political system in which the people are sovereign.

²¹ The Recommendation CM/Rec(2008)3 of the Committee of Ministers to member States on the Guidelines for the implementation of the European Landscape Convention considers that: “All action taken to define, implement and monitor landscape policies should be preceded and accompanied by procedures for participation by members of the public and other relevant stakeholders, with the aim of enabling them to play an active role in formulating, implementing and monitoring landscape quality objectives” (Part 1, 1.1, G).

European Landscape Convention and the annual Council of Europe meetings of the Workshops for the implementation of the Convention.

1. Historical background to the link between landscape and democracy

The goal here is not to compile a list of the links between landscape and democracy but to highlight certain fundamental principles and cite certain meaningful examples from history. Neither is it our aim to dwell on the effects of political decisions on landscapes, which have been obvious from Antiquity up to the present day. The main focus of this report therefore is not this direct link between political authorities and the landscape but the one which relates to the role of rural and urban populations in political decision-making and consequently has an intentional, shared impact on landscapes, which are components, as the European Landscape Convention points out, of people's day-to-day surroundings. The starting point therefore is radically different. The assumption is that landscape planning decisions are taken in agreement with local people and involve all the stakeholders in the areas concerned. Among the many examples from history, some are worth a cursory mention, such as the *terpen* constructed in the marshlands along the North Sea shore in Dutch, German and Danish Friesland²², or the political system of the Communes, applied in the City of Siena in Tuscany well before the unification of Italy and superbly illustrated in the famous fresco painted by Ambrogio Lorenzetti in 1338, entitled the "Allegory of Good and Bad Government"²³. Another example is the Enclosure Acts and the growth in the role of the parliament in the United Kingdom²⁴.

Gradually, however, the forms of democracy became more diverse and widespread. For a long time, though, they remained representative democracies, involving little participation. Besides the examples referred to previously, we should mention the palaver tree, which Nelson Mandela called the "Great Place" and which was a democratic system for the exercise of power at local level, enabling everyone to have a say, irrespective of the social hierarchies which inevitably existed²⁵. While women only have a minor role to play and their participation should be increased, the "palaver tree" is a means of discussing the problems of the local community, the conflicts that divide it and any punishments that need to be imposed on individuals who have infringed the community's rules²⁶.

It was only in the second half of the 20th century that the most advanced forms of participatory democracy linked to the management of living environments emerged, particularly in the 1960s and in the initiatives based on the theories of the American philosopher, John Dewey.

If we look more closely at the main features of the examples above, it is possible to draw the following conclusions:

²² Stéphane Lebecq, 1980, De la protohistoire au Haut Moyen Âge : le paysage des "Terpen", le long des côtes de la mer du nord, spécialement dans l'ancienne Frise, in *Le paysage, réalités et représentations*, 10th Colloquy of Medieval Historians, *Revue du Nord*, Lille 1979, pages 125-148.

²³ Patrick Boucheron, 1338, *Conjurer la peur : Sienne, essai sur la force politique des images*, Ed. du Seuil, October 2013.

²⁴ W.G. Hoskins, 1955, *The making of the English landscape*, Hodder and Stoughton, London. The first elected parliament in England was de Montfort's Parliament of 1265. Only a small minority had a vote, meaning that the parliament was elected by only a very small percentage of the population. Parliaments only sat when the king or the queen saw fit to summon them (most often when he or she needed money). The power of parliament did grow over time, however, particularly on the occasion of the Glorious Revolution of 1688, in the wake of which a Bill of Rights was adopted in 1689, giving parliament more influence. The electorate grew slowly, and parliament gained more and more power until such time as the monarchy fulfilled only a figurehead role.

²⁵ Nelson Mandela, 1994, *Long Walk to Freedom, The Autobiography of Nelson Mandela*, Macdonald Purnell.

²⁶ Another example that could be cited is Vietnamese villages, where public debates take place in the meeting house or *Dinh*, where the village worthies meet to discuss village matters; however, it is still only the worthies who have the right to make political decisions.

- spatial and temporal scales are most certainly key issues as the examples which most clearly illustrate the pertinence of a strong link between democracy and landscape are often situated at a local level. Time scales are relevant because of the time required for the indispensable debate between the stakeholders in the area concerned;
- the status of the stakeholders is also crucial therefore because it determines each person's place and role in the political decision-making process;
- lastly, it is quite clear that the effectiveness of forms of participatory democracy depends on the procedures for participation by those concerned.

These three findings will not be the only ones, however, to contribute to our understanding of the relationship between landscape and democracy and how it works. Others will emerge in the course of the investigation, which will both enhance and render more complex our ideas about the processes of public participation in political decision-making on spatial development and landscape management.

2. The arrangements for exercising democracy: how to reflect the opinions of the people concerned about the future development of their living environment

When the first modern democracies were established, namely the French and the American ones, the question of the representation of citizens arose from the very beginning. The problem that had to be resolved was the one that had given rise to the debate between Emmanuel-Joseph Sieyès and Jean-Jacques Rousseau contrasting direct democracy with representative democracy²⁷. Direct democracy is a system which enables the people to adopt laws and important decisions themselves and to choose enforcers whom they can subsequently dismiss. Indirect, or representative, democracy is a system in which representatives are drawn by lots or elected by the citizens for a non-mandatory fixed-term mandate, during which they are not necessarily liable to dismissal by the citizens.

However, there is also a form of semi-direct democracy in which the people are nonetheless required to rule themselves on certain laws by means of a referendum, which may actually be a vote on a popular initiative, either to oppose a bill through a veto or to table a bill. The latter scenario occurs for example in the Swiss Cantons and in Italy.

Representative democracy itself can be divided into several different types of system, namely parliamentary, presidential, semi-presidential, assembly-based and liberal democracy. The main feature of the parliamentary system is that the government is politically responsible to the parliament, from which it usually stems. The parliament may therefore dismiss the government through a vote of no confidence, the procedures for which vary from country to country. In exchange, the government, the holder of executive power, may dissolve the parliament, the holder of legislative authority. There is therefore a separation of powers within a parliamentary system, but it is regarded as “flexible” because of the reciprocal supervision between the executive and the legislature.

The presidential system is characterised by a stricter separation of powers. The executive has no political responsibility towards the legislature, which cannot dismiss it. On the other hand, the head of state, who is also the head of government and is elected by direct or indirect universal suffrage, has less power over parliament than in a parliamentary system, as he or she cannot dissolve it. In the United States, where the system is truly presidential, the President has the right to veto legislation.

²⁷ Emmanuel-Joseph Sieyès: “Citizens who appoint representatives renounce – and must renounce – the possibility of making law themselves. They have no particular will to impose. If they were to dictate their will, France would no longer be a representative State; it would be a democratic State. In a country which is not a democracy (and France cannot be one), I repeat that the people can only speak and act through their representatives” (speech of 7 September 1789). Jean-Jacques Rousseau considered that democracy could only be direct: “Sovereignty, for the same reason as it is inalienable, cannot be represented; it lies essentially in the general will, and that general will cannot be represented.”, *The Social Contract*, Book III, Chapter 15.

The semi-presidential system combines the features of the parliamentary system and the presidential system, so is sometimes referred to as a mixed system.

The assembly-based system is represented by a single assembly, elected by direct universal suffrage. It has exclusive political authority, as the executive and judiciary are subordinated to the legislature. The system was applied in France between 1792 and 1795, when the Convention was charged with drawing up a constitution. This type of system is not necessarily associated with a separation of powers.

In a liberal democracy, the capacity for elected representatives to exercise decision-making powers is subject to the rule of law and is generally delimited by a constitution which focuses on protecting individual rights and freedoms, thus establishing a binding framework for leaders. This is not a particular type of representative system, so it may be parliamentary, presidential or mixed. Nor does it require a representative system in the strict sense, as it can also extend to a semi-direct system or a participatory one. Among its main principles, which are also found in most representative systems, we find individual rights and freedoms, but also freedom of expression, assembly, association and the press, property rights and the right to do business, in other words, the right to free trade.

In this report, there will be no discussion of these various systems in themselves but an investigation of how democracy can be exercised in relation to living environments and spatial development. In this connection, several remarks need to be made:

- the first relates to the notion societies form of the landscape. The situation differs according to whether the landscape is regarded as something outstanding or is equated with people's everyday living environment;
- the second has to do with the level of governance involved: the situation differs according to whether people are thinking in terms of the national scale or an activity carried out at local or regional level;
- the relationship between democracy and landscape during the process of drawing up laws or other measures or launching protection, management or planning activities will vary according to the political and social status of the people involved, namely whether they are elected representatives, associations or just local residents;
- lastly, the participatory process depends on what we mean by it. The role – and effectiveness – of citizens, experts, political leaders and institutions will differ according to whether the process is one of information, consultation, discussion or participation.

The definition of landscape

The definition of landscape has changed over time. Before the 1970s it was most frequently equated with outstanding landscapes and covered by the regulations introduced in most European countries to protect such landscapes because of their picturesqueness, role in legend or their scientific or artistic qualities. From the late 1960s onwards, the academic community began to pay attention to the landscape again. Previously it had fallen somewhat by the wayside following the great wave of interest that had stemmed from the work of geographers in several countries such as the UK, Italy, the Netherlands, France, Russia and Spain, who had viewed the landscape as the result of biophysical processes such as tectonics, hydrology, erosion or geomorphology, as a means of identifying countries' mining resources (this was the case with the Russian school, which added much to our knowledge about the formation of mountain ranges such as the Caucasus) or as a product of the interaction between nature and human activities (as was the case with the French school including Paul Vidal de la Blache). The German school had taken a different approach, making a distinction

between natural and cultural landscapes. Historians had also produced a whole series of works on the history of the landscapes of certain countries, amongst them W.G. Hoskins in England²⁸, Emilio Sereni in Italy²⁹ and Roger Dion in France³⁰. These works mostly date from the inter-war period, although some were published in the 1950s.

The emergence of environmental concerns changed the meaning attached to the term “landscape” and prompted a revival in the research work on the subject, which had been declining generally in Europe – although not in all countries. The most important innovation, and one which was connected with the relationship between democracy and landscape, was undoubtedly the emergence of studies on the social perceptions or representations of landscapes. The effect of these was to turn the spotlight onto the diverse range of social views on the landscape and to reveal their major impact on political activities. The research showed that social players act according to their social perceptions or representations of landscapes, and not necessarily in response to the problems that actually arise in the field. In this way these academic studies, which were produced in many European countries and at the same time in North America, began altering the meaning that was attributed to the landscape by injecting the dimension of social perceptions and representations and by shifting the focus increasingly onto everyday landscapes and away from outstanding ones.

It was as a result of this that, when the European Landscape Convention was drafted, the discussion almost immediately showed an interest in those everyday landscapes – although outstanding landscapes were not forgotten. Everyday landscapes were therefore included within the scope of the Convention (under Article 5), and this prompted a widespread upsurge in interest throughout Europe and elsewhere, the main argument being that the large majority of people now lived in landscapes which were not outstanding, but above all urban or suburban, although of course sometimes rural, and that the main challenge was that of improving these people’s living environments.

The other aspect of the meaning of the term landscape, which ties in with the above remarks, is the fairly widespread tendency among elected representatives to view the landscape as something that is linked with conservation and hence at odds with their desires for economic development. It is relatively rare for elected representatives to accept the new definition, which is more alive to social concerns and aspirations, as assessed through social perceptions and representations. The position of elected representatives in relation to democratic processes during landscape development operations will be discussed below, but it can already be said that it is essential for them to engage in discussions with their electorate.

It can be concluded therefore that the meaning that is assigned to the landscape determines the democratic quality of the debate between those concerned and of the political decisions taken. Fortunately, the meaning of the term has shifted to encompass greater participation by the people concerned, as is clearly indicated in the European Landscape Convention when it defines the landscape as an “area, as perceived by people”. The term landscape does indeed allude to social representations and perceptions which act as a driving force for political action.

The question of spatial and temporal levels of governance

New semantics therefore have prompted the emergence of experiments with participation, which were sometimes spontaneous, and although they were not directly linked to the European Landscape Convention, they were incorporated into its principles, particularly in the articles on the identification and assessment of landscapes and landscape quality objectives and those recommending that the public should be encouraged to take part in these activities³¹. If these experiments are carried out in

²⁸ Hoskins, 1955, *op cit*.

²⁹ Emilio Sereni, *Histoire du paysage rural italien*, Julliard, Paris, 1955, 330 pages.

³⁰ Roger Dion, *Essai sur la formation du paysage rural français*, Ed. Arrault, 1934, Tours.

³¹ Article 6.C.b “Identification and assessment”: Each Party undertakes to “assess the landscapes thus identified,

small areas, and not countrywide, the pursuance of policies for the benefit of landscape depends both on national institutions and on local and regional authorities. This is the meaning of the landscape as envisaged by the European Landscape Convention, which calls on the States Parties to implement landscape policies at this level. It can be accepted that this is a democratic process achieved through decisions taken by elected individuals representing the people. As has been the case in some European States, they can have a law adopted which will be of benefit to the landscape.

The national level is the one at which decisions are taken to promote policies for the protection of outstanding landscapes such as those that are candidates for inclusion on the World Heritage List. In this context, the democratic process is played out between the experts and the elected representatives of local and regional authorities or the nation. They need to have electoral representativeness and standing in expert circles in order to defend their case in international institutions. Polls show that many people accuse their elected representatives of failing to listen to them. In the same way, the public rarely has any say in decisions on the protection of sites or landscapes at national level, which are regarded as matters for expert reports and technical opinions by the administrative departments concerned and local and regional elected representatives. Public surveys may be conducted but they are not a sign of any real democracy and are more like consultations, which are a very different matter.

The spatial level of governance is therefore a key factor in the proper exercise of democracy with regard to landscape issues. Examples of this are on the increase throughout Europe, and even elsewhere, in places such as North and South America, where campaigns to have the aspirations of the populations of small territories taken into account are commonplace in an attempt to combat developments that they deem unsatisfactory. The case of Veneto, in Italy, is an interesting example, because it is one in which the committees (*comitati*), which were set up to oppose projects which took no account of the local population's desires, are now attempting to devise development projects which are based on studies of the local landscape³².

The local level is therefore the tier at which the democratic process is most operational, although it raises countless questions, which are examined below. It is clear in particular that this is the level that most enables residents to regain control over the quality of their living environments. It provides a form of resistance to all types of processes driven by the globalisation of commercial and financial transactions, which the citizens of Europe (and the world) cannot combat directly. In this way, the local level serves as a kind of haven from globalisation. However, at this level there is of course also the question as to whether local residents are really capable, through the elected individuals who represent them in the political sphere, of having any influence on decisions which are taken at world level. For example, can they have any impact on the price of food, which is decided on the world markets and which has a bearing on landscapes, because it means that certain crops are favoured over others, or on the price of oil, which affects transport infrastructure and methods?

Another issue that arises with regard to the spatial level of governance is that, in some cases, spatial development decisions may be taken by local authority bodies from which citizens are remote in administrative and political terms. This can happen in particular when municipalities, associations of municipalities or nature parks carry out landscape analyses and development programmes run by technical experts and elected representatives and residents are never consulted or even informed about them. In such circumstances, democracy is a relatively distant notion, and decisions are taken by an elite circle of insiders in the interest of a limited number of political and economic pressure groups. These remarks bring us to the issue of the status of the people involved.

taking into account the particular values assigned to them by the interested parties and the population concerned” and 6.D “Landscape quality objectives”: “Each Party undertakes to define landscape quality objectives for the landscapes identified and assessed, after public consultation in accordance with Article 5.c”.

³² Mauro Varotto, *In difesa dei luoghi dell'abitare : il fenomeno dei comitati spontanei in Veneto*, Osservatorio Veneto, Verona, 2000, Quaderno 3; Mauro Varotto, Ludovico Fabrizio Visentin, « Comitati locali e criticità ambientali in Veneto », *L'evoluzione del fenomeno negli ultimi 10 anni*, A.R.S. 2008, No. 116.

This leaves us with the question of the *temporal scale*. Though it is rarely referred to, it is crucial, as it relates to the time that elected representatives, experts, associations and inhabitants have for discussion. It is clear that if the decision-making process fails to make time for a debate between elected representatives and citizens, there is a strong risk that decisions will not be sufficiently reasoned and consensual. Elected representatives should attempt to foster debate when taking decisions. This will be to their advantage because a shared decision-making process is more likely to get them re-elected.

The status of those involved

This is a crucial issue because local and regional governance and the landscape governance that goes with it depend on the interplay of power between social or pressure groups such as economic, political or trade union lobbies. The processes of global trade and financial transactions are carried out by economic or financial groupings which influence decisions and are the very opposite of democracy. The prices of cereals, animal products and other products, which determine the fates of whole swathes of European landscapes in particular, are fixed by global agreements in which the major multinational food trading companies, which have not the slightest concern for local or regional development or landscapes, frequently operate with the goal of making a short or medium-term profit. The public interest often comes second to vested interests. Examples of this can be seen in policies on housing and on infrastructure, which are controlled by major property or civil engineering companies. This applies for instance to motorways, which are not only necessary for social and economic development but should also be the subject of negotiation with bodies such as landscape conservation associations, taking account of environmental and cultural aspects.

At local level also, even though citizens have more chance of taking part in negotiating procedures, some groups act in their own interests first, before thinking of the general interest. At this level, the process is more balanced, but there is no doubt, as is proven by certain experiments with citizen participation, that some people are more able to intervene than others, if only because they are more used to speaking in public and are more skilled in imposing their views over those of other residents with less debating experience and less skill in argument. The democratic process can also be skewed when local issues are hidden because, if they were brought up in public, they would reignite underlying conflicts which some local groups do not want to be aired in front of the entire population. This is especially the case with the question, which many regions have to deal with, of the preservation of hedges. Environmental groups do not always agree with one another, and tensions can arise between those wishing to preserve biodiversity and those more attached to the quality of landscapes, with the two aims proving difficult to reconcile in a calm manner.

The people who promote participation procedures may also belong to various spheres of society. Research workers, landscape practitioners, artists, architects and environmental and landscape associations are all involved in various ways, and sometimes they work together, but problems can arise when trying to agree on the methods and tools to be used. Sometimes tensions also arise between these groups or even within one and the same group, such as the disagreement between ecologists and human sciences experts, who do not view the landscape in the same way. The involvement of artists can stimulate social dialogue by appealing to local inhabitants through art installations, provided of course that their involvement results in an accomplished landscape project.

Nonetheless, it is through public negotiation and by pitting different viewpoints against one another that problems can be solved. However, there are many obstacles to such debates and they are not necessarily appreciated by elected representatives, who sometimes see them as a waste of time.

The various forms of participation

Participation procedures vary³³, ranging from communication to negotiation:

- *communication* attempts to gain the support of a target group and is a one-way process;
- *information*, which is also a one-way process, provides access to a form of power in that it increases people's capacity to act;
- *consultation* enables various opinions to be expressed, but it does not allow decision-making powers to be shared and provides no guarantee as to whether the opinions expressed will be taken into account;
- *dialogue and exchange* help those involved to get to know one another better as they are put on an equal footing;
- the aim of *concerted action* is a collective effort to build forward-looking approaches and goals, but it does not always allow people to play any part in the decision-making process;
- the aim of *negotiation* is to arrive at an agreement within a context of balances of power.

Given that the four factors discussed above – namely the meaning assigned to landscape, the scale of governance, the status of those involved and forms of participation – are so inextricably linked, it would be difficult to dissociate them from one another when analysing and attempting to improve the democratic process in its relationship with landscape.

It is important to point out therefore that in recent decades, the various procedures for exercising democracy have undergone a change which has redefined their meaning. This started with concerted action, which is participation in a less than fully developed form, and ultimately grew into participation proper. This has altered the relationship between elected representatives and citizens, introduced a collective element, created renewed interest in public affairs and restored confidence between (elected) representatives and those they represent (citizens), in a context which is often described as a “crisis of representative democracy” or a “crisis of politics”, one of the main symptoms of which is low turnout at elections³⁴.

While the most conventional definition of democracy is that of a political system in which the people are sovereign, it is preferable to proffer Paul Ricoeur's definition: “A democratic society is one which is aware that it is divided, in other words shot through with conflicts of interest, and which decides to operate by involving every citizen in equal measure in the expression, analysis and consideration of those conflicts, with a view to finding a compromise”³⁵.

3. Current changes in the participatory democratic process in the context of the globalisation of trade and the present economic and political crisis, and the impact on landscapes

Emergence and development of participation

A large majority of the world's citizens express a strong desire to be listened to by their political leaders and this could represent a strength for the exercise of democracy, but only of course if it were

³³ Technical document on “Participation and Landscape”, 2013, Landscape and Sustainable Development Programme, 2005-2010, Yves Michelin, Ministry of Ecology, Sustainable Development and Energy, Landscape Office, National Research Institute of Science and Technology for Environment and Agriculture (IRSTEA), 2013, 8 pages (See Beuret et al, 2006).

³⁴ The programme on information, public participation, consultation and involvement in risk prevention plans conducted by the Research Centre for Transport Networks and Urban Planning (CERTU) (Lydie Bosc), under the supervision of the Ministry of Ecology's Sub-Directorate on the Prevention of Major Hazards (MEDAD/DPPR/SDPRM) (Magali Pinon-Leconte).

³⁵ (Translated from the French of) Paul Ricoeur, 1997, *L'idéologie et l'utopie* (Lectures on Ideology and Utopia), Essais, Seuil, Paris, 413 pages.; *Amour et justice*, PUF, Paris, 1997, 110 pages.

actually fulfilled, which is far from the case. In most cases, the residents of a place regret that they are not heeded by their elected representatives and this explains the alternative movements that are springing up everywhere in Europe and sometimes organising protests or participation at local level. These are still not very common experiences and are usually based on opposition to political decisions imperilling the landscape lived in by populations confronted with projects which they do not support. Sometimes changes that upset what the populations regard as useful balances prompt local elected representatives to get involved in local debate. These experiences arise in connection with proposed changes to the living environment, tending towards the collective construction of new landscapes. However they do not yet constitute a dominant movement. While still marginal in relation to the customary institutional procedures, they reflect a resolve to broaden democracy, consistent with its evolution through history.

Several authors have analysed this historical trend, and in particular the question of representation of the entire population in a system operating through elections favouring the majority party. One of these is Pierre Rosanvallon, who takes the view that the democratic systems of the United States of America and France underwent a process of change which broadened their societal base either through universal suffrage or through extension of the vote to women, or by setting up power-curbing bodies intended to avert the excesses which were inevitably caused by the election of representatives of a majority party³⁶. Societies themselves, and no longer States, have explored the possibility of mobilising certain groups which, by organising assemblies of “citizens”, have tried to intervene in official decisions. This form of contribution to political decision-making has found scope for expression in most European countries. Moreover, it resulted in the 1998 Aarhus Convention³⁷, to which the European Landscape Convention refers.

In the 1990s, the social sciences debated this question of concerted action and participation and the forms they take; the debate gave rise to research programmes and many publications, which often centred on the collective mechanisms which grow up around environmental issues and allow debate between opposing groups in a local community. These mechanisms have occasionally been constructed by scientists themselves or by institutions as part of a plan for development or management of an environmental problem. In this period of incipient participation by civil society in official decision-making on landscape planning or on environmental issues, there was much criticism of the role of experts.

Since that period the context has changed, and participatory democracy and its variants have evolved, though the expert's role has still not been made completely explicit. Is the expert supposed to be the facilitator of the participation procedure? Or a mediator? Or should he or she simply be contributing his or her proficiencies and knowledge to the preparation of a common landscape project? The question of mediation is a subject of debate in the landscape sphere: some specialists hold that the spatial professions – spatial planners, town planners, landscape architects, architects, ingeniors, geographers and others – serve primarily as new mediators, whereas others consider that, while mediation is a tool at the service of participation, the main thing is to arrive at a landscape project which improves people's living conditions, so these professions should not renounce their status of designer.

Participatory, deliberative, argumentative or interactive democracy

Participatory projects of this kind require mobilisation of the participants over time, meaning that funding for participatory development operations needs to be provided on an ongoing basis, so that the political activity can be extended beyond the initial stage of the project. Landscape projects are not

³⁶ Pierre Rosanvallon, 2008, *La légitimité démocratique, Impartialité, réflexivité, proximité*, Ed. du Seuil, Paris, 350 pages.

³⁷ *Op. cit.*

processes which end as soon as the initial outline plans are delivered but ones which are in constant flux, requiring continuous follow-up.

The expression “participatory democracy” is the most commonly used but some specialists prefer to talk of deliberative, argumentative or interactive democracy. The latter is proposed by Pierre Rosanvallon, who is cited above. The expression “interactive democracy” differs from the more commonly used “participatory democracy” and also from “deliberative democracy”, in the sense that it enables stakeholders to engage in an ongoing discussion. This is why it is more appropriate to view landscape projects as open-ended processes which are not limited in time than attempts to draw up a completed plan resembling an architectural design. This enables the stakeholders to engage in a process of ongoing exchanges, not only between the political power and society but also within society itself. This takes us beyond the conventional distinction between participatory and deliberative democracy³⁸, and makes it possible to absorb the knowledge gained by analysing the effects of applying field-tested measures.

Interactive democracy is consistent with the principle propounded to justify landscape’s meaning as the outcome of interaction between biophysical and social processes³⁹, in keeping with the definition of landscape given in the European Landscape Convention. *Interaction* can be complemented by the idea of *adjustment*, meaning that in the actual course of the planning process, the stakeholders gradually adjust and possibly alter their positions with the help of new knowledge derived from experimental development projects. History moreover provides relevant information to help us understand the concept of adjustment present in the work of geographers, historians and archaeologists when they analyse the reactions of societies to situations of environmental crisis. Adjustment becomes a mode of governance that entails changes both to the technology and to the social and political configurations. Technology, in which the political world often seeks refuge, is not enough in itself, although it is frequently used to resolve environmental crises; the problem of climate change has given rise to technological ideas which may help us to address the problem of the exhaustion of energy resources. Although technology is crucial, the systematic use of technologies (such as renewable resources) is often identified as the key to the future, whereas it is the entire global social and political system that is at stake and needs to be reconstituted. Thus, as Edgar Morin puts it⁴⁰, interactive democracy opens onto a permanent cognitive, informational and social interchange.

Following and trying to rectify the action is the aim of landscape projects which are devised as continuous processes in which the action attempts to steer current transformations in the direction which may emerge from debate. But do all citizens want debate? While governments need alternative forms of exercising democracy in order to address controversial situations, it is not certain that everyone subscribes to the solution of interactive democracy. Participatory democracy is often criticised by elected representatives themselves, who regard it as a perversion of representative democracy or a muddled path liable to disrupt the political process and the place of the elected representatives of the people in political decision-making.

Clearly, in the debates which accompany these experiences, having a say depends on voluntary affiliation and this raises the question of the participants’ representativeness and of the pressure that category-based organisations can exert on collective debate. The question is what an activity really means when its participants are not selected in a manner that is representative of the local community concerned. This question poses many problems regarding the organisation of such activities and their

³⁸ *Ibid.*, page 337.

³⁹ As formulated by the European Landscape Convention in its definition of landscape, landscape “is the result of the action and interaction of natural and/or human factors” (Article 1.a).

⁴⁰ “As soon as an individual embarks on any action whatsoever, it begins to break free of his intentions. The action enters a universe of interactions, and it is finally the environment which takes hold of it in a way that may become opposite to the initial intention. The action will often rebound on us like a boomerang. This compels us to follow the action, to try and rectify it ...”. Edgar Morin, 2005, *Introduction à la pensée complexe* (Introduction to complex thought), Essais, Points, Ed. du Seuil, Paris, 160 pages, page 106.

social and political relevance. Like many other environmental law specialists, Massimo Morisi addresses these questions by making a distinction between various categories of policies including landscape projects which may constitute public policies arising from deliberative or argumentative democracy, alongside public policies originating from the political world, and those deriving from technocracy and those resulting from a referendum. He also introduces other questions relating to the organisation of this form of participation⁴¹.

Initiative is the first question raised: the difference between a local democracy activity undertaken by a political institution and one undertaken by a residents' association is not insignificant. It casts doubt on the social validity of participation; not all residents of a place where a conflict situation has emerged participate, but the fact that the participants are not representative can be presumed not to constitute an obstacle in itself to the circulation of information. The main thing is simply for the participation procedure to begin, provided, that is, that it is open enough; in any given locality, information circulates by word of mouth and the whole population is soon informed to a greater or lesser extent of the debates which have taken place and shown that there is a controversy. The debates may also be enriched by the informal conversations held outside scheduled meetings.

It is clear today that some sections of the public have lost confidence in their political leaders, and this leads to low turnout rates at elections or votes for extremist candidates. Elected representatives therefore have every reason to get closer to the electorate through participatory policies⁴². This observation helps to understand the success, albeit relative, of participatory projects centring on landscape. However, they do require certain conditions to be fulfilled for them to be at least relatively successful.

4. Contemporary forms of participatory democracy relating to landscape and experiments in implementation

Diverse and sometimes spontaneous experiments

Participatory experiments involving landscape emerged in the 1990s and evolved thereafter⁴³. They accompanied social movements which arose in response to threats to the quality of the living environment posed by infrastructure or by alterations considered to be incompatible with the well-being of the populations concerned. The aim here is not to review these experiments but to learn lessons from them that can be applied generally⁴⁴.

The participatory process generally follows a pattern that takes it through the following stages:

- surveys of local inhabitants and key players in a geographical area to assess the problems and challenges raised by changes in the landscape;
- collective reading of the landscape is an important phase, which has proven its effectiveness;
- mapping enables each participant to locate the important landscapes and the changes and projects affecting them, while sharing this knowledge through debate with the other residents;

⁴¹ Massimo Morisi, 2008, *Partecipazione e governo del territorio*, Biennale Toscana del Paesaggio, 13-15 November 2008. The terms denoting non-representative democracy vary; interactive democracy is closer to the conception put forward here than deliberative, argumentative or participatory democracy.

⁴² See, in particular, the survey by the Robert Schuman Foundation: <http://www.robert-schuman.eu/en/european-issues/0363-the-european-democratic-divide>

⁴³ See, in this connection, the experiments carried out by Mairie-Conseils, a support service for French municipal councils run by the Caisse des dépôts et consignations. Annie Blanchard and Yves Gorgeux in particular have conducted experiments in mobilisation and participation of local stakeholders and residents in several municipalities or groupings of municipalities in France.

⁴⁴ See Yves Luginbühl, "Landscape and democracy", in *Landscape Dimensions: reflections and proposals for the implementation of the European Landscape Convention*, Council of Europe Publishing, op. cit.

– workshops enable the various stakeholders to exchange ideas on the basis of the mapping carried out or processes of collective landscape reading.

The last stage is the process of devising the project on the basis of shared knowledge. It is constructed step by step through mutual input of solutions from the various stakeholders, including elected representatives. However one of the problems besetting this process is its continued application. If there are no funds to take it further, the process halts and there is no guarantee that all the measures thought of during discussions will be carried through. On this subject, Michel Prieur and Sylvie Dourousseau point out that the aim of the European Landscape Convention is “to involve the widest possible public in participation procedures during the definition of projects and discussion of individual requests continuing right up to the final decision, which they must be able to influence, including monitoring the implementation of a genuine landscape policy. Such public participation presupposes concomitant action on the part of the public authorities: informing the public and raising awareness of landscape issues, drawing up an inventory of landscapes of national, regional, local and even transborder interest, adapting participation procedures, where these exist, and so on”⁴⁵.

At all events, this type of participatory approach provides valuable information about the public contribution to the collective experience of devising a landscape project in a democratic context.

From opposition to project

Many participatory processes begin with opposition to development or infrastructure projects planned by political authorities without really consulting the local inhabitants. It would be difficult to list these but we can cite the example of Veneto, where residents’ committees have moved from opposition to support for landscape projects⁴⁶.

These days, governments are reliant on these alternative movements, which perform a role of transmitting information or finding a way out of controversial situations. However, it does need to be pointed out that spontaneous movements stemming from neither the political nor the scientific world, and particularly not from the social sciences, can emerge when there is a conflict situation or a problem facing society at a given level, as illustrated by the committees in Veneto, and that this can add a new dimension to the relationship between landscape and democracy. They are part of the array of alternative associations which are springing up just about everywhere. What makes them unique is that they use landscape to convey civic demands for improvement of the living environment, combining claims for greater social justice with calls for sustainable development, and for recognition of the emotional and aesthetic values attached to the areas in which they are emerging.

Among all of these ideas one that can most certainly be retained is the diversity of the democratic forms of participation linked with landscape. However, there is also a clear progression from opposition to project, which is increasingly beginning to resemble a continuous process, although this is not always possible under the political and financial circumstances in which such projects are implemented.

⁴⁵ Michel Prieur and Sylvie Dourousseau, 2006, Landscape and Public Participation, in *Landscape and sustainable development: challenges of the European Landscape Convention*, Council of Europe Publishing, op.cit., p. 167.

⁴⁶ Mauro Varotto, 2000, *op.cit.* The number of residents’ committees increased from 108 in 2000 to 253 in 2010, but they began drawing up development projects.

5. Factors in the success or failure of experiments in participatory democracy

Shaping landscape: a shared project

The success or failure of landscape participation operations depends on multiple factors. Treating landscape as a project has not yet become established practice in the political world, although some experiments have been a clear success⁴⁷. Other landscape approaches attempt to influence processes of economic and social change that are of benefit to local inhabitants' living environments and living conditions⁴⁸.

Negotiated landscape operations therefore no longer apply directly to landscape features but to processes of transformation of landscapes and the way in which landscape is conceived. The aim is not just to curb landscape development which is considered to be harmful to landscape quality and the living conditions of residents or nearby populations, but also to launch a whole range of education campaigns or cultural events which are also capable of influencing people's ideas about landscape, and to innovate by introducing new practices for the preservation of economic activities which are conducive to high-quality landscapes.

The context

The context in which participation activities are carried out is also a crucial question: forms of participation may differ depending on whether the process takes place in a rural, urban or suburban landscape. Many countries have experience of all three cases but they differ in form, if only because the residents' knowledge is not shared in the same way. The relative anonymity of urban residents is not necessarily conducive to the emergence of processes of spontaneous participation, yet experience shows that mobilisation can sometimes be prompted by neighbourhood community movements⁴⁹. In towns, neighbourhood committees, to which residents are invited, have also been set up. However, as the initiative has come from elected representatives, residents have misgivings deriving from their suspicion of activities devised by politicians⁵⁰.

In rural areas, residents often know one another better and this may improve participation; often however, it will also mean that there are latent antagonisms bequeathed by history or neighbourhood conflicts resulting in cases of deadlock which do little to encourage public debate. Inhabitants here are frequently older and less inclined to take part in debate, acting more warily than urban populations, which include more young people. The urban periphery, where longer established and recent populations mingle, may be yet another case. As a rule though, in the absence of any assessment of current experience, it is still difficult to draw conclusions that can be applied generally. Therefore, whatever the situation, launching a participation process is not as easy as might be assumed and should be carefully studied, or otherwise stem from an initiative by a body such as an association, an artists' community or a local collective. Participation has not yet reached the mature stage of its

⁴⁷ For example, the Saint-Flour Landscape Plan in France, implemented in 1993 by the landscape architect, Alain Marguerit, who continues to monitor it regularly, thus confirming the ongoing nature of landscape projects over time.

⁴⁸ Lifescape is an operation based on the deployment of new practices promoting landscape preservation and sustainable development; *Lifescape, Your landscape*, EU INTERREG IIIB North West Europe Programme.

⁴⁹ This was the case in Paris with the example of the Jardins d'Eole project, in which an association initiated discussions with Paris City Hall to work towards creating an urban park on derelict railway land.

⁵⁰ See in this connection the leaflet published by the Standing Conference for Territorial Development, Ministry for the Walloon Region: *La participation des citoyens à la vie communale: enjeux et pratiques*, 2003, 175 pages. See also: Philippe Barret (Geyser), *Guide pratique du dialogue territorial, Concertation et médiation pour l'environnement et le développement local*, Fondation de France, 2003; Yves Luginbühl, 2009, *Participer au paysage de demain*, in *Di chi è il paesaggio, La partecipazione degli attori nella individuazione, valutazione e pianificazione*, edited by Benedetta Castigioni and Massimo De Marchi, CLEUP, Padua; and Michael Jones, *The art of effective participation, a scientific assessment, The European Landscape Convention in research perspective*, Florence, 18-19 October 2010.

development. It may be necessary to wait until the current experiments have yielded positive or negative results for future projects to absorb the lessons of past ones.

The contribution of knowledge

The contribution of knowledge to the participatory process is also an unresolved question: in what form should this contribution be made? At what point in the process should practitioners or scientists be asked to contribute their knowledge: at the start, or as questions specific to a given theme arise? The process itself generates new knowledge, which helps to fuel the debate and may influence decisions.

Between academic knowledge and empirical knowledge there are indeed gaps that may upset the workings of knowledge-sharing between those involved in the participation process. However, empirical knowledge is often used by scientists in processes such as assessing an area's animal or plant species, or by social scientists when they record residents' personal accounts so as to understand their social representations of the landscape or to identify hazard zones remembered by older people, such as flood-prone areas or avalanche paths. In the urban landscape, sociologists, anthropologists and geographers question residents and gain insight into disputes over the use of shared resources or ethnic conflicts in a neighbourhood.

Research programmes conducted by the French Ministry for Ecology have covered several experiments in participation in various settings; they reveal numerous factors of success or failure. A first finding from the analysis of these experiments, conducted in various French regions but also studied in other States, shows that some of them – often those run by artists' or architects' collectives – aim to bring together residents of an urban neighbourhood at festive events. However, these activities often do not result in a tangible project; they merely provide an opportunity for residents to meet in a convivial setting and get to know one another without drawing them into the adventure of devising a collective project. In some ways, it is precisely because these collectives organise activities which do not have a real development goal that they are relatively appreciated by elected representatives, since they often allow them to prepare development plans as they please and claim that this is participation.

Facilitating and arriving at the landscape project

There is some debate about the process of arriving at a landscape project⁵¹. Some specialists argue that the participation process itself is the most important thing, but this is a hazardous assumption and a potential pitfall; while the participation process is crucial, it must nevertheless reach a compromise on a project which satisfies all the stakeholders. The aim of these participation processes is of course to carry the approach through to its conclusion in order to improve the inhabitants' living environment, not to bring them together solely to create social cohesion, even though this is essential. Facilitation of the participation process is a prerequisite for success, and those in charge of the operations, most of whom are both landscape practitioners and mediators, must not abandon their mission as designers. This question of facilitation is key, and the status of facilitators must be carefully thought through: should they be a full stakeholder in the operation, such as a practitioner or a scientist, or should they be independent and have no responsibility for the measures planned, simply doing their work of facilitation?

⁵¹ In an operation conducted in a municipality on the banks of the Loire, those in charge placed emphasis on the participation process, basing themselves on the assumption that this is the crucial thing and that actually arriving at a development project was secondary. However, they ultimately acknowledged that the project was also important because it had stirred some of the inhabitants into action, prompting them to set up an association to improve the appearance of the municipality. The municipality in question was Villandry, where a joint development project was devised by the residents and a team of scientists and practitioners (see the appendix to the report "Landscape and democracy, in *Landscape Dimensions: Reflections and proposals for an implementation of the European Landscape Convention*, Council of Europe Publishing, *op. cit.*).

The project may take the form of a charter between the partners involved in a spatial development project⁵². Such charters may set landscape quality goals agreed on by the various stakeholders. They take an innovative approach compared to the usual process in this type of document, which starts with a diagnosis and ends in the preparation of a landscape project founded on an array of different operations designed to “restore meaning” to the landscape or to define a “new identity”. Although work programmes begin with a definition of landscape quality objectives, they have not yet fully entered into a permanent organised process of participation by residents, although many local associations have participated in the meetings held by contracting authorities.

Here the question of the meaning assigned to landscape recurs, although the question of identity is a matter for discussion. The meaning which the planning process gives landscape is fundamental, allowing detachment from the problems posed by the vexed issue of the aesthetic dimension. Other questions arise such as validating decisions, disseminating the content and conclusions of debates, means of conveying decisions, interaction between the local forms of grassroots democracy and debates at regional, national or international level. These are avenues to explore which could fuel discussions at Council of Europe meetings on matters relating to the implementation of the European Landscape Convention.

Assessment of participatory projects

There remains the essential question of project assessment. Validation of the various stages in the participation process is part of this, and it is essential because it enables participants to see the outcome of their commitment. However, it is surprising that large numbers of plans purporting to be landscape projects have never been subjected to an assessment of their actual effects on the landscape. If we consider that a landscape project can be likened to a process nurtured by self-generated knowledge, its own progress also offers an opportunity for assessment. Lessons drawn from the planning process are a means of assessing the project's effects: they continuously inform those involved in the project about the effects of the measures adopted and implemented, and allow these to be altered or corrected as the project goes ahead. The planning process takes the form of a retroactive loop, which operates as follows: the landscape project is a territorial process which begins with knowledge and progresses through definition of the landscape quality objectives and the framing of the protection, management or development measures, before moving on to the review, monitoring and assessment stage, which retroactively fuels further knowledge and provides fresh impetus for the activities prompted by what the process has yielded in the way of new knowledge⁵³.

⁵² Josep Maria Mallarach, *Carta del paisatge de la Vall de Camprodon, Pacte per a la protecció, ordenació, gestió i millora dels paisatges, Pla de gestió*, 2009, 34 pages

⁵³ Seguin Jean-François, 2008, *Le projet de paysage comme processus territorial*, presented to an inter-DIREN workshop in the context of implementation of the Information System on Nature and Landscape, 16 and 17 October, Vichy.

Chapter II. Landscape's contribution to human rights

*"I am monarch of all I survey, My right there is none to dispute."*⁵⁴

The positing of a right to landscape by poets and philosophers in the 18th and 19th centuries was but a prelude to the contemporary extension of human rights to environmental issues. With the advent of the European Landscape Convention, landscape came to be seen not only as an individual right but also as a collective one. The enjoyment of landscape being at once an individual and a collective experience, it allows diverse cultures to exist side by side on the same territory. People who live in the area will have a different sense of identity from others who are merely passing through, yet whatever their various perceptions, everyone has a right to landscape, even if they do not necessarily own the land in question.

The European Landscape Convention neatly encapsulates the spiritual and moral values that lie at the root of freedom and the rule of law, principles which form the basis of all genuine democracy according to the Preamble to the Statute of the Council of Europe. The Preamble to the Convention and all its articles call for the effective realisation of human rights and fundamental freedoms in accordance with Article 1.b of the Statute.

Likewise, according to the Council of Europe's aim of facilitating "economic and social progress", as stated in Article 1.a of the Statute, the European Landscape Convention, with its concern to achieve sustainable development, reflects the need for economic and social progress. From an economic point of view, the Preamble emphasises that landscape "constitutes a resource favourable to economic activity" and that landscape protection, management and planning, central themes which are the aims of the Convention, "can contribute to job creation". On the subject of social progress, the Convention refers in its Preamble to "social well-being" and "human well-being".

Held up as the first international convention on sustainable development in the 21st century, the European Landscape Convention effectively sets the standard in this area. Landscape is about striking a harmonious balance between social, economic, environmental and cultural needs. Its dual aspect, natural and cultural, means that people's natural and cultural heritage needs to be considered simultaneously.

Landscape, then, mirrors the complexity of the territory concerned and is an expression of the symbiosis between the human need for high-quality spaces conducive to social equilibrium and well-being, and nature's need for balance based on biodiversity.

The following section aims to shine a light on the complex relationship between human rights and territory, as perceived by human beings through landscape.

1. The universality of human rights in relation to landscape

There is no contradiction between landscape and cultural diversity and the thesis about the universality of human rights, which holds that, based on a common ethical foundation, the fundamental requirement to preserve human rights is universal and provides the inspiration for legal instruments to protect human rights. The following instruments, for example, specifically refer in their opening lines to the Universal Declaration of Human Rights proclaimed by the UN General Assembly in Resolution 217 A (III) of 10 December 1948:

⁵⁴ William Cowper, *The solitude of Alexander Selkirk*, quoted by Henry David Thoreau, in *Walden or Life in the Woods*, 1854.

- the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms;
- the American Convention on Human Rights;
- the African Charter on Human and Peoples' Rights;
- the Arab Charter on Human Rights;
- the ASEAN Human Rights Declaration.

It is worth noting that while the Universal Declaration of Human Rights does not mention landscape, understandably given that the year was 1948 and the European Landscape Convention had not yet been adopted, Articles 22, 25.1 and 29.2 of the Declaration talk about “dignity”, “culture”, “health” and “well-being”, concepts that are at the heart of the Landscape Convention. Article 22 states that everyone “is entitled to realization [...] of the [...] *cultural rights indispensable for his dignity*”. Article 25.1 acknowledges everyone’s right to *health* and *well-being*. Article 29.2 refers to the just requirements in terms of “*the general welfare in a democratic society*”. These provisions echo the view of landscape expressed in the Preamble to the Convention, where it is described as a key element “of *individual and social well-being*” and a basic component of “cultural heritage”⁵⁵.

It is thanks to this universal character that the European Landscape Convention has been able to be extended to non-European States, having originally been concerned solely with the specific features of European identity. Accordingly, the Protocol amending the European Landscape Convention adopted by the Committee of Ministers on 15 June 2016 at its 1260th meeting, and opened for ratification, acceptance or approval on 1 August 2016 will afford an opportunity to protect, manage and plan landscapes according to common principles that apply to landscapes worldwide, in all their diversity. On every continent, landscape is invariably a reflection of local and regional cultural identities. And with landscapes around the globe increasingly in danger of losing their distinctive character and becoming homogenised, the need for proper management of the world’s landscapes based on principles and directives that everyone can understand has become urgent, especially as there is now a growing awareness among the public and elected officials in all countries of the importance of landscape for quality of life.

In future, therefore, human rights, which are the cornerstone of the Convention and central to its implementation, will underpin the application of the Convention in non-European countries as well. Thanks to the Landscape Convention, the Council of Europe will embody fundamental rights and values for the benefit of all humankind and will be able to propagate these values beyond its member States. Landscape is becoming an essential component of people’s surroundings worldwide (new paragraph 6 of the Preamble). With the support of the Argentinian network on landscape, a Latin-American initiative has produced a draft Latin-American convention on landscape along similar lines, linking landscape to human rights⁵⁶.

It will be noted below (II and IV) that the human rights implemented, directly or implicitly, when applying the Convention are now regarded by the international community as part of their common heritage, in much the same way as the environment. Landscape is seen as an essential component of the environment, providing as it does a bridge between culture/territory and culture/nature. Human rights have become a vehicle for environmental and sustainable development policies, as framed and universally approved at the Rio de Janeiro conference in 1992 through the rights and principles on environment and development:

- *right to a healthy and productive life in harmony with nature* (Principle 1);

⁵⁵ The tightening of the relationship between “territory and landscape” and “human rights” through the Universal Declaration of Human Rights was highlighted by Florencio Zoido in “Droits de l’homme, territoire et paysage”, in Aline Bergé, Michel Collot and Jean Mottet, *Paysages européens et mondialisation*, Ed. Champ Vallon, 2012, p. 50.

⁵⁶ *Proyecto de convenio latinoamericano del paisaje*, 4 de mayo de 2016, LALI.

– *principle of integration*: in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it (Principle 4);

– *principle of co-operation*: States shall co-operate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem (Principle 7);

– *principle of information on the environment and participation in decision-making processes* as the best way to handle environmental issues at the relevant level (Principle 10);

– *vital role of women, youth, indigenous peoples and their communities* because of their local knowledge and traditional practices in managing the environment in such a way as to ensure sustainable development (Principles 20, 21 and 22).

Since the 1994 Resolution (1994/65 of 9 March 1994), the United Nations Human Rights Council has on several occasions emphasised the connection between human rights and environment, of which landscape forms part. In its Resolution 19/10 of 22 March 2012 (A/HRC/RES/19/10) on human rights and the environment, updated on 23 March 2016 (31/8, A/HRC/RES/31/8), the Human Rights Council recognised that “human beings are at the centre of concerns for sustainable development, that the right to development must be fulfilled in order to meet the development and environment needs of present and future generations equitably, and that the human person is the central subject of development and should be the active participant and beneficiary of the right to development.” This requirement may apply in particular to landscape protection, management and planning.

The 1992 Convention on Biological Diversity states in its Preamble that biological diversity is a “common concern of humankind” and emphasises its intrinsic value. Among the constituent elements of this value, it is possible to detect the implicit presence of landscape on an “ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic” level. Since then, numerous decisions and recommendations of the Conference of the Parties to the Convention on Biological Diversity have repeatedly acknowledged landscape as an important factor in biodiversity policies. For example, the Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets adopted in Nagoya at the 10th Conference of the Parties in 2010 provide in Target 11 for measures “integrated into the wider landscapes and seascapes”. In addition, among the research carried out on biological diversity and ecosystem services is a study on the connection between ecosystem services and “human well-being”, in particular with respect to landscape⁵⁷. Landscape had already been considered on previous occasions, at the 7th and 8th Conferences of the Parties⁵⁸. The Convention on Biological Diversity is mentioned in the Preamble to the European Landscape Convention.

Universality likewise arises from the close ties that have existed between the Council of Europe and the European Union, ever since the latter explicitly opted to follow in the Council of Europe’s footsteps on human rights issues. The EU Charter of Fundamental Rights accordingly contains references to rights to dignity, education, non-discrimination, cultural diversity, health care and a high level of environmental protection implying non-regression (with Article 6.1 of the Treaty on European Union according the Charter the same legal value as the treaty).

In the Memorandum of Understanding between the Council of Europe and the European Union of 23 May 2007, the two organisations declare that they will base their co-operation “on the principles of indivisibility and universality of human rights”. The Council of Europe is regarded as the Europe-wide reference source for human rights on account of the European Convention for the Protection of Human

⁵⁷ See the Diversitas research on ecosystem and society.

⁵⁸ Decisions VII/12 on sustainable use and biological diversity, VII/14 on biological diversity and tourism (COP 7), and VIII/28 on voluntary guidelines on biodiversity-inclusive impact assessment (COP 8).

Rights⁵⁹. The main themes addressed in the present report, as an expression of how the European Landscape Convention is actually implemented, crop up again, therefore, in the Memorandum of Understanding: democracy and good governance, intercultural dialogue and cultural diversity, education, social cohesion.

The work done by the Steering Committee for Culture, Heritage and Landscape (CDCPP) will accordingly be passed on to the European Union and, under the co-operation agreement between the European Union Agency for Fundamental Rights and the Council of Europe, the Agency “shall take due account” of the decisions, findings, reports and activities in the human rights field of the Council of Europe’s intergovernmental committees⁶⁰. Accordingly, the Parliamentary Assembly of the Council of Europe, in its Resolution 2029 (2015) of 27 January 2015, with a view to pursuing further the building of a common space for human rights protection, ensuring complementarity and coherence of standards and of the monitoring of their implementation, invited the European Union to examine: “the possibility for the European Union to accede to key Council of Europe conventions tackling the major challenges facing European society today”. That could quite easily include the European Landscape Convention, particularly as the EU’s accession has already been made possible thanks to Article 14 of the Convention.

2. Complementarities and conflicts between human rights as they relate to landscape

The human right to the environment is recognised in the Stockholm Declaration of 1972, the Rio Declaration of 1992, the African Charter on Human and Peoples’ Rights of 1981, the San Salvador Protocol to the American Convention on Human Rights of 1988 and the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters of 1998⁶¹. The human right to the environment is not formally enshrined in the European Convention on Human Rights, however. The Parliamentary Assembly of the Council of Europe has on several occasions expressed interest in amending this last to include the right to a healthy environment⁶².

On 28 April 2010 the Declaration entitled “Working together for Biodiversity, Protection of Natural Areas and the Fight against Climate Change” called on the Committee of Ministers and Council of Europe member States to recognise the right to a healthy environment as an integral part of human rights⁶³.

If human rights are universal, they are also interdependent and complementary. Legal clashes are apt to occur between them, however, where conflicting interests are involved. When dealing with specific cases, therefore, the courts have the delicate task of either tying the environment in with existing rights, or giving greater weight to one or other of the human rights at play.

⁵⁹ Paragraphs 16 and 17.

⁶⁰ Agreement published in the Official Journal of the European Union of 15/07/ 2008, L. 186/7, paragraph 8.

⁶¹ Maguelonne Déjeant-Pons, *Humans Rights and the Environment*, Council of Europe Publishing, 2002, 341 p.

⁶² Recommendation of the Parliamentary Assembly of the Council of Europe 1431 (1999) “Future action to be taken by the Council of Europe in the field of environment protection”; Recommendation of the Parliamentary Assembly of the Council of Europe 1614 (2003) “Environment and human rights”; Recommendation of the Parliamentary Assembly of the Council of Europe 1885 (2009) “Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment”. The Recommendations adopted in 1999 and 2003 were specifically mentioned in the ECHD judgment in *Atanazov v. Bulgaria*, of 2 December 2010, No. 12853/03, paragraphs 56-57; M. Déjeant-Pons, «L’insertion du droit de l’homme à l’environnement dans les systèmes régionaux de protection des droits de l’homme», *Revue universelle des droits de l’homme*, Ed. N.P. Engel, Kehl, 30 novembre 1991, vol. 3 n° 11, pp. 461-470 ; « The right to environment in regional human rights systems », in *Human rights in the twenty-first century: a global challenge* (K. E. Mahoney, P. Mahoney) London, Martinus Nijhoff Publishers, 1993, pp. 595-614..

⁶³ Declaration signed by the presidents of the Parliamentary Assembly of the Council of Europe, the Congress of Local and Regional Authorities and the INGO Conference of the Council of Europe.

Turning to the case law of the European Court of Human Rights (ECHR), it will be observed that landscape is seldom a cause of action and when it is, it is invariably linked to issues relating to the environment⁶⁴. Since 9 December 1994 and the judgment in *López-Ostra v. Spain*, the Court has recognised that, by extension, damage caused to the environment and hence also to its component parts, such as landscape, may amount to a violation of certain human rights expressly enshrined in the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. This is the case when the environmental violation is deemed to also constitute a violation of the right to life (Article 2), or a violation of the right to respect for private and family life and for the home (Article 8). It is interesting to note that in the aforementioned judgment of 1994, the Court held that: “severe environmental pollution may affect individuals’ *well-being* and prevent them from enjoying their homes in such a way as to affect their private and family life adversely”. The reference to *individuals’ well-being*, which is not even mentioned in Article 8, thus suggests that, in the view of the Court, *well-being* is a value worth protecting, which is precisely what the European Landscape Convention does. Recognition of the environment as a new human right gained further support with the judgment in *Tatar v. Romania* of 27 January 2009 which likewise made a connection between Article 8 and the right to “enjoyment of a healthy, protected environment”. Once again, a parallel can be drawn with the Landscape Convention, which refers to the right to enjoy high quality landscapes.

In *Kyrtatos v. Greece*, however, the European Court of Human Rights made it quite clear that urban development which was detrimental to the environment and neighbouring countryside could not be a ground for complaint under Article 8 unless the interference directly affected the applicant’s home or private life⁶⁵. The judgment itself, though, suggests that damage to the surroundings situated outside the applicant’s property could, in other circumstances, amount to a violation of Article 8, paragraph 1: “it might have been otherwise if, for instance, the environmental deterioration complained of had consisted in the destruction of a forest area in the vicinity of the applicants’ house, a situation which could have affected more directly the applicants’ own *well-being*”⁶⁶. In other words, the *well-being* attached to the home is clearly conditioned by the surrounding area affording a certain quality of environment, and hence a certain quality of life of which landscape is an integral part.

Well-being can also affect people outside their homes, however, as in the case of *Di Sarno v. Italy* involving the piling-up of rubbish in the streets⁶⁷. On 10 January 2012, the Court ruled that the environmental pollution complained of “may affect individuals’ *well-being*”⁶⁸. The polluted environment in this instance also referred to “countryside”, with the Court citing European Directive 2006/12 of 5 April 2006 on waste, Article 4(1)(c) of which mentions the possibility of poor waste management “adversely affecting the countryside”. Shortly before that, the Court of Justice of the European Union had found Italy to be in breach of the directive, the Commission having alleged that there had been “significant degradation of the environment and the landscape”⁶⁹. The Court found that “given the lack of availability of sufficient landfills, the presence of such quantities of waste outside appropriate, approved storage facilities is likely to affect ‘adversely ... the countryside or places of special interest’”⁷⁰.

⁶⁴ See the *Manual on human rights and the environment*, Council of Europe, 2012, 2nd Ed.

⁶⁵ ECHR, *Kyrtatos v. Greece*, No. 41666/98, 22 May 2003; note Yves Winisdoerffer, *Revue juridique de l’environnement*, No. 2, 2004, p.176.

⁶⁶ Paragraph 53.

⁶⁷ ECHR, *Di Sarno v. Italy*, No. 30765/08; Note Francis Haumont, La crise des déchets en Campanie et les droits de l’homme, *Revue trimestrielle des droits de l’homme*, n° 2012/92; Anne Rasson-Roland, Quelques arrêts récents de la Cour européenne des droits de l’homme relatifs au droit fondamental à la protection de l’environnement, in *D’urbanisme et d’environnement*, Liber Amicorum Francis Haumont, Bruylant, 2016, p.763.

⁶⁸ Paragraphs 81 and 104.

⁶⁹ CJEU, *Commission v. Italy*, 4 March 2010, C/297/08, paragraph 90.

⁷⁰ The case continued, with Italy being ordered to pay 20 million euros for persistent waste management failures in the Campania region and for failing to execute the judgment of 4 March 2010 (CJEU, 16 July 2015, case C. 653/13), paragraph 107.

More often than not, the right to environment and hence the right to landscape risks clashing with other fundamental rights, in particular the right to property or freedom of enterprise. If legal measures are taken to protect the landscape, e.g. by banning construction or extensions in areas protected because of the quality of their landscape, the owners affected may consider that there has been a breach of their right to property, as protected under Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. Under this same article, however, the right to property may be restricted for reasons of public utility or public interest. In a case dating from 1985, the former European Commission of Human Rights favoured the right to landscape over the right to property, taking the view that “planning controls are necessary and desirable in order to preserve areas of outstanding natural beauty for the enjoyment of both the inhabitants of Jersey and visitors to the island”⁷¹.

A more recent decision by the European Court of Human Rights served to entrench the principle that protecting the integrity of landscapes takes precedence over the right to property and economic imperatives. The judgment in question was handed down in *Hamer v. Belgium* on 27 November 2007 and concerned a home erected in a forest without planning permission which was the subject of a demolition order, in breach, argued the owner, of her right to property. The Court dismissed the claim, finding that the aim pursued by the State, namely to protect a wooded area of particular landscape value in which building was prohibited, was legitimate. According to the judgment, “Financial imperatives and even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations”⁷².

Conversely, however, the Court does not necessarily guarantee owners a subjective right to any landscape they might enjoy. Owners of private property cannot lay claim to a right to continue to enjoy their possessions in pleasant surroundings, should it be decided, for example, to build a nuclear power plant in the vicinity of their property⁷³. It could nevertheless be argued, with a general nod and/or specific reference to the European Landscape Convention, something the European Court of Human Rights is easily capable of⁷⁴, that the private property protected under Article 1 of Protocol No. 1 is no longer respected when the landscape that normally surrounds it is damaged or disfigured. That was the Court’s conclusion in a case concerning an illegally constructed wall which blocked the applicant’s view of the sea⁷⁵. Similarly, the right protected under Article 8 from violations of privacy and/or the home should include enjoyment of the amenities of the home, of which landscape is naturally part. The home is an integral whole, as a space where life is lived, physically, mentally and psychologically. It is in itself a form of landscape, which is experienced as such by those who inhabit it.

A number of recent decisions by the Court invite us to consider these shifting attitudes. In *Plachta v. Poland*, judgment No. 25194/08 of 25 November 2014, the Court ruled that severe damage to the natural environment could potentially affect “*individuals’ well-being*, preventing them from enjoying their homes”⁷⁶. So provided it can be shown that damage to the landscape amounts to a sufficiently serious attack on individual well-being, such damage could warrant a finding of a violation of either Article 8 or Article 1 of Protocol No. 1. In an earlier judgment, No. 5723/00 of 9 June 2005 in *Fadeyeva v. Russia*, the Court had concluded that environmental nuisance could potentially have an

⁷¹ Decision of 11 March 1985, application No. 11185/84, *Muriel Herrick v. United Kingdom*, D.R. 42, p. 275.

⁷² See also ECHD, *Turgut v. Turkey*, No. 1411/03 of 8 July 2008, §90; ECHD, *Koktepe v. Turkey*, No. 35785/03 of 22 July 2008, paragraph 87; ECHD, *Satir v. Turkey*, No. 36192/03 of 10 March 2009, paragraph 33.

⁷³ Decision of the Commission of Human Rights of 17 May 1990 No. 13728/88, *S v. France*; see also ECHD, *Flamenbaum v. France* No. 3675/04 of 13 December 2012, paragraph 184.

⁷⁴ The ECHD may or may not refer to Council of Europe treaties, to which the States may or may not be Parties, by way of relevant international law and practice. See for example *Tatar v. Romania*, No. 67021/01 of 27 January 2009, p. 19.

⁷⁵ ECHD, *Fotopoulou v. Greece*, No. 66725/01 of 18 November 2004.

⁷⁶ Paragraph 77.

effect on the victims' mental health⁷⁷. The link between landscape and people's health has already been the focus of various studies which could potentially lend weight to this approach⁷⁸.

Lastly, it is worth noting that protection of the landscape has been expressly mentioned by the Court as constituting a general-interest ground which qualifies as a legitimate aim enabling State law to regulate the use of property under the second paragraph of Article 1 of Protocol No. 1 by restricting the right to property for the purpose of "protecting *the landscape* and developing the land in a rational and environmentally friendly manner"⁷⁹. The general interest is typically that of the State but it may also be the interest of local authorities, particularly where landscape is concerned. In a case involving the creation of a public green space which had a statutory basis in the urban plan, the restriction on the right to property "sought to preserve nature and the environment, something which in the eyes of the Court answers an imperative on the part of *local communities* and is clearly in the general interest, within the meaning of paragraph 2 of Article 1 of Protocol No. 13"⁸⁰. The Court recognises that "the protection of nature and forests and more generally of the environment is of *value*"⁸¹.

There have been occasions in the past when the legitimate aim of protecting the environment and, in this instance, the rural character of a landscape which had been listed in the town planning records as a landscape conservation area has collided with the rights of Gypsy minorities. In *Chapman v. the United Kingdom*, protection of the countryside trumped the right to property when the Court ruled that the prohibition on parking a caravan on land belonging to a Gypsy family was not contrary to the European Convention on Human Rights⁸². This contentious decision⁸³ shows that in conflicts between human rights, the right to environment can potentially prevail, where landscape is concerned, over highly sensitive rights such as the rights of minorities, in specific circumstances as defined in detail by the Court. In effect, the Court was anxious to avoid a situation where, out of concern for the rights of minorities, a particular population group would end up receiving special treatment that would allow them to violate with impunity the rules adopted in "the interests of the general population" concerning the environment described in the decision as "commons"⁸⁴.

The consideration given to the environment and landscape by human rights judges has also begun to attract fresh interest in American human rights courts⁸⁵. While their case law is less extensive than that of their European counterparts, it does nevertheless acknowledge the importance of the right to access natural resources⁸⁶ and violations of rights as a result of the landscape having been "radically altered" have led to a government being ordered to take appropriate measures to rehabilitate the affected area⁸⁷.

⁷⁷ Paragraph 69. See also ECHD, *Dubetska v. Ukraine* No. 30499/03 of 10 February 2011, paragraph 105.

⁷⁸ See in particular: Nicolas Bauer, Marie Mondini, Andreas Bervasconi, *Landscape and health*, Swiss Federal Institute for Forest, Snow and Landscape, 2012; Catherine Waed Thompson, Peter Aspinall, Simon Bell, *Open space 2, Innovative approach to researching landscape and health*, Taylor and Francis, UK, 2010.

⁷⁹ ECHD, *Valico SRL v. Italy*, 21 March 2006, No. 70074/01.

⁸⁰ Paragraph 26 of ECHD decision No. 32635/05 of 15 January 2013, *Marco Campanile v. Italy*.

⁸¹ For example ECHD *Satir v. Turkey*, No. 36192/03 of 10 March 2009, paragraph 33.

⁸² ECHD, *Chapman v. United Kingdom*, No. 27238/95 of 18 January 2001.

⁸³ Jean-Pierre Marguénaud counts this judgment among the less positive examples of environmental case law in "Droits de l'homme à l'environnement et CEDH", *Revue juridique de l'environnement*, n° spécial, 2003, p.16. See also M. Déjeant-Pons, "Le droit de l'homme à l'environnement, droit fondamental au niveau européen dans le cadre du Conseil de l'Europe, et la Convention européenne de sauvegarde des droits de l'homme et des libertés fondamentales", *Revue juridique de l'environnement*, 1994, n° 4, pp. 373-419; "The right to environment in regional human rights systems", in *Human rights in the twenty-first century: a global challenge* (K. E. Mahoney, P. Mahoney) London, Martinus Nijhoff Publishers, 1993, pp. 595-614; *Humans Rights and the Environment*, Council of Europe Publishing 2002, 341 p.

⁸⁴ Paragraphs 94 and 96.

⁸⁵ Fernanda de Salles Cavedon-Capdeville, "L'écologisation du système interaméricain des droits de l'homme: commentaire de la jurisprudence récente (2010-2013)", *Revue juridique de l'environnement*, 3/2014, p. 489.

⁸⁶ Inter-American Commission on Human Rights, *Pobladores de Quishque-Tapayrithua v. Peru*, 24 July 2014, No. 62/14, paragraph 2

⁸⁷ Inter-American Court of Human Rights, *Pueblos Kalinas y Lokono, v. Suriname*, 25 November 2015, Series C

3. Landscape as a shared, common space

The Landscape Convention is inclusive in that it takes the view that landscape, as shared cultural and natural heritage, is necessarily subject to shared use by all those who are entitled to enjoy it⁸⁸. In this respect, landscape directly addresses the human rights requirements which prohibit discrimination and advocate living together (Article 2 of the Universal Declaration of Human Rights and Article 14 of the European Convention on Human Rights). According to Article 1 of the Universal Declaration, this living together must be peaceful: human beings should act towards one and another “in a spirit of brotherhood”. Shared, participatory landscape management can but contribute to this ideal. Equality in law and in dignity likewise applies to those who use the landscape.

Viewed in this light, landscape is very much the place where the physical environment meets an individual and collective mental image, reflecting at once intercultural integration, human rights and democracy.

There is, then, a legitimate connection to be made between landscape and the conclusions and recommendations contained in Recommendation CM/Rec (2015) 1 of the Committee of Ministers of the Council of Europe to member States on “intercultural integration” adopted on 21 January 2015. All landscape is “a shared common public space” which encourages “people in exploring the plurality of identities through the diversity of heritage and contemporary cultural expressions”⁸⁹.

It is also fair to say that the European Landscape Convention is fully in line with the recommendations made in the 2011 Group of Eminent Persons report entitled “*Living Together – Combining diversity and freedom in 21st-century Europe*”:

- by calling for people from various backgrounds to be genuinely included at grassroots level⁹⁰ ();
- by inviting non-European States to join European conventions (strategic recommendation 17), something that is envisaged in the 2016 draft Protocol to the European Landscape Convention;
- by encouraging active participation in local public life by all: nationals, foreigners, immigrants (strategic recommendation 24), something that is envisaged in Article 5.c of the European Landscape Convention since the “public” referred to in this article, as in the Preamble, does not introduce any discrimination under Article 14 of the European Convention on Human Rights.

In Recommendation 2093 (2016) of the Parliamentary Assembly of the Council of Europe on “culture and democracy”, it is pointed out that culture is an integral part of the democratic process. Accordingly, it is recommended that support be given to projects that aim to integrate cultural activities into other policy sectors. Their inclusion in landscape policies is particularly welcome, therefore. Recommendation 177 (2005) of the Congress of Local and Regional Authorities of the Council of Europe on cultural identity in peripheral urban areas calls for local authorities to be given help with identifying the best practices relating to development of cultural identity (paragraph 13.d). Once again, it must be accepted that the European Landscape Convention already complies with this request, by advocating identifying landscapes in Article 6.C.1.

The development by the Council of Europe in 2005 of social cohesion indicators through a comprehensive methodological guide shows that the concerted local and regional approach based on

No. 309, paragraphs 93 and 220.

⁸⁸ Michel Prieur, “Le paysage et le droit de l’environnement en Europe”, in Michel Prieur, *Droit de l’environnement, droit durable*, Bruylant, 2014, p. 567.

⁸⁹ See also Catherine Ward Thompson and Penny Travlou, *Open space: people space*, Ed. Taylor and Francis, UK, 2007.

⁹⁰ Page 44.

quality of life and living environments necessarily leads to recognition of the value of “landscape”. Although landscape is not mentioned as such in the methodological guide, it is inescapably linked to two elements which are of key importance for the indicators: “*citizen well-being*” and “*physical surroundings* conducive to personal and social development”. Also mentioned as indicators, incidentally, are environmental rights and access to a healthy environment⁹¹.

Following the 10th Conference of Ministers of Culture held in Moscow in April 2013, the Council of Europe launched a draft Indicator Framework on Culture and Democracy (IFCD). The studies submitted to the Steering Committee for Culture, Heritage and Landscape (CDCPP) in 2016 show the feasibility of such indicators as a means of illustrating the relationship between culture and democracy and how cultural aspects influence well-being and health⁹². It would be appropriate to study the feasibility of expanding these indicators in order to deal with the contribution made by landscape to culture and democracy, based on the European Landscape Convention which clearly highlights how landscape feeds into cultural heritage and how natural heritage contributes to cultural heritage. The close interdependence between nature, culture, democracy and landscape deserves to be given more systematic emphasis.

4. The list of human rights realised thanks to the Landscape Convention

Human rights apply everywhere and to everyone. It is clear that they are all intended to apply to everyday or degraded landscapes as well as landscapes which are outstanding.

The European Landscape Convention does not establish any new human rights. Explicitly or implicitly, however, it refers on several occasions to existing human rights which are recognised, either at European level or universally. It has rightly been observed that the European Landscape Convention expresses “the territorial dimension of human rights”⁹³.

In the words of the Honorary Chair of the Conference of the European Landscape Convention: “high landscape standards and a high quality of living environment for all, building on the potential of the landscape as a mark of history, a cradle of cultural identity, a common heritage and the reflection of a pluralist Europe, are a central pillar of human rights. Human rights cannot be separated from their historical and sociological context and this is why, today, they must also encompass aspects of well-being”⁹⁴.

Similarly, on the 10th anniversary of the European Landscape Convention, attention was drawn to the fact that the Convention contained “*the territorial dimension of human rights*”⁹⁵. Likewise, in the final conclusions of the 6th Council of Europe Conference on the European Landscape Convention held in Strasbourg on 4 May 2011, it was observed that the participants had “considered the importance of the European Landscape Convention as a means of implementing the prime objectives of the Council of

⁹¹ Methodological Guide to the Concerted Development of Social Cohesion Indicators, Council of Europe, 2005 and Recommendation of the Congress of Local and Regional Authorities 207 (2007) on the development of social cohesion indicators – the concerted local and regional approach.

⁹² Indicator Framework on Culture and Democracy, June 2016, Council of Europe, CDCPP (2016)6, Add. 1, 2, 3.

⁹³ M. Déjeant-Pons, “L’émergence d’un droit au développement durable: les perspectives de la dimension territoriale des droits de l’homme”, in *Environnement et renouveau des droits de l’homme*, Colloque de Boulogne-sur-Mer 2003, *La Documentation française*, 2006, p. 84. Eleonara Petrova-Mitevskva, representative of the Committee of Ministers, opening speech delivered on 22 March 2007, Council of Europe Conference on the European Landscape Convention, Council of Europe, T-FLOR (2007) 14, p. 30.

⁹⁴ Enrico Buergi, *idem*, p.36.

⁹⁵ The “*Council of Europe celebration of the tenth anniversary of the European Landscape – New Challenges, New Opportunities*”, Florence, Italy, 20-21 October 2000, Council of Europe Publishing. See also the Declaration of the Sustainable Territorial Development Committee on the European Landscape Convention’s 10th Anniversary “New challenges, new opportunities”, 2010.

Europe in the field of human rights, democracy and the rule of law and to deal with the main problems facing the society today”⁹⁶.

It is thus possible to identify nine human rights to which the Landscape Convention can be said to give effect, either directly or indirectly. The table which appears in the appendix mentions the European and international human rights instruments which enshrine each of the rights concerned, as outlined below.

The right to well-being, quality of life and sustainable development

The right to well-being, quality of life and sustainable development is referred to in the Preamble to the Landscape Convention to the extent that it constitutes “a key element of *individual and social well-being*” which implies rights for everyone. “*Well-being*” should be understood here as including some related elements, which likewise feature in the preamble: the landscape contributes to “*human well-being*” and is “an important part of *the quality of life for people everywhere*”⁹⁷. We have seen before how *well-being* is closely bound up with human rights, notably through the Universal Declaration of Human Rights (Articles 25.1 and 29.1). Well-being also features in the International Covenant on Economic, Social and Cultural Rights (Article 4) and in the Convention on the Rights of the Child (Article 17). As for the sustainable development mentioned in the Preamble to the European Landscape Convention, this is merely shorthand for the economic, social and environmental requirements which together make for well-being and quality of life. A theme which extends throughout the 1992 Rio Declaration, sustainable development now figures in every international convention on the environment. The Charter of Fundamental Rights of the European Union gives it a prominent place in its preamble and in Article 37. The Convention on the Rights of the Child of 1989 emphasises that which is conducive to children’s social, spiritual, moral and cultural well-being and also their mental health. Landscape is also of relevance to children, of course, in the case of several rights mentioned below. That is why the Committee of Ministers emphasised educating children about landscape in its recommendations on landscape. In its General Comment No. 17 of 2013 on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts, the UN Committee on the Rights of the Child observes that: “Connection to nature through gardening, harvesting, ceremonies and peaceful contemplation is an important dimension of the arts and heritage of many cultures” and that, consequently, States have a responsibility to ensure “provision of access to landscaped green areas, large open spaces and nature for play and recreation”⁹⁸.

The right to health

Although not specifically mentioned in the Convention, the right to health is recognised in international human rights law. The right to health is recognised at European level through Article 11 of the European Social Charter. Health must be understood as meaning mental balance, well-being, personal development and quality of life⁹⁹. The Council of Europe’s Committee of Social Rights has accordingly taken the view that Article 11 of the Social Charter guarantees the right to a healthy environment through the right to health¹⁰⁰. Well-being and people’s quality of life are both goals that appear in the Landscape Convention. The United Nations Environment Programme (UNEP) in its

⁹⁶ Council of Europe, CEP-CDPATEP (2011) 18 E, Appendix 8, p. 63.

⁹⁷ See Yves Luginbühl, “Landscape and individual and social well-being”, in *Landscape and sustainable development – Challenges of the European Landscape*, Council of Europe, 2006, p. 31 et seq.

⁹⁸ Paragraphs 40 and 58.

⁹⁹ Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity (Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organisation, no. 2, p. 100) and entered into force on 7 April 1948).

¹⁰⁰ European Committee of Social Rights, Complaint No. 30/2004, Marangopoulos Foundation for Human Rights v. Greece, 6 December 2006, paragraph 95.

report “Healthy environment, healthy people”, published in May 2016, twice mentions landscape as a factor that needs to be considered¹⁰¹.

The right to dignity and to non-discrimination

The right to dignity and to non-discrimination¹⁰² is bound up with “human well-being” (Preamble to the Landscape Convention) and concerns people living in degraded areas such as slums or the outskirts of certain towns or cities. To be deprived of quality landscape is a form of psychological and mental suffering that violates a person’s dignity and at the same time their right to life. As one writer put it: “Landscape, therefore, is territory elevated to a living entity and a measure of *people’s dignity*, their way of living and building (their way of “being” in the words of Heidegger in his famous “bauen wohnen denken” lecture delivered in 1951)”¹⁰³. In this same lecture, given in Darmstadt, the philosopher contended that space, for people, is not a vis-à-vis and that it is impossible to think of humankind independently of space. Space is dwelling thought of in terms of Man’s being. Landscape, therefore, is an integral part of being and hence of human dignity.

Dignity and non-discrimination can be found in almost all human rights instruments, as the fundamental basis of these rights. They feature, for example, in the Universal Declaration of Human Rights (Articles 7 and 22), the International Covenant on Economic, Social and Cultural Rights (Article 3), the International Covenant on Civil and Political Rights (Article 2), the Charter of Fundamental Rights of the European Union (Articles 1 and 21) and in Protocol No. 12 to the European Convention on Human Rights.

The Committee of Ministers’ Guidelines to member States on the protection and promotion of human rights in culturally diverse societies adopted on 2 March 2016 at the 1249th meeting of the Ministers’ Deputies apply to landscape management, and provide *inter alia* for participation in the democratic process, access to goods and living together in a spirit of non-discrimination¹⁰⁴.

The right to participate in cultural life

The right to take part in cultural life is set forth in Article 15, paragraph 1 a) of the International Covenant on Economic, Social and Cultural Rights. In its General Comment No. 21, the United Nations Committee on Economic, Social and Cultural Rights made it clear that for the purposes of its implementation, this right includes ways of life, shelter and “natural and man-made environments”¹⁰⁵. It has its roots in Article 27.1 of the Universal Declaration of Human Rights.

The right to participate in cultural life is likewise mentioned in Article 17 of the African Charter on Human and Peoples’ Rights and has been interpreted by the African Commission on Human and Peoples’ Rights as meaning that access to territory cannot be prohibited for the purpose of creating a game reserve, as to do so would deny local communities access to an integrated system of beliefs, values, mores and traditions¹⁰⁶. In the view of the African Commission, landscape is by definition the fusion of land and culture, culture being “that complex whole which includes a spiritual and physical association with one’s ancestral land, knowledge, belief, art, law, morals, customs (...)”¹⁰⁷.

¹⁰¹ Pages 8 and 48.

¹⁰² On the relationship between the right to quality of life, the right to health and promoting well-being and dignity, see Pascale Steichen, “Evolution du droit à la qualité de la vie, de la protection de la santé à la promotion du bien-être”, *Revue juridique de l’environnement*, 3/2000, p. 361

¹⁰³ Giorgio Bertone, *Pour une redéfinition historique du paysage: le regard littéraire*, in Aline Bergé, Michel Collot and Jean Mottet, *op.cit.*, p. 96

¹⁰⁴ Paragraphs 49, 53 and 7.

¹⁰⁵ General Comment No. 21, 21 December 2009, E/c.12/GC/21.

¹⁰⁶ African Commission on Human Rights, *Endorois Welfare Council v. Kenya*, 25 November 2009, paragraph 250.

¹⁰⁷ Paragraph 241 of the above decision, in caselaw.ihrrda.org/doc/276.03.

The Council of Europe Framework Convention on the Value of Cultural Heritage for Society, adopted on 27 October 2005 in Faro, refers to the European Landscape Convention and includes, according to Article 2, “aspects of the environment resulting from the interaction between people and places through time”. The European Landscape Convention is a prime example of the interaction between territory and cultural activity, in which landscape becomes an open book about people’s culture. Landscape is the face of a territorial entity, and a reflection of cultural diversity (Article 5.a of the Convention). The word “culture” appears five times in the Preamble to the European Landscape Convention, which specifically provides for landscapes to be integrated into cultural policies (Article 5.d), while the participation of the general public provided for in Article 5.c is the means by which the right to participate in cultural life is to be realised¹⁰⁸.

The right to landscape for all and landscape as a common resource¹⁰⁹

Although the right to landscape is not mentioned as such in the European Landscape Convention, it is tacitly present in the Preamble where landscape implies “rights (...) for everyone” and allows the public (i.e. everyone) “to enjoy high quality landscapes” and “to play an active part in the development of landscapes”.

This right to landscape derives directly from the “human right to the environment” now recognised at both international and national level¹¹⁰. At international level, it stems from Principle 1 of the Stockholm and Rio Declarations, from the African Charter on Human and Peoples’ Rights, the Maputo Convention, the San Salvador Protocol to the American Convention on Human Rights and from Article 1 of the Aarhus Convention, to which the Preamble to the Landscape Convention refers.

The right to landscape is also closely bound up with democracy. Landscape requires that democracy be respected: “The landscape is everyone’s concern. The standard of partnership, negotiating capacity and interchange among the social groups which create, manage and use the landscape will show in its quality”¹¹¹.

According to the Landscape Convention, what is required is a right to enjoy quality landscape which applies to all territories (and not only areas of outstanding beauty) and a right for everyone, without discrimination, through equal access to landscape. The awareness raising called for in Article 6.A of the European Landscape Convention is instrumental in sensitising individuals to their right to landscape.

This right to landscape presupposes shared common space and hence access to landscape¹¹². That effectively means recognising that landscape is a “common good” or, to quote the Landscape Convention, “a common resource”. Landscape is not, as such, susceptible to appropriation. Legally speaking, that implies an unimpeded view of the surrounding area which will vary depending on whether the area in question is publicly or privately owned. In public spaces, exercise of the right to landscape will be facilitated by ensuring unimpeded access for all, subject to restrictions related to

¹⁰⁸ Michel Prieur, “La protection juridique des paysages culturels”, in M. Prieur, *Droit de l’environnement, droit durable*, Bruylant, 2014, p. 625.

¹⁰⁹ Shelley Egoz, Jala Makhzoumi, Gloria Pungetti, G., *The right to landscape. Contesting landscape and human rights*, op.cit.

¹¹⁰ For a comparative law study, see D. R. Boyd, *The environmental rights revolution*, Vancouver, UBC press, 2012.

¹¹¹ Sébastien Géorgis, *Rural landscapes in Europe: principles for creation and management*, Council of Europe, 1995, p. 29.

¹¹² Access to landscape was called for as early as 1994 in Recommendation No. R (94) 6 of the Council of Europe’s Committee of Ministers, Appendix, paragraph 4; Michel Delnoy, “La zone d’habitat doit aussi accueillir des espaces verts publics”, in *D’urbanisme et d’environnement*, Liber Amicorum Francis Haumont, Bruylant, 2016, p.103.

public safety (risk of accessing cliffs or crevasses or other geological hazards) or the environmental fragility of certain sites (protected natural areas). In privately owned spaces, tighter restrictions related to property rights or the right of enclosure may restrict access to landscape. Goal 11.7 of the 2030 Agenda for Sustainable Development which aims to achieve human rights for all, reads as follows: “by 2030, *provide universal access* to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities”¹¹³.

The fact that in the Preamble to the Landscape Convention, landscape is recognised as being “*common heritage*”, “*natural and cultural heritage*” and a “*common resource*” suggests that it can safely be considered a “common good” or *res communis*, in the same way as air, water or biodiversity. Landscape is a shared natural and cultural resource. In practice and in law, therefore, often according to local practices and customs, owners allow unimpeded access to their land and hence landscape, via footpaths and/or forestry roads. A few States have even passed laws to allow unimpeded access to nature, such as Norway’s 1957 *Outdoor Recreation Act*¹¹⁴.

It is interesting to note that the Florence Declaration on Landscape, adopted on the 40th anniversary of the UNESCO Convention on World Heritage, considers that “the landscape is a common good, the right to the landscape is a human necessity”¹¹⁵. This same Declaration affirms the importance of safeguarding and improving landscapes for “fostering the respect for human rights, including the rights of communities to ensure their livelihood and preserve their resources, identity and beliefs”. The right to landscape, therefore, is a reflection not of a right to own the landscape but of a right to shared use, which implies access and participation in its management, prompting some writers to talk about “spatial justice” or “landscape justice” in the Anglo-Saxon sense of the term¹¹⁶.

Lastly, the right to landscape is seen at once as an individual right and as a collective one. Thanks to the European Landscape Convention and according to the letter of the ECHR’s decisions with respect to the environment, it is supported both by procedural rights, namely the right of the public and stakeholders to participate in landscape policy, and substantive rights, meaning enjoyment of a common good.

The right to education

Common goods are a matter of common responsibility. That in turn requires that people be educated about landscape, as recommended in Article 6.B of the European Landscape Convention which deals with training and education¹¹⁷. Recommendation CM Rec (2008)3 of the Committee of Ministers on the guidelines for the implementation of the European Landscape Convention addresses the subject of education in point D. In order to better implement these provisions, the Council of Europe’s

¹¹³ UN General Assembly Resolution of 25 September 2015, 2030 Agenda for Sustainable Development, A/RES/70/1.

¹¹⁴ Odd Inge Vistad and Margrete Skar, *Access and privacy, rights and realities among the populated Norwegian shoreline*, in UNISCAPE Seminar Firenze, January 16-17, 2004, *Common goods from a landscape perspective*, I Quaderni di Carreggi, n° 06 /2014, pages 98-99

¹¹⁵ UNESCO, Florence Declaration on Landscape, 19-21 September 2012.

¹¹⁶ See also in I quaderni di Careggi, n° 6/2014, *op.cit.* Amy Strecker, *Landscape, property and common good: the ambiguous convergences of spatial justice*, p. 25; Laura Menatti, *What does right to landscape mean? An analysis through the concept of commons*, p. 200; Luca Di Giovanni, *The use of landscape in Italian property law*, p. 87; Andreia Saavedra Cardoso, *Agro-urbanism and the right to landscape common goods. The Saclay plateau case study*, p. 15.

¹¹⁷ Benedetta Castiglioni, “Education on landscape for children”, in *Landscape facets: reflections and proposals for the implementation of the European Landscape Convention*, Council of Europe Publishing, *op. cit.*, p. 217; Annalisa Maniglio Calcagno, “Landscape and education”, in *Landscape dimensions : reflections and proposals for an implementation of the European Landscape Convention*, Council of Europe Publishing, *op. cit.*; Charles-Hubert Born, *Mobiliser la société par l’éducation et la sensibilisation à l’environnement et au développement durable: une priorité à l’heure de l’anthropocène*, in *D’urbanisme et d’environnement*, Liber Amicorum Francis Haumont, Bruylant, 2016, p. 447.

Committee of Ministers has approved two recommendations: CM Rec (2014) 8 on promoting landscape awareness through education and CM Rec (2015) 7 on pedagogical material for landscape education in primary school. A third recommendation is expected to be adopted later, on promoting landscape in higher education¹¹⁸.

The right to information and to participation

Both of these rights, which have been considered basic procedural rights in environmental law since the adoption of Principle 10 of the 1992 Rio Declaration and since the Aarhus Convention of 1998, must be observed when framing and implementing the kind of landscape policies advocated by the European Landscape Convention. The Preamble to the Convention accordingly refers to the Aarhus Convention, while Articles 5.c and 6.C provide for participation by the general public.

The right to compensation and restoration

Environmental damage and pollution are increasingly being addressed through compensation and restoration measures which are in theory related to the right to the environment but which can also be seen in themselves as an expression of a right to redress. For example, Principle 13 of the 1992 Rio Declaration mentions liability for “pollution and other environmental damage”. The European Landscape Convention envisages “landscape protection” and “landscape planning” including through action to “restore” landscapes (Article 1.f). In referring in the Preamble to “degraded” landscapes, the Convention calls for measures to be taken to put an end to such degradation. In general, the legal instruments under which compensation and restoration may be sought are based on national rights relating to liability which are increasingly the subject of specific environmental measures that apply to landscape as well. Compensation for damage to the “characteristic aspects of the landscape” and reinstatement are provided for in the 1993 Council of Europe Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment (Article 2.8 and 10)¹¹⁹.

Article 4 of France’s Reclaiming Biodiversity, Nature and Landscape Act of 8 August 2016, for example, introduces new rules on compensation for environmental damage. These rules apply to “significant damage to the components or functions of ecosystems or to the collective benefits derived by humans from the environment (new Article 1386-20 of the Civil Code)” and are certain to benefit the landscape, as one of the components of ecosystems and as a collective benefit of the sort described. The law states that compensation for environmental damage “is to be effected as a matter of priority in kind”, which is effectively an invitation to promote the recovery of degraded landscapes through *restoration*, as recommended in Article 1.f of the European Landscape Convention.

According to the case law of the European Court of Human Rights, compensation can also be awarded for damage caused to the environment and landscapes as a result of a violation of a fundamental right such as the right to property or the right to respect for one’s home or private and family life.

¹¹⁸ Draft Recommendation proposed at “the 8th Council of Europe Conference on the European Landscape Convention (Council of Europe, CEP-CDCPP (2015) 14-BE)

¹¹⁹ This Convention has not come into force.

The right to continued enjoyment of a certain quality of landscape or the right to non-regression

Article 12 of the Landscape Convention gives priority to any stricter national and international instruments concerning landscape protection, management and planning that may be adopted in the future. In other words, the aim is to protect and manage landscapes ever more effectively and to refrain from reducing those levels of protection which have already been achieved.

This so-called non-regression clause, also known as the principle of standstill or progressiveness, has recently begun to be applied to the environment and its constituent parts. It is recognised at international level by most of the international conventions on the environment and is enshrined in the final text of the Rio+20 conference “The Future we want”, held in 2012 (paragraph 20)¹²⁰. It is now either recognised by law¹²¹, or embedded in case law, notably in Belgium¹²², Spain¹²³ and France¹²⁴. Explicitly or implicitly, this principle is a practical extension of the entrenchment of the right to a healthy environment in national constitutions in the interests of continuous improvement of the environment. Applied to the environment, it is the equivalent of a principle that is already accepted in the field of fundamental rights as an intangible right or one that is constantly evolving with a view to achieving continuous improvements in human rights protection.

This principle can have the effect of securing respect for other human rights such as the right to dignity mentioned above. In a ruling dated 23 December 2013, for example, the Supreme Court of Panama held that destroying a wetland area in the Bay of Panama would have the effect of depriving people “of a central feature of the city... in the provision of *dignified* living conditions for local residents... whose conservation is vital for properly functioning ecosystems, preserving biodiversity and *cultural development*”¹²⁵.

Moreover, the Recommendation CM/Rec(2008)3 of the Committee of Ministers to member States on the Guidelines for the implementation of the European Landscape Convention mentions regarding the achievement of “landscape quality objectives”, that “Every planning action or project should comply with landscape quality objectives. It should in particular improve landscape quality, or *at least not bring about a decline*. The effects of projects, whatever their scale, on landscape should therefore be evaluated and rules and instruments corresponding to those effects defined. Each planning action or project should not only match, but also be appropriate to the features of the places”¹²⁶.

The landscape dimension should thus be integrated in the preparation of all spatial management policies, both general and sectoral, in order to lead to higher-quality protection, management or planning proposals.

¹²⁰ Michel Prieur et Gonzalo Sozzo, *La non régression en droit de l'environnement*, Bruylant, 2012; Isabelle Hachez, *Le principe de standstill dans les droits fondamentaux: une irréversibilité relative*, Bruylant, 2008 ; « Le standstill en matière de droits fondamentaux: de la reconnaissance d'un principe à la négation de sa portée ? » in *D'urbanisme et d'environnement*, Liber Amicorum Francis Haumont, Bruylant, 2016, p. 913.

¹²¹ For example, Article 2 of France's Reclaiming Biodiversity, Nature and Landscape Act of 8 August 2016 introducing a paragraph 9 into Article L. 110-1 of the Environment Code: “The principle of non-regression whereby the environmental protection provided through laws and regulations on the environment may be subject only to continuous improvement, having regard to the current state of scientific and technical knowledge”.

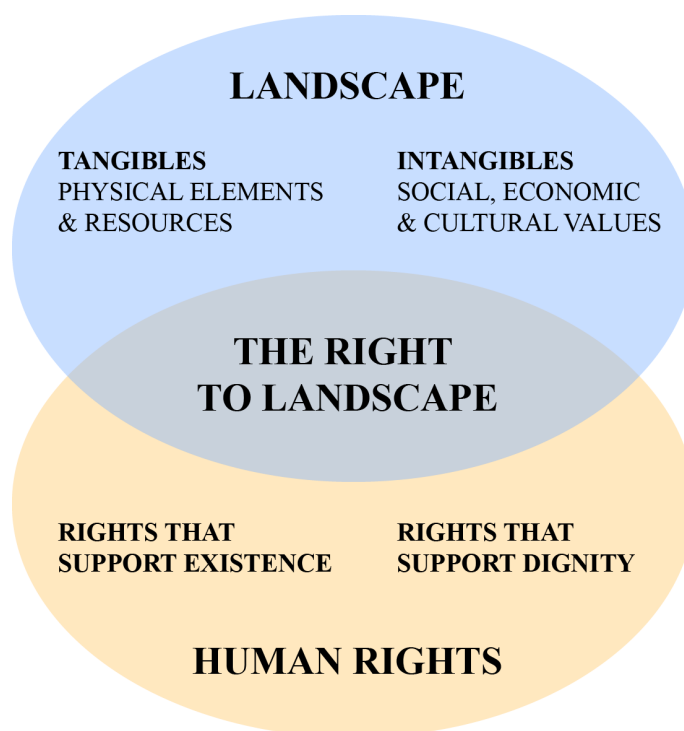
¹²² For example: Constitutional Court, 14 September 2006, No. 137/2006; 27 January 2011, No. 8/2011; 17 July 2014, No. 107/2014.

¹²³ On the subject of green landscape areas: Spanish Supreme Court, 22 February 2012 (STS 3774/2009) and 29 March 2012 (STS 2000/2012), note Marat Franchi I Sager, *Revue juridique de l'environnement*, n° 2/2014, p. 215.

¹²⁴ Constitutional Council, 4 August 2016, No. 20166737 DC.

¹²⁵ Supreme Court of Panama, 23 December 2013, No. 123-12, note Maria Valéria Berros, *Revue juridique de l'environnement*, n° 3/2014, p. 533.

¹²⁶ Part1, 1.1, H.



“Conceptual diagram. The overlap between landscape and human rights”
by Shelley Egoz, in *The Right to landscape*, Ashgate Publishing, 2011, p. 6

Appendix: Table on human rights and landscape

Human rights	European Landscape Convention	International and European human rights law
1) Right to well-being and quality of life	Preamble: Para. 6 “quality of life for people everywhere” Para. 9 “key element of individual and social well-being”	UDHR ¹²⁷ , Art. 25.1, 29.1 ICESCR ¹²⁸ , Art. 4 UNCRC ¹²⁹ , Art. 17, Art. 31
2) Right to health	Para. 5 “human well-being” Para. 9 “individual well-being”	UDHR, Art. 25.1 ICESCR, Art.12.1 UNCRC, Art.17, 24.2.e European Social Charter, Art.11 CFREU, Art. 35
3) Right to dignity and non-discrimination	Para. 5 “human well-being”	UDHR, Art. 22, Art. 7 ICESCR, Art. 3 ICCPR ¹³⁰ , Art.2 CFREU ¹³¹ , Art.1, Art. 21 ECHR, Protocol No. 12 (2000)
4) Right to participate in cultural life	Para. 5 Art. 5.a, 5.c, 5.d	UDHR, Art. 27.1 ICESCR, Art. 15.1.a UNCRC, Art. 31 CFREU, Art. 22 Faro Convention ¹³² , Art. 2
5) Right to landscape as a common resource	Para. 4 “general interest” Para. 8 “enjoy high quality landscapes” Para. 9 “rights... for everyone” Para.11 “common resource”	UDHR, Art.12 ICESCR, Art. 11 “continuous improvement of living conditions”; Art. 25 1972 Stockholm Declaration, Principle 1 1992 Rio Declaration, Principle 1 1981 African Charter on Human and Peoples’ Rights, Art. 24 1988 San Salvador Protocol, Art. 11 2003 Maputo Convention, Art. 3

¹²⁷ Universal Declaration of Human Rights, 1948.

¹²⁸ International Covenant on Economic, Social and Cultural Rights, 1966.

¹²⁹ Convention on the Rights of the Child, 1989.

¹³⁰ International Covenant on Civil and Political Rights, 1966.

¹³¹ Charter of Fundamental Rights of the European Union, Treaty on European Union, 2007.

¹³² Council of Europe Convention on the Value of Cultural Heritage for Society, 2005.

		1998 Aarhus Convention, Art. 1 ECHR ¹³³ , López-Ostra 1999, Tatar, 2009, Bacila 2010 ECHR ¹³⁴ , Art. 8.1
6) Right to education	Art. 6.B	UDHR, Art. 26 UNCRC, Art. 28.1, 29.1.e “The development of respect for the natural environment” Protocol No. 1 ECHR Art. 2
7) Right to information and participation	Para. 8 “play an active part” Para. 9 “responsibilities for everyone” Art. 5.c Art. 6.A Art. 6.C.1 Art. 6.C.1.b Art. 6.D	ICCPR, Art. 19.2, 25.a ICESCR, Art. 15.1.a UNCRC, Art. 13.1, Art. 17 ECHR, Art.10 1992 Rio Declaration, Principle 10 Aarhus Convention, information and participation on “landscape” Art. 2.3.a ECHR “participate in debates on subjects of general concern”, Vides Aizardzibus Klubs, 2004, Mamère, 2005
8) Right to compensation and restoration	Para. 6 “degraded areas” Art. 1.f “restoration”	1992 Rio Declaration, Principle 13 ECHR, Art. 41 “just satisfaction”
9) Right to continued enjoyment of landscape quality or right to non-regression	Para. 8 “high quality landscapes” Art. 12 “stricter” provisions to take precedence	ICESCR Art. 2, Art.11-1 “continuous improvement” “The Future we want” declaration, Rio 2012, para. 20 “critical that we do not backtrack from our commitment” CFREU, Art. 37 and 53 “high level, improvement”

¹³³ European Court of Human Rights.

¹³⁴ European Convention on Human Rights, 1950.

Chapter III. Landscape's contribution to sustainable development

The concept of sustainable development emerged in 1987 in the Brundtland report, entitled “Our Common Future”, drawn up by the United Nations World Commission on Environment and Development¹³⁵, which defines it as follows: “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts: the concept of needs, in particular the essential needs of the world’s poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs”.

The French term “*développement durable*” is probably less appropriate than the English “*sustainable development*”, and some experts think that “*développement soutenable*” would be preferable, in that human societies would be required to sustain, or maintain, a restrictive form of development entailing life styles that consumed fewer non-renewable resources such as oil, energy and so on. The term has indeed given rise to numerous criticisms which characterise it as a mere wishful slogan that is unlikely to persuade those economically and socially active in the environmental field or the general public to adopt ethical forms of consumption.

No consideration was initially given to the relationship between sustainable development and landscape. The term landscape only appears infrequently in the Brundtland report, and the French term *paysage* only twice: “Taking the world as a whole, fertilizer run-off and sewage discharges into rivers, lakes, and coastal waters have increased, with resulting impacts on fishing, drinking water supply, navigation, and *scenic beauty*” (in French “*la beauté des paysages*”)¹³⁶ and “Haphazard development also consumes land and *natural landscapes* needed for urban parks and recreation areas”¹³⁷. This report is only marginally concerned with the theoretical nature of the relationship between landscape and sustainable development and does not set out to develop this link. It only started to be explored at the beginning of the 21st century, probably because the term landscape rarely appeared in scientific and political debates on climate change, biodiversity or, more simply, the environment. In 2005, for the first time, the French environment Ministry launched a research programme entitled “landscape and sustainable development” to finance European research teams, involving collaboration between French and European teams, with a Quebec team¹³⁸. This is the only such programme in Europe. Austria also has a landscape research programme, but this is not devoted solely to sustainable development.

Without dwelling on the lessons of this research programme, which have been the subject of a report published in French and English, consideration must be given to the various dimensions of the landscape-sustainable development relationship. This entails a re-examination of the definition of sustainable development proposed in 1987 and in subsequent years, during which it has undergone a number of significant changes. The first important term is clearly that of “development”: it refers to the economic dimension, but also to local development, which is a fundamental issue for local and regional authorities and is bound up with the future of the landscape.

The second important term is that of “resource”. What is meant by resource? The scientific discipline most concerned with this concept is probably geography, which gives a leading role to natural resources, both renewable and non-renewable. But are there other forms of resource? Our heritage may itself be an economic and cultural resource. In the case of resources, one of the key issues raised

¹³⁵ Chaired by the Norwegian Gro Harlem Brundtland. The report served as a basis for the 1992 Earth Summit and was the first to use the term “*sustainable development*”, translated into French as “*développement durable*”.

¹³⁶ Gro Harlem Brundtland, 1987, Report *Our Common Future*, Chapter 8, Paragraph 17.

¹³⁷ *Ibid*, Chapter 9, Paragraph 13.

¹³⁸ About €1 million is allocated to this programme.

by sustainable development is how to ensure their long-term preservation for future generations, as well as making sure that they are distributed fairly, in the context of social diversity. History may itself be a resource, offering as it does the opportunity to examine and understand how societies in the past managed natural resources so as to ensure their survival and reproduction. If the issue of resources is viewed from a landscape perspective, we have to consider the relationships between the spatial distribution of resources and different forms of landscape.

Future generations must therefore be placed at the centre of our definition of sustainable development. Time is a key factor, since it raises the problem of the lack of synchronicity between natural time and social time, which itself may represent historic time, daily life or political horizons, to name but three. Such an approach entails an examination of the political dimension and of the various ways in which nature and landscape in particular are managed politically, in order to involve those most concerned by the protection, management and planning of landscapes, as defined in the European Landscape Convention.

1. Landscape and economy

How landscapes develop and change is intimately bound up with economic development: any change in economic activity is reflected in alterations to landscapes, which may be beneficial or detrimental for human beings. Economic development has changed profoundly over time, moving from autarkic systems to the globalisation of world trade. This is paralleled by the globalisation of financial transactions, whose toxic effects created the property bubble, and then the banking crisis of 2008. It should not, however, be forgotten that trade also existed in former times; even in antiquity, societies traded food and minerals, as did the Romans with Gaul and the majority of colonised countries. In the Renaissance, the great patrician families of Tuscany and Lombardy traded with England and France, using the services of bankers who transferred funds using land or sea routes. The Medici family sold wool from its immense flocks of sheep to England and the Sforzas traded with other countries. Such economic transactions therefore altered certain landscapes, so that, for example, those of the Po plain were transformed by cattle raising.

Alongside the globalised economy, there are local economies based on the capacity of those concerned to develop activities that rely on the exploitation or processing of local resources. However, it would be wrong to claim that these local economies function totally independently of world trade, since the two types of economy are interdependent and interactive. Thus, cereal prices are set by world trade and have a direct impact on the future of the landscapes of cereal-growing areas, even ones that are restricted in size. Similarly, pork prices will determine whether producers opt for intensive or outdoor pig breeding, which has a fundamental effect on landscape forms and the quality of the products. Local and regional authorities often try to promote local produce and practise a form of landscape marketing whose advertising and publicity seek to create a link between agricultural production and landscape. Such an approach is not, in itself, detrimental to the landscape, but this form of local landscape marketing often encourages the short-term commercialisation of a product at the expense of desirable long-term objectives, with a potentially adverse impact on the future. Precedence is thus given to the cliché image of a landscape over its reality for the life of its local inhabitants. Local elected members and officials are well advised to focus on the relationship between local products and the landscape as it really is, in the interests of the well-being of those directly concerned.

However, sustainable development takes different forms according to location, those involved and the issues at stake. Research into three different sites in Italy, Switzerland and France¹³⁹ shows that sustainable development may entail, in one location, combating urbanisation or maintaining a cultural identity, in another avoiding the abandonment of relatively uneconomic agricultural activities or

¹³⁹ Emmanuel Guisepelli, 2012, "Paysage et développement durable: un mariage contre nature?" (Landscape and sustainable development: an unnatural marriage?) in Yves Luginbühl, Gérard Guillaumin, Daniel Terrasson, *Paysage et développement durable*, Ed. QUAE, Paris, 2012, 300 pages.

supporting one of them, and in a third maintaining the rural character of the landscape by preserving the natural ecosystems and opposing poorly integrated buildings and infrastructure. Sustainable development therefore takes a range of forms, according to the individuals, groups and locations concerned, and the varying ways in which the relevant economic, social, environmental and landscape issues are perceived.

The globalised economy often seeks to establish commercial facilities on a massive scale, such as hypermarkets or shopping malls with car parks and services for customers, such as child care provision, all designed to encourage spending. Every effort is made to speed up access to shops and stores, such as expressways and roundabouts, huge car parks, filling stations and numerous retail outlets of all sorts gathered together in the same location as incentives to shop as much and as quickly as possible, with a rapid turnover of customers and a minimum of costly inventories and staffing. This is all geared to short-term profit and is detrimental to local shops that breathe life into urban landscapes. They are replaced by branches of banks or clothing stores, telecoms providers and so on, which form a major part of today's urban landscape, right across the planet.

Such an arrangement is clearly incompatible with sustainable development: it involves high energy use, shows little regard for the environment and focuses on the short term with a total lack of concern for future generations. Nor does it have any ethical justification in terms of the well-being of the general public. However, for the last ten or twenty years, there has been an increasing demand for high quality local produce. Examples include the production of foodstuffs by neighbourhood market gardens and shared gardens and allotments that add life to suburban landscapes and represent a slight improvement to their ecological functioning. Organic farming is also expanding and even the major commercial distribution chains market its products. Certain political figures have taken steps to promote such activities in several European States.

The fact remains that European farming, which manages the great majority of rural landscapes (about 50% excluding and 75% including forests), is still geared towards high energy-consuming productivism, makes considerable use of pesticides and pollutes underground water sources, rivers and streams with slurry from intensive farming (pigs, for example, are protected from swine fever by repeated injections of antibiotics, as noted in particular in the Brundtland report). This form of agriculture is totally inimical to sustainable development and poses a threat to the future of landscapes and coming generations' access to a high standard of nutrition.

The political authorities therefore have every reason to promote innovations and experiments relating to high-quality agriculture that bind the latter to the landscape, and to develop essentially local economies that are not excluded from export markets. Nowadays, in fact, retailers offer an increasing range of high quality produce of foreign origin, produced in landscapes that are appreciated equally by their local inhabitants, who make their living there and are proud to contribute to the quality of their everyday surroundings, and by the tourists who make their contribution to the local economy.

The relationship between landscape and economy may be viewed in terms of the well-being induced by an agreeable environment¹⁴⁰. The majority of economic theories concerned with assessing the environment use well-being as an indicator. This applies particularly to Joseph Stiglitz, Nobel Prize winner in economics, who, in a report produced jointly with Amartya Sen and Jean-Paul Fitoussi on French economic performance commissioned by the country's President¹⁴¹, reviewed various methods used for environmental assessment and criticised the approach consisting in imputing a value to the

¹⁴⁰ See Proceedings of the 15th Council of Europe Meeting of the Workshops for the implementation of the European Landscape Convention, *Sustainable landscape and economy: on the inestimable natural and human value of the landscape* (Urgup, Nevşehir, Turkey, 1-2 October 2014), <http://www.coe.int/fr/web/landscape/publications>.

¹⁴¹ Joseph Stiglitz, Amartya Sen, Jean-Paul Fitoussi, *Report by the Commission on the Measurement of Economic Performance and Social Progress*, 2008, 322 pages.

environment based on, for example, willingness to pay. This raises the general issue of whether to ascribe an economic value to non-traded goods and assets, which the majority of heterodox economists now question. Certain economists have also tried to apply this approach to the landscape, with rather unconvincing and trivial results. One new method consists in evaluating, not the landscape directly but the well-being or its opposite caused by landscapes that have been altered by changes in economic activity. This method is currently being tested in the Loire valley¹⁴².

At all events, it is now recognised that any economic assessment of non-traded goods must include a qualitative, and not just a quantitative, element, as Joseph Stiglitz notes. The numerous studies that have attempted to impute an economic value to a landscape are now open to question. As Michel Prieur states: “The now general recognition that all landscape has a social, economic, cultural and ecological function is due to landscape’s contribution – as the preamble to the European Landscape Convention expressly states – both to the community’s well-being and sustainable development. In spite of its apparent abstractness, landscape, through its physical composition and its psychological dimension, meets important social and cultural needs while also playing a part in ecological and economic functions”¹⁴³. The term “need” also appears in the Brundtland report as one of the essential features of sustainable development. But even though the term “need” is initially applied to human beings’ basic material needs – food, reproduction, shelter, clothing and so on – it now also covers the need for culture, education and the affective, aesthetic and symbolic aspects of the landscape.

The economic activities contributing to sustainable development include measures to combat air, water and soil pollution and all the “green” activities that create employment in the numerous branches of the environment, including those concerned with landscape. The latter include not only the activities of landscape architects themselves but also those of developers, planners, engineers, architects and farmers carrying out landscape projects, and geographers specialising in spatial/regional planning. Public participation in policy decisions relating to landscape protection, management and planning¹⁴⁴ now also requires input from specialists to take part in these operations. Ethnologists, anthropologists, sociologists, geographers and historians, as well as political and legal scientists, all enjoy expanding roles. These might be considered to be the sustainable development professions, and together make up a distinct social and economic branch of this area of activity.

The so-called “green” sector of the economy also includes landscape maintenance activities that create numerous jobs, starting with farmers, who are often considered to be landscape gardeners. Their activities help to preserve landscapes that would otherwise return to the wild, particularly in relatively inaccessible areas such as mountain regions and steeply sloping terrains that do not lend themselves to mechanisation. However, this type of agriculture is not necessarily the same as that found in the great European plains where, generally speaking, farming takes a productivist form in which huge tracts of land are used to grow cereals or oilseed and other protein-rich crops, often with the aid of numerous phytosanitary products. Agriculture in mountain regions is generally devoted to cattle or sheep raising in meadows where the flora adds to the local biodiversity and thus to sustainable development. Landscape preservation also entails the upkeep of the hedgerows lining fields, which have been greatly reduced since the 1950s following the consolidation of agricultural land and a large decline in the number of holdings. Today, some farmers are involved in replanting hedges and establishing banks and slopes but this is fairly exceptional and while some succeed in planting trees or shrubs on the new raised areas they find it difficult to maintain them in the longer term. Their upkeep is therefore often taken over by non-agricultural associations like the ramblers’ clubs that maintain footpaths.

¹⁴² Mission Val de Loire, Laboratoires Citères (Université de Tours), LADYSS (CNRS, Universités de Paris 1, 7, 8, 10), Cemotev (Université de St-Quentin-en-Yvelines), ESO (Université d’Angers), Passeurs paysagistes, *Recherche sur l’évaluation socio-économique du bien-être*, 2016-2017.

¹⁴³ Prieur Michel, “Landscape and social, economic, cultural and ecological approaches” in *Landscape and sustainable development: challenges of the European Landscape Convention*, Council of Europe Publishing, Strasbourg, 2006, pp. 11 to 29.

¹⁴⁴ European Landscape Convention: see the objectives for landscape quality and public participation in identifying and assessing landscapes.

Sometimes local and regional authorities take responsibility for maintaining footpaths used by ramblers and walkers to attract tourists. They may also maintain other facilities, as do private companies holding motorway concessions. It is well known that motorway verges and embankments are propitious to the migration of various types of fauna and flora, though they can also contribute to the propagation of invasive species, such as Japanese knotweed, which is spreading widely alongside roads and railways.

Another employment-creating activity that is fully consistent with sustainable development is the recycling of waste of all sorts, including household waste such as glass, plastic, metals and paper, which have now given rise to profitable processing industries. There is also green waste such as all forms of grass cuttings and the products of land clearing and garden maintenance operations. These supply considerable quantities of material that is transformed into exportable granules. The recycling of cars and boats also permits the production of metals and plastic substances for use by industry. All these activities create jobs and contribute to sustainable development. However, it might also be pointed out that waste from livestock raising can be avoided if varieties are bred outdoors, as are pigs in the Iberian peninsula. These are partly fed on holm oak acorns or cork from the Spanish *dehesas*, and their meat is fairly cholesterol-free as their animal fats have a high proportion of unsaturated fatty acids whereas the fat from normal pigs contains high levels of saturated fatty acids that are bad for human health. This also applies to poultry that is bred free-range rather than intensively in buildings where the chickens are kept in metal cages and are unlikely to produce a flavoursome meat.

Implementing sustainable development is therefore a difficult and challenging task, but it is also one of the preconditions for a high-quality landscape that contributes to public well-being. It poses a considerable economic challenge for the future of Europe's landscapes and for generations to come. But it also provides a major ecological challenge for the conservation of natural resources.

2. Landscape and resources

The second pillar of sustainable development concerns resources, and in particular non-renewable resources such as minerals, oil and the soil. Awareness of the exhaustion of petroleum reserves came initially with the first oil crisis, following the peak in United States production and the abandonment, in 1971, of the Bretton Woods Agreement, which led to a major depreciation of the dollar and thus of income from oil, which was priced in dollars. This was followed by a large rise in the price of oil, which encouraged several States to move towards and develop nuclear energy production, even though uranium is also a non-renewable resource. At all events, these energy producing resources are running out, even though the United States is now resorting to shale gas production, which can cause major ecological damage to the surrounding environment. This US energy strategy has caused a fall in oil prices and does not encourage sustainable development, since drivers who had adopted a somewhat more economical approach to fuel consumption are once more using their vehicles to excess, which has a negative impact on both air quality and road safety.

Increasing use is being made of wind turbines and solar panels as sources of renewable energy, but in widely varying ways according to country. Denmark is making particularly significant use of wind turbines because its hydroelectric capacity is very limited. Wind turbines produce a considerable quantity of energy in Spain, where wind farms are well developed, since the settlement pattern is highly suited to this form of infrastructure: thus, dwellings are grouped in settlements approximately 25 km apart¹⁴⁵, leaving sufficient space between to establish wind farms. Opposition to them is less common than in France, where dwellings are more dispersed, thus encouraging certain inhabitants to protest against large wind turbines, which they deem to be detrimental to their peace and well-being. This is the paradoxical aspect of the development of wind farming, which on the one hand benefits the

¹⁴⁵ A legacy of Roman colonisation, when the legions covered this distance each day and then set up camps that have sometimes continued as human settlements, i.e. villages.

production of sustainable energy but on the other leads to alterations to the landscape and objections on aesthetic grounds.

Hydroelectric energy also comes into this category, since dams may be the subject of protests by those concerned. Small-scale hydroelectricity is also interesting, since small bays and small turbines have a less negative social impact. However, ecologists believe that they may create impediments to the movement or migration of fish. Such paradoxes are characteristic of other means of producing renewable energy: thus solar panels are often criticised for causing changes to the landscape.

Currently, the development of these forms of energy depends on the participation of the population at large. According to certain experts, the political authorities put forward wind farm projects and then seek to persuade those concerned to accept them (the “social acceptability” principle). Wind farms are more acceptable in Germany on account of the forms of social negotiation in use there, which are more advanced than those of other States such as France.

Society can thus be considered to be a resource for sustainable development: social negotiation can give rise to public debates where issues relating to the installation of energy saving equipment can be discussed in the context of greater social and environmental justice. Experts in numerous countries are now considering the question of social justice against a background of unequal access to natural resources, according to social stratum. For example, the poorest social groups are often to be found in unfavourable and polluted environments with poor living conditions. The residents of inner cities and poorer areas frequently occupy areas with few green spaces, remote from services and sources of employment. Yet the aim of sustainable development is to secure equitable access to the different resources offered by this planet and its component parts. And equitable access also implies transmission to future generations. Employment is therefore another resource for sustainable development, but it will only be a renewable resource if the authorities allow it to be, without giving in systematically to the demands of the financial lobby or special interests.

The heritage is another possible resource for sustainable development, whether it be “prestige heritage”, such as our great houses or cathedrals, which contributes to our knowledge of history or historical processes, or the “everyday heritage” which forms part of our daily life and which has brought us to our current situation, through a series of political, social and even ecological events¹⁴⁶. These various edifices contribute to our popular culture and our awareness that every European citizen forms part of a community of ideas and helps to establish a common culture based on his or her history and landscapes. History can also be treated as a resource. History recalls and recounts the events that have forged this culture and landscape, which themselves have their own history. Understanding the past to imagine the future is a logical procedure and our conception of the future draws on what history teaches us about social relationships with nature, our use of natural resources, and the ecological and environmental crises that societies have undergone¹⁴⁷. This is a means of dealing with the long term, in other words with sustainable development.

Our notion of resource therefore takes various forms. One is based on physical geography and ecology (“resource” is a natural, or original, phenomenon which should ideally not be touched). Another views resources as commodities for consumption, so that landscape becomes a form of display or entertainment. A third approach sees resources as a joint enterprise, or as something arising from the mobilisation of social forces and their capacity to innovate, in other words to direct or support development processes that contribute to a shared product. This third concept of resource is therefore adapted to the human capacity to innovate, meaning the ability to articulate biophysical and social processes so that “natural” and “social” resources are mobilised on behalf of social and individual well-being. This is indeed one of the objectives of the European Landscape Convention.

¹⁴⁶ For example, the common washing places in villages, or the paths taken by village people to travel to market.

¹⁴⁷ Corinne Beck, Yves Luginbühl, Tatiana Muxart, *Temps et espaces des crises environnementales*, Ed. QUAE, Collection “Indisciplines”, 2006 ; Marc Stenger, *Planète vie, Planète mort, L'heure des choix*, Ed. du Cerf, 2005.

3. Landscape and temporality

The principles of sustainable development include the notions of the long term and transmission to future generations. This brings us to the question of time, or more precisely temporalities, since references to time imply that there is just one single time, whereas there are multiple temporalities. The latter include those of nature, which range from up to several billion years – the time taken to form the universe, for example – to the nanosecond of an infinitesimal earth tremor, or of societies, which range from a few million years – since the appearance of man on earth – to the nanosecond again, such as the time taken by the software designed by market traders to effect banking speculations. Within each category of temporality, a huge number of intermediate times mark the progress of the interactions between nature and society, such as the speed with which a flood can occur, compared with the time required for it to subside or for the societies that have been affected by the disaster to react to it, and then the time taken to repair the damage or for the insurance companies to pay compensation.

There are also political time-scales, such as those of an election campaign or an elective term of office, and social time-scales, such as the time for reflection granted to an individual whose vote has been solicited by several election candidates, that taken to cast the vote, and that spent awaiting the implementation of the promises made by the candidates. Time can no longer be seen as a mechanical process, as was believed in the 18th century when it was thought that the planet functioned to a regular and inexorable rhythm, like the mechanism of a clock. Time is in fact a chaotic phenomenon, made up of breaks, stops, accelerations and slowdowns: this is the chaos theory that tries to explain how the universe and the star and solar systems came about.

The term “sustainable” cannot therefore refer to a regular and mechanical form of time but rather to various temporalities. There are several temporalities associated with sustainable development. Nature’s time clearly concerns the time-scale of natural resources, whether or not renewable. Oil, for example, needed several million years to take the form of underground deposits. Since petroleum consumption has increased considerably, certain analysts think that peak oil could have occurred in 2008 and that certain deposits will soon be exhausted: in 2020 in the case of the Cantarell field in Mexico and 2050 in the case of the North Sea. But the situation is more complex, since some specialists, and in particular the major oil companies, think that they can exploit deposits discovered under the North Pole, whereas nature protection organisations and associations are alerting public opinion to the extreme risks posed by such a situation. Deep water drilling has already led to a number of ecological disasters, such as that of the American platform in the Gulf of Mexico where an underwater wellhead blowout released enormous quantities of crude oil into the sea. Several countries are now producing shale gas, thus polluting enormous tracts of land. There are numerous uncertainties attached to the time-scale of nature – in this case crude oil – relating to energy policies and international decision making, particularly ones taken by OPEC (the Organisation of Petroleum Exporting Countries), which are themselves linked to the Middle East conflict and the positions of the states involved.

The period of exploitation and global level of reserves also apply to other non-renewable resources. Their fundamental characteristic is that they are likely to be exhausted within a certain time that is still uncertain and is linked to the recycling industries. How does this affect the landscape? Clearly, wide swathes of landscape are closely bound up with the future of these resources. Thus, the exhaustion of oil reserves may lead to the development of energy from wind farms, which transforms landscapes in the same way, as previously noted, as do solar panels or small hydroelectric stations. Similarly, growing crops to produce biofuels, such as rape cultivation, which leaves Europe’s countryside dotted with yellow fields in spring, also transforms the landscape¹⁴⁸.

¹⁴⁸ The same applies to the cultivation of cane sugar in Brazil, which is expanding massively, at the expense of pasture land and biodiversity.

Among the diverse forms of natural time, climate change is one of the most problematic temporalities. This affects the future of landscapes because certain regions will have to cope with problems of drought and the migration of species that will modify their aspects. The northwards advance of the limits of olive cultivation may affect Europe's landscapes, as will that of vineyards, with grape harvesting now occurring three weeks earlier than in the past. Even before the arrival of humans on earth, climate change existed at a global level and significant temperature variations caused changes to the landscape. For example, the extreme glaciation of the quaternary era had a radical effect on European landscapes, with glaciers extending as far as the Rhone plain, whereas they have now retreated so much that scientists are concerned that certain Alpine glaciers will disappear completely. Similarly, the melting of polar pack ice and of the permafrost could speed up climate change, through the disruption of marine currents such as the Gulf Stream and emissions of methane, which has a much more detrimental effect than CO₂ on the future of the atmosphere.

It can be postulated that the period of the Middle Ages between the 10th and 14th centuries was one of high temperatures and that the relevant technical and social progress was attributable to these favourable meteorological conditions. Thus, the development of annual and permanent crops had such a demographic effect that the increase in the population of countries such as France and Italy was greater than that of the post-Second World war baby boom. This population growth was accompanied by more extensive cultivation of bread grains and, to a lesser extent, livestock raising, which was closely linked to the former by the right of common grazing after harvesting. This expansion was brutally interrupted in the 14th century when climatic conditions deteriorated: the years 1318 and 1320 experienced cold and damp summers that resulted in poor harvests and malnutrition, to be accompanied in 1348 by the arrival of the plague, whose effect on a weakened population was a significant demographic decline. On top of these climatic and sanitary disasters came the Hundred Years War. It was not until the Renaissance that the climate returned to a more normal state, but temperatures again fell in the 17th century, in what is known as the little ice age, to such an extent that it became possible to cross numerous rivers throughout Europe on the ice.

To return to the current era, we can conclude that climate change will have major consequences for landscapes. This is a situation to which societies and their institutions will have to adapt, or more precisely adjust, so as to deal with the risk of major climatic events such as floods, storms or cyclones, and with landscape changes. This raises the issue of social and political temporalities. As already noted, social and political time-scales do not necessarily coincide and the time frames of politicians and policy makers are not the same as those of civil society. The problem raised by the issue of time and sustainable development is that of the interaction between the political world, which takes the relevant spatial planning decisions, and those actually concerned by them, thus taking us back to the relationship between landscape and democracy. However, what is specific to sustainable development is the question of the timing of decisions taken in agreement with civil society on changes and improvements that will permit the passing on of high quality landscapes to future generations. Politicians and policy makers must therefore be ready to innovate, accept new ideas and experiment in the social, political – for example with participation – and ecological domains.

All this creates enormous scope for exploration and invention on behalf of the future of societies that expect their elected politicians to be concerned with social and individual well-being, which it is very much in their interests to develop. This is what makes the landscape itself a fundamental resource of sustainable development.

Conclusions

The relationship between landscape, democracy, human rights and sustainable development is thus a complex matter that depends on multiple factors belonging to numerous fields of activity. Although many examples of this relationship are to be found throughout Europe and the world, they do not apply in the same way at the international, European, national, regional and local levels. It is clear that the local level is the one that is most in tune with the wishes of the individuals and groups directly concerned whereas the international level is highly dependent on processes that the general public finds it difficult to control. The draft Constitutional Treaty of the European Union, proposed in 2004, drew a distinction between participative and representative democracy and saw the need for “open, transparent and regular dialogue with representative associations and civil society”. Even though the treaty was not adopted, the desire for participation is still fairly strong in European societies.

Among these factors, the very meaning of the term “landscape”, which may sometimes vary but has been defined with the consent of the vast majority of European States through their ratification of the European Landscape Convention, interacts with the levels of activity and status of the stakeholders concerned. Throughout Europe, as in other continents, the population at large wishes to make its voice heard by those who govern, and who sometimes appear to be out of their depth when trying to circumvent the major global dealings of international trade and finance. Participation is becoming a means of exercising democracy that is demanded by numerous social movements.

Already, we can identify several relevant approaches to the exercise of a form of democracy in which ordinary people can raise the issue of their everyday environment and landscape, in accordance with human rights and in the context of sustainable development. A number may be put forward, with no claims to exclusivity:

- what steps should be taken at the European Union level to promote a form of democracy that will help to improve the public’s everyday landscape and environment? Action might focus on the relevant European sectoral and infrastructure programmes, and on health and education standards. The Union’s research programmes should focus more on the landscape, which is currently only a marginal issue;
- at the national level, governments should be encouraged to incorporate a landscape element into sectoral policies, as the European Landscape Convention already advocates, and develop spatial planning policies on participation that take account of landscape issues. They should systematically draw up landscape atlases or similar inventories, on the lines of the United Kingdom *Landscape Character Assessment*, with public participation at the landscape identification, description and classification stages and in the definition of landscape quality objectives. Such atlases should also be linked to landscape photographic collections and observatories and relevant demographic, housing, agricultural and infrastructure data bases;
- at the regional level, the authorities should launch participatory action programmes concerned with landscape plans, charters, contracts, for example. They should develop regional atlases and their participative elements by using the Internet to consult the public and encourage their participation;
- at the local level, elected representatives and officials should be urged to take steps to promote public participation in protecting, managing and planning the landscape, and to develop experimental approaches with the assistance of regions or States.

Over and above these recommendations, however, it is essential to extend the debate on participative or representative democracy by promoting research in the fields of social science and ecology, which are already active in this area. As part of the Council of Europe’s activities connected with the European Landscape Convention, a working group could be asked to consider the following issues:

– in addition to the relevance of participation, consideration should be given to the relationship between scientific and technical knowledge on the one hand and action on the other, on which the debate still continues. This applies particularly to the role played by the media in disseminating such knowledge. As is well known, the media tend to modify and over-simplify the relevant information¹⁴⁹. Consideration must be given to the contribution of such knowledge, be it technical or non-specialist and empirical, to the landscape participation process, and to its form and timing;

– another key issue concerns the way in which participation is organised and led. The individuals concerned are often territory practitioners, which raises the problem of their role and status in such operations: are they mediators or implementers? This in turn has implications for their training and the curricula of the relevant educational establishments;

– the landscape project: how should it be drawn up? As already noted, such projects entail a process rather than just a simple outline based on an architectural or garden plan that goes no further than the delivery of a turnkey project, whose precise scope and content varies according to the scale of the intervention. Since landscape projects are now established as ongoing and participatory processes, this raises the question of the involvement of the competent authorities in establishing medium and long-term procedures and appropriate financing. What teams are required for these projects? An interdisciplinary approach is necessary but this cannot be taken for granted and consideration must be given to the role of scientists and technical specialists alongside landscape professionals and other stakeholders. Moreover, if a participatory landscape project becomes a continuing process, consideration must also be given to how to organise its ongoing evaluation.

The exercise of democracy must take account of the complexity of the process of producing and transforming landscapes. The European Landscape Convention has created a European dimension for this form of social mobilisation. Landscapes themselves constitute a “complex” of material and non-material connotations that science has separated, and in doing so reduced, thus making landscape action more difficult, even though it offers a potential commensurate with the high hopes that its advocates nourish¹⁵⁰.

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¹⁴⁹ Pierre Rosanvallon, “The New World of interactive democracy will only take shape if a newly renovated form of journalism emerges alongside it; one that is capable of leading public debate while at the same time maintaining an actively investigative presence in society, and endeavouring to intellectually decipher the complexities of the world. A new foundation for this kind of journalism is itself indissociable from the capacity of social sciences to inform public debate and enrich its quality”. *op. cit.*,

¹⁵⁰ Edgar Morin, *Introduction à la pensée complexe*, Essais, Points, Seuil, Paris, 2005 (translated from the French): “(...) science has been blinded in its inability to control, to plan, even to conceive of its social role, in its inability to integrate, to articulate and to reflect on its own knowledge. If indeed the human mind is incapable of apprehending the huge mass of knowledge in every discipline, then either the human mind or the division of knowledge into different disciplines must be changed”.