

1. Landscape and social, economic, cultural and ecological approaches

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“The member States of the Council of Europe signatory hereto [...]

Concerned to achieve sustainable development based on a balanced and harmonious relationship between social needs, economic activity and the environment ...”

Preamble to the European Landscape Convention

Introduction

As the first regional international convention exclusively to do with landscape, the convention opened for signature in Florence on 20 October 2000 has aroused great interest among Council of Europe member states. In a modern way in keeping with the universal principles of the Rio Declaration, the convention reflects the Council of Europe's main objectives: democracy, extension of human rights to take in the environment, and helping solve the main problems of contemporary European society. It also gives practical effect to the joint Council of Europe-United Nations Environment Programme Pan-European Strategy for Biological and Landscape Diversity which environment ministers of 55 European countries approved at Sofia on 25 October 1995. Action Theme No. 4 in the 1996-2000 Action Plan was entitled "Conservation of landscapes", and the aims to be achieved by the year 2000 were:

"To prevent further deterioration of the landscapes and their associated cultural and geological heritage in Europe, and to preserve their beauty and identity. To correct the lack of integrated perception of landscapes as a unique mosaic of cultural, natural and geological features and to establish a better public and policy-maker awareness and more suitable protection status for these features throughout Europe."

The European Landscape Convention can be regarded as having amply risen to those challenges: it goes well beyond mere protection of landscapes to concern itself with landscape management and development, and it promotes public and official awareness of the need to be attentive to all kinds of landscape, whether ordinary ones, outstanding ones or spoilt ones.

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 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. This combination of characteristics, reflecting landscape's multiplicity of functions, is unique. The European Landscape Convention sets out to convince decision makers and the public of the present and potential wealth which all landscapes possess and of the need for all areas of official policy to take this factor, which is now better appreciated, into account.

Why landscape "policies" in the plural? Although Article 1.b of the convention uses the singular in defining the term "landscape policy", the deliberate emphasis is on avoiding imposing any one model in landscape matters. The concern, in

acknowledgment of the “diversity of European landscapes”,³ is to reflect the range of perceptions and cultures by having the Parties work out, not a uniform, authoritarian policy, but “landscape policies”, as stated, this time in the plural, in Article 5.b of the convention, under the heading of general national measures. The plural, within a given country, reflects not only the geographical and ecological diversity of landscapes, which do not necessarily need treating the same way, but also the various levels of spatial responsibility, ranging from national authorities to local bodies. It is therefore permissible for there to be, within the one country, different landscape policies reflecting different local situations and in particular reflecting the local community’s active role in modifying the landscape.⁴ There was also a desire to match the approach to the convention’s wider geographical scope (the convention applies to all parts of the national territory). As stated in the explanatory report of the European Landscape Convention,⁵ that “does not imply that the same measures and policies must be applied to all landscapes; these measures and policies should be adaptable to particular types of landscape, which, depending on their specific characteristics, will need various forms of treatment at local level, ranging from the strictest conservation via protection, management and planning to actual creation”. Diversity of landscape policies is thus perfectly conceivable at the formulation stage, and even more so when it comes to implementation as mentioned in Article 6.E.

In this plural approach one should not see any risk of landscape-policy anarchy, producing different and contradictory policies from one place and one authority to another. The convention seeks neither a new landscape order nor disorder in landscape matters. It requires merely that the public authorities frame general principles, strategies and guidelines,⁶ with a view not to a single type of action on the landscape (for example, systematic conservation) but to applying a range of measures – protection, management, planning or a combination, in time and space, of all three.⁷ Most landscapes need a combination of the three modes of action, and some of them some degree of intervention. The convention does not set out to impose a standard landscape policy. It is simply an international legal instrument which requires the individual state to frame landscape policies appropriate to the particular area and to the needs expressed by the community and to pool policies and experiences at Council of Europe level. The convention does not impose any set menu. It merely lays down the order of courses. However, it does require that the wines go reasonably well with the food.

As a framework for the landscape policies of central government and local entities, the convention stands out for its sobriety, possessing very few clauses (11 articles plus the final clauses). What it sets out is not the content of policies or technical

3. Preamble to the European Landscape Convention.

4. *Ibid.*.

5. Paragraph 27 of the explanatory report of the European Landscape Convention.

6. Article 1.b of the European Landscape Convention.

7. Paragraph 41 of the Explanatory report of the European Landscape Convention.

recipes but the methodology to use in order to attain what the preamble states to be the convention's two main objectives:

- individual and social well-being;
- sustainable development based on a balanced and harmonious relationship between social needs, economic activity and the environment.

Thus it is for the Parties, through active monitoring committees,⁸ to back up convention implementation with European co-operation based on exchange of experience and information and on demonstration of successes or failures. It is hoped this will produce a kind of illustrated, collectively produced users' manual to the convention, guaranteeing consistency of objectives, principles and implementation tools.

Below we shall be considering what, for the purposes of the European Landscape Convention, constitutes the actual foundations of landscape policies. In order to be able to formulate clearly, and then implement, landscape policies, there are various prerequisites. They relate to different conceptual and material levels. First we need a clear statement of the objectives of the new European landscape policy – why a landscape convention? We will then present two key principles of convention accession and implementation. Lastly, to have proper landscape policies, parties to the convention must establish at least minimum machinery in terms of institutions and exercise of responsibilities on the one hand and information arrangements and public participation in line with the convention on access to information, public participation in decision making and access to justice in environmental matters (Aarhus, 25 June 1998) on the other.

1.1. The objectives of the convention

The European Landscape Convention takes as its starting point the observable fact of landscape deterioration in Europe, in terms of landscape quality and diversity, as a result of numerous and varied factors. Increased public and official awareness in Council of Europe member states has gone hand in hand with present-day insistence on quality of life in an unspoilt environment, yet at the same time on having the benefit of a degree of economic development.

That is why the convention's main objectives are concerned with guaranteeing both well-being for all and what has been known, since the Brundtland report "Our common future",⁹ as sustainable development.

1.1.1. Well-being for all

Human activity – whether industry, agriculture and forestry, or construction of infrastructure and buildings for various purposes – has Visual as well as physical

8. Article 10 of the European Landscape Convention.

9. Gro Harlem Brundtland, World Health Organization, 1987.

impact, modifying the individual's perception of his or her surroundings. It may even cause what some people describe as visual pollution.

The landscape is a familiar part of everyone's daily scene and plays a part in people's sense of belonging to a particular place and a particular community. So on a conscious or even unconscious level it contributes to mental well-being, and unspoilt landscapes perhaps therefore play a part in combating violence. Those who visit or explore an area, as tourists or for work, take away an impression of a particular identity and a local distinctiveness, leading them to judge their experience of the area positively or negatively. Both local people and the visitor will see the landscape as a factor in quality of life or the lack of it.

As stated in Article 5.a of the European Landscape Convention, landscapes are "an essential component of people's surroundings, an expression of the diversity of their shared cultural and natural heritage, and a foundation of their identity". It is because landscape is indissociable from people's surroundings that it "is a key element of individual and social well-being", as affirmed in the preamble to the convention.

Clearly, then, the convention's purpose is to do everything possible to preserve that individual and collective well-being by means of officially formulated landscape policies instead of letting landscapes take shape and evolve spontaneously.

The fact that landscape involves a sensitive relationship to an area, without any ownership link between the beholder and the beheld, changes landscape into a genuine "common resource",¹⁰ in other words a collective visual asset or item of common heritage. It is therefore only to be expected that society should take steps to preserve that heritage for present and future generations. The explanatory report to the convention (paragraph 30) expresses this very well:

"In their diversity and quality, the cultural and natural values linked to European landscapes are part of Europe's common heritage, and so European countries have a duty to make collective provisions for the protection, management and planning of these values."¹¹

As, therefore, landscape is both an essential component of community well-being and a common asset, the individual has rights and duties in respect of that asset, which is ample justification, if any were needed, for the obligation – repeatedly stated in the convention – to involve the community in landscape policies (we shall come to this in due course). The preamble to the convention gives a clear statement of the close link between the individual's rights and duties and concern for well-being:

"Believing 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."

¹⁰. Penultimate paragraph of the preamble to the European Landscape Convention.

¹¹. Paragraph 36 of the Explanatory Report of the European Landscape Convention.

1.1.2. Sustainable development

The European Landscape Convention's second main purpose is to help achieve sustainable development.

Landscape is a component of the environment, just like water, air and biological diversity. Consequently landscape policies must be so formulated as to fit in with the objectives of sustainable development. As explained in the explanatory report:

“The concern for sustainable development expressed at the 1992 Rio de Janeiro conference makes landscape an essential consideration in striking a balance between preserving the natural and cultural heritage as a reflection of European identity and diversity, and using it as an economic resource capable of generating employment in the context of the boom in sustainable tourism.”

This is why the preamble to the convention gives prominence to sustainable development as one of the treaty's objectives:

“Concerned to achieve sustainable development based on a balanced and harmonious relationship between social needs, economic activity and the environment.”

In a statement to the Council of Europe Encounters at Segovia (Spain) the secretary general of Europa Nostra referred to Italy's setting up pilot areas for landscape protection and enhancement:

“The overall cost of an integrated programme of that kind would undoubtedly be greater, he said, than sporadic action but the money was an investment, not economically unproductive expenditure. The pilot zones would show by example, which was the most persuasive way of doing so, that landscape protection was not incompatible with economic development and that, on the contrary, protecting and enhancing the landscape was a prerequisite for sustainable economic development.”¹²

Sustainable development is now a goal built into all environmental policy, and landscape action is consistently referred to as a factor, of no less significance than others, in sustainable development. It is worth drawing attention, here, to the two basic principles that shape the content of sustainable development. These are Principles 3 and 4 of the 1992 Rio de Janeiro Declaration on environment and development:

Principle 3: *“The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”*

Principle 4: *“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.”*

12. Antonio Marchimi Camia, in a paper on protecting the landscape as a priority for civil society, Segovia meeting, 6 and 7 April 2000. See Environmental Encounters, *“Awareness of the landscape: from perception to protection”*, Council of Europe Publishing, 2002, No. 52, pp. 43-49.

Council of Europe Committee of Ministers Recommendation Rec(2002)1 of 30 January 2002 on the Guiding Principles for Sustainable Spatial Development of the European Continent accordingly states:

“The Guiding Principles for Sustainable Spatial Development of the European Continent take account, in accordance with the concept of sustainability, of the needs of all the inhabitants of Europe’s regions, without compromising the fundamental rights and development prospects of future generations. They aim in particular at bringing the economic and social requirements to be met by the territory into harmony with its ecological and cultural functions and at contributing in this way to long-term, large-scale and balanced spatial development.”¹³

The guidelines laid down in the recommendation consequently cover spatial development measures for characteristic types of European region, including the landscape measures contained in the European Landscape Convention.¹⁴

The Final Declaration on the conservation and sustainable use of biological and landscape diversity in agricultural policies and practices¹⁵ recommends, for making sustainable use of biological diversity in all rural areas:

“[Promoting] biodiversity and landscape-sensitive management in the wider countryside through broader agri-environmental programmes to address dispersed species and scattered landscape features.”¹⁶

The conclusions of the Council of Europe international CEMAT Seminar¹⁷ stressed the connection between sustainable development and landscape:

“Agriculture and forestry should not be seen only as economic activities and land uses. They are indispensable tools for landscape management. Their operation methods should be held in line with the goals of prudent and rational land use and sustainable spatial development.”

Leaving aside spatial development and agriculture, tourism derives economic benefit from landscape. Sustainable tourism necessitates careful attention to the

13. Paragraph 8 of the Council of Europe Committee of Ministers Recommendation Rec(2002)1 of 30 January 2002 on the Guiding Principles for Sustainable Spatial Development of the European Continent.

14. Paragraph V-1 Nos. 49 and 50 of the Council of Europe Committee of Ministers Recommendation Rec(2002)1 of 30 January 2002 on the Guiding Principles for Sustainable Spatial Development of the European Continent.

15. Adopted in the framework of the High-level Pan-European Conference on Agriculture and Biodiversity: Towards integrating biological and landscape diversity for sustainable agriculture in Europe. See *Compendium of background reports*, Paris, 5-7 June 2002, Nature and environment series, 2002, No. 133, Council of Europe Publishing, 598 p.

16. “Final Declaration” adopted in the framework of the High-level Pan-European Conference on Agriculture and Biodiversity: Towards integrating biological and landscape diversity for sustainable agriculture in Europe. See *Compendium of background reports*, Paris, 5-7 June 2002, Nature and environment series, 2002, No. 133, Council of Europe Publishing, Appendix (I-A-4), pp. 241-63.

17. International Seminar organised by the Council of Europe and the Ministry of Environment and Spatial Planning of Portugal within the framework of the activities of the European Conference of Ministers responsible for Regional Planning of the Member States of the Council of Europe – CEMAT, Lisbon, 26-27 November 2001, *Landscape heritage, spatial planning and sustainable development – Proceedings*, Council of Europe Publishing, European regional planning series, No. 66, pp. 133-41.

characteristics and evolution of landscape in both rural and coastal areas¹⁸ and this doubly applies in protected areas.¹⁹

Lastly, cultural sites of course need landscape policies geared to sustainability, as pointed out in Council of Europe Committee of Ministers Recommendation No. R (95) 9 of 11 September 1995 on the integrated conservation of cultural landscape areas as part of landscape policies:

“It is important that landscape policies should draw on the principles of sustainable development while striving, by taking appropriate measures, for compatibility between the managed evolution of the landscape and the economic and social changes which tend to alter the environment.”²⁰

The fact is that by taking care of the landscape we simultaneously promote communal well-being, safeguard the environment and protect economic activity. All four ingredients of sustainable development (social, ecological, economic and cultural improvement) are thus involved here. The explanatory report to the convention makes that point several times:

“This [individual, social and cultural fulfilment] may help to promote the sustainable development of the area concerned, as the quality of landscape has an important bearing on the success of economic and social initiatives, whether public or private.”²¹

“These various treatments [of landscapes] may allow an important socio-economic development of the areas concerned.”²²

The preamble to the convention, which, legally, has the same force as the body of the text, states the economic as well as social impact of landscape:

“... [the landscape] constitutes a resource favourable to economic activity and whose protection, management and planning can contribute to job creation.”

1.2. The principles of the convention

The European Landscape Convention contains, both directly and indirectly, a large number of principles. Arguably the convention’s scope²³ is a principle in itself, given the innovativeness of stating that all landscapes deserve attention, regardless of their value and even if they are everyday or degraded landscapes. It has been said that the convention democratises landscape, taking a social rather than an

18. See Council of Europe Committee of Ministers Recommendation No. R (97) 9 of 2 June 1997 on a policy for the development of sustainable environment-friendly tourism in coastal areas.

19. See Council of Europe Committee of Ministers Recommendation No. R (95) 10 of 11 September 1995 on a sustainable tourist development policy in protected areas.

20. Article 6.1 of the Council of Europe Committee of Ministers Recommendation No. R (95) 10 of 11 September 1995 on a sustainable tourist development policy in protected areas.

21. Paragraph 24 of the explanatory report of the European Landscape Convention.

22. Paragraph 27 of the explanatory report of the European Landscape Convention.

23. Article 2 of the European Landscape Convention.

elitist view of it,²⁴ and recognises a human right to landscape. The convention also contains the principle of public involvement, which we shall be looking at as an action tool in that implementing it necessitates adaptation of procedures. Nor must we overlook the principles of subsidiarity and diversity.

We have opted to highlight two less obvious principles in the convention which, however, will play a major role in its future implementation: the integration principle and the consistency principle.

1.2.1. The integration principle

We can connect the integration principle as regards environment, and thus landscape, to the above-quoted Principle 4 of the Rio de Janeiro Declaration: landscape protection needs to be an integral part of the development process and cannot be treated in isolation. In actual fact there are two kinds of integration here: integrating the environment into landscape policies, which is to some extent the natural and obvious approach, and integrating landscape considerations into other sectors of activity and thus building them into sectoral policies. This second type of integration is much more complex, requiring extensive co-ordination at all levels of decision making.

While the convention expressly deals with integration in the context of national measures, we must not omit to mention integration in the context of European co-operation.

Article 5.d places an integration obligation on parties:

“Each Party undertakes:

[...]

d. to integrate landscape into its regional and town planning policies and in its cultural, environmental, agricultural, social and economic policies, as well as in any other policies with possible direct or indirect impact on landscape.”

The explanatory report to the convention states that landscape objectives are to be taken into account in all relevant sectors of public life.²⁵ Building landscape considerations into policy in this way is a unique opportunity to reconsider sectoral policies without narrowly focusing review on landscapes which already have legal protection.

This integration is of course viewed as applying to all stages of action on an area – from the framing of strategies, plans or programmes to giving permission for an activity or item of infrastructure. In the field of spatial planning and development, integration of sectoral policies consists in giving thought simultaneously to the mutual interactions of a range of activities well before a final decision is taken.

24. Riccardo Priore, “La Convention européenne du paysage”, *Revue européenne de droit de l’environnement*, 2000, No. 3, p. 285.

25. Paragraph 50 of the European Landscape Convention.

Landscape needs to come into the reckoning as early as possible, like natural risks, climate, preserving biodiversity and social implications. The Guiding Principles for Sustainable Spatial Development of the European Continent approved at the Hanover European Conference of Ministers responsible for Spatial/Regional Planning in September 2000 and set out in the aforementioned 2002 recommendation of the Committee of Ministers are presented to us as “a coherent strategy for integrated development”. That is why they contain a lengthy list of the requirements to be met and the factors to be taken into account, one of them being landscape.

There is nothing particularly new about the principle of integrated planning and management in regional/spatial planning. The European Regional/Spatial Planning Charter (Torremolinos, 1983) treated regional/spatial planning as all-embracing, giving geographical expression to the economic, social, cultural and ecological policies of society. It was comprehensive in that it should “ensure the co-ordination of the various sectoral policies and integrate them in an overall approach”. At the time, however, inclusion of landscape was not expressly mentioned except in rural areas, being disregarded elsewhere.

By adopting a definition of landscape which takes in the whole of national territory, covering natural, rural, urban and peri-urban areas and including land, inland water and marine areas, the European Landscape Convention requires parties to incorporate landscape into treatment of all types of area and into all policy areas.

However, proclaiming the principle of integration is all very well – it is integration methods and tools that pose most problems. Here, the convention does not provide any recipes. It is for states to devise as effective integration instruments as possible. This includes the full range of co-ordination and consultation methods. Exchange of experience and information, as provided for in Article 8 of the convention, is calculated to spread the best methods very effectively. An example of an innovative integration approach has been provided by Switzerland, with its concept of “Swiss Landscape”.²⁶

Taking as a model the guidelines on protection and “integrated conservation” of the archaeological heritage produced by the Legislative Support Task Force as part of the Council of Europe cultural heritage service’s programme of technical co-operation and assistance,²⁷ national legislation needs to make it compulsory for there to be consultation between the landscape, town planning and spatial planning sectors on any development plans, and there has to be consultation right from the start of any project so as to minimise uncontrolled destruction of or damage to landscapes. Such consultation would use inventories and field studies in determining what use a development project was allowed to make of the

26. See presentation in “The European Landscape Convention”, Council of Europe Review, *Naturopa*, 1998, No. 86, pp. 20-21.

27. *Guidelines for the protection of the archaeological heritage*, document prepared by the Legislative Support Task Force in the framework of the Technical Co-operation and Consultancy Programme of the Cultural Heritage Department, Council of Europe Publishing, 2000.

landscape. In the event of disagreement, landscape services would have to be able to veto a project or appeal to some higher arbitration body. The services involved in such consultation could draw up non-binding codes of conduct for planners so that there would be a specialist document with educational intent providing a negotiation framework.

The key questions with the integration principle are, in actual practice, what type of integration is needed and what approach to adopt. There has to be overall integration of the different integration levels, with provision for geographical integration, institutional integration, integrated planning and integrated decision making. The International Centre for Comparative Environmental Law made recommendations to this effect during the preparations for the United Nations World Summit on Sustainable Development in Johannesburg.²⁸

Integration at the level of European co-operation is no less important than an integrated national approach. Two articles of the convention are particularly relevant here, Articles 7 and 8.

By undertaking to take the landscape dimension into consideration in international policies and programmes and to co-operate for that purpose, states parties to the convention agree, under Article 7, to have the international bodies of which they are members take landscape into account where relevant. The European Landscape Convention must not be an isolated international legal instrument operating in a vacuum and must be a driving force to promote the landscape concept wherever appropriate. This “inclusion” of landscape (as Article 7 puts it) is an obligation on states not only in the other European bodies of which they are members – such as, in some cases, the European Union or, in others, the United Nations Economic Commission for Europe – but also in world organisations, in particular of course Unesco, through the world heritage convention, and the IUCN.

Lastly, the integration principle must also guide the multilateral European co-operation for which there is provision in Article 8 of the convention. By pooling information and experience and arranging for technical and scientific assistance, including legal assistance, the parties to the European Landscape Convention must see to it that the integration principle set out in Article 5.d is properly implemented. Proactive co-operation in this area will consist in suggesting remedies or offering advice based on comparison of experience, in the form of guidelines, white papers or sets of principles which would be drawn up by specialist committees under Council of Europe auspices and then approved by the Conference of Parties. Article 8 provides for co-operation “in order to enhance the effectiveness of measures taken under other articles of this Convention”.

28. See recommendations on integrated management of the environment in the Declaration of Limoges II, A World Meeting of Environment Law Specialists and Associations, CIDCE, Limoges, 9 and 10 November 2001.

1.2.2. The consistency principle

While the integration principle is clearly stated in the text of the convention, the consistency principle is not expressly mentioned either in the convention or the explanatory report.²⁹

The point has occasionally been made that the convention is a little paradoxical, proclaiming the benefits of landscape variety while at the same time putting forward what are intended to be common principles.³⁰ Diversity of rights from country to country and, within federal states, from region to region might suggest that the convention is incapable of laying down guidelines. The paradox is only apparent. It highlights the need to apply the convention in a spirit of acceptance of diversity so as to avoid contradictions between the different policies. It underlines the framework nature of the convention, leaving it to countries to decide what means to deploy on the basis of shared recognition of the objectives we have referred to: landscape is a common heritage which, regardless of its intrinsic qualities, valuably contributes to individual and collective well-being, while, in addition, taking landscape into account reinforces and meets the requirements of sustainable development.

At national level the consistency principle should make it possible, on the basis of the options which the convention offers, to ensure that the different levels of landscape policy do not clash. This requires a modicum of central-level national guidance for local policies. Consistency is also necessary in implementing the integration principle so that landscape policies in different sectors are not at odds. However, consistency is never to be a pretext for the imposition of a standard model. Lastly, there has to be consistency in local choices for a given site as regards landscape-quality objectives and dovetailing of protection, management and development policies.

At European level the consistency principle has to guide directives and recommendations on implementing the convention. Any common proposals or suggestions will have to be reconcilable with diversity and distinctive features of localities. In matters of landscape, the preservation of local cultural difference as proclaimed in the 2001 Unesco universal declaration will have to be consistent with preservation of biological diversity and with socio-economic development.

The consistency principle will likewise have to apply to application of Articles 7, 9 and 12 of the European Landscape Convention. In the case of Article 7, proper allowance has to be made for landscape across the range of international policies, instruments and programmes, in which landscape is still all too often accorded

29. It emerged during discussions at the First Conference of Contracting and Signatory States (Strasbourg, 22 November 2001) and was underlined by the rapporteur for Workshop I, Mr Jean-François Seguin, Report of 19 December 2001, T-FLOR 1 (2002) 19. See also the speech to France's national landscape council by the French regional planning and environment minister, Ms D. Voynet, 28 May 2001, Council of Europe information document of 4 February 2002 (T-FLOR 2 (2002) 14, French only).

30. Bas Pedrolí, Appendix 15 to the report of the First Conference of Contracting and Signatory States, Strasbourg, 19 December 2001, T-FLOR 1 (2001) 19, p. 71.

secondary importance as a factor in biological diversity³¹ or as a geographical entity to be protected for its aesthetic value (as in many international documents on coastal or mountain zones).³² Consistency henceforth requires co-ordinated international action on landscape in the spirit of the European Landscape Convention.

Implementation of joint programmes in the case of cross-border landscapes, as provided for in Article 9, will be a test of the consistency principle when it comes to combining the convention's principles with distinctive local, cultural and legal features. Lastly, by its very nature, Article 12 reflects the requirement that there be consistency between the European Landscape Convention and any other national or international legal instruments stricter than it – that is, more favourable in terms of effective provision for the landscape.

To gauge consistency given various, often contradictory, requirements will need detailed illustrations of good and bad practice, complete with photographs and documentation, so as to build up a varied archive of examples that meet the requirements of Article 8 and help make the new landscape policy more effective.

1.3. Essential instruments

Some of the obligations in the convention require states to put instruments in place if none exist in national legal systems. Those which are clearly essential for framing and implementing landscape policies are, first, institutional instruments closely bound up with exercise of powers and, secondly, participation and information arrangements which meet the requirements of the Aarhus Convention.

1.3.1. Institutional instruments

Although the convention is silent as to what institutions need setting up, we can assume that the requirements to frame landscape policies,³³ to recognise landscapes in law,³⁴ to establish participation procedures and to integrate landscape into other policies³⁵ call for administrative machinery to perform those functions.

That does not mean there necessarily has to be a special law dealing with landscape: giving legal recognition to landscape can be done in the constitution or in any piece of legislation, and for there to be an administrative department responsible for landscape does not require landscape legislation. Conceivably there could even be a law dealing with landscape and giving it legal recognition without any

31. The biological diversity convention does not refer to landscape, merely referring in its preamble to the recreational or aesthetic significance of some ingredients of biological diversity.

32. The implementing Protocol for the implementation of the Alpine Convention of 1991 of 20 December 1994 in the field of nature protection and landscape conservation is mainly concerned with the “*unique beauty*” (see preamble) and the “*diversity, distinctiveness and beauty of natural landscapes*” (Article 1).

33. Articles 1.b and 5.b of the European Landscape Convention.

34. Article 5.a of the European Landscape Convention.

35. Article 5.c and d of the European Landscape Convention.

institution or policies specifically to do with landscape. It makes sense, however, for the introduction of official policy on landscape to involve special supervision machinery.

We shall first consider who should have administrative responsibility for landscape, go on to consider co-ordination and consultation arrangements and lastly look at how powers, vertically, should be exercised.

The question of where administrative responsibility for landscape should lie was studied in 1997.³⁶ Of course landscape, as a matter relevant to all sectors, should not be monopolised by any one administrative department, but the lead has to come from somewhere. Depending on the particular country, landscape is either a matter for several ministries in the absence of any clearly demonstrated policy, or a matter for a particular ministry which (at the time of the report) might be the ministry for agriculture, culture and historic monuments, town planning or environment.

To ensure that environmental considerations are built into other policy areas, the ministry dealing with landscape needs to be vested with a leadership function which is performable if the service concerned with landscape has sufficient staff – if that service is invited to other departments' meetings on matters potentially affecting landscape, it has to have enough people to attend them. However, a landscape presence in the various areas of administration is only really guaranteed by a modicum of official machinery in the form of standing bodies for co-ordination or consultation. Landscape councils or committees attended by all the departments concerned and by specialists and non-governmental organisations would seem the approach best calculated to generate genuine momentum towards formulation of national strategy on landscape.

The most complex matter, both in centralised or unitary countries and in systems which are regionalised or federal to whatever degree, is that of exercise of responsibilities and how, vertically, powers and responsibilities are apportioned between the central, regional and local authorities. The convention devotes an article to this without, of course, offering any solutions. Article 4, on division of responsibilities, is based on the subsidiarity principle, which requires that problems be dealt with as close as possible to the people affected by them.³⁷ Taken together with the European Charter of Local Self-Government,³⁸ that should mean that local authorities have an important role to play in landscape policies affecting them. This treatment of landscape as a matter for local policies is, incidentally,

36. See Michel Prieur, Appendix II to the report by P. Hitier, Congress of Local and Regional Authorities, 5 May 1997, CG (4) 6, Part II. This deals with law applicable to landscape in comparative law and international law.

37. Article 4.3 of the Council of Europe European Charter of Local Self-Government states: "*Public responsibilities shall be generally exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.*"

38. Strasbourg, 15 October 1985.

appropriate to the actual history of the convention – it was the Congress of Local and Regional Authorities of Europe that was the moving spirit behind it.³⁹

In deference, however, to the particular constitutional features of federal or regionalised countries, the convention leaves it to the individual party to decide the level most appropriate for making decisions. A general trend in Europe, though, is to assign more and more functions to local bodies, thus reinforcing decentralisation and regionalism. States can be guided by Council of Europe Committee of Ministers Recommendation No. R (96) 12 of 2 October 1996 on the distribution of powers and responsibilities between central authorities and local and regional authorities with regard to the environment.⁴⁰ Tiering of responsibilities will in fact always be necessary, quite apart from the formal position in law. The central level's function is to lay down guidelines and general principles and, within strict limits, it is permissible for it to take action on landscapes which are of outstanding national importance. The regional level can act as co-ordinator if local interests conflict and the local level must play an active part in informing and educating the community and in designing local policies to reflect the Community's wishes. Provided that short-term economic interests do not predominate, it is the local level that is best placed to take concrete action, within a given area of known make-up and history, for the purposes – which often complement one another – of protection, management and development. The local level's active role applies not only to towns and urban landscapes,⁴¹ but also rural communities.

Whatever the existing national system of apportioning powers and responsibilities, it is essential that room be found for landscape at all levels of decision making as both an individual and a collective asset that needs preserving. In this, there has to be constant attention to the above-mentioned two principles of integration and consistency.

1.3.2. Information and participation arrangements

The information and participation requirement is something of a leitmotiv in the European Landscape Convention. While the convention's provisions on institutional machinery and powers were deliberately left very vague, those on information and participation are, no less deliberately, much more detailed and demanding. For that reason, some commentators have categorised them as general principles. My preference here has been to treat them as tools so as to give them less abstract content. The concern is with organising participation and not just proclaiming it.

39. See the speech by the Chair of the CLRAE Committee on Sustainable Development, Mr Moreno Bucci, Appendix 7 to the report of the 1st Conference of Contracting and Signatory States to the European Landscape Convention, 19 December 2001 (T-FLOR 1 (2001) 19).

40. See also *Environment and Local and Regional Authorities*, Local and Regional Authorities in Europe, No. 60, Council of Europe, 1996 and, on the same subject, *Naturopa*, 1999, No. 89.

41. See the Seville (Spain) landscape plan, as presented by Mr Florencio Zoido Naranjo at the Workshops in Strasbourg on 23 May 2002, Council of Europe Publishing, European spatial planning and landscape series, 2003, No. 72, pp. 229-43.

In quite a few countries there is a great deal of informal practice regarding participation, but it is rarer for there to be a detailed legal framework on the subject. The convention should prompt countries to lay down precise frameworks on information and participation, in line with the Aarhus Convention of 25 June 1998 on access to information, public participation in decision making and access to justice in environmental matters, which came into force on 30 October 2001.⁴² Numerous Landscape Convention signatories are in fact parties to the Aarhus Convention.⁴³ Giving effect to the Aarhus Convention cannot but assist giving effect to the European Landscape Convention. It should be noted that the main ideas in the Aarhus Convention are found in the European Landscape Convention – the connection between human well-being and proper protection of the environment, for instance, and sustainable development for the sake of present and future generations.⁴⁴ Among “elements of the environment” the Aarhus Convention expressly includes landscape, together with water, air, soil, land, natural sites, biological diversity and interaction among all these.⁴⁵

In its preamble, the European Landscape Convention refers to the public’s wanting high-quality landscapes and an active part in the development of landscapes. Under Article 5.c the parties have a legal obligation to establish procedures for participation. Participation here means participation not just by the public but by all parties concerned, including local elected representatives, economic, social and cultural players, and specialists. This avoids the risk of decision makers being taken prisoner by one category of player. The European Landscape Convention does not define “the public”. The Aarhus Convention defines it as “one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or groups”. The public is thus not just citizens or voters.

Nor, as referred to in Article 5.c, is it just the public immediately affected: it takes in both the local and the wider community. However, the assessment procedure in Article 6.C.b restricts “the public” to population “concerned”, which, as defined in the Aarhus Convention, means the public affected or likely to be affected or having an interest.⁴⁶ There is no provision specifying that the participation arrangements do refer to consultation on landscape quality objectives.⁴⁷ Information also has to

42. The Aarhus Convention applies to decisions of public authorities other than judicial or legislative authorities. See Michel Prieur, “La Convention d’Aarhus instrument universel de la démocratie environnementale”, *Revue juridique de l’environnement*, special issue, 1999.

43. See Recommendation 1430 (1999) of the Council of Europe Parliamentary Assembly on implementing the Aarhus Convention, in which the Assembly urges that account be taken of the Aarhus Convention’s principles in Council of Europe work potentially affecting the environment. See also the Committee of Ministers’ reply, adopted at the Ministers’ Deputies 730th meeting on 22 November 2000.

44. Preamble and Article 1 of the Aarhus Convention.

45. Article 2.3.a of the Aarhus Convention.

46. Article 2.5 of the Aarhus Convention.

47. Article 6.D of the Aarhus Convention.

be provided for the various parties (civil society, private organisations and public authorities).⁴⁸

There are three matters which we can consider with regard to participation: its scope (and the stage at which it takes place), the arrangements for it and its effect.

The scope of participation is extremely wide and takes in very different stages of decision making. Roughly speaking, it covers two of the three stages which the Aarhus Convention provides for in Articles 6, 7 and 8. First, there is participation in working out landscape policies, with Article 5.c of the European Landscape Convention referring back to Article 5.b. This is the point at which the principles and strategies are set – the “definition” stage. It involves reflection and looking ahead – there is a proactive side to participation here. It involves national policy no less than local and regional policies. The participation arrangements and stage may vary according to whether a question is national or local. The identification and assessment processes in Article 6.C are part of it, as is the setting of landscape quality objectives (Article 6.D). In any event, participation here precedes the detailed decision making and is concerned with reflection on strategies, plans and programmes. It corresponds to the phase dealt with by Article 7 of the Aarhus Convention, “Public participation concerning plans, programmes and policies relating to the environment”.

The second stage in participation concerns implementation of policies, plans and programmes. Provision for participation here is again compulsory, by virtue of Articles 5.c and 5.b taken together. It is when decisions are to be taken on protection, management and development that participation has to be provided for. Here, participation involves reaction to a particular project. It corresponds to Article 6 of the Aarhus Convention, “Public participation in decisions on specific activities”. Unlike the Aarhus Convention,⁴⁹ the European Landscape Convention does not provide for public participation in the preparation of “executive regulations and/or generally applicable legally binding normative instruments”. That does not, of course, preclude bringing Article 8 into play in the preparation of legal instruments on landscape, even in respect of countries not parties to the Aarhus Convention.

As participation arrangements are not specified in the Landscape Convention (except for consultation under Article 6.D), the Aarhus Convention, which is of course expressly referred to in the preamble to the European Landscape Convention, can reasonably be regarded as the benchmark. The European Landscape Convention leaves states parties full latitude to decide participation arrangements. At least as regards the identification and assessment phase and the setting of landscape quality objectives the view must be taken that participation needs special, detailed provision since the objective is to identify the “aspirations of the public”⁵⁰ and “the particular values” which interested parties and the population concerned assign

48. Article 6.A of the Aarhus Convention.

49. Article 8 of the Aarhus Convention.

50. Article 1.c of the European Landscape Convention.

to landscapes.⁵¹ An ordinary consultation, such as a public inquiry, is liable to be inadequate to identify the public's expectations and needs with sufficient accuracy. Appointing an expert or, as in Switzerland, an independent mediator⁵² responsible for gathering in opinions and taking the necessary time over it is a worthwhile idea. The Aarhus Convention does not impose any particular participation arrangements either but its lengthy Article 6 spells out the various methods of ensuring greater participation in the interests of better decisions and more effective implementation of them.

Where there is to be participation, for instance, the public must first be informed, early in the process, by public notice or individually as appropriate, and this information must specify the nature of the project, the public authority in charge, the intended conduct of the procedure (dates, places, methods). The starting date and length of the procedure must give the public enough time to prepare and take part effectively. Reasonable time-frames must be set for the different phases. Additional information must be obtainable from a designated and accessible department. The public must be able to consult the relevant documents free of charge, subject to any legal restrictions on the right to information. There must be an unrestricted right to make copies of documents, on a paying basis where appropriate. Any project reports and opinions must be obtainable on request.

Participation itself can take various forms provided it allows the public to express its views freely. The public must be able to submit comments, information, analyses or opinions whether in writing or orally at a public hearing or public inquiry with the project applicant. Oral participation should assist public debate, with public meetings at which all sides have fair and adequate speaking time. A local referendum, preceded by equitably supplied information and public debate, is one way of enlightening public authority (an advisory referendum), or it could replace the official decision (a referendum with decisive effect).

There are seldom binding rules as to the effect of participation. Participation is designed as an aid to decision making, not a substitute for it, except in the case of direct democracy through such devices as the popular vote. The success or failure of participation often hinges on the expected outcome. To what extent is participation able to really influence or alter the official decision? While the European Landscape Convention says nothing about this, the Aarhus Convention tackles the question at least in part. First, the Aarhus Convention places a formal requirement on parties to inform the public of the decision taken and the reasons and considerations on which the decision is based.⁵³ Second, in substantive terms, it contains a requirement that "due account is taken of the outcome of the public

51. Article 6.C.1.b of the European Landscape Convention.

52. Presentation of the Colvert integrated policy project (Switzerland) by Mr Andreas Stalder, in Strasbourg on 23 May 2002, First meeting of the Workshop for the implementation of the European Landscape Convention, Proceedings (Strasbourg, France, 23-24 May 2002) (to be published in the European spatial planning and landscape series).

53. Article 6.9 of the Aarhus Convention.

participation”.⁵⁴ This wording is open to various interpretations. It reflects an obligation, if not to adopt the public’s views expressly, at least not to disregard them and to take them into account as far as possible. Review of the reasons given in appeal proceedings before a higher administrative authority or a court will then test whether due account has been taken.

The reason for the European Landscape Convention’s insistence on the participative approach is a desire not so much to fall in with prevailing fashion as to give legal

recognition to the special features of landscape. Landscape exists because it is visible. A landscape policy which involved only experts and administrators, who themselves are often specialists, would result in landscapes that were imposed on

the public, just as in the days when landscape was produced by and for an elite. Democratisation of the landscape is not just a question of the new scope which the

European Landscape Convention introduces; it is also reflected in this collective and individual appropriation of all landscapes, through the requirement that there

be direct participation for all in all phases of decision making regarding landscape alteration, supervision of landscape evolution and prevention of reckless landscape destruction.

All the more account will be taken of the outcome of participation if the participation process itself is proof against crowd-pleasing tactics on the one hand and abnormal pressure from particular lobbies on the other. This entails

achieving balanced involvement of experts, elected representatives, the public and the voluntary sector. And there is a prerequisite – all the preliminary awareness-raising, training and education which are the cornerstone of participation.

54. Article 6.8 of the Aarhus Convention.