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From the right to landscape towards landscape right

By Pierre Donadieu

"The landscape is part of our natural and cultural heritage. It is a precious legacy to future generations. Too often, neglect and selfishness destroy it. Every day is the assault: concrete, billboards and giant signs, pylons, waste ... For the present and future, it is essential to react."¹

According to the association *Paysages de France*, created in 1992, the right to landscape refers to a proclamation of indignation presented as introduction of the website. It appears as a legitimate human right to defend the freedom "to fight against all forms of visual pollution in urban and non urban areas". The right to claim landscape quality exists in France, for at least a century- but it turned into a "landscape right" with the promulgation of appropriate legal texts, as the 1930 and 1993 laws; or in Europe with the European Landscape Convention in Firenze in 2000. However, for lawyers, the autonomy of this law, incorporated in the fields of urban planning and environment is not yet recognized².

Would this right to landscape quality not refer to those of the 1789 French Declaration of Rights or the 1948 Universal Declaration of Human Rights? If we follow the economist Amartya Sen on the viability of human rights, we also must ask whether "this particular freedom of a particular person has any ethical significance, and (...) if it presents a social weight enough to be integrated into the law of that person, and that others help to achieve it."³

To support the social significance of the concept of landscape, several arguments can be invoked: the legal texts - including landscape protection – which exist in most European countries; the "social mobilization" spread regularly by the media; and the public policies on landscape quality developed by the national and regional authorities.

Yet, the public policies on landscape do not seem to meet these social expectations, as we still face recurrent defacements of landscapes in France. Contrary to most court decisions which relate only to claimants and litigants, the application of "justice" or rather the landscape regulation is immediately apparent to all. This means that anyone can freely judge and give his opinion on it.

If the right to quality of landscapes is a freedom to which every society should pay attention, is it a freedom to enter into the universal human rights? Is a pleasant and relaxing environment of the same nature as the right to eat or to have access to health treatment? Is it not rather referring to the privacy (my landscape) like the right to individual peace? Or cannot it be understood as the fear of disfigurement or deterioration of our living environment, or places emblematic of the social group identity to which we belong (our landscapes)? The first interpretation writes A. Sen about a similar case⁴ "is too introverted and outside the scope of effectiveness of a social policy to be a suitable object of human right". In contrast, the second can be validated - if we want to preserve material symbols of local cultural and social identities - and put in debate if the origin of the collective fears is questionable.

While it is understandable that the State seeks to discourage these fears by building a landscape right (in fact its quality), it cannot be limited to that assistance. If implemented, it must also be evaluated -

¹ <http://paysagesdefrance.org/spip.php?article161>

² Le droit du paysage n'est pas ici celui d'une Nature-paysage qui aurait des droits, thème qui a été abordé par les philosophes écocentrés comme Michel Serres dans *Le Contrat naturel*, 1990.

³ Amartya Sen. *L'idée de justice*, Paris, Flammarion, p. 436.

⁴ La liberté de connaître la tranquillité, op. cit, p. 437.

impartially- according to the objectives of better individual and social well-being it is supposed to reach. To be admissible, judgments highlighting the landscape values expressed by different actors must survive in a democratic debate, based on free and contradictory arguments.

The indignation, writes Amartya Sen, can be used to justify the reason, if not replace it.⁵ Therefore, the right to have a qualified lifestyle being recognized by law, no one shall be excluded from the application of this law, or to challenge it because of the results.

“Petitions developed by the association *Paysages de France* to denounce the excesses of advertising: National Petition “*on nous vole nos paysages*” The wave of billboards - legal or illegal - everywhere in France, pollutes seriously the daily lives environment of the citizens. The degradation has often taken an intolerable magnitude. Face to this open disrespect of the people and the common heritage, I urge governments to: 1) get our landscapes rid of all illegal billboards 2) to reform the articles L 581-1 to L 581-45 of the Code of environment (old 12.29.1979 law) for an effective protection of our living environment.”⁶

⁵ Op. cit., p. 462.

⁶ <http://paysagesdefrance.org/spip.php?rubrique121>