

## PROTECTION OF HUMAN RIGHTS TO THE CITY AND PRESERVATION OF HISTORIC URBAN LANDSCAPES: WAYS TO COHERENCE

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**Abstract.** Presuming that principles of international law reflect common values and moral attitudes of the humankind, the author analyses a mutual dissociation of three fields of international law – human rights to the city, rights to cultural heritage, and preservation of historic urban landscapes (HULs) – and looks for legal models of their cohesion. Based on analysis of legal and doctrinal texts of the UN, the UNESCO, the UNECE, the Council of Europe and the ICOMOS, the author states that since historic HULs usually are both heritage sites and habitats, people related multichotomous values and interests to them. Human rights to the city are equality, non-discrimination, social cohesion, security, protection for vulnerable persons and groups, right to public mobility, housing, education, healthy environment, etc. Legislation on culture and heritage is focusing on cultural identity, diversity, and continuity; it is paying less attention to human, civil, and communal rights, therefore may even pose a threat to them. The conventions cause this mutual dissociation less than confrontations while implementing. Next, issues of HULs usually are trans-sectorial, soluble on macro-levels, and located outside protected areas. However, on these macro-levels of development heritage tends to be treated as “marginal”, “out of system”, and might be perceived as excess activities, causing restrictions for other vital interests of communities and individuals. Social activities for cultural sustainability create tensions between communities and developers. Globalization pressures strengthen this tendency. Under such situation, heritage preservation may even threaten other human rights. On the other hand, HULs – due to their eco-cultural qualities – can sustain human well-being, dignity, and the right to life. These urban areas tend being sociopetal, coherent, and sustaining face-to-face interactions in a familiar and secure environment. Due to an important added value, created by them, integrated legislation has a huge cross-sectional potential for preservation and continuity of HULs’ in the context of human rights to the city. The new legal instruments that entered into force in 2011 – The UNESCO Recommendation on Historic Urban Landscapes and The Council of Europe Faro Convention – might be used as prototypes for cohesion of these and similar human rights.

**Keywords:** Cultural rights, Council of Europe, EU, heritage law, historic urban landscape, human rights to the city, urban conservation, UN habitat, UNESCO, ICOMOS, sustainable cultural development.

### Introduction and background perspectives

Urban heritage issues are tightly related to human, social, and cultural rights, though this relationship tends to be underestimated in urban conservation, and even in heritage legislation. As a result, urban conservation loses a powerful tool of support and sustenance.

On its way to success, a new UNESCO concept of urban heritage landscapes must take into account a variety of specific issues. This text refers to three *inevitables*: (i) clear articulations of what is really going on in practice; (ii) effective, especially leveraging legal tools; (iii) inclusive legitimating of human and social rights to

culture and heritage altogether with the public participation rights in decision-making (right-to-know-and-consider) and access to justice (right-to-sue)<sup>1</sup>.

Though each of the three fields of law is presented by a wide range of studies, there are practically no comparative cross-sectorial analyses of relevant legal sources from a cultural perspective chosen by the author.

<sup>1</sup> For this paper *heritage* does not cover issues specific to *movable heritage*, and *international legislation of culture and heritage* exclude specialized instruments (on armed conflicts like *The Hague Convention*, and on more narrow subjects like underwater cultural heritage, etc.)

Through implemented principles of the international law, **international agreements on human and social rights** reflect the global discourse on fundamental human values, common beliefs and moral attitudes of humankind. Based on a complicated consensus between culturally different, but equally sovereign states, these legal instruments are ethical statements, suggesting a global vision of the more just, tolerant, peaceful, beautiful, and wise world that should be created and sustained for current and future generations.

**National legislation on cultural heritage** may, however, differ from country to country, and from region to region. Without taking into account differences in legal traditions and generic cultural identities, a common international *know-how* happens to miss national and especially local targets; as a result, it may be less effective in critical situations, such as increasing pressures of new development on historic urban areas, not excluding World Heritage Sites (just to mention the recent *rush to erect skyscrapers* in historic centres of European cities).

**An intrinsic role of the contemporary heritage preservation in human cultures** should be taken into account as well. Heritage preservation is a specific social instrument of cultural *self-defence* that emerges as an inevitable substitute of broken or lost traditions, sometimes becoming a *last resort* in sustaining and continuing cultural identities of human societies (Markevičienė 2006: 81). From this perspective, a permanently broadening concept of cultural heritage, together with an increasing inclusion of large structures, such as cultural landscapes and their systems, is a response to the cultural shift that happens now in our commercially globalizing world.

**A balance between hard law and soft law** also has to be reconsidered. That society has a rule-governed character is a standard sociological axiom; without this feature of rule-governance, individual and social behavior is bound to lapse into randomness and radical contingency (Dallmayr 1992: 3). However, heritage conservation professional community tends to be rather sceptical towards *hard* law. In day-to-day urban conservation preference is often given to *soft* law, such as case-to-case decisions based on mutual agreements between various formal and non-formal actors on the urban development arena, or moral attitudes and obligations, as well as targeted *know-how*, carried by conservation professionals and heritage authorities.

Unfortunately, this *soft* way is the most effective in ideal situations of comprehensive mutual agreements. Under a conflict situation *powers* enter the game, and options for heritage preservation often cannot resist

against other pressures. Then, a *hard* legal background may become *the last resort* both for heritage authorities in their public service and for the public concerned in heritage preservation. In addition, it helps in case of gaps between legislation and law enforcement.

## **I. Human rights – a support to or a pressure on culture and heritage?**

**I. International law on human rights** refers to fundamental cultural issues in a more than laconic way. *The UN Universal Declaration on Human Rights* (1948) (4) indicates *cultural rights*, relating them to fundamentals, such as personal dignity, individual development, and social participation, providing that everyone, as a member of society, is entitled to realization of the economic, social and *cultural rights* indispensable for his dignity and the free development of his personality, and has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits (Art. 22, Art. 27, para. 1). Parallel to **rights**, the *Declaration* assigns individual's **duties** to the community, and draws **limits** to personal rights and freedoms (Art. 29). However, it *does not elucidate the specific relationship between individuals, communities, and nations, and do not clarify how conflicts among these three entities could or should be resolved* (Silverman, Ruggles 2007: 4). Follow-up legal instruments – *The UN International Covenant on Economic, Social and Cultural Rights* (1966) (6) and *The UN International Covenant on Civil and Political Rights* (1966) (5) – are similar to the *Declaration* in not clarifying, what *cultural rights* really mean.

**2. International indicators on human well-being**, such as the *UN Human Development Index* (HDI), and the *UN Commission on Sustainable Development* (CSD) *indicators* (27) consistently omit issues on culture and heritage, as well as on cultural aspects of sustainable development<sup>2</sup>.

The same is true with the *UN Program on Sustainable Development AGENDA 21*, as well as with **economically biased international indicators**, such as the *GDP indexes*, or more sophisticated systems like the *Genuine Progress Indicator* (GPI), the *Societal Capacity to Commit Resources* (SCCR), or *The Economist Intelligence Unit's Quality of Life Index* (LQI) (19).

From an anthropological perspective, almost all of these notions have cultural facets – and factually every of these facets has been overlooked in the mentioned

<sup>2</sup> However, the *UN Human Development Report 2006* notes that the *Index* is not in any sense a comprehensive measure of human development (28)

legal instruments. For example, there are indicators on biodiversity, but nothing is related to human cultural diversity, though both concepts are compared, and sometimes equalized at academic discourses. No wonder that in common “Realpolitik”, not talking about economic life, cultural heritage is often treated either as potential commodities on a free market, or as obstacles to new developments, but not as irreplaceable cultural resources. Socio-cultural consequences of heritage losses are neither classified, nor estimated.

This is especially true for urban heritage. A vast majority of historic urban areas are both heritage sites and habitats. Multichotomous values, needs, aspirations, and interests are related to and targeted at the same historic environments. These contradictory aims often lead to conflicts, which result in losses both of tangible and intangible urban heritage. More often than not, urban heritage is of no priority in legal instruments related to urban life; and in the context of human rights it may be *forgotten* or just added as an *embellishment of life*, a pleasure, non-vital for human well-being.

Are cultural considerations of *residual* nature in major human rights instruments, as Logan suggests? Quoting Asbjørn Eide and Allan Rosas (2001: 289) note that in both the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966), “cultural rights” seem like a left-over category coming at the end of the rights listed in both documents, he gives an excuse: *this seems to be largely by accident rather than design, the result of the relatively late recognition of cultural rights. But this in turn probably reflects a perception in the general community (and particularly the legal community drawing up the human rights instruments) that cultural matters are less critical than the economic, political, and social* (2007: 40).

However, the problem is more faceted. On the whole, international law is rather uneasy about cultural issues – they seem indefinable, fuzzy, unprovable, and complicated to estimate. Perhaps everybody agrees that culture, including heritage, is the essence of human life; that many conflicts, even wars have been triggered by distinctions between cultural identities, and people have been murdered or sacrificing their lives for cultural reasons. On the other hand, there are no evident proves or precise appraisals on a direct harm to individuals and/or communities that could be caused by cultural changes or losses of heritage (such as a destruction of an old historic district, or an erection of skyscrapers nearby monuments). A loss of cultural relationships does not necessarily lead to physical disadvantages and oppressions of individuals and groups.

Helaine Silverman and Fairchild D. Ruggles note that values related to human life are by no means equal with values related to culture and heritage: *The loss of heritage can easily be decried as a crime that affects multiple generations, erasing cultural memory and severing links with the past that are integral to forging and maintaining modern identities. Yet it is dangerous to place commensurate value on people and things and to couch these acts in a language reserved for genocide, since they do not inhabit the same order of existence* (2007: 5). Finally, it is not clear, how issues of *vital interests* should be distinguished from issues of *taste and imagination*.

Cultural heritage is commonly positioned as *shared common good*. However, Silverman and Ruggles point out one more specific facet – that culture and heritage are by no means a *neutral* category of self-definition, nor an inherently positive thing: heritage can either unite, or divide, be perceived as a *fundamentally good thing*, and serve as a *tool for oppression*. According to them, *for this reason, heritage has an uneasy place in the United Nations’ call for universal human rights and it merits examination as an urgent contemporary problem* (2007: 3).

Whatever the reason, it does not change the fact. This omitting attitude provokes responses. For example, the **Submission** prepared by ICOMOS for the *Workshop to reflect on the Future of the World Heritage Convention*, 25–27 February 2009 UNESCO, **has attributed human rights’ issues associated with natural and cultural heritage**, as well as **the economic and social sustainability of the local context to global pressures impacting on the conservation outcomes** – putting them in a line with other major threats, such as climate change; rapid pace and scale of urban development, and the associated role of global capital; rapid demographic change; poverty and local under-development; complex relationships between tourism, conservation and the well-being of local communities, etc. (2008: 4). This statement looks like a paradox only at the first sight.

3. Contrary to this ‘cultural laconism’ of the international law on human rights, **international conventions on culture and heritage** tend to *explain what culture really is and why it is so important* to individuals, peoples and communities. Consequently, they present an ideal outlook on the subject and indicate relevant human aspirations, becoming an excellent tool in raising awareness, as well as in assisting any positive national activities for protection, safeguarding, and maintenance of cultural heritage. However, they are less effective in a case of cultural conflicts, since they do not clarify some crucial definitions, and introduce rather limited remedies for enforcement of their provisions.

As regards definitions, conventions on culture and heritage paradoxically **do not define the very concept of culture**. This is true to *The UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage* (1972), *The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage* (2003), *The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005). In addition, the latter gives no definition of its derivative key concept – *cultural diversity*.

From a socio-anthropological perspective this option might be correct, taking into account a variety of concepts on culture and flexibility of their interpretations that exist in the global discourse. Yet in practice it happens to be misleading, especially in the context of globalization, where *corporate* or *enterprise culture* is a word on the lips, but the common definition denotes an opposite order: *an organizational or social environment that encourages and makes possible initiative and innovation. /.../. A society with an enterprise culture facilitates individuality and requires people to take responsibility for their own welfare. /.../. Governments /.../ promoted an enterprise culture by introducing market principles into all areas of economic and social life. These included policies of deregulation of financial services, privatization of utilities and national monopolies, and commercialization of the public sector*<sup>3</sup>.

From a legal point of view this unclearness is a systemic gap, which may lead to stalemate situations and event to a dead-end for heritage in decision-making, as well as in complicated judicial debates, if taken by experienced barristers, protecting pure profit-oriented developers.

As regards human rights to culture and heritage, the Conventions are rather limited in providing for them, because they do not assign the public rights for access to justice, in particular for *locus standi* – a foundation stone of the right of the individuals or groups to take action where wrong exists. This is in contrary to the fundamental principle of law *ubi ius ibi remedium* (where there is a right, there is a remedy). In addition, legal actors under the Conventions are limited to nations (peoples), which by virtue of fact are represented only by national governments.

All this weakens binding forces of the Conventions in case of a conflict. Due to *soft formulas*, notions of the Conventions on culture may be (and sometimes are) perceived as a **wishful thinking** rather than obligations under the international law.

## II. Public participation – voices in the wilderness?

Human rights are considered to be natural-born **rights** of every human being. These universal rights are supposedly not a privilege: they are not *earned* and do not carry obligations (Barkan 2007: 187). This, however, does not exclude interpersonal and socio-cultural **duties**, including an obligation to future generations. The third pillar of legislation on human rights is a set of **remedies** against rights violation.

### 1. Human rights to the environment

Perhaps, the most interesting tool for active protection of human and civil rights, and a potential model for urban heritage legislation is *The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (*The Aarhus Convention*). It relates rights to environment to general human rights by recognizing that *adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself; and that every person has the right to live in an environment adequate to his or her health and well-being, and the duty to protect and improve the environment for the benefit of present and future generations*. These rights and duties are related to relevant **remedies**: *to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters* (*The Preamble*). This way the Convention entitles the public with procedural rights in these areas, and imposes on States Parties obligations regarding access to information and public participation, as well as backs up these rights with access-to-justice provisions that go some way towards putting teeth into the Convention, providing for government accountability, transparency, and responsiveness (*The Aarhus Convention: an Implementation Guide... 2000: 1*). Being an *umbrella-type procedural* instrument, the Convention proved to be a success in many States Parties. It is widely known, applied by national authorities and especially by the public, and really helps avoiding many potential social conflicts related to human environment, and finding satisfying mutual agreements instead (Markevičienė 2008).

### 2. Human rights to cultural heritage

The Conventions on culture and heritage do not provide for human rights to the same extent. Basically they do not legitimize any remedies against violation of the given rights. Hence concerned individuals, groups and communities sometimes have a *voice*, but the public authorities have *no obligation to hear* what has been

<sup>3</sup> Source: QFinance: *Finance and Business Dictionary*. Online: <http://www.qfinance.com/dictionary/enterprise-culture>. Looked on March 3, 2011

said and to take these voices into considerations. Even in a case of the World Heritage, there is no way to submit an individual claim against a state party to the Convention, when it fails to protect this heritage.

In order to avoid increasing social tensions, and gain the widest possible support for heritage preservation, public participation in cultural and heritage issues needs to be legitimated on an international level, maybe by relevant protocols to the Conventions.

In addition, there is a legal gap between cultural rights and heritage preservation. According to Logan, this is mainly due to lack of mutual understanding between professionals: linkage between protection and preservation of cultural heritage and cultural rights as a form of human rights is too often ignored or inadequately understood by scholars working in the cultural heritage field, not clearly understood by cultural heritage practitioners in many countries who too frequently view their work merely as technical, and finally, poorly understood by human rights experts and international law specialists, despite the abundance of opportunities around the world to witness people struggling to assert their cultural rights in order to protect their cultural heritage and their cultural identity (2007: 34).

The same is true regarding interactions between experts, governments and the public. According to Logan, recently UNESCO has promoted the view that heritage protection does not depend alone on top-down interventions by governments or the expert actions of heritage industry professionals, but must involve local communities, and that many conflict situations facing professionals can be avoided or minimized where the local community is engaged in the decision-making processes from the outset. (2008: 3, 5).

*The Council of Europe Framework Convention on the Value of Cultural Heritage for Society* (the *Faro Convention* 2005, entry into force June 1, 2011) is one of the first steps. It legitimates individual and community rights to and responsibilities towards cultural heritage, and for this purpose introduces fundamental legal notions: heritage as *resources* for sustainable development and quality of life; *social cohesion* by fostering a sense of shared responsibility towards the places in which people live; rights related to cultural heritage as being *inherent in the right to participate in cultural life*; *obligatory recognition of the public interest in cultural heritage* and consideration of values of *heritage communities*, *access to cultural heritage and public participation* as involvement in the process of identification, study, interpretation, protection, conservation and presentation of the cultural heritage, as well as in public reflection and debate on the opportunities and challenges which the cultural heritage represents, etc. Being new to exist-

ing international heritage law, this model is very close to actual environmental legislation (namely the *Aarhus Convention*). An ongoing process of its accession/ratification indicates clearly that the Convention is of special importance to countries being under heavy pressures of new development and undergoing major transformations of national legal and/or economic systems<sup>4</sup>.

For the mentioned reasons both the *Aarhus* and the *Faro* conventions may serve as valuable models for preservation and cultural continuity of large heritage sites and territorial systems, as well as a legal framework for both international and national legislation on historic urban landscapes worldwide.

### 3. Human rights to the city

The end of the 20<sup>th</sup> and the beginning of the 21<sup>st</sup> century is marked by overall cultural transformations. Due to a rapid increase in the world urban population altogether with socio-cultural shifts, caused mainly by internal and external migration, the scope of human rights tends to expand from individual well-being to social and cultural existence, as well as **to citizens' rights in the city and to the city**.

On the other hand, historic areas usually are *large and inhabited morphologic structures* with a *variety and multichotomy of site-related existing and potential usages*.

In this context historic urban landscapes are a very vulnerable heritage, and their preservation faces strong challenges: (i) area-related development issues tend to be trans-sectorial, and soluble not on micro-, but on macro-levels, often outside the sites; (ii) activities in the field of human rights to the city are targeted in equality and non-discrimination, social cohesion, urban security, adequate housing, education, healthy environment, etc.; all these needs may be satisfied in various ways – hence heritage preservation is not an inevitable precondition; (iii) equalization of all the cultural (including urban and architectural) expressions, wherever they took place; in practice this often leads to a *clash of values*, especially in protected areas; (iv) cultural and urban preservation activities tend being self-focused, and paying less attention to wider issues of urban development, such as human, civil and communal rights, environment, health, and social welfare.

<sup>4</sup> Status as of 22/10/2011: ratifications/accessions (Bosnia and Herzegovina, Croatia, Georgia, Latvia, Luxembourg, Moldova, Montenegro, Norway, Portugal, Serbia, Slovenia, The former Yugoslav Republic of Macedonia); signatures not followed by ratifications (Albania, Armenia, Bulgaria, San Marino, Ukraine). Source: Council of Europe Framework Convention on the Value of Cultural Heritage for Society CETS No.199. Online: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=199&CM=8&DF=22/10/2011&CL=ENG>

As a result, heritage conservation may clash with, and even threaten, other human rights. It may be also perceived as excess activities, causing unnecessary restrictions to development and other vital interests of communities, groups, and individuals. No wonder that on urban macro-levels heritage issues tend to be treated as *marginal, non-important, of no priority, non-integral, out of system, complimentary and residual*.

Globalization pressures strengthen this *tendency for marginalization of urban heritage issues*. In addition, groups and communities acting for preservation are increasingly **stigmatized** by corporations and bureaucrats **with labels** like NIMBY (which is an acronym for Not-In-My-Backyard), NIABY (Not-in-Anyone's-Backyard), LULU (Locally-Undesirable-Land-Usage), NOTE (Not-Over-There-Either), NOPE (Not-on-Planet-Earth), BANANA (Build-Absolutely-Nothing-Anywhere-Near-Anything), or CAVE people (Citizens-Against-Virtually-Everything). These stigmatizing campaigns seek to *shut up* the public; sometimes they go further to *slapping* (SLAPPs are *Strategic Lawsuits Against Public Participation* – retaliatory lawsuits intended to silence, intimidate, or punish those who have used public forums to speak, petition, or otherwise used constitutionally protected rights to persuade the government to take a particular course of action). Many countries consider slapping a fight against human rights and gradually adopt anti-SLAPP legislation<sup>5</sup>; *the Aarhus Convention* provides for remedies against slapping on an international level.

On the other hand, there is a growing and gaining strength movement of urban communities, including neighbourhoods, called YIMBY (Yes-In-My-Back-Yard). This means something the people demand being put in their area. The latter is often presented as being in contrast and opposition to the NIMBY phenomenon. However, ***YIMBY groups' objectives are in fact similar to those of NIMBY groups***<sup>2</sup>: both are interested in affordable housing, clean energy sources, greenways, quality housing, affordable senior, family, and low-income housing development, access to transit, social, and other services for community's members, public spaces, streets for people, etc.

The major difference is that of *contra* versus *pro* type of response from the public. However, one or another type of response depends rather on public information and consultations agenda, than on “inherently

positive” or “inherently negative” persons/attitudes. Since information and consultations with the public happen from the very beginning, at the initial stage, when “ideas just fly in the air”, public feedback is heard, and concerns are taken onto account, a YIMBY-type response is much more expectable, and vice versa. In other words, ***the same public concerned may give a YIMBY- or NIMBY- type response in the same matter***, reacting adequately to openness, fairness, and transparency of developers/public servants in charge.

**Human rights to the city and in the city** are indicated in a large scope of the UN instruments, related to programs on human settlements (UN-HABITAT) and sustainable development, as well as in documents of related global forums, i.e., *World Urban Forum*, *World Social Forum*, *International Alliance of Inhabitants*, and of European initiatives, such as *European movement of cities for Human Rights*, etc.

*The Global Charter–Agenda for Human Rights in the City* has been initiated by city mayors during the *World Social Forum 2005*, continued under an umbrella of the *World Forum on Human Rights*, created by the UNESCO (SHS), as well as of a global organization the *United Cities and Local Governments* (UCLG); the final document will be presented at UCLG World Council (which will be held in Florence (Italy) in December 2011) for formal approval. As regards cultural rights and rights to heritage, *The Global Charter* stays in the mainstream of the mentioned legal instruments on human rights, i.e. it more than briefly indicates the right to culture, diversity, and to enjoyment of the arts and heritage. Another legal instrument – *The Draft World Charter on the Right to the City* – has been elaborated by the *Social Forum of the Americas 2004*, the *World Urban Forum 2004*, and the *World Social Forum 2005*, under the initiative of NGOs, academic community, and civil society networks. It presents a comprehensive humanitarian background and a holistic communal perspective, including an emphasis on citizens' right to their historical and cultural heritage. The most important is a notion of *the city* both as a physical and immaterial public space, pertaining to all of its inhabitants. *The right to the city* is understood as an equitable usufruct to the city (i.e. the right to use it) – a collective right of the inhabitants (2005: 1–2).

*The Universal Declaration on Emerging Human Rights* has been approved by the *Universal Forum of Cultures* at Monterrey, Mexico in 2007. Many of its guiding principles and human rights are significant to legislation on urban heritage, just to mention: (i) dignity; (ii) interdependence and multiculturalism, which recognizes individuals, peoples, and communities as collective subjects of rights; (iii) justiciability; (iv) the

<sup>5</sup> For example, a majority of the US States have passed ‘anti-SLAPP laws’, Canada, Australia, and some other counties are undergoing the same legislative shift. For SLAPP details see Jennifer Gleason’s “Strategic lawsuits against public participation” (*The Handbook on Access to Justice under the Aarhus Convention*, 2003:59-60).

right be consulted, participate, and challenge before the courts; (v) pluralistic democracy for individuals and communities; (vi) recognition and protection of the common cultural identity; honour and self-image of human groups; (vii) participatory democracy, which *inter alia* comprises the right to the city; (viii) the right to maintain residence in the place of main social relations; (ix) public spaces and attractive town-planning, harmonious and sustainable urbanism; (x) conversion of the marginal city into the city of citizenship, etc.

Human rights are tightly related to human well-being and the enjoyment of basic human rights, including the right to life itself. However, they are *not inseparable* from historic urban landscapes, and can be satisfied in other environments as well. On the other hand, urban conservation has no other way to success than through implementation of these general aims. Historic urban areas are much more than honourable evidences of the Past. Due to their scale, structure, shape, and other eco-cultural qualities they usually are socio-petal, coherent, fitted to small communities, and sustaining face-to-face interactions in a familiar and secure environment, i.e. they are irreplaceable resources for habitat purposes, having a potential for positive socio-cultural shaping of local communities.

Unfortunately, these important added values haven't been defined clearly, and their promotion is not wide enough and convincing. As a result, historic urban landscapes often are underestimated in the entire context of urban development. Thinking about successful preservation under these uneasy circumstances, it is vital to upturn the situation, especially in legal terms.

#### 4. Historic Urban Landscapes

In all this light, the above-mentioned ICOMOS *Submission* is stating correctly that an establishment of the new type of protected areas – historic urban landscapes – is a challenge to *conventional models of urban conservation* (2008: 5). However, it is no less a challenge both to *conventional urban development planning* that treats urban heritage as an added *city décor* – marginal to fundamentals of *real* urban life, as well as to issues of human rights *in* the city and *to* the city.

**A notion of historic urban landscapes as urban habitats** has been initiated by the UNESCO in 2005, passed through a long world-wide debate, and ended in a new standard-setting instrument – *The Recommendation on the Historic Urban Landscape* – that has been adopted by the UNESCO General Conference at its 36th session in November 2011<sup>6</sup>.

The Draft Document states that:

**Urban heritage**, including its tangible and intangible components, constitutes a key resource in enhancing the liveability of urban areas and fosters economic development and social cohesion in a changing global environment; and

**Historic urban landscapes** are the urban areas understood as the result of a historic layering of cultural and natural values and attributes, extending beyond the notion of “historic centre” or “ensemble” to include the broader urban context and its geographical setting; and this wider context includes notably the site’s topography, geomorphology, hydrology and natural features; its built environment, both historic and contemporary; its infrastructures above and below ground; its open spaces and gardens, its land use patterns and spatial organization; perceptions and visual relationships; as well as all other elements of the urban structure. It also includes social and cultural practices and values, economic processes and the intangible dimensions of heritage as related to diversity and identity (Para. 8–9).

Further, *The Recommendation* defines **conservation** as management of resources and a strategy to achieve a balance between urban growth and quality of life on a sustainable basis (Para. 3).

Finally, it proposes a specific instrument – **the historic urban landscape approach** – that:

*Aims at preserving the quality of the human environment, enhancing the productive and sustainable use of urban spaces while recognizing their dynamic character, and promoting social and functional diversity;*

*Integrates the goals of urban heritage conservation and those of social and economic development;*

*Is rooted in a balanced and sustainable relationship between the urban and natural environment, between the needs of present and future generations and the legacy from the past;*

*Considers cultural diversity and creativity as key assets for human, social and economic development and provides tools to manage physical and social transformations and to ensure that contemporary interventions are harmoniously integrated with heritage in a historic setting and take into account regional contexts; and*

*Learns from the traditions and perceptions of local communities while respecting the values of the national and international communities* (Para. 11–13).

*The Recommendation* clarifies challenges, pressures, and opportunities, taking into account economic, demographic, social and environmental issues, and defines policies and tools, such as civic engagement, knowledge and planning, regulatory, and financial tools, as well as capacity building.

<sup>6</sup> Since the Final document has not been published yet, see the Final Draft, presented for adoption, for reference

Relevant important doctrinal principles have been set by the ICOMOS *Valetta Principles for the Safeguarding and Management of Historic Cities, Towns and Urban Areas*, adopted by the ICOMOS XVII General Assembly on 28 November 2011. In addition the General Assembly accepted “Heritage and Landscape as Human Rights” as the main theme of the scientific symposium of the ICOMOS XVIII General Assembly 2014.

The proposed integration of the three rather isolated areas of activities, i.e., of urban conservation, urban planning, and human rights, is innovative from any particular perspective. And an estimated outcome would be a vibrant and continuing historic city, sustained by heritage communities, socio-petal, enhancing social cohesion, safe and friendly to natural and historic environment. It is really worth trying.

### Conclusions

1. Human rights law denotes cultural and heritage rights, however does not precise them, which leads to misinterpretations, as well as to diminishing or neglect of their importance to individuals, peoples and societies.
2. International legislation on culture and heritage is too *soft* for adequate protection of living historic cities.
3. *The UNESCO Recommendation on Historic Urban Landscapes* is a valuable perspective for preservation and continuity of an increasingly endangered urban heritage.
4. In this context, it would be necessary to: (i) legitimize human rights to culture and heritage, as well as public participation in the entire conservation process from the very beginning; (ii) define historic urban landscapes as irreplaceable socio-cultural resources, being a critical factor for formation and continuity of socio-cultural identities, and adding important values to human development; (iii) precise the meaning of *sustainable development* in the process of urban conservation.
4. The *Aarhus* and the *Faro* conventions might become useful legislative models for implementation of fundamental human and socio-cultural rights, related to living in historic cities.

### References

- Barkan, E. 2007. Genes and Burkas: Predicaments of Human Rights and Cultural Property, in Silverman, H.; Ruggles, F. D. (Eds.). *Cultural Heritage and Human Rights*. NY: Springer Science + Business Media, 184–200.
- Council of Europe Framework Convention on the Value of Cultural Heritage for Society (*the Faro Convention*) [online]. 2005. Available from Internet: <<http://conventions.coe.int/Treaty/EN/Treaties/Html/199.htm>>.
- Council of Europe Framework Convention on the Value of Cultural Heritage for Society: state of signification and accession/ratification, 26 February 2009 [online]. Available from Internet: <<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=199&cm=8&df=&cl=eng>>.
- Dallmayr, F. 1992. Hermeneutics and the Rule of Law, in Leyh, G. (Ed.). *Legal Hermeneutics: History, Theory, and Practice*. Los Angeles, Oxford: University of California Press: Berkeley, 3–20.
- Denhez, M. 1997. *The Heritage Strategy Planning Handbook*. Durdurn Press: Toronto-Oxford.
- Draft Global Charter-Agenda for Human Rights in the City*, 2008. 3 version, October 2008 [online]. Available from Internet: <[http://www.spidh.org/uploads/media/CHARTER-AGENDA\\_V3\\_EN\\_oct2008.pdf](http://www.spidh.org/uploads/media/CHARTER-AGENDA_V3_EN_oct2008.pdf)>.
- Handbook on Access to Justice under the Aarhus Convention*. 2003. Stec, S. (Ed.). Hungary: Szentendre [online]. Available from Internet: <<http://www.unece.org/env/pp/a.to.j/handbook.final.pdf>>.
- Logan, W. S. 2007. Closing Pandora’s Box: Human Rights Conundrums in Cultural Heritage Protection, in Silverman, H.; Ruggles, F. D. (Eds.). *Cultural Heritage and Human Rights*. NY: Springer Science + Business Media, 33–52.
- Logan, W. S. 2008. UNESCO, Cultural Diversity, Cultural Heritage and Human Rights, in *3rd International UNESCO Memory of the World Conference*, 19–22 February 2008, Canberra [online]. Available from Internet: <<http://www.amw.org.au/mow2008/mow/speakerPapers/LoganPaper.pdf>>.
- Markevičienė, J. 2006. Concept of Cultural Heritage in the International Law: from the Charter of Venice to the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, in *Cultural Heritage and Society in the 21st Century, National and International Aspects*. Vilnius: ICOMOS Lithuania, 69–90.
- Markevičienė, J. 2008. *The Aarhus Convention and its Implementation in the Republic of Lithuania*. Research project. Vilnius: The State Commission for Cultural Heritage [online]. Available from Internet: <[http://www2.lrs.lt/kt\\_inst/pamink/dokumentai/2008\\_05\\_23/Orhuso\\_pazyma.doc](http://www2.lrs.lt/kt_inst/pamink/dokumentai/2008_05_23/Orhuso_pazyma.doc)>.
- Recommendation on the Historic Urban Landscape. The Draft text of the new proposed Recommendation on the Historic Urban Landscape, as adopted on 27 May 2011 at the Intergovernmental Meeting of Experts on the Historic Urban Landscape (category II) at UNESCO Headquarters, including a Glossary of Definitions*. 36 C/23 Annex. The UNESCO, 2011. Available from Internet: <<http://unesdoc.unesco.org/images/0021/002110/211094e.pdf>>.
- Silverman, H.; Ruggles, F. D. (Eds.). 2007. Introduction, in *Cultural Heritage and Human Rights*. NY: Springer Science + Business Media, 3–22.
- The Aarhus Convention: an Implementation Guide*, 2000. Prepared by Stec, S.; Casey-Lefkowitz, S. United Nations: New York and Geneva [online]. Available from Internet: <<http://www.unece.org/env/pp/acig.pdf>>.
- The Economist Intelligence Unit’s Quality of Life Index (LQI), 2005 [online]. Available from Internet: <[http://www.economist.com/media/pdf/quality\\_of\\_life.pdf](http://www.economist.com/media/pdf/quality_of_life.pdf)>.

*The ICOMOS Submission to Reflection Workshop on the Future of the World Heritage Convention*. 17 October 2008. Paris.

UN AGENDA 21. [online]. Available from Internet: <<http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21toc.htm>>.

UN Commission on Sustainable Development (CSD) indicators. 2007. 3<sup>rd</sup> edition [online]. Available from Internet: <<http://www.un.org/esa/sustdev/natlinfo/indicators/guidelines.pdf>>.

UN Human Development Report. 2006 [online]. Available from Internet: <<http://hdr.undp.org/en/media/HDR06-complete.pdf>>.

UN International Covenant on Civil and Political Rights, 1966 [online]. Available from Internet: <[http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)>.

UN International Covenant on Economic, Social and Cultural Rights, 1966 [online]. Available from Internet: <[http://www.unhchr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhchr.ch/html/menu3/b/a_cescr.htm)>.

UN Universal Declaration on Human Rights, 1948 [online]. Available from Internet: <<http://www.unhchr.ch/udhr/lang/en>>.

UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention), 1998, entry into force 30 October 2001 [online]. Available from Internet: <<http://www.unece.org/env/pp/documents/cep43e.pdf>>.

UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972, entry into force 17 December 1975 [online]. Available from Internet: <<http://whc.unesco.org/archive/convention-en.pdf>>.

UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, 2003 [online]. Available from Internet: <<http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>>.

UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005 [online]. Available from Internet: <<http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>>.

Universal Declaration of Emerging Human Rights, 2007 [online]. Available from Internet: <<http://www.idhc.org/eng/documents/CDHE/DDHE.pdf>>.

World Charter on the Right to the City, 2004, Social Forum of the Americas–Quito–July 2004/ World Urban Forum–Barcelona–September 2004 [online]. Available from Internet: <[http://portal.unesco.org/shs/en/files/8218/112653091412005\\_-\\_World\\_Charter\\_Right\\_to\\_City\\_May\\_051.doc/2005%2B-%2BWorld%2BCharter%2BRight%2Bto%2BCity%2BMay%2B051.doc](http://portal.unesco.org/shs/en/files/8218/112653091412005_-_World_Charter_Right_to_City_May_051.doc/2005%2B-%2BWorld%2BCharter%2BRight%2Bto%2BCity%2BMay%2B051.doc)>.

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**Reikšminiai žodžiai:** kultūrinės teisės, Europos Taryba, ES, paveldo teisė, istorinis miestovaizdis, žmogaus teisės į miestą, miestų išsaugojimas, JT-HABITAT, UNESCO, ICOMOS, tvarus kultūrinis vystymasis, konvencijos.

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## ŽMOGAUS TEISIŲ Į MIESTĄ APSAUGA IR ISTORINIŲ MIESTOVAIZDŽIŲ SAUGOJIMAS: SANGLAUDOS LINK

J. Markevičienė

### Santrauka

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