

# ARTYKUŁY

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## The European Landscape Convention with respect to the cultural landscape – a Polish perspective

Europejska Konwencja Krajobrazowa  
wobec krajobrazu kulturowego – perspektywa polska

**Summary:** The aim of this article is to address how the European Landscape Convention (ELC) defines the cultural landscape, and what tools the former provides for the latter's protection. It is also crucial to determine, from the viewpoint of the Polish legal order, how the legislator implements the protection of the cultural landscape into national law. The general thesis of the article is that the ELC creates an integrated model of landscape protection in which the cultural landscape is considered an intrinsic component. The general thesis is accompanied by a detailed thesis that the ELC does not independently create an optimal level of protection for the cultural landscape, but rather shapes the direction that this protection will take. The ELC also defines the cultural landscape, including the mutual relations between natural and cultural values, as well as the perception of the landscape by people. The basic link for the protection of the cultural landscape in Poland is the municipality, which – with the help of planning and spatial development instruments – can directly affect the quality of the landscape. Legal tools

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for the protection of the cultural landscape should also be pursued in the matter of monument protection.

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**Keywords:** The European Landscape Convention, cultural landscape, spatial planning

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**Streszczenie:** Celem niniejszego artykułu jest odniesienie się do tego, w jaki sposób Europejska Konwencja Krajobrazowa (ELC) definiuje krajobraz kulturowy oraz jakie tworzy narzędzia jego ochrony. Kluczowe jest również ustalenie, z punktu widzenia polskiego porządku prawnego, jak ustawodawca implementuje ochronę krajobrazu kulturowego do prawa krajowego. Ogólna teza artykułu brzmi: ELC tworzy zintegrowany model ochrony krajobrazu, w którym krajobraz kulturowy jest traktowany jako jego nieodłączny element. Tezie ogólnej towarzyszy teza szczegółowa, że ELC nie tworzy samodzielnie optymalnego poziomu ochrony krajobrazu kulturowego, ale raczej kształtuje kierunek, w jakim ta ochrona będzie zmierzać. ELC definiuje również krajobraz kulturowy, w tym wzajemne relacje między wartościami przyrodniczymi i kulturowymi, a także postrzeganie krajobrazu przez ludzi. Podstawowym ogniwem ochrony krajobrazu kulturowego w Polsce jest gmina, która – za pomocą instrumentów planowania i zagospodarowania przestrzennego – może bezpośrednio wpływać na jakość krajobrazu. Prawne instrumenty ochrony krajobrazu kulturowego powinny być również poszukiwane w obszarze ochrony zabytków.

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**Słowa kluczowe:** Europejska Konwencja Krajobrazowa, krajobraz kulturowy, planowanie przestrzenne

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## Introduction

At the outset of the new century, a progressive degradation of the landscape – related to the increase of dispersed urbanisation and strong investment pressure – could be observed. More and more often, economic motivations were given priority over the requirements for the protection of monuments and cultural heritage, but also over other values, such as environmental protection. The placement of large-size advertisements in the public space and fairly aggressive activity by developers also diminished the aesthetic value of a given landscape. Thus, it is no wonder that the aesthetics of the environment have increasingly become the subject of scientific reflection. The aesthetic values of the landscape were highlighted, inter alia, by T. Bąkowski<sup>1</sup>,

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<sup>1</sup> T. Bąkowski, *Ochrona krajobrazu w prawie zagospodarowania przestrzennego* [Landscape protection in spatial development law], "Prawo - Administracja - Kościół" 2006, Vol. 26, pp. 35-36.

I. Niżnik Dobosz (from an investment perspective)<sup>2</sup>, who also pointed out that there are no 'aesthetically indifferent' standards<sup>3</sup>. The cultural landscape, through constant references to beauty and art, undoubtedly shapes the aesthetics of the surroundings.

A vital step towards the protection of the cultural landscape on an international scale was the adoption of the European Landscape Convention, developed in Florence on October 20, 2000 under the auspices of the Council of Europe (hereinafter: ELC or Convention)<sup>4</sup>. It is worth indicating that the ELC is an act of international law entirely dedicated to landscape issues. Before the ratification of this Convention, the importance of cultural landscapes was recognized on an international scale through the World Heritage Convention, which was adopted by the UNESCO General Conference in November 1972, and ratified by Poland in 1976 (hereinafter, World Heritage Convention). This convention required the landscapes in question to possess 'Outstanding Universal Value.' It is noteworthy that the ELC applies three adjectives to landscapes in its Preamble and Art. 2: outstanding, everyday, and degraded. Outstanding landscapes are those to which the population has assigned a heritage value. This is why they are usually the subject of protection at the most appropriate level (national, regional or local)<sup>5</sup>. In terms of the relationship between these important conventions, the ELC differs in both form and substance from the World Heritage Convention. The two conventions have different purposes, as do the organisations under whose auspices they were drawn up. One is regional in scope, while the other has world-wide application. The Council of Europe Convention can be regarded as complementary to the World Heritage Convention. As regards its substantive scope, the Council of Europe Convention covers all landscapes, even those that are not of outstanding universal value, but does not deal with historic monuments, unlike the World Heritage Convention<sup>6</sup>. Considering the relationship between conventions, Amy Strecker

<sup>2</sup> I. Niżnik-Dobosz, *Estetyka techniczna i ład przestrzenny jako pojęcia prawa budowlanego oraz prawa planowania i zagospodarowania przestrzeni* [Technical aesthetics and spatial order as concepts of construction law and the law on planning and spatial development], in: I. Niżnik-Dobosz (ed.), *Przestrzeń i nieruchomości jako przedmiot prawa administracyjnego. Publiczne prawo rzeczowe* [Space and property as a subject of administrative law. Public property law], LexisNexis, Warszawa 2012, pp. 481-503.

<sup>3</sup> J.S. Langrod, *Zagadnienia wybrane z praktyki administracyjnej* [Issues selected from administrative practice], Księgarnia Powszechna, Kraków 1938, pp. 12-13.

<sup>4</sup> Europejska Konwencja Krajobrazowa, sporządzona we Florencji dnia 20 października 2000 r. [The Council of Europe Landscape Convention], Dz. U. 2006 No. 14 item 98; European Landscape Convention, Florence, 20.X.2000, Council of Europe, European Treaty Series, No. 176, <https://rm.coe.int/1680080621> [accessed: 11.08.2022].

<sup>5</sup> Glossary of the Information System of the Council of Europe Landscape Convention. Spatial planning and landscape, No. 106, Council of Europe, 2017, p. 48, <https://edoc.coe.int/en/environment/7623-glossary-of-the-information-system-of-the-council-of-europe-landscape-convention-spatial-planning-and-landscape-no-106.html> [accessed: 11.08.2022].

<sup>6</sup> *Explanatory Report to the European Landscape Convention*, Florence, 20.X.2000, Council of Europe, European Treaty Series, No. 176, p. 13, <https://rm.coe.int/16800cce47> [accessed: 11.08.2022].

believes that “given the focus of the World Heritage Convention on landscapes of ‘outstanding universal value’, it was not until the adoption of the European Landscape Convention in 2000 that landscape became democratized”<sup>7</sup>. On the other hand, M.H. Roe reports that

The European Landscape Convention provides a holistic view of landscape that has grown out of contemporary thinking on sustainability and understandings of the human condition related to ecological processes – or culture and nature – and as such it is an important precedent with considerable potential global significance<sup>8</sup>.

The objectives of the ELC are focused on promoting landscape protection as well as planning and organising European cooperation founded on the exchange of experiences and the formation of good landscape practices. The Convention treats the landscape as a relevant element for people living in urban and rural areas. The incontestable advantage of the ELC is the fact that it recognizes both degraded and common areas, as well as unique and priority landscapes. It applies to the entire territory and covers natural, rural, urban, and peri-urban areas, including land, inland water, and marine areas.

The intent of this article is to address the question of how the ELC defines the cultural landscape and what tools it provides for its protection. It is also crucial to determine, from the viewpoint of the Polish legal order, how the legislator implements the purpose of protecting the cultural landscape into national law. The general thesis of the article is that the ELC creates an integrated model of landscape protection in which the cultural landscape is an intrinsic component. The general thesis is accompanied by a detailed thesis that the ELC does not independently create an optimal level of protection for the cultural landscape, but rather shapes the direction it will take. Action at the State level is indispensable so that the provisions of the Convention can reach its intended effect in the domestic legal order. A. Strecker is correct in claiming that the ELC

has ignited an awareness of the importance of safeguarding landscape continent wide (and beyond) and goes a long way to effecting long-term changes through education, awareness-raising, and good landscape planning, but it lacks strength as a legal tool in itself<sup>9</sup>.

Such tools must be created by States. A significant burden of implementing protective tasks concerning the cultural landscape rests with the local authorities.

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<sup>7</sup> A. Strecker, *Landscape as Cultural Heritage*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020, p. 272.

<sup>8</sup> M.H. Roe, *The European Landscape Convention: a revolution in thinking about ‘cultural landscapes’*, “Journal of Chinese Landscape Architecture” 2007, Vol. 23(143), p. 2.

<sup>9</sup> A. Strecker, *Landscape protection in International Law*, Oxford University Press, Oxford 2018, p. 106.

This study will depict the Polish perspective of implementing the Convention in relation to the cultural landscape. Poland adopted the ELC on March 1, 2004, two months before joining the European Union. Undeniably, both these events brought hope for an improvement in the quality of the Polish landscape, given that the ideological basis of the ELC rests on the assumption that the diversity of landscape forms is a core element of the common European cultural heritage.

## A few remarks regarding the definition of cultural landscape against the background of the concept of landscape

As A. Strecker writes, "the term 'landscape' has many nuances of meaning which can be traced to its varying etymological and epistemological origins"<sup>10</sup>. The notion of *landscape* is very extensive and operates both in everyday language and in the natural, biological and geographical sciences, as well as in architecture and urban planning. Geographical and biological sciences treat the landscape as a natural concept, referring to the basic components of the natural and geographical environment<sup>11</sup>. On the other hand, architectural and urban sciences limit the content and meaning of this concept only to external, scenic features and aesthetic values<sup>12</sup>. The concept of landscape in these sciences has been the subject of numerous scientific disputes<sup>13</sup>. Cultural landscapes are intimately intertwined with the human societies inhabiting them and have attracted increasingly interdisciplinary attention. But not all disciplines have put direct value on the cultural landscape concept, so the interest has been uneven, bypassing some social and behavioural sciences while being included in certain physical and biological sciences and humanities<sup>14</sup>. M. Jones is correct when he writes the following on the cultural landscape:

Different disciplines have used the term in different ways, dependent on the academic traditions and methods into which the practitioners of different disciplines have been schooled or socialized<sup>15</sup>.

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<sup>10</sup> Ibidem, p. 9.

<sup>11</sup> B. Żarska, *Ochrona krajobrazu* [Landscape protection], Wydawnictwo SGGW, Warszawa 2003, p. 11.

<sup>12</sup> T. Szczęsny, *Ochrona przyrody i krajobrazu* [Nature and landscape protection], Państwowe Wydawnictwo Naukowe, Warszawa 1971, p. 96.

<sup>13</sup> U. Myga-Piątek, *Spór o pojęcie krajobrazu w geografii i dziedzinach pokrewnych* [Dispute over the concept of landscape in geography and related fields], "Przegląd Geograficzny" 2001, Vol. 1/2, pp. 163-176. They also pointed to cultural aspects as follows: "Considering the need to protect a harmonious, traditional or historic landscape, architects respectfully refer to categories such as the tradition and canon of a place, or regionalism, homeliness and identity of the landscape".

<sup>14</sup> M.P. Conzen, *Cultural Landscape in Geography*, in: *International Encyclopedia of the Social & Behavioral Sciences*, University of Chicago, Illinois 2001, pp. 3086-3092.

<sup>15</sup> M. Jones, *Progress in Norwegian cultural landscape studies*, "Norsk Geografisk Tidsskrift" 1988, Vol. 42, pp. 153-169.

The precursor of this field in Poland, which was engrossed with the cultural landscape, was the Institute of Landscape Architecture in Cracow, led for many years by Janusz Bogdanowski. In the 1980s, an inter-ministerial commission chaired by this researcher drew up guidelines for cultural plans and Bogdanowski conducted a "Landscape Perception" program for Man & Biosphere (UNESCO)<sup>16</sup> for many years. It can be assumed that the present-day definition of *landscape* adopted in the ELC is a specific result of the work of this Institute. According to Art. 1a of the Convention, landscape is "an area perceived by people, the character of which is the result of the action and interaction of natural and/or human factors". Opening the ELC, this definition highlights the mutual correlation of natural and cultural resources. It draws attention to the area character of the landscape as well as its presence in both unique and common, protected and endangered, urban and rural, land and sea forms. K. Olwig suggests that *landscape* is not only a spatially defined area, but also a concept defined by custom and culture over time. He traces these developments to the political and legal origins of landscape as set out in the European Landscape Convention<sup>17</sup>.

In Poland, the legal definition of the term 'landscape' appeared only with the entry into force of the Convention, in spite of the fact that the natural and cultural landscape were present earlier in Polish legislation. It is worth mentioning at this point that the concept of the cultural landscape appeared in Polish legislation for the first time in the Act of 19 July 1990 Amending the Act on the Protection of Cultural Assets and Museums, as established conservation protection zones, reserves and cultural parks<sup>18</sup>. It can be discerned that at that time, the forms of the cultural and natural landscape jointly constituted the essence of the cultural landscape. This is clearly reflected in the work of the Polish National Commission for UNESCO, where 'cultural and natural landscape' is a concept defined broadly, including not only monuments, but also the townscape and its contemporary contexts – such as intangible cultural heritage and cultural diversity<sup>19</sup>. The UNESCO Commission has distinguished three main categories of cultural landscapes: 1) a landscape designed and created intentionally by man; 2) a landscape that has transformed organically,

<sup>16</sup> J. Środulska-Wielgus, K. Wielgus, *Metoda Janusza Bogdanowskiego w badaniach krajobrazu warownego i jej skuteczność w rewaloryzacji zespołów fortyfikacyjnych* [Janusz Bogdanowski's method in the study of fortified landscape and its effectiveness in the revaluation of fortification complexes], in: L. Narębski (ed.), *Dawne fortyfikacje dla turystyki, rekreacji i kultury* [Former fortifications for tourism, recreation and culture], Towarzystwo Opieki nad Zabytkami Oddział w Toruniu, Toruń 2018, p. 25.

<sup>17</sup> K. Olwig, *Editorial: Law, Polity and the Changing Meaning of Landscape*, "Landscape Research" 2005, Vol. 30(3), pp. 293-298.

<sup>18</sup> Ustawa z dnia 19 lipca 1990 r. o zmianie ustawy o ochronie dóbr kultury i o muzeach [Act of 19 July 1990 Amending the Act on the Protection of Cultural Assets and Museums], consolidated text: Dz. U. 1990 No. 56 item 322.

<sup>19</sup> A. Kowalewski, *Znaczenie i kształtowanie środowiska kulturowo-przyrodniczego* [The importance and shaping of the cultural and natural environment], in: S. Ratajski, M. Ziółkowski (eds.), *Krajobraz kulturowo-przyrodniczy z perspektywy społecznej* [Cultural and natural landscape from a social perspective], Polski Komitet do spraw UNESCO Narodowe Centrum Kultury, Warszawa 2000, p. 155.

including relict landscapes; and 3) an associative cultural landscape whose value derives from its religious, artistic or cultural impact, mainly related to nature<sup>20</sup>.

Before the entry into force of the ELC, the concept of landscape existed in various contexts of meaning, once as a component of nature within the meaning of Art. 2, sec. 1 point 7 of the Act of 16 April 2004 on the Protection of Nature<sup>21</sup>, or as one of the elements of the environment within the meaning of Art. 3 point 39 of the Act of 27 April 2001 of the Environmental Protection Law<sup>22</sup>, as well as one of the resource elements of the environment (Art. 81 (1) and (4) of this Act). Moreover, in Polish legislation, landscape is an element forming part of the concept of an immovable monument, as described in Art. 6 sec. 1 point 1 of the Act of 23 July 2003 on the Protection and Guardianship of Monuments – hereinafter referred to as UOZ<sup>23</sup>. Therefore, M. Pszczyński is correct that in the years since Poland signed the Convention, it has not developed comprehensive measures of landscape protection, confining itself mainly to the solutions adopted in the Nature Conservation Act and other normative acts that comprise partial aspects of landscape protection in sectoral regulations<sup>24</sup>.

From the perspective of this research, it is meaningful that the Polish legislator decided to deal with the concept of cultural landscape even before the entry into force of the ELC, recognizing the cultural landscape (pursuant to Art. 3, point 14 of the UOZ) as a space perceived by people, containing natural elements and products of civilization, historically shaped as a result of natural factors and human activity. This definition indicates that the landscape is a result of human and natural activities, taking into account the urban and architectural traditions of a particular cultural area. In this connection, it is essential to note the gradual disappearance of the separation between culture and nature, which was formerly the rule<sup>25</sup>. As A. Strecker reports,

By stating that the landscape is a basic component of the European natural and cultural heritage, the European Landscape Convention departs from the apparent culture/nature dichotomy present in most international legal instruments<sup>26</sup>.

<sup>20</sup> S. Biernat, *Przestrzeń kulturowa a krajobraz kulturowy na listach UNESCO* [Cultural space versus cultural landscape on the UNESCO lists], "Prace Komisji Krajobrazu Kulturowego" 2014, Vol. 24, p. 119.

<sup>21</sup> Ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody [Act of 16 April 2004 on the Protection of Nature], consolidated text: Dz. U. 2022 item 916.

<sup>22</sup> Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska [Act of 27 April 2001 of the Environmental Protection Law], consolidated text: Dz. U. 2021 item 1973.

<sup>23</sup> Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece i zabytkami [Act of 23 July 2003 on the Protection and Guardianship of Monuments], consolidated text: Dz. U. 2022 item 840.

<sup>24</sup> M. Pszczyński, *Park kulturowy a planowanie przestrzenne* [Cultural park vs. spatial planning], "Opolskie Studia Administracyjno-Prawne" 2018, Vol. 16(2), p. 206.

<sup>25</sup> *Council of Europe Landscape Convention. Contribution to human rights, democracy and sustainable development*, Council of Europe, Strasbourg 2018, p. 92, <https://rm.coe.int/council-of-europe-landscape-convention-contribution-to-human-rights-de/16807bffda> [accessed: 11.08.2022].

<sup>26</sup> A. Strecker, *Landscape as Cultural Heritage*, p. 289.

The cultural landscape is also, in a sense, an economic value, as it is often associated with tourism (which always has a smaller or larger economic dimension). It is worth noting that the perspective of people's perception of the landscape is a subjective category, since each person has a unique sense of aesthetics.

## Pillars of the European Landscape Convention

The European Landscape Convention promotes the protection, management and planning of European landscapes and organises European co-operation on landscape issues. The convention entered into force on 1 March 2004 (Council of Europe Treaty Series No. 176). It is open for accession to the countries of the Council of Europe as well as European non-Union member states. It is the first international treaty to be exclusively concerned with all dimensions of the European landscape<sup>27</sup>. There are three pillars of the European Landscape Convention: protection, management and planning constitute the main course of action of public authorities towards the landscape<sup>28</sup>.

Landscape protection within the meaning of the Convention covers activities for the preservation and maintenance of important or characteristic features of the landscape. Landscape management means acting, from the perspective of permanent and sustainable development, in order to ensure the regular maintenance of the landscape. Landscape planning, in turn, emphasizes the reclamation of degraded landscapes. In light of the ELC, it is treated as a process aimed at landscape protection with the possibility of maintaining this resource in a non-deteriorated condition, but also in creating new landscapes. In the Polish legal literature, one can find views alleging that recreating landscapes is crucial in the legal protection of landscapes as a whole<sup>29</sup>. According to J. Ciechanowicz-McLean, *landscape* is an area open to any planned changes that should not be perceived hermetically, with only a conservation nature<sup>30</sup>. In A. Strecker's view, the ELC is important because it recognizes the right of people to enjoy quality landscapes, and essentially promotes a notion of landscape in this context<sup>31</sup>.

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<sup>27</sup> <https://www.coe.int/en/web/landscape/home> [accessed: 21.12.2020].

<sup>28</sup> M. Woźniak, *Filary Europejskiej Konwencji Krajobrazowej a polska wizja ochrony krajobrazu w świetle „ustawy krajobrazowej”* [The pillars of the European Landscape Convention vs. the Polish vision of landscape protection in the light of the “Landscape Act”], “Administracja. Teoria - Dydaktyka - Praktyka” 2016, Vol. 43(2), p. 18.

<sup>29</sup> P. Korzeniowski, *Krajobraz i walory krajobrazowe jako przedmiot ochrony prawnej przyrody* [Landscape and its values as an object of legal protection of nature], “Zeszyty Naukowe Sądownictwa Administracyjnego” 2015, Vol. 622(5), p. 31.

<sup>30</sup> J. Ciechanowicz-McLean, *Prawo i polityka ochrony środowiska* [Law and environmental protection policy], Wolters Kluwer, Warszawa 2009, p. 109.

<sup>31</sup> A. Strecker, *Landscape protection in International Law*, p. 27.



The above-mentioned pillars of the ELC are to be achieved by means of general legal measures addressed to the legislative authority, and specific measures addressed primarily to regional and local authorities. Landscape protection policy is implemented at the central level and covers activities consisting in the creation of instruments aimed at landscape protection, management and planning. Local authorities, on the other hand, within their competences, implement individual instruments according to their needs and social expectations. By signing the ELC, States are committed “to recognise landscapes in law”, “to establish and implement landscape policies”, and “to integrate landscape into [...] policies with possible direct or indirect impact on landscape” (COE, 2000, Art. 5). In this context, they also commit to identifying and characterising landscapes. The integration of landscapes into legislation and spatial planning documents presents itself as pivotal to the implementation of the convention<sup>32</sup>.

## Cultural elements in the content of the European Landscape Convention

Cultural accents permeate the entire content of the ELC. Even in the preamble, it is emphasized that the landscape plays a vital role in terms of culture, ecology and social matters. It contributes to the creation of local cultures and is an essential component of the European natural and cultural heritage. Regardless of where people live (e.g. in urban or rural areas, degraded as well as high-quality areas, in areas of recognized exceptional beauty and common areas), landscape is an important part of people’s quality of life. At the outset, it can be noted that the intention of the ELC is to treat the landscape as an integral whole. It is an element that reflects both natural and cultural values, as well as the mutual relations between these elements. As the Explanatory Report to the European Landscape Convention points out, the concern for sustainable development expressed at the 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<sup>33</sup>.

The added value of the ELC is provided by the definition of landscape contained in Art. 1, point a as an area perceived by people, the nature of which is the result of the action and interaction of natural and/or human factors. Cultural elements fall under the concept of human factors. Therefore, it can be concluded that the cultural landscape is protected to the same extent as the natural landscape by the provisions of the ELC. The Convention does not favour any of these landscapes

<sup>32</sup> I. Loupa Ramos, R. Silva, *The European Landscape Convention at urban scale: insights from an exploratory approach in Lisbon*, “Belgeo” 2015, Vol. 3, <https://doi.org/10.4000/belgeo.16539> [accessed: 16.02.2021].

<sup>33</sup> *Explanatory Report to the European Landscape Convention*, p. 6.

over the other; on the contrary, it places them on equal footing. As already mentioned, there are three main pillars that can be distinguished in the ELC: protection, planning and landscape management. The cultural elements of the landscape, above all, are protected and planned, and the management of the landscape should take into account historical monuments and contemporary cultural goods existing in a given area. Moreover, in the objective scope of ELC contained in Art. 2, it is possible to find elements of the cultural landscape that may fall under the term “exceptional landscape”.

Among the legal measures indicated in the ECL, there are also measures specifically dedicated to cultural landscapes. These consist of activities for the legal recognition of landscapes as a vital component of people’s surroundings, as an expression of the cultural and natural diversity that they share and the basis of their identity, as well as activities for the integration of the landscape with its own policy in the field of regional and urban planning and its own cultural, environmental, agricultural, as well as social and economic policy.

The recognition of the cultural landscape as an important component of the overall landscape in the ELC has also been noticed in literature. As M. Roe believes, the European Landscape Convention embodies revolutionary thinking in relation to the meaning of the term “cultural landscape”. In the author’s view, the ELC presents a holistic approach to the cultural landscape, inherently related to sustainable development with respect to the environment, culture and science<sup>34</sup>. We agree with the author’s view that the ELC is a pioneering instrument and that it is the first international legal document devoted to the landscape as a whole. M. Déjeant-Pons also points out the overall character of the landscape in the definition contained in the ELC, stating that landscape is now understood to have evolved as “a result of being acted upon by natural forces and human beings”. It also underlines that “a landscape forms a whole... [and the...] natural and cultural components are taken together not separately”<sup>35</sup>. Cultural landscapes may be situated in urban, suburban, rural or wilderness areas, and they exist over a continuum of time reaching from the prehistoric to the future at a variety of scales from the domestic to the landscape scale<sup>36</sup>. It is also worth noting that cultural landscapes are sometimes described as “traditional landscapes”. However, in many European countries, only fragments of what could be considered traditional landscapes have survived.

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<sup>34</sup> M.H. Roe, *The European Landscape Convention...*, pp. 10-15.

<sup>35</sup> M. Déjeant-Pons, *The European Landscape Convention*, “Landscape Research”, 2006, Vol. 31(4), p. 379.

<sup>36</sup> M.H. Roe, *Definition and Explanation of the significance of ‘cultural landscapes’ set out on behalf of the Cultural Landscapes Working Group, Le Notre European Union Network Project*, 2003, quoted after M.H. Roe, *The European Landscape Convention...*, p. 4; M.H. Roe, *The European Landscape Convention...*, pp. 10-15.

## The legal model of cultural landscape protection from the Polish perspective

As has already been indicated, the burden of implementing protective tasks for the cultural landscape rests with local authorities. Poland, as a signatory to the ELC, undertook to recognize the landscape as a vital element of the human environment, and to implement and manage the landscape policy by taking into account protection requirements in spatial planning acts.

The model of cultural landscape protection in Poland is of a dual planning and cultural character. By signing the European Landscape Convention (ELC), States are committed “to recognise landscapes in law”, “to establish and implement landscape policies”, and “to integrate landscape into [...] policies with possible direct or indirect impact on landscape” (COE, 2000, Art. 5). In this context, they also commit to identifying and characterising landscapes themselves. The integration of landscapes into legislation and spatial planning documents presents itself as pivotal for the implementation of the convention<sup>37</sup>. The literature on the subject emphasizes that spatial planning is a powerful instrument for implementing landscape policies<sup>38</sup>. At the same time, the sensitivity to landscape issues is greater in the policies for other sectors, such as the environment, cultural heritage, water management, infrastructure, and tourism<sup>39</sup>.

As far as the legal model of cultural landscapes is concerned, in terms of planning, cultural landscape is an element of planning and management, which is conducted in Poland through the use of planning and spatial development instruments. It is worth emphasizing at this point that planning the cultural landscape fulfils the postulates of the ELC, and local authorities have a fundamental role to play here. The Polish Act of 27 March 2003 on Spatial Planning and Development<sup>40</sup> (hereinafter: UPZP) captures the cultural landscape in several contexts. First, the requirements for the protection of cultural heritage and monuments as well as contemporary cultural assets pursuant to Art. 1 sec. 2 of UPZP are treated as highly sensitive in value. The concept of cultural order also falls within the concept of spatial order under Art. 1 sec. 2 point 1 of UPZP. Also, the local plans adopted before January 1, 1995, which, by virtue of transitional provisions, remained in force until the adoption of new plans (but no longer than until December 31, 2003), set out the specific conditions for land development, including the prohibition of building

<sup>37</sup> I. Loupa Ramos, R. Silva, *The European Landscape Convention at urban scale...*

<sup>38</sup> A. De Montis, *Impacts of the European Landscape Convention on national planning systems: A comparative investigation of six case studies*, “Landscape and Urban Planning” 2014, Vol. 124, pp. 53-65.

<sup>39</sup> *Ibidem*.

<sup>40</sup> Ustawa z dnia 27 marca 2003 r. o planowaniu i zagospodarowaniu przestrzennym o planowaniu i zagospodarowaniu przestrzennym [Act of 27 March 2003 on Spatial Planning and Development], consolidated text: Dz. U. 2022 item 503.

development, resulting from the needs of cultural environment protection. Thus, it can be noted that the cultural landscape in UPZP has solid axiological foundations.

In a practical sense, the cultural landscape is one of the obligatory elements of a local spatial development plan, which is the basic legal instrument accepted by municipalities in order to determine the design of areas and to determine the how their use and development will take place. In light of Art. 15 sec. 2 point 4 of UPZP, the local spatial development plan must define the rules for the protection of cultural heritage and monuments, including cultural landscapes and contemporary cultural assets. This means that including immovable monuments and cultural parks in the local spatial development plan is a compulsory element of the plan. Including a monument in a given local spatial development plan, by clearly indicating this form of monument protection, is obligatory, and its absence constitutes a serious violation of the provisions of Art. 15 sec. 2 point 4 of UPZP<sup>41</sup>. One of the most serious threats to the protection of the cultural landscape by means of local spatial development plans is their fragmentation; i.e., their adoption for small areas, often for parts of communes or one housing estate. In this way, local plans cannot effectively synchronize various needs related to the use of space, including the very demanding needs of cultural landscape protection. Local spatial development plans also have many substantive weaknesses, the most serious of which are an incorrect and imprecise diagnosis of the current state of the landscape and the lack of planning references to the same, which may lead to spatial pathologies<sup>42</sup>. In this situation, it is difficult for the local spatial development plan to become a comprehensive platform capable of solving the problems of the cultural landscape.

In areas without a local spatial development plan, space management is carried out by individual administrative acts. Pursuant to Art. 4 sec. 2 of UPZP, in the absence of a local spatial development plan, the development methods and conditions for land development conditions are determined by way of a decision on development conditions. The decision on development conditions is a type of individual planning act which establishes specific conditions and requirements for land development and development for an investment which is not a public purpose investment. The law requires that the decisions shaping the space in areas without a local zoning plan take into account the requirements for the protection of cultural heritage, monuments and contemporary cultural assets. The reason for the requirement to agree on a draft decision on building conditions in terms of conservation protection by the Provincial Monument Conservator serves this purpose. At this point, it is worth mentioning that the conciliation procedure is ancillary;

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<sup>41</sup> Judgement of the Provincial Administrative Court in Gdańsk of August 2, 2017, II SA/Gd 423/16, published LEX No. 2345386.

<sup>42</sup> M. Jać, P. Jać, *Planowanie przestrzenne - o potrzebie i kierunkach zmian* [Spatial planning - on the need and directions of changes], in: I. Zachariasz (ed.), *Kierunki reformy prawa planowania i zagospodarowania przestrzennego* [Directions of the reform of spatial planning and development law], Wolters Kluwer, Warszawa 2012, pp. 301-302.

i.e., related to the main case for issuing an administrative decision. Its task is to provide evidence to the body conducting the main proceedings through a specialized body; in the field of protection of cultural heritage and monuments, this is done by the Provincial Monument Conservator<sup>43</sup>.

In terms of planning, the ELC led to a number of changes in the Polish legal system aimed at ordering the normative aspects of the landscape. These changes were related to the adoption of the Act of 24 April 2015 on Amending Certain Acts in Connection with the Enhancement of Landscape Protection Tools<sup>44</sup>. Despite its many drawbacks and weaknesses, the Landscape Act has undoubtedly contributed to unification of the legal model of landscape protection. Owing to this Act, in the Act of 23 July 2003 on the Protection and Guardianship of Monuments – the definition of *cultural landscape* was changed to add that apart from human activity, it can also be shaped by natural factors (Art. 3 point 14 of UOZ).

The Landscape Act imposed additional obligations on communes with respect to their planning activities. According to Art. 10 sec. 1 point 3 and 4a UPZP, a commune is obliged to include in the spatial development conditions and directions study for a commune area, inter alia, landscape protection requirements (including the cultural landscape), as well as recommendations and conclusions contained in the landscape audit or the boundaries of priority landscapes defined by the landscape audit. Also, when creating a local spatial development plan, the head of the commune, mayor or president of the city determines, among others, the “Rules for the protection of cultural heritage and monuments, including cultural landscapes, and contemporary cultural assets” (Art. 15 sec. 2 point 4 of UPZP). At the same time, the Landscape Act abolished the obligation to include in the local spatial development plan the rules and conditions for the location of small architecture objects, advertising boards and devices as well as fences, their dimensions, quality standards and types of building materials from which they can be made (Art. 15 sec. 3 point 9 UPZP).

One of the most relevant tools for landscape protection introduced in the Landscape Act (including the cultural landscape) is the resolution on the rules and conditions for the location of small architecture objects, advertising boards, advertising devices and fences (also known as an advertising resolution or landscape resolution). This is the second act of local law in this field (apart from the local spatial development plan), and similarly to the plan, it is optional. The legal nature of this resolution, as well as the rules and procedure for its adoption, are regulated by the provisions of Art. 37a-37e. It is a which a commune can use to organize the issue

<sup>43</sup> The decision of the Supreme Administrative Court of 13 March 2019 II OSK 999/17, published LEX No. 2705157.

<sup>44</sup> Ustawa z dnia 24 kwietnia 2015 r. o zmianie niektórych ustaw w związku ze wzmocnieniem narzędzi ochrony krajobrazu [Act of 24 April 2015 on Amending Certain Acts in Connection with the Enhancement of Landscape Protection Tools], Dz. U. 2015, item 774. The law entered into force on September 11, 2015, hereinafter referred to as UK or the landscape act.

of advertisements in public space, which have an impact on the aesthetics of the landscape. Before the enactment of these regulations, the protection of the cultural landscape against the so-called advertising chaos could only be ensured in the areas of cultural parks and areas covered by local spatial development plans.

The instrument in the form of a landscape resolution was not successful in Poland due to numerous complaints lodged with administrative courts by the advertising industry. Nevertheless, the very idea that the regulation of landscape protection should be included in one such act was correct. In fact, this should have been required of the public authorities in relation to the ratification of the European Landscape Convention. Furthermore, it is through the practical application of the Landscape Act that one can speak of the indirect application of the ELC as a source of law in Poland. Unfortunately, when ruling on the subject of landscape, the administrative courts do not refer directly to the ELC; therefore, it is not possible to speak of a well-established case study in this respect. Therefore, A. Strecker is correct that

While the European Landscape Convention has ignited the awareness of the importance of safeguarding landscape continent-wide (and beyond) and goes a long way to effecting long-term changes through education, awareness-raising, and good landscape planning, it lacks strength as a legal tool in itself<sup>45</sup>.

In the second of the aforementioned aspects, i.e. in the cultural aspect, the protection of the cultural landscape takes place primarily through the creation of cultural parks. This issue, however, is vital and in itself calls for a separate study. For the needs of this article, it should be noted that the target for creating a cultural park is the protection of cultural landscape and the preservation of a landscape's distinctive areas with immovable monuments characteristic of the local building and settlement tradition (Art. 16 (1) of the Act on UOZ). The area in which the commune council creates a cultural park has an ordered spatial situation, as a local plan is obligatory for this area. During the process of cultural park creation, the Provincial Monument Conservator watches over the protection of cultural values, the person holding this position expresses his/her opinion on the draft resolution of the commune council on the creation of the park. The resolution itself is optional, so this form of protection of the cultural landscape is not dominant in the public space. Yet, in those areas where the relevant resolution has been adopted, the cultural park undoubtedly contributes to the preservation of the cultural and landscape heritage for current and future users<sup>46</sup>. In order to summarize the essence of the cultural park, it is worth using the thesis of the judgement of the Provincial Administrative Court:

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<sup>45</sup> A. Strecker, *Landscape as Cultural Heritage*, p. 290.

<sup>46</sup> M. Pszczyński, op. cit., p. 212.

The purpose of the resolution on the cultural park is to protect the cultural values of a specific, historically shaped space as a whole. Thus, this protection also covers non-material aspects in the form of the general impression, atmosphere of the place, its micro-climate, comfort of stay or movement. The content of the resolution on the cultural park is not so much about maintaining the structure and façades of individual buildings in proper condition, but about creating, *inter alia*, with the help of prohibitions and restrictions, conditions that optimally protect, and, at the same time, expose the historically shaped space, and more specifically the way it is 'perceived' (which the legislator highlighted in the legal definition of cultural landscape)<sup>47</sup>.

Other forms of protection of the cultural landscape can be found in the UOZ. Pursuant to Art. 7 of the UOZ, apart from creating a cultural park, these are: entry in the register of monuments; entry on the Heritage Treasures List; recognition as a historical monument and establishing protection measures in the local spatial development plan or in the decisions referred to in this provision (including decisions on building conditions). It can therefore be seen that these aspects overlap, since the UOZ points to the planning instruments for the protection of cultural landscape discussed above. The other indicated forms of protection of the cultural landscape should be demonstrated here, emphasizing that their characteristics go far beyond the scope of the current study.

## Summary

Returning to the research questions posed at the onset, the ELC defines the cultural landscape in such a manner that it imposes an inclusion of the mutual relations between natural and cultural values, as well as the perspective of landscapes' perception by people. The ratification of the ELC has had a decided impact on the model of cultural landscape protection in Poland, which is currently characterized by integrity, owing to the formation of a systemically coherent definition of the cultural landscape. Notwithstanding these limits,

the lack of legal force should not undermine the enormously positive role and influence of the ELC on landscape discourse and society more broadly and on the renewed activity taking place across Europe on the part of civil society organizations, communities and groups [...]. In addition, the ELC has had some success in effecting change in planning laws throughout Europe and has led to the development of landscape strategies and landscape character assessment<sup>48</sup>.

The mandate to protect the cultural landscape espoused by the ELC is reflected in the actions of public bodies. At the legislative level, an attempt has been made to protect the cultural landscape through, among other things, the Land-

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<sup>47</sup> Judgement of the Provincial Administrative Court in Wrocław of 20 December 2017, IV SA/Wr 589/17, published LEX No. 2428497.

<sup>48</sup> A. Strecker, *Landscape as Cultural Heritage*, p. 292.

scape Act and ordering the regulations contained in the Act of 27 March 2003 on Spatial Planning and Development and the Act of 23 July 2003 on the Protection and Guardianship of Monuments. These laws provide various useful legal tools addressed to regional and local authorities, with whose help these bodies can take imperative actions for the protection, management and planning of the cultural landscape. The burden of protecting the cultural landscape rests primarily with the commune, which has the legal instruments reinforced as a result of the ELC's ratification at its disposal. The fundamental role here is played by planning and spatial development tools, but also by cultural parks. Bottom-up activities, undertaken at the level of the lowest local government unit, give hope for a constant improvement of quality in the cultural landscape, as do the ratification of the Convention and the subsequent actions of public authorities, which constitute an essential link in this process. Eventually, it must be stressed that the cultural landscape is a form of local and regional heritage, which is a carrier of social memory about the past and a guarantee of the development of future generations, and must therefore be protected having regard to its unique character.

## References

- Bąkowski T., *Ochrona krajobrazu w prawie zagospodarowania przestrzennego* [Landscape protection in spatial development law], "Prawo – Administracja – Kościół" 2006, Vol. 26.
- Biernat S., *Przestrzeń kulturowa a krajobraz kulturowy na listach UNESCO* [Cultural space versus cultural landscape on the UNESCO lists], "Prace Komisji Krajobrazu Kulturowego" 2014, Vol. 24.
- Ciechanowicz-McLean J., *Prawo i polityka ochrony środowiska* [Law and environmental protection policy], Wolters Kluwer, Warszawa 2009.
- Conzen M.P., *Cultural Landscape in Geography*, in: *International Encyclopedia of the Social & Behavioral Sciences*, University of Chicago, Illinois 2001.
- Council of Europe Landscape Convention. Contribution to human rights, democracy and sustainable development*, Council of Europe, Strasbourg 2018, <https://rm.coe.int/council-of-europe-landscape-convention-contribution-to-human-rights-de/16807bffda> [accessed: 11.08.2022].
- De Montis A., *Impacts of the European Landscape Convention on national planning systems: A comparative investigation of six case studies*, "Landscape and Urban Planning" 2014, Vol. 124.
- Déjeant-Pons M., *The European Landscape Convention*, "Landscape Research", 2006, Vol. 31(4).
- European Landscape Convention, Florence, 20.X.2000, Council of Europe, European Treaty Series, No. 176, <https://rm.coe.int/1680080621> [accessed: 11.08.2022].
- Europejska Konwencja Krajobrazowa, sporządzona we Florencji dnia 20 października 2000 r. [The Council of Europe Landscape Convention], Dz. U. 2006 No. 14 item 98.
- Explanatory Report to the European Landscape Convention*, Florence, 20.X.2000, Council of Europe, European Treaty Series, No. 176, <https://rm.coe.int/16800cce47> [accessed: 11.08.2022].



- Glossary of the Information System of the Council of Europe Landscape Convention. Spatial planning and landscape, No. 106, Council of Europe, 2017, <https://edoc.coe.int/en/environment/7623-glossary-of-the-information-system-of-the-council-of-europe-landscape-convention-spatial-planning-and-landscape-no-106.html> [accessed: 11.08.2022].
- <https://www.coe.int/en/web/landscape/home> [accessed: 21.12.2020].
- Jać M., Jać P., *Planowanie przestrzenne – o potrzebie i kierunkach zmian* [Spatial planning – on the need and directions of changes], in: I. Zachariasz (ed.), *Kierunki reformy prawa planowania i zagospodarowania przestrzennego* [Directions of the reform of spatial planning and development law], Wolters Kluwer, Warszawa 2012.
- Jones M., *Progress in Norwegian cultural landscape studies*, "Norsk Geografisk Tidsskrift" 1988, Vol. 42.
- Judgement of the Provincial Administrative Court in Gdańsk of August 2, 2017. II SA/Gd 423/16, published LEX No. 2345386.
- Judgement of the Provincial Administrative Court in Wrocław of 20 December 2017 IV SA/Wr 589/17, published LEX No. 2428497.
- Korzeniowski P., *Krajobraz i walory krajobrazowe jako przedmiot ochrony prawnej przyrody* [Landscape and its values as an object of legal protection of nature], "Zeszyty Naukowe Sądownictwa Administracyjnego" 2015, Vol. 622(5).
- Kowalewski A., *Znaczenie i kształtowanie środowiska kulturowo-przyrodniczego* [The importance and shaping of the cultural and natural environment], in: S. Ratajski, M. Ziółkowski (eds.), *Krajobraz kulturowo-przyrodniczy z perspektywy społecznej* [Cultural and natural landscape from a social perspective], Polski Komitet do spraw UNESCO Narodowe Centrum Kultury, Warszawa 2000.
- Langrod J.S., *Zagadnienia wybrane z praktyki administracyjnej* [Issues selected from administrative practice], Księgarnia Powszechna, Kraków 1938.
- Loupa Ramos I., Silva R., *The European Landscape Convention at urban scale: insights from an exploratory approach in Lisbon*, "Belgeo" 2015, Vol. 3, <https://doi.org/10.4000/belgeo.16539> [accessed: 16.02.2021].
- Myga-Piątek U., *Spór o pojęcie krajobrazu w geografii i dziedzinach pokrewnych* [Dispute over the concept of landscape in geography and related fields], "Przegląd Geograficzny" 2001, Vol. 1/2.
- Niżnik-Dobosz I., *Estetyka techniczna i ład przestrzenny jako pojęcia prawa budowlanego oraz prawa planowania i zagospodarowania przestrzeni* [Technical aesthetics and spatial order as concepts of construction law and the law on planning and spatial development], in: I. Niżnik-Dobosz (ed.), *Przestrzeń i nieruchomości jako przedmiot prawa administracyjnego. Publiczne prawo rzeczowe* [Space and property as a subject of administrative law. Public property law], LexisNexis, Warszawa 2012.
- Olwig K., *Editorial: Law, Polity and the Changing Meaning of Landscape*, "Landscape Research" 2005, Vol. 30(3).
- Pszczynski M., *Park kulturowy a planowanie przestrzenne* [Cultural park vs. spatial planning], "Opolskie Studia Administracyjno-Prawne" 2018, Vol. 16(2).
- Roe M.H., *The European Landscape Convention: a revolution in thinking about 'cultural landscapes'*, "Journal of Chinese Landscape Architecture" 2007, Vol. 23(143).

Strecker A., *Landscape as Cultural Heritage*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020.

Strecker A., *Landscape protection in International Law*, Oxford University Press, Oxford 2018.

Szczęsny T., *Ochrona przyrody i krajobrazu* [Nature and landscape protection], Państwowe Wydawnictwo Naukowe, Warszawa 1971.

Środulska-Wielgus J., Wielgus K., *Metoda Janusza Bogdanowskiego w badaniach krajobrazu warownego i jej skuteczność w rewaloryzacji zespołów fortyfikacyjnych* [Janusz Bogdanowski's method in the study of fortified landscape and its effectiveness in the revaluation of fortification complexes], in: L. Narębski (ed.), *Dawne fortyfikacje dla turystyki, rekreacji i kultury* [Former fortifications for tourism, recreation and culture], Towarzystwo Opieki nad Zabytkami Oddział w Toruniu, Toruń 2018.

The decision of the Supreme Administrative Court of 13 March 2019 II OSK 999/17, published LEX No. 2705157.

Ustawa z dnia 19 lipca 1990 r. o zmianie ustawy o ochronie dóbr kultury i o muzeach [Act of 19 July 1990 Amending the Act on the Protection of Cultural Assets and Museums], consolidated text: Dz. U. 1990 No. 56 item 322.

Ustawa z dnia 27 kwietnia 2001 r. Prawo ochrony środowiska [Act of 27 April 2021 of the Environmental Protection Law], consolidated text: Dz. U. 2021 item 1973.

Ustawa z dnia 27 marca 2003 r. o planowaniu i zagospodarowaniu przestrzennym o planowaniu i zagospodarowaniu przestrzennym [Act of 27 March 2003 on Spatial Planning and Development], consolidated text: Dz. U. 2022 item 503.

Ustawa z dnia 23 lipca 2003 r. o ochronie zabytków i opiece nad zabytkami [Act of 23 July 2003 on the Protection and Guardianship of Monuments], consolidated text: Dz. U. 2022 item 840.

Ustawa z dnia 16 kwietnia 2004 r. o ochronie przyrody [Act of 16 April 2004 on the Protection of Nature], consolidated text: Dz. U. 2022 item 916.

Ustawa z dnia 24 kwietnia 2015 r. o zmianie niektórych ustaw w związku ze wzmocnieniem narzędzi ochrony krajobrazu [Act of 24 April 2015 on Amending Certain Acts in Connection with the Enhancement of Landscape Protection Tools], Dz. U. 2015 item 774.

Woźniak M., *Filary Europejskiej Konwencji Krajobrazowej a polska wizja ochrony krajobrazu w świetle „ustawy krajobrazowej”* [The pillars of the European Landscape Convention vs. the Polish vision of landscape protection in the light of the “Landscape Act”], “Administracja. Teoria – Dydaktyka – Praktyka” 2016, Vol. 43(2).

Żarska B., *Ochrona krajobrazu* [Landscape protection], Wydawnictwo SGGW, Warszawa 2003.