

## COMPULSORY PARTNERSHIP ACTIVITIES: THE BIGGEST CHALLENGES FOR LOCAL GOVERNMENTS IN THE LOCAL DEMOCRACY IN FRANCE

The Case of the Implementation of the Local Directive on Advertising (RLP)

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The 5<sup>th</sup> French Republic was established after a period of parliamentary instability of the 4<sup>th</sup> Republic. It emerged from the concept of Charles de Gaulle, who presented its main ideas in his speech in Bayeux in 1946.<sup>1</sup> As researchers indicate, the Constitution of the 5<sup>th</sup> Republic of 1958 met a wave of criticism after it came into force.<sup>2</sup> For some it meant the introduction of the authoritarian political system in the state; others saw it as a system that will stabilize the situation in France and will prompt its development. It must also be noted that, although the French constitution has been amended a few times, its structure has never been questioned

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<sup>1</sup> DOCUMENTATION FRANCAISE (LA), *La constitution française du 4 octobre 1958 après la révision de juillet 2008* [French constitution of 4 October 1958, after amendments of July 2008], 2011, Research Documentation No. 104.

<sup>2</sup> T. Godlewski, *Partie polityczne i system partyjny we Francji*, [in:] *Współczesne partie polityczne. Wybrane problemy*, ed. idem, M. Jastrzębski, I. Kapsa, D. Karnowska, A. Lipiński, Toruń 2009, pp. 7–67. On the political system of France see also: T. Godlewski, *Wybory prezydenckie we Francji w 2007 r.*, „Świat Idei i Polityki” 2007, Vol. 7, pp. 9–22; E. Popławska, *Czy zmieniać konstytucję?*, [in:] *Prawo międzynarodowe i wspólnotowe w krajowych porządkach prawnych Polski i Francji*, ed. Granat M., Warsaw 2008, pp. 159–68; A. Jamróz, *Przemiany ustrojowo-polityczne współczesnej Francji (1958–1988)*, Białystok 1991.

– even when some politicians changed their political stance and electorate. It is also worth pointing out that the critics of the existing political system focus on the excessive centralization of power in the executive bodies and on the minor role of public opinion in the formation of state ss policy. It should be noted here that until the constitutional reform of 2008, only the executive branch had initiated a referendum.

There is a view in the literature that the Constitution of the 5<sup>th</sup> Republic<sup>3</sup> was drafted in response to the expectations of local governments. Local communities are addressed in a special – consisting of four articles – chapter (it was chapter X in 1958) of fundamental law.<sup>4</sup> It is a perfect illustration of the important role of the representatives of local governments in the formation of the constitution. May 1981, when François Mitterrand was elected the President of France, marked the beginning of the period of rapid development of local governments. It was the time when a series of new legal acts setting the rules for local communities were adopted.<sup>5</sup>

Experts indicate that spatial economy has always been one of the key areas of the executive power's activity. The Languedoc coastal area development project implemented by the Agency for the Territorial Development and Regional Action (DATAR) in the 1960<sup>s</sup> serves as the best example. What is interesting is the fact that the chief manager of DATAR was Oliver Guichard, one of Charles de Gaulle's devoted associates. However, this vision of spatial development was questioned in the early 1980<sup>s</sup>. There were growing demands that the authorities consult their decisions with citizens and the inhabitants of coastal areas. As a result, this tendency

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<sup>3</sup> See also: E. Popławska, *Francja jako państwo zdecentralizowane w świetle reformy konstytucji z 2003 roku*, [in:] *Instytucje prawa konstytucyjnego w dobie integracji europejskiej. Księga jubileuszowa dedykowana Prof. Marii Kruk-Jarosz*, ed. J. Wawrzyniak, M. Laskowska, Warsaw 2009, pp. 279–85.

<sup>4</sup> *Konstytucja Francji*, preface and translation W. Skrzydło, Warsaw 1997; idem, *O ustroju politycznym Francji. Prace wybrane*, Lublin 2009; idem, *Ustrój polityczny Francji*, Warsaw 1992; M. Granat, *Od klasycznego przedstawicielstwa do demokracji konstytucyjnej (ewolucja prawa i doktryny we Francji)*, Lublin 1994.

<sup>5</sup> See: the law on decentralization of 1982, and then a law of 2002, when Raffarin was the Prime Minister

was reflected in the following legal acts that regulated the issue of area development.

The law on the state's involvement in the natural environment (ENE), like Grenelle II of 12 July 2012, aims at putting into practice the assumptions of Grenelle concerning the natural environment. It particularly refers to those concepts which concern local governments' search for new ways of achieving economic growth. It is a logical follow-up of *Charte de l'environnement* of 2005. Some researchers were critical of the new reform, indicating that it was too time-consuming. It must be pointed out, however, that thanks to its solutions the government may be more flexible in its activities. Moreover, there is more room for free debate and consultation in the field of spatial economy.

There is common agreement in literature that since the 1950s advertising has been a way of selling products. A number of scholars believe that it is one of the main elements of the globalized market economy. It also constitutes an inseparable part of our daily life, entering radio, television, newspapers, and, obviously, the landscape – in the form of advertising billboards placed along transportation routes. As Dupont points out, outdoor advertising, being a part of our everyday life, “constitutes an element of city landscape.”<sup>6</sup> It includes information, guidelines and advertising, and it is being more and more frequently perceived as a disturbing factor in landscapes considered to be unique and valuable.

Within the framework of the discussion on local democracy and the spatial management of France, we should also deal with the issue of outdoor advertising, as since the adoption of the first laws of 1943 and 1979, and then of 1993 and 2010, the protection of people's living environment and the natural landscape has significantly evolved.

Therefore, we may point out that there is a strong social demand for landscapes in France at the moment. For thirty years, local communities have consistently motivated local governments to increase the degree to which the landscape issue is included in decisions concerning spatial development. There is a dominant view that landscape constitutes an aesthetic value for districts and their inhabitants. Thus, the improvement

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<sup>6</sup> A. Dupont, *Rapport sur la Publicité extérieures, enseignes et préenseignes*, Paris 2009.

of the quality of the landscape is as important a goal for local governments as the issue of stimulating the economic growth of the region.

The presence of outdoor advertising in a given area has long been perceived as a sign of its business prosperity. It has also reflected the dynamic development of its economy. Today, the status of advertising is increasingly criticized by many associations, such as the Association of French Landscapes, which raises the issue of the economic effectiveness of advertising, at the same time condemning its visual influence upon landscape. This conflict between landscape protection and business activity forces local authorities to make well thought out and rational decisions concerning the natural environment. Hence, a question may be asked: how to combine the issues of landscapes and outdoor advertising in the present municipal policy.

### **THE CONTEXT OF THE ENE LAW AND THE ISSUE OF ADVERTISING**

The Constitution of the 5<sup>th</sup> French Republic leaves some autonomy for local communities (districts, departments and regions). In this way, apart from the traditional functions of districts, decentralization laws grant some rights and duties to individuals at every level of the local community.

Local communities may also launch some political activity in the area, based on the general authority clause. It is a legal concept that specifies the local communities' ability to launch initiatives, within the framework of powers exceeding those which they have been fully entitled to, on the basis of local interests in this field. Although this notion is quite broad, no article of the constitution or this particular law includes the definition of "general authority", even if it may be compared to one of the elements of the free administration of local governments, guaranteed by articles 34 and 72 of the Constitution.

Local governments may interfere within the framework of their authority, if they act in the interest of their area. Such a defined concept of benefit legitimates the action that goes beyond the authority strictly specified by the existing law. In this way, local governments may justify

their own decisions, for example the ones on the establishment of local public services, or those concerning grants and material aid, or the progress of work. Nevertheless, the notion of general authority cannot be freely extended. The doctrine clearly specifies its borders. Therefore, the following principles in particular cannot be violated in the decision-making process:

- the EU competition law or the specific legal regulations concerning the support for business;
- free trade and industry in the field of public service development;
- the principle of neutrality, which forbids, among other things, local governments to interfere in collective labour disputes, by providing financial backing for one of the parties.

The researchers indicate, however, that in practice the existing law does not fully contribute to the broadening of the area of effective cooperation and consultation with citizens. This is because the legislator speaks only of territorial interest, thus not specifically addressing the inhabitants of a given region. As a result, it is mainly the law on municipal development and the law on the natural environment that motivates local governments to initiate dialogue with citizens in the course of implementing area development projects. Therefore, we may point out that the ENE law enhanced the consultation procedures which concern city development projects.

## **THE DEFINITION OF OUTDOOR ADVERTISING**

Advertising adopts various forms and is carried by different media. It is a communication medium which changes and develops following the progress of information and communication technology (ICT). The evolution of advertising responds to expectations and customs. In France, outdoor advertising is regulated by the provisions of local directives on advertising. It is indicated in the literature that outdoor advertising encompasses the publication of guidelines and associations, as well as trade publications: information, guidelines, adverts in compliance with the definition of the code of environmental protection.

The law on publishing advertisements, which refers to advertising carriers rather than the advertising contents, is the result of a long change that had to be completed for the present regulations to be adopted: starting from abandoning royal and imperialistic political systems under the law on the freedom of press of the 29<sup>th</sup> July 1881 to the law of the 22<sup>nd</sup> July 2010, called Grenelle 2, which regulates the issue of environmental protection.

Before the law of the 29<sup>th</sup> July 1881 came into force, the exposition of advertisements had been perceived in principle as instigating action, which was subject to authorization, regardless of the purpose. It was only article 68 of this act that included information that the exposition of an advertisement is legal as long as the owner of the advertising carrier consents to place an advert on it. According to the adopted provisions, if on the wall of a building there was a notice saying “posting forbidden”, no advertisements could be placed there. When analyzing the provisions of the new law, scholars stress the important aspect of the freedom of speech. Outdoor advertising is at the meeting point of public freedoms (opinion, trade and industry), economy and people’s living environment. Hence, we must emphasize the importance of article L581-1 of the code of environmental protection, which says that “all men have the right to spread information and views, regardless of their nature, by means of advertisements, recommendations and guidelines, in accordance with the existing law and subject to provisions of this chapter.”

The right to poster is regulated by the law No. 79-1150 of the 29<sup>th</sup> of December 1979 and the directives issued by particular districts, the aim of which is to protect people’s living environment and the aesthetics of the city.

Municipal authorities cannot forbid the publication of advertisements as it would violate the fundamental principle of the freedom of speech. It does not mean, however, that they can allow advertisements to degrade landscapes and human environment. The authorities should find a proper balance between the protection of landscapes and people’s living environment and the media that affect the development of business activities and support entrepreneurs. In fact, many of them believe that advertising brings benefits to their operations.

The code of environmental protection specifies three types of advertising carriers.

- The information, i.e. all records, forms or images which are placed on a building and refer to the activity performed there.
- The guidelines which refer to the whole record, form or image indicating the proximity of a building in which a specific activity is performed.
- The advertisement which includes the complete record, form or image, excluding the information and guidelines the purpose of which is to inform the public or attract attention. Advertisements also include the devices that serve to receive the above-mentioned records, forms or images. The law also specifies four main categories: a device on a wall carrier, a device on a portable carrier, a light device and elements of street equipment.

Advertisements are usually allowed in cities and their surrounding areas, with the exception of some territories which are considered to be protected areas. Apart from these places, outdoor advertising should meet the requirements specified by law, depending on the carriers used. These standards are regulated by, among other things, some articles included in local directives concerning advertisements.

## **LOCAL AUTHORITIES AND ADVERTISING**

The issue of outdoor advertising, as it was said earlier, is addressed in the code of environmental protection. This document also provides districts with the possibility to adopt a local directive on advertising (RLP) in order to regulate the issue of advertising on the territory of the district.

Thus, the mayor has the authority proper for the police in the area of district bans, except for the situations when the district has established an RLP. In such a case, it is a prefect – who has the authority in the field of outdoor advertising – that is responsible for keeping order. The provisions of the law No. 2010–788 of the 12<sup>th</sup> of July 2010, which concerned the state's involvement in the natural environment, have changed some provisions of the code of environmental protection, which are included in the

chapter devoted to outdoor advertising. After amendments, article L.581-14-1 of this act stipulates that “a local directive on advertising is drafted, discussed and modified in accordance with the procedures of developing, reviewing and modifying local urban development plans (PLU) specified in the 3rd chapter of the 2nd volume of the urban code.”<sup>7</sup>

The new procedure consists of four consecutive chapters: preliminary consultation, which is a phase of collecting comments, because it often includes a register, even if the increasing number of districts makes the documents revealing their position on a given issue available to the public. The next stage is the debate of the city council on the main assumptions of the draft local directive on advertising. Then, the Departmental Committee on Landscapes forwards the information on the decision concerning the draft directive.

In the next phase, a preliminary public survey is carried out. It is necessary for the directive to be approved. It allows all citizens to make themselves acquainted with the form of the directive, as well as with attachments. The project may be constantly improved thanks to comments gathered in the register or directly by a surveying commissioner. The development process, thanks to the fact that it is continuing over time, allows the participation of all entities interested in the issue rather than of only those who publish advertisements, as it was the case in the workgroups acting before the amendments introduced by the law of the 12<sup>th</sup> of July 2010. Therefore, we witness a real opening to the opinions of citizens on a given issue, especially as there are more publications in the press, which effectively encouraged people to participate in different phases of *participatory democracy*.

Thus, a local directive on advertising helps to adapt regulations to the character of a city and its specific areas. They can be recognized and adopted in accordance with opinions and comments gathered in public registers, as part of a preliminary consultation and a public survey. Moreover, thanks to adapting the procedure to the local urban development plan (PLU) by means of a local directive on advertising (RLP), there is a correlation of action areas of both these urban development docu-

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<sup>7</sup> [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr) [accessed on 25 October 2011].

ments, especially in the case of identifying the so-called population-sensitive zones (natural, landscape or heritage ones) as well as PLU natural zones.

Before the reform, the mayor could initiate the adoption of an RLP in order to establish principles that would be more or less restrictive than national directives (height, size). The protection mainly covered the selected areas where advertising is of particular importance (city entrance, sightseeing sites). A directive at district level helps to protect landscape areas or regional heritage zones, at the same time preventing the spread of advertisements in ordinary areas as it may adopt principles that will be more rigorous than those stipulated by the code of environmental protection. Consequently, it abandons the Extended Advertising Zones (ZPE). The directive may be adopted with regulations that will be less restrictive than national directives in order to increase the number of advertisements in the places that are in the need of revival by placing more adverts. In this last case, the ZPE has been established by a ministerial resolution (the only example over the past thirty years has been the city of Cannes). Therefore the issue of outdoor advertising lies in the competences of districts.

It should also be emphasized that the adoption of a local directive on advertising is based on the involvement of the population at three separate stages: preliminary consultation, a public survey and a debate in the city council. The last stage features the participation of territorial intelligence. Jean-Jaques Girardot claims that “territorial intelligence is the sphere of science the objective of which is the long-term development of territories. Its subject is the territorial commonwealth.”<sup>8</sup> Hence, projects should be based on the cooperation of various participants, especially between different communities of the same conurbation, in order to avoid the transfer effect and achieve the territorial cohesion in the issue of advertising. Projects should also make use of the area study. The general approach to the RLP project is driven by the need for innovation based on “the knowledge built between territories and stimulated by participating local governments.”<sup>9</sup>

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<sup>8</sup> Intelligence-territoriale.eu [accessed on 25 October 2011].

<sup>9</sup> Ibidem.

This is the role of pilot committees and representatives of local communities or technical committees which ensure thematic exchange.

## THE PROBLEM OF THE DEFINITION OF LANDSCAPE

In the case of outdoor advertising and consultations performed as part of the verification or adoption of a local directive on advertising, there is a certain difficulty in defining unclear notions, such as “people’s living environment” or “landscape”. Landscape protection began with the protection of unique and valuable landscapes. With time it started to cover the whole area. As a result, a new concept of “regular” or, putting it more simply, “everyday or ordinary landscape” emerged. To sum up, it may be noted that, on the one hand, landscapes perceived to be prestigious, classified as “landscapes with a star”,<sup>10</sup> are favoured, following the example of guide books. On the other hand, we tend to be quite indifferent when it comes to landscapes perceived as ordinary ones, considering them to be private areas.

There is common agreement in literature that the notion of landscape has its origins in many different spheres (such as, among others, a study of influence, spatial planning, city policy). It also appears in the title of a law (the one on landscape protection of 1993), which – according to French researchers – reflects its fundamental role in the conscious and transparent area of management. It is difficult to propose one definition of landscape as there are diverse opinions and visions of landscape, which has been clearly indicated in the definition formulated by the European convention. Therefore, “if the subject of study depends on the point of view of a researcher, it is perceived from the angle of passion and in a more personal manner,” and there is a bigger variety of viewpoints, especially as they originate from suppositions. Thus, this diversity of perspectives leads to the diversity of definitions and differences in approaches to them. None of those viewpoints can be combined with others: we need to take into

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<sup>10</sup> S. Ormaux, *Cours sur le paysage au master 2 dans le cadre du master IT-ISA*, Besançon septembre-décembre 2011, Université de Franche-Comté.

account all opinions so that we can achieve the full meaning of the notion which does not limit its semantic field.<sup>11</sup> Landscape is first of all something that we see from the geographical point of view in a given area, and sometimes also from the cultural and social perspective. It is an element of life, our feelings and a project that is connected with them.

The ordinary landscape made its debut under the French flag at the Architecture Biennale in Venice in 2006.<sup>12</sup> The project was coordinated by Patrick Bouchain. It was then that Belgian scholars also pointed out “ordinary beauty,” wondering “how to persuade the whole of society, involved in the phenomenon of the aestheticization of daily life, to the phenomena which are the result of something unintentional, indefinable or absurd, and thus incomplete and unsaid, the identification of which would be relative.”<sup>13</sup>

Everyday spaces may be defined as “the environment that everyone knows but cannot name, including the flat, the threshold, the cellar, the way to school, the bakery, the petrol station, the square, the market, the town-hall, the sports field, the church, the wall, or the garden. Everything that forms a district the undefined limits of which are marked with streets, squares, blocks, bus stops, tramways, railway stations.”<sup>14</sup>

This area would be – with reference to press practice – a public space, which often remains unnoticed. Spaces would be joined with networks constituting the whole of everyday life, the perception of which changes depending on the number of individual factors, where “even a monument automatically loses its «extraordinariness» when passing familiar landscape.”<sup>15</sup> Nonetheless, just like all landscapes, it changes following the rhythm of seasons and natural erosion, but also, more or less successfully, depending on social, technological and urban changes with some selected urban forms and the type of applied infrastructure.

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<sup>11</sup> J.C. Wieber, *Reflexions sur l'espace et les paysages comtois, dans Provinces et états dans la France de l'est, 1977*, Actes du colloque de Besançon.

<sup>12</sup> [www.labiennale.org](http://www.labiennale.org) [accessed on 25 October 2011].

<sup>13</sup> Ibidem.

<sup>14</sup> C. Grandin-Maurin, *Le paysage, du projet à la réalité*, „Les Cahiers”, September 2011, No. 159.

<sup>15</sup> Ibidem.

In the preface to chapter No. 159 of IAU Papers *îdf*, Christian Thibault writes: “as each place is unique in principle, all landscapes are unique as well and they should be recognized as such.” In this way, it is not a problem to protect, i.e. immobilize landscape, but to facilitate the coexistence of various, often contradictory, but equally right perceptions in diverse society. Therefore, our objective is the stability of landscape, but having in mind its evolution.

Hence, it is necessary to find the compromise between separate and distant positions, where the issues connected with economy often become the reason for conflict. This lets us establish the definition of ordinary landscape and make inhabitants aware of its existence, thus of its potential changes. Subjects participating in the planning of area development may ask questions about the criteria for the protection of the space which is not considered by inhabitants or other people (travellers or visitors) to be the one requiring protection, i.e. the non-existent one.

It is worth quoting Lévi-Strauss’s opinion of a language here.<sup>16</sup> Comparing a language to landscape, he said” “those ordinary activities we pay attention to are based on motivations other people are not quite aware of or are completely unaware of. We learn foreign languages, but people speaking these languages are not aware of the principles they use in order to speak and be understood.” Therefore, ordinary landscapes, which we pay attention to, are based on motivations that other people are not quite aware of or are completely unaware of. Geographers and urban planners study landscapes, but people who live there have no awareness of their existence.

## SUMMARY

We saw that the concept of landscape is undefined and follows social change. At the same time, in this constant evolution, landscape has become a real tool in recent years: it may offer support for trade, or even be its

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<sup>16</sup> C. Levi-Strauss, *Les structures élémentaires de la parenté* [Elementary Structures of Similarity], Paris 2008.

reference point, i.e. an element of identity taken into consideration in spatial planning. There are numerous benefits of proper management. Landscapes, including the ordinary ones, seem to constitute a common good.

The Grenelle II Act strengthens the competences of local governments in the area of urban planning, advertising, sewage disposal, and grants them more rights to intervene than duties. One of its objectives is long-term development planning. European directives have affected the shape of this law, too.

The Grenelle II text has the hallmarks of centralization as well. The state may ensure the cohesion of local urban development documents, but it may also start the necessary adaptation of plans (e.g. SDRIF, SROM, ZPPAUP). We may observe that the state tends to force projects that lie in the interest of the whole of society. This meets severe criticism from scholars and specialists in this field. They believe that the thematic extension (especially the environmental one), which should be included in PLU, the unification with the development and Long-Term Growth Project (PADD), as well as drafting on the district scale, all contribute to changes in the character of district documents. Although the spatial development plan (POS, the prototype of PLU) mirrored districts' autonomy in the field of urban planning, it seems that PLU reflects the nationwide policy implemented in a given area.

To conclude, we should emphasize that the issue of spatial planning is attracting more and more attention in France. As new legal regulations have been adopted, the scope of control over specific areas (The Languedoc coast, cities, and the Paris suburbs) has been extended. Hence, we may expect that soon local area development plans will cover the whole territory of France.