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What is the relationship between spatial planning and human rights? Though this question may seem highly theoretical at first glance, closer analysis will reveal that there are in fact a number of ways in which public policies in the area of territorial planning and development and the imperative of respecting the fundamental rights of human beings are interrelated. This paper seeks to explore the link between the use and development of the territory and the realisation and protection of human rights, based on an examination of a number of important legal and policy documents in both fields. It does not aim at exhaustive treatment of the subject, but only highlights some of the key issues which deserve due consideration in the formulation and implementation of land-use planning and territorial development policies.

General principles recognised in declaratory instruments of the Council of Europe and the United Nations

When the European Conference of Ministers responsible for Regional Planning (CEMAT) adopted the European Regional/Spatial Planning Charter in Torremolinos in 1983, it duly recognised the human development rationale of spatial planning in the following terms:

Man and his well-being as well as his interaction with the environment are the central concern of regional/spatial planning, its aims being to provide each individual with an environment and quality of life conducive to the development of his personality in surroundings planned on a human scale.

In endorsing the Torremolinos Charter and recommending its principles and objectives to its member states as a basis for their national policies, the Committee of Ministers of the Council of Europe stressed the need to ensure that “principles governing the organisation of space (...) are not formulated solely on the basis of short-term economic objectives without due consideration for social, cultural and environmental
factors”.¹ Though this recommendation, adopted in January 1984, predates the emergence of the concept of sustainable development in policy discourse, the approach to spatial and regional planning based on “new criteria (…) in keeping with economic, social and environmental requirements”, which it advocates, effectively amounts to a sustainable development approach avant la lettre.

The Charter itself lists four “fundamental objectives” of regional/spatial planning which are consistent with those of sustainable development as currently understood, ranging across its three pillars: (i) balanced socio-economic development of the regions; (ii) improvement of the quality of life; (iii) responsible management of natural resources and protection of the environment; and (iv) rational use of land. Though it contains no explicit reference to human rights, it stresses the need for democracy and public participation in regional and spatial planning policies at all levels.

Building on the Torremolinos Charter, the Guiding Principles for Sustainable Spatial Development of the European Continent, adopted by CEMAT in September 2000 and subsequently endorsed by the Committee of Ministers in a recommendation of January 2002,² articulate the link between spatial planning, sustainable development and human rights more explicitly. To quote their terms, these Guiding Principles set out a “concept for sustainable development” and “stress the territorial dimension of human rights and democracy”. They are presented as a blueprint for “Europe-wide cooperation aimed at creating a regionally-balanced and sustainable Europe”, taking into account “in accordance with the concept of sustainability, (…) the needs of all the inhabitants of Europe’s regions, without compromising the fundamental rights and development prospects of future generations”. More specifically, their objective is “to define spatial development policy measures through which people in all the Member States of the Council of Europe can achieve an acceptable standard of living”, by “bringing the economic and social requirements to be met by the territory into harmony with its ecological and cultural functions”.

¹. Recommendation No. R (84) 2 of the Committee of Ministers to Member States on the European Regional/Spatial Planning Charter, 25 January 1984. The European Regional/Spatial Planning Charter, adopted by the 6th European Conference of Ministers responsible for Regional Planning (CEMAT) at Torremolinos, Spain, in May 1983 (hereafter referred to as Torremolinos Charter), is appended to this Recommendation.

Neither the Torremolinos Charter, nor the Guiding Principles for Sustainable Spatial Development spell out the relationship between spatial planning and human rights. The primary purpose of spatial and regional development, according to both policy documents, is to plan and organise the use of the territory and its resources in such a way as to meet the economic and social needs of its population. These human needs are referred to in terms such as the achievement of “an acceptable standard of living” or the “improvement of the quality of life”, terms which are also used in international instruments concerning economic and social rights. Thus, the International Covenant on Economic, Social and Cultural Rights recognises everyone’s right “to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and the continuous improvement of living conditions”. The European Social Charter refers to a “decent standard of living” in the context of workers’ right to a fair remuneration. The concept of “quality of life” extends the range of human needs to be met beyond the basic necessities of food and shelter, to include well-being and an environment conducive to personal development. Indeed the Torremolinos Charter refers to “improvement in the quality of everyday life, in respect of housing, work, culture, leisure or relationships within human communities, and the enhancement of the well-being of each individual through the creation of jobs and the provision of economic, social and cultural amenities”. Thus defined, the objectives of spatial planning are related not only to the realisation of economic and social rights, but also encompass a cultural and environmental dimension.

The link between environmental protection and human rights was first explicitly recognised in the 1972 Stockholm Declaration, adopted by the United Nations Conference on the Human Environment, which proclaimed “the fundamental right to (...) adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being”. Its preamble furthermore affirmed that protection of the environment is “essential (...) to the enjoyment of basic human rights – even the right to life itself”. Though these provisions do not directly recognise the right to a healthy environment per se, they amount to an indirect recognition of such a right, by acknowledging

environmental quality as a prerequisite for achieving adequate conditions of life and full enjoyment of fundamental human rights. In language that is strangely reminiscent of the Torremolinos Charter, though less explicit than the Stockholm Declaration as regards human rights, the 1992 Rio Declaration on Environment and Development\(^6\) states in its Principle 1:

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

This provision articulates an anthropocentric rationale for sustainable development, implicitly linking it both with fundamental human rights as the right to health and the right to an adequate standard of living – or, arguably, the right to work –, and with the conservation of natural resources. Principle 3 of the same Declaration, in turn, links sustainability with intra- and intergenerational equity by providing that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”. Similar concerns are expressed in the Guiding Principles where they refer to the need to avoid “compromising the fundamental rights and development prospects of future generations”.

In this age of globalisation, environmental as well as human rights considerations inevitably call for an extension of both the temporal and geographical horizon of spatial development policies, as the natural resource needs of regions with high levels of economic development increasingly affect land use patterns in other areas of the world, well beyond national boundaries. Thus, unsustainable patterns of production and consumption in some countries and regions are having a serious impact on the state of the environment, the availability of natural resources and development prospects in others, as has been shown through the application of novel concepts such as that of “ecological footprint”. This is a method used to measure the area of biologically productive land and water that is required to provide the resources consumed and absorb the wastes generated by a given human population. Through this method, it is possible to determine whether this population is effectively using an excessive amount of “environmental space” relative to the natural biological productivity and carrying capacity, or “biocapacity”, of the land normally available to it. According to a recent study on the ecological footprint of the European Union and its Member States, published by the

World Wide Fund for Nature, “the average footprint of Europe’s citizens is more than twice Earth’s available biocapacity per person, and about eight times that of such low-income countries as Mozambique or Pakistan.”

This study categorises most of the Member States of the EU as “ecological debtors”. In a way, countries like these, whose development patterns result in a large ecological footprint exceeding the planet’s average biocapacity, are determining not only the use of their own territory, but also, indirectly, the territorial development of other areas from which they draw their resources. In so far as this affects the development prospects of the populations living in those areas, it raises serious human rights issues.

According to the Declaration on the Right to Development, adopted by the United Nations General Assembly in December 1986, “development policy should (...) make the human being the main participant and beneficiary of development” and aim at “the constant improvement of the well-being of the entire population and of all individuals”. This is to be achieved, inter alia, by the elimination of “obstacles to development”, as well as by ensuring “equality of opportunity for all in their access to basic resources”. Looking at territorial and human development in terms of human rights implies due consideration of the necessary social and environmental conditions of “equality of opportunity for development” as a right of each individual. The common ecological heritage is unquestionably one of the “basic resources” that are essential to human well-being and to which the Declaration requires that equal access opportunities be guaranteed to all. Unsustainable production and consumption patterns based on the excessive appropriation and consumption of natural resources undermine “equality of opportunity for all in their access to basic resources” and, therefore, the prospects of securing civil, political, economic, social and cultural rights for all.

Sustainable spatial development is clearly related to the achievement of second-generation economic and social rights as well as third-generation solidarity rights such as the right to a healthy environment and the right to development. In addition, the formulation and implementation of spatial planning policies also involves issues of democracy and respect for civil and political rights, as has been noted by CEMAT and the Committee of Ministers. The latter, in the preamble of its Recommendation No. R(84) 2, expressed its conviction

“that all European citizens should have the opportunity in an appropriate institutional framework to take part in the devising and implementation of all regional/spatial planning measures”. The Torremolinos Charter itself stresses that regional/spatial planning should be a democratic process, “conducted in such a way as to ensure the participation of the people concerned and their political representatives”. Likewise, the Guiding Principles for Sustainable Spatial Development call for “increased involvement of citizen and societal groups in spatial development planning”. Moreover, the Charter refers specifically not only to the importance of public participation but also of access to information, where it states:

It is essential that the citizen be informed clearly and in a comprehensive way at all stages of the planning process and in the framework of institutional structures and procedures.

Having examined the basic principles on which the concept and policy objective of sustainable spatial development is based – as enunciated by the Torremolinos Charter and further elaborated in the Guiding Principles for Sustainable Spatial Development – with a special focus on their human rights dimension, we shall now address a number of international legal instruments at the European level which are particularly relevant for the implementation of this objective and underpin a rights-based and sustainable approach to territorial development.

**Relevant provisions of European regional conventions in the field of human rights and environmental protection**

As is well-known, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its additional protocols do not contain any specific provisions concerning environmental protection or territorial development. Nevertheless, it has been recognised in the case-law of the European Commission and Court of Human Rights that certain kinds of environmental impairment with harmful consequences for individuals resulting from particular uses of land, may constitute a violation of other human rights protected by the Convention, such as the right to respect for one’s private life and home, or even the right to life.9 The most important cases considered so far concerned environmental nuisances and risks

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associated with transport or waste management infrastructures as well as certain industrial activities.

In Europe, air pollution and noise caused by transportation are now regarded as a major public health issue, especially in urban areas. According to the WHO’s European Regional Office, the number of adult deaths linked to chronic exposure to atmospheric pollution caused by traffic in European cities is estimated at about 80,000 per year, and the risks of respiratory symptoms are about 50% higher among children living near very busy roads than those living in areas with little traffic. The level of indirect mortality from motor vehicle exhaust fumes is similar to the number of victims of road accidents. Moreover, transport, and particularly road traffic, is the main cause of human exposure to background noise in Europe; the WHO estimates that the proportion of the European population exposed to high noise levels harmful to health rose from 15% in 1980 to 26% in 1990.

In view of this situation, the Ministers and representatives of European member states of the WHO responsible for transport, environment and health adopted a “Charter on Transport, Environment and Health” in London on 16 June 1999, in which they expressed their concern “that current means of transport, which are dominated by motorised road transport, have substantial adverse impacts on health”.10 The Guiding Principles for Sustainable Spatial Development elaborated by CEMAT expressly recognise the sensitive nature of the planning and siting of transport infrastructure from the viewpoint of sustainable development and environmental protection: “A true pan-European transport policy is all the more urgent as traffic congestion reaches unacceptable levels (...) and pressure on the environment does not seem to be decreasing. (...) In this respect, the growth in trade between areas that are geographically remote from each other makes a review of the organisation of transport systems necessary”. The Guiding Principles specifically call for “integrated strategies taking into account the various transport modes and – on an equal basis – spatial planning policy” and for “encouraging more environment-friendly modes of transport”.

Many cases considered by the Commission and the European Court of Human Rights concern noise pollution suffered by people living near airports. In 1980, the Commission declared complaints from local residents under Article 8 of the Convention admissible. It accepted that, in principle,

10. WHO Doc. EUR/ICP/EHCO 02 02 05/9 Rev.4.
significant noise pollution could affect a person’s physical well-being to the extent that it impairs his or her private life. However, it also accepted that interference in the exercise of the right to respect for one’s home and private life could be justified by the general economic interest served by the operation of an airport, and that there was no violation of Article 8 of the Convention provided that the principle of proportionality had been respected in weighing different interests.

In the most controversial case concerning Heathrow Airport, however, the Court concluded that Article 8 had been violated, finding that the United Kingdom had permitted an increase in the noise pollution produced by night flights without giving serious consideration to the impact of this increased pollution on local residents’ sleep, and without seeking the least detrimental solution in terms of human rights. In this case, the Court first held that the country’s economic interest had not been properly weighed against the rights of the applicants, who were victims of the pollution.11 However, this judgment was overturned on appeal by the Grand Chamber of the Court, whose majority, after scrutinising the national decision-making process leading to the decision to allow increased night flights, ultimately found that the defendant state had not exceeded its ‘wide margin of appreciation’ in balancing the applicants’ rights against the economic interests at stake.12

The siting of waste treatment installations has always been a controversial environmental and land-use planning issue, especially where such infrastructures are located near residential areas and in densely populated regions. In certain cases, human rights violations have been found to result from the way in which such installations have been authorised by public authorities and operated by public or private operators. One of the early environmental cases considered by the European Court of Human Rights concerned serious nuisance from a waste-water treatment plant built in the city of Lorca in Spain to treat effluent from a number of tanneries. In this case, the Court found Spain guilty of violating Article 8 of the Convention owing to a lack of measures to prevent environmental conditions adversely affecting the quality of life of a person living near the plant in question, recognising that “severe environmental pollution may affect individuals’ well-being and prevent them

12. European Court of Human Rights (Grand Chamber), judgment of 9 July 2003, Hatton et al. v. United Kingdom.
from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.” A more recent case arose from a complaint brought against Italy by a person whose house on the outskirts of Brescia is located 30 metres away from a plant for the storage and treatment of industrial waste which started operating in 1982. The activities of the plant were first licensed by the regional authorities in 1989, seven years after they had actually begun. No prior environmental impact assessment had been carried out. This provisional permit was renewed in 1994 and again in 1999, the latter administrative decision providing for an *a posteriori* environmental impact assessment. Notwithstanding the fact that this decision was found to be unlawful by Italy’s supreme administrative court, the competent authorities took no action to suspend operation of the facility, but instead granted its private operator a new permit in 2004. The European Court of Human Rights ruled that Italy had violated Article 8 of the Convention because the applicant’s “right to respect for her home was seriously impaired by the dangerous activities carried out at the plant built thirty metres away from her house” for many years, and “the procedural machinery provided for in domestic law for the protection of individual rights, in particular the obligation to conduct an environmental-impact assessment prior to any project with potentially harmful environmental consequences (...) were deprived of useful effect in the instant case for a very long period”. The most serious case concerning the human rights implications of waste disposal operations was decided by the Court in 2002. It arose out of an accidental explosion of methane gas in a municipal waste landfill located adjacent to a densely populated suburban slum in Turkey, which resulted in substantial loss of life and property. The Court found Turkey had violated the right to life of the slum residents who lost their lives when their homes were buried in a landslide caused by the explosion of methane that had built up in the landfill, as a result of the decomposition of the untreated waste. It ruled “that a violation of the right to life can be envisaged in relation to environmental issues, (...) liable to give rise to a serious risk for life or various aspects of the right to life” . The Court held that the Turkish authorities had violated Article 2 of the ECHR by failing to take the necessary measures recommended

15. European Court of Human Rights, judgment of 18 June 2002, *Öneryıldız v. Turkey*
by technical experts to remove the methane, stabilise the landfill and inform the shanty town’s inhabitants of the serious hazards to which they were exposed. More generally, the case of this uncontrolled landfill, where municipal waste from the city of Istanbul was dumped, highlights the serious environmental management problems caused by unplanned urban development and the lack of suitable infrastructure to treat urban waste in an environmentally sound manner. The lack of a proper environmental and spatial planning policy resulting in the presence of a serious environmental, health and safety risk in the vicinity of dwellings tragically illustrated the way in which environmental hazards are often transferred to marginal areas and imposed on the most disadvantaged populations, which are least equipped to protect themselves, even to the extent of directly threatening these populations’ right to life. Yet the need for proper coordination, through regional/spatial planning policies, of “the distribution of population, (…) habitat, (…) and waste disposal” was already stressed in the Torremolinos Charter twenty-five years ago.

Other cases concerning conflicts between the right to respect for one’s home and private life and environment and planning policies have involved chronic pollution or the risk of serious accidental pollution associated with certain industrial activities. In a 1998 judgment on a complaint made by people living near a chemical production plant entailing major accident hazards in Italy, the European Court of Human Rights ruled that even merely depriving a person of “essential information” concerning the nature and extent of an industrial accident hazard in his or her immediate environment, to which he or she and his or her family are exposed, could constitute a violation of that person’s right to respect for his or her private and family life.16 A more recent judgment concerned the situation of a person living in local council housing near a large steel production complex in the town of Cherepovets in Russia, in an area in which the maximum permissible limits for several toxic air pollutants established by domestic law were frequently exceeded as a result of the steel plant’s emissions. The applicant was actually exposed to a serious health hazard, and her requests for resettlement in an environmentally safe area addressed to the municipal authorities had been ignored. Due to the difficult housing situation and the applicant’s limited resources, she had no other option but to stay in the polluted area, which had actually been declared

a “sanitary security zone” by the Russian authorities, implying that it was legally deemed unfit for habitation. According to the Court’s judgment:

The State authorised the operation of a polluting plant in the middle of a densely populated town. Since the toxic emissions from this plant exceeded the safe limits established by the domestic legislation and might endanger the health of those living nearby, the State established through legislation that a certain area around the plant should be free of any dwelling. However, these legislative measures were not implemented in practice. (…) Furthermore, although the polluting plant in issue operated in breach of domestic environmental standards, there is no indication that the State designed or applied effective measures which would take into account the interests of the local population, affected by the pollution, and which would be capable of reducing the industrial pollution to acceptable levels”.17

In those circumstances, Russia was found to be in breach of Article 8 of the Convention by reason of its “fail[ure] to strike a fair balance between the interests of the community and the applicant’s effective enjoyment of her right to respect for her home and her private life.” This case provides a rather extreme example of an irrational spatial planning policy which had failed to ensure proper coordination of sectoral policies “in the organisation and development of large urban and industrial complexes”, to quote the Torremolinos Charter, with serious consequences for individual rights.

Several of the above-mentioned cases under the ECHR actually involved serious risks to human health, which were equated by the Court with violations of the first-generation rights protected by Article 8 of the Convention. However, the European system for the protection of human rights also includes a specific provision protecting the right to health, i.e. Article 11 of the European Social Charter, which requires its Parties “to take appropriate measures designed inter alia (…) to remove as far as possible the causes of ill-health”.18 This provision was recently found by the European Committee of Social Rights to have been violated by Greece in two regions of the country where lignite is mined on a large scale and burned as fuel in a number of electric power plants.19 Both the mining operations and the combustion of lignite for the production of electricity are causing serious air pollution by suspended particulates, sulphur dioxide, nitrogen oxides and other air pollutants hazardous to human health.

17. European Court of Human Rights, judgment of 9 June 2005, Fadeyeva v. Russia
18. European Social Charter (revised), Strasbourg, 3 May 1996, art. 11.
The Committee, after detailed consideration of relevant domestic and European legislation and factual information submitted by the complainant NGO and respondent government, came to the conclusion that the measures taken by the Greek authorities to limit the health impact of the activities in question were insufficient, that there was “clear and unambiguous” evidence of health effects on the inhabitants of the affected areas, and that “Greece has not managed to strike a reasonable balance between the interests of the persons living in the lignite mining areas and the general interest”.\textsuperscript{20} More generally, the Committee affirmed in its decision that the right to the protection of health as laid down in Article 11 of the European Social Charter includes the right to a healthy environment and that the measures to be taken by states pursuant to this provision “should be designed, the light of current knowledge, to remove the causes of ill-health resulting from environmental threats such as pollution”.\textsuperscript{21}

According to the Guiding Principles, sustainable spatial development should aim not only at the reduction of environmental harm resulting from pollution, with consequent risks for human health, but also at enhancing and protecting natural resources and the natural heritage, recognising that these “contribute not only to properly balanced ecosystems but also to the attractiveness of regions, their recreational value and the general quality of life”. It is now well-recognised that the conservation of nature and biological diversity are important for human well-being, as the reference to “the general quality of life” implies. Accordingly, the human rights dimension of environmental protection and sustainable spatial development is not only a matter of “environmental hygiene”, to quote the terms of Article 12 of the International Covenant on Economic, Social and Cultural Rights. A healthy environment involves more than ensuring environmental conditions which are not detrimental to human health; balanced territorial development should result in an environment that is adequate for human well-being as well as health. The special bond between man and the natural environment is acknowledged in the 1982 World Charter for Nature, which affirms that “civilisation is rooted in nature (...) and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation”.\textsuperscript{22} From this perspective, the conservation of nature becomes a condition of human well-being and acquires a human rights dimension.

\textsuperscript{20. Ibid., paras. 200, 221.}
\textsuperscript{21. Ibid., paras. 195, 202.}
\textsuperscript{22. United Nations General Assembly Resolution 37/7, 28 October 1982.}
However, this particular aspect of sustainable spatial development is not adequately protected by the current provisions of the ECHR, as the European Court of Human Rights so far has not recognised that the deterioration of nature and biological diversity can amount to a violation of the rights protected by Article 8 of the Convention. In a case concerning the destruction of a coastal wetland on a Greek island as a result of planning decisions and construction permits designed to promote tourist development which had been declared unlawful under domestic law by the Supreme Administrative Court of Greece but nevertheless been implemented by the local authorities, the European Court rejected the claim under Article 8 brought by the owners of a house in the vicinity of the wetland area. According to the Court, the applicants had failed to demonstrate “the existence of a harmful effect on [their] private or family sphere and not simply the general deterioration of the environment”. The damage to the wetland was not of such a nature as to be able to affect the claimants’ own rights, though the judgment further notes, in a rather surprising obiter dictum, that the Court’s legal assessment may have been different “if, for instance, the environmental deterioration complained of had consisted in the destruction of a forest area in the vicinity of the applicants’ house, a situation which could have affected more directly the applicants’ own well-being”.23

Disputes concerning nature conservation measures most frequently come before the European Court of Human Rights as a result of complaints brought by land-owners who consider their property rights have been violated by government measures restricting the free use of their property in the interest of the protection of species or habitats. Such claims are generally based on the right to respect for property established by the first additional Protocol to the ECHR. On the whole, however, the Court has accepted that such measures may be duly justified under the provisions of Protocol No. 1 allowing states to control the use of property in accordance with the general interest. Thus, the Court’s case-law recognises that the conservation of biological diversity is a legitimate public interest which may justify restrictions on the exercise individual rights, but has not yet gone as far as to positively require parties to the ECHR to take nature conservation measures in order to protect fundamental human rights. It should be noted, however, that two other Council of Europe conventions impose positive duties in this field to their contracting parties: the 1979 Bern Convention on the Conservation of European Wildlife

and Natural Habitats\textsuperscript{24} and the European Landscape Convention, signed in Florence in 2000.\textsuperscript{25} However, neither of them contains any explicit reference to human rights, though the latter recognises the social and cultural dimension of landscape protection in its preamble, “acknowledging that the landscape is an important part of the quality of life for people everywhere”, and makes provision for public participation in the definition and implementation of landscape policies.

Of particular relevance to the achievement of the objectives of sustainable spatial development is the Protocol on Strategic Environmental Assessment (SEA) to the 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context.\textsuperscript{26} This Protocol was negotiated by the contracting parties to the Espoo Convention and opened for signature at the ‘Environment for Europe’ pan-European ministerial Conference in Kyiv in May 2003. Though signed by 37 states of the UNECE region and recently approved by the European Community,\textsuperscript{27} the SEA Protocol has not yet obtained the required number of ratifications for its entry into force. Yet its implementation would contribute significantly to ensuring the sustainability of regional/territorial development policies in Europe, as it requires its parties to carry out an SEA in accordance with the procedure set out in its provisions for plans and programmes which are prepared or adopted by public authorities in a wide range of sectors with important environmental and territorial impacts, including agriculture, forestry, energy, mining, transport, waste management, tourism, and, more generally, in the area of regional development, town and country planning or land use. When such plans or programmes “set the framework for future development consent for projects” with potentially significant impacts, the SEA process mandated by the Protocol shall ensure that “the likely significant environmental, including health, effects of implementing the plan or programme and its reasonable alternatives” are

properly identified, described and evaluated, with the participation of the public concerned, before its approval by the competent authority. The SEA Protocol’s requirements with respect to access to information and public participation are fully consistent with the participatory approach to planning advocated by the Torremolinos Charter and the Guiding Principles for Sustainable Spatial Development.

Whereas the SEA Protocol directly addresses regional development and spatial planning programmes at the national or sub-national level, another international legal instrument elaborated within the framework of the UNECE, the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which is in force since 2001, mainly concerns decision-making at the project level. It applies to a wide range of industrial, agricultural and infrastructure projects likely to have significant environmental effects and guarantees citizens a number of procedural rights that must be respected by public authorities when deciding whether or not to authorise these projects. As the preamble to the Aarhus Convention states, “citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters” in order to “be able to assert” their right to live in a healthy environment and to “observe” the associated duty “to protect and improve the environment for the benefit of present and future generations”.

The purpose of the procedural rights of access to information, public participation in the decision-making process and access to justice guaranteed by the provisions of the Convention is clearly set out in Article 1, which states that its aim is “to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being”. The Aarhus Convention is the first multilateral treaty on the environment whose main aim is to impose obligations on states in respect of their own citizens. As a result, this treaty bears close similarities to international legal provisions on the protection of human rights.

In practical terms, the Aarhus Convention requires its Parties, in response to requests from any member of the public, and without the latter having to state any particular interest, to make available information on the environment held by public authorities, subject to a limited number of exemptions that

may be invoked on grounds of public interest. The Parties must also take steps to collect and disseminate a whole range of information on the condition of the environment and activities and measures likely to affect it. The provisions on public participation in decision-making processes require the Parties to implement procedures enabling members of the public to obtain information and to assert their interests where public authorities are considering whether to permit specific activities that may have a significant impact on the environment. Measures must also be taken to enable the public to participate in the preparation of plans and programmes relating to the environment, and in the preparation by public authorities of regulations and other generally applicable, legally binding rules that may have a significant impact on the environment. Last but not least, the Convention guarantees access to review procedures in the event that public authorities fail to comply with their obligations in respect of access to information and participation in the decision-making process. The public must also have access to administrative and judicial procedures to be able to challenge acts and omissions by private individuals or public authorities that contravene national legal provisions on the environment.

The affinity between the Aarhus Convention and some of the rights guaranteed by the ECHR has been duly recognised by the Parliamentary Assembly of the Council of Europe in a recommendation on environment and human rights adopted in 2003, in which it called on governments of member states to “recognise a human right to a healthy, viable and decent environment, including the objective obligation for states to protect the environment, in national laws, preferably at constitutional level”, and furthermore specifically recommended that the Committee of Ministers “draw up an additional protocol” to the ECHR “concerning recognition of the individual procedural rights, intended to strengthen environmental protection, as set out in the Aarhus Convention”. The European Court of Human Rights itself has also acknowledged the importance of the Aarhus Convention from a human rights perspective by referring to it in some of its recent judgments and decisions.

The Convention, which has been ratified by most member states of the

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Council of Europe, provides an important instrument for the implementation of the procedural rights of public participation in decision-making and access to information, whose significance in the context of spatial planning has been recognised by CEMAT ever since the Torremolinos Charter.

**Conclusions**

Though the relevant European-level policy instruments concerning spatial planning and sustainable territorial development rarely make explicit reference to human rights, the analysis in this paper has shown that there are nonetheless multiple links between the use and development of the territory and human rights protection. These links actually span across all three generations of human rights. As spatial planning is an important aspect of democratic governance at the regional and local level, the effectiveness and legitimacy of decision-making in this area is dependent on respect for civil and political rights, and, in particular, on appropriate guarantees of access to information, public participation and access to justice. Ensuring the fundamental right of respect for individuals’ home and private life requires adequate environmental conditions, which it is one of the objectives of spatial planning to achieve. Overall, spatial planning and territorial development policies are aimed at creating appropriate conditions for the achievement of human well-being and quality of life, and thus at contributing to the realisation of economic, social and cultural rights. Finally, securing this aim not only for present but also future generations and for humankind as a whole requires a global and long-term perspective in which spatial planning is viewed as one of the instruments designed to promote the achievement of third-generation rights such as the right to a healthy environment and the right to development.