Engaging a geo-legal approach to landscape protection in the era of energy transition
Elements from the analysis of a French jurisprudential corpus on oppositions to renewable developments

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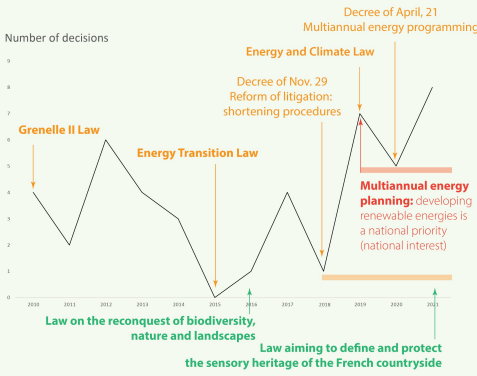
1 *Issues at stake and questioning:* Of windfarm developments, land use, landscape and national interest

Although France experienced a slightly late surge in the development of renewable energies, from 2005 onwards, **the recent growth in installed capacity has been one of the most dynamic in Europe.** Following the Law of 2015 on the energy transition for green growth, successive governments have set **increasingly ambitious targets for the development of renewable energy.** The 2019-2028 multiannual energy program aims for a **40% share in the mix by 2030**. The development of **wind power is prioritized**, as installed onshore capacity is expected to reach **33.2 to 34.7 GW in 2028** (19 GW installed by the end of 2021). Yet, while the French energy transition relies on a substantial share of normative planning, the **actual implementation of energy projects** remains subject to **uncertainties, discrepancies, delays, ad-hoc provisions and interpretations,** that questions the concrete working of these legal instruments. Among these discrepancies, **landscape protection** has become a political flagship in the disputes over new wind power infrastructures. While legally defined, the **notion of landscape remains polysemous**. The European Landscape Convention (2000) and the French Environmental Code consider it as a **social perception**, a visible yet subjective slice of human-environment relations. Therefore, landscapes are not to be protected for what they are, but rather for what they represent. However, **a new trend is emerging** that considers landscape concerns as concrete environmental components, involving interests of biodiversity protection, ecosystems and human health. **This view complexifies claims for landscape protection in wind development disputes.**

The implementation of renewable energy projects and their take on land use and landscape embodies the **difficult balance of conflicting scalar interests in the energy transition.** In this regard, **we note an important increase in the number of decisions emitted by the French higher jurisdiction, the Council of State.** Submitted since 2010, the vast majority of them deal with the complex reconciliation of ancillary factors in the siting of onshore wind turbines (44 out of 63 cases). In this context, what stands out is that renewable energy is **increasingly seen as a key issue, taking precedence over other policies, possibly touching on the "overriding reason of major public interest".** The **implementation of wind turbines may then seem more pivotal to achieve than landscape protection**, while this prioritisation questions the **hierarchy of norms in law, and blurs the boundaries between legal concepts at different scales** (European/national objective, national/local interest).

Based on the **analysis of a French case law corpus** (n=46) related to oppositions to so-called negative socio-environmental perceptions of renewable energy projects (with an explicit siting) since 2010, this poster brings empirical evidence of such trend. For that, it **explores a new research format** for **geographically-interpretating landscape-based wind power litigations.**

Evolution of the number of wind energy decisions taken by the Council of State, and of legislations concerning both the development of renewable energies, and the legal qualification of landscape



2 *Positioning and Methodology*

This research adopts a **geo-legal positioning**. First, it emphasizes the need to describe concrete practices of the law, by understanding and formalizing the **discrepancies between textual provisions and the everyday life of norms in society, that jointly producing spatialities**. Second, it proposes a methodology to **geographically interpretating case law.** Based on the examination of case files and decisions of the Council of State, we assessed **how the spatiality of a project was considered in the decisions,** including consideration of the project's **location** (within a protected area or not), its geographical **position in relation to other protected elements** (in the vicinity of...), its **scale of interest** (national, regional, local). As such, this geo-legal approach also provided an essential tool to show the limits of a strictly theoretical view of the workings of the hierarchy of norms. A **map of localized cases was produced,** and is presented below.

3 *Results*

Siting matters, a summary map: spatial distribution of studied contentious wind projects, displayed by landscape type and associated decision of the Council of State

Year	[2010-2017]	[2018-2021]	Total
NA	2	3	5
Against	9	4	13
EL	4	1	5
OL	4	2	6
OL+	1	1	2
In support	7	19	26
EL	1	3	4
OL		1	15
OL+		1	7
Total	4	5	44

Number of decisions by the Council of State (2010-2021)

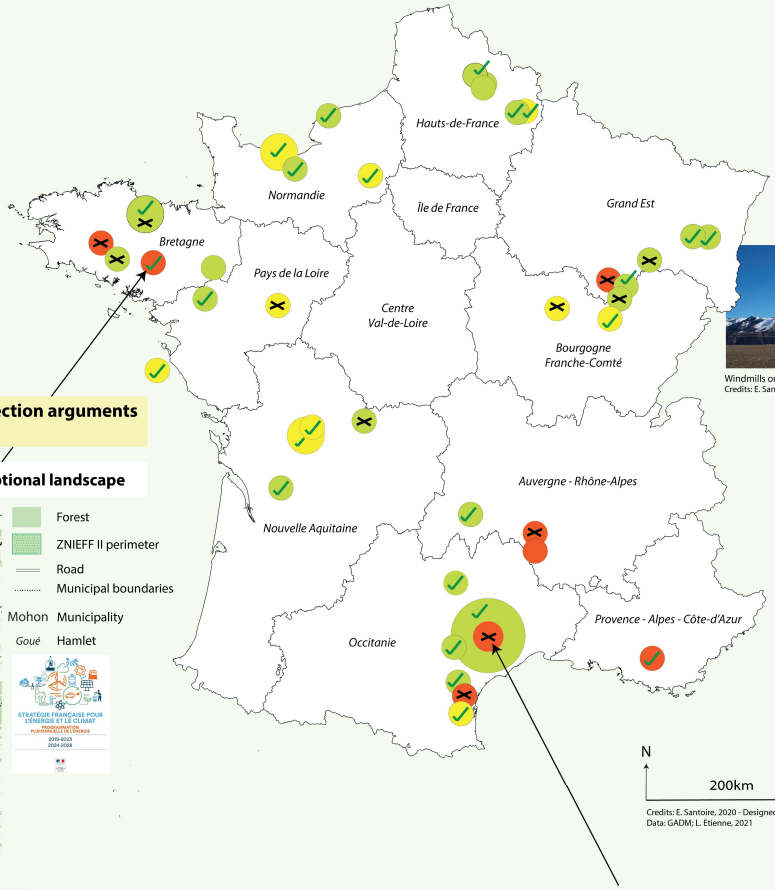
1 2 5

Landscape qualification by the Council of State

- Qualified as **ordinary** landscape
- Qualified as **ordinary +** landscape because of **proximity** to listed sites or landscapes
- Qualified as **extraordinary** landscape

Council of State decision

- ✕ Project decommissioning
- ✓ In support of the wind power project
- **empty** Not applicable (remand of decision)




Windmills on the Trièves plateau, Isère
Credits: E. Santoire, 2020

Comparison of two cases to assess the historical evolution: a weakening of protection arguments to the benefit of national energy interests at the turn of the 2015s

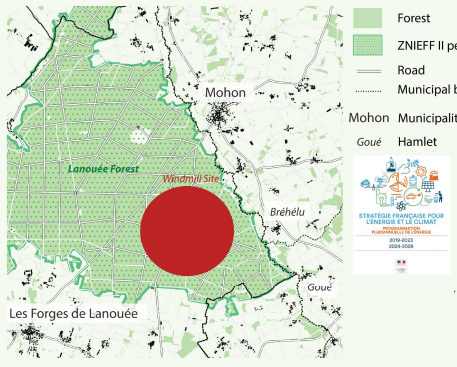
The Lanoué case is **representative of a post-2015 trend** giving precedence to national energy needs, and marked by the 2018 decree simplifying land-based litigation procedures (shortening their length).

Here, local residents and environmental associations **requested the cancellation of a wind farm of 16 or 17 wind turbines** in the Lanouée forest, located in Les Forges (Morbihan, Brittany).

Although located in a **type 2 natural area of ecological, faunistic and floristic interest** (ZNIEFF), the Council of State stated that this project was of **major public interest and noted that the derogation from the prohibition on harming protected species was justified on that basis.** This wind farm of 51MW, would supply electricity to more than 50,000 people. It was part of an electricity pact signed between the State and several regional players, in a context of extremely limited local electricity production (only covering 8% of local needs).

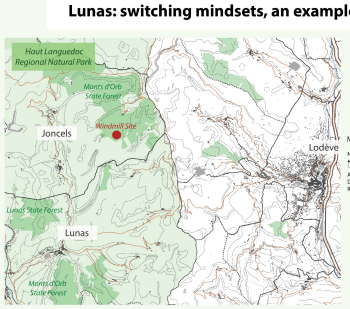
The energy interest of the project, which was justified by national political objectives, took precedence over other regulatory concerns (such as landscape protection).

Lanouée: a major public interest in an exceptional landscape



- Forest
- ZNIEFF II perimeter
- Road
- Municipal boundaries
- Mohon Municipality
- Goué Hamlet

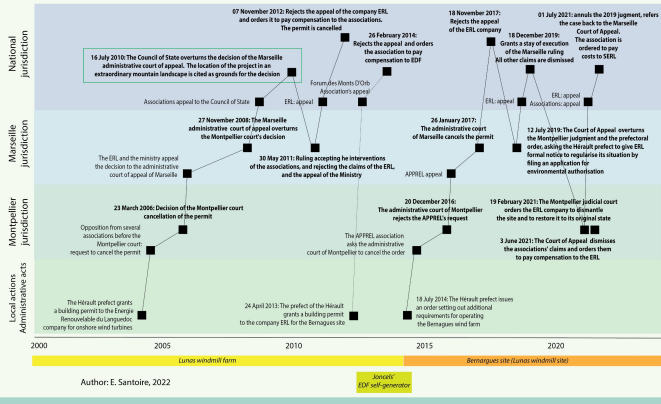
Lunas: switching mindsets, an example of evolving jurisprudence in the years 2000-2010



Located in the Hérault department (Occitanie region), the Lunas case **adds historical depth,** as it stresses the post-2015 change.

In this **18-years long, multi-layered dispute** (see chronology opposite), the Council of State has issued 5 decisions. Yet, while the **first ones pointed out the extraordinary siting of the project** and called for its cancellation, **by 2014 the situation was reversed.** The Council of State validated the construction permit for a self-generator on the grounds of its **"economic relevance"**, whereas several associations had requested its cancellation due to the adverse landscape effects caused by the concentration of wind farms in the vicinity of the same municipality.

The analysis reveals that **only the 2010 decision referred to the exceptional landscaping characteristics of the site**. The judge no longer used this reference in subsequent proceedings.



4 *Conclusions*

1. The **post-2015 period highlights a tendency to favour the development of wind energy**, qualified as a major public interest. The national energy strategy (political objectives) takes precedence over other legal strategies and concepts, questioning the concrete functioning of the hierarchy of norms.
2. In a context of wind energy development, and **tension over available land**, we see **constructions being authorised in inventoried landscape areas**. Even though these inventories (e.g. ZNIEFF) **do not provide regulatory protection** (no direct legal value), they are being increasingly sidelined by the judge at national level. And, while judges do not legislate, they contribute to **making law by interpreting it and putting it into practice.**
3. An analysis of the decisions of the Council of State shows that a **'State landscape' vision** is still present (Nadaï and Labussière, 2014), despite **current decentralisation trends.**
4. In spite of locating cases and paying attention to their geographic position when judging disputes, their reading **remains mainly national in scale** (in a paradigm opposing national objectives to local interests). In this respect, this study suggests **no territorialisation of renewable energies in the sense of a law seized by the territory, whose actors would be producers of norms, in a movement of extending spaces of action.**

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