Land use conflicts in coastal areas: the case of Corsica

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Abstract—Mediterranean littoral spaces are subjected to a strong tourist pressure which poses the problem of the conciliation between growth of the built-up areas, on the one hand, and safeguarding of the environment and the agricultural activities, on the other hand. The tensions generated by these contradictory interests are particularly sensitive in Corsica, because of the existence of vast portions of the littoral preserved and strictly protected. Present research is interested on two levels of regulation of these interests: legal regulation by the administrative courts which relates to the conflicts on a communal scale (operations of constructions), and political regulation at the regional level by the conciliation procedures which aims to reform the rules of protection concerning coastal areas. This enquiry focused on the statistical study of the activity of administrative court in Corsica in the field of planning law over a five years period (1998-2002), from an economic point of view, attentive in a empirical way for the use of the legal institution by the actors implied in the cases, and for the rules which they mobilize. These data highlight that the activity of the court as regards planning law disputes is largely concerned with the environmental problems, and especially with the safeguarding of coastal natural spaces. On the other hand, local state administration thus appears particularly vigilant in the control of environmental protection. But these results must also be interpreted from the perspective of political relations between state administration and local elected officials. Indeed, the significant number of legal procedures initiated by the administration means that the preliminary procedures of mediation frequently lead to a failure. On the second part we present the results of a follow-up of a consultation process about land management issues undertaken by the Corsican Regional Parliament. The aim of this consultation is to support a forthcoming land management regulation to be edicted by the regional parliament. We show on a last part the tight boundaries between these two ways of regulation in a context of sovereignty dispute between statal and local authorities

Index Terms—Environment, tourism, land use conflicts, littoral, governance.
the kind of actor (plaintiff and defendant), the basis of their respective argumentations and the consideration of the judgement of the courts. On the second part we present the results of a follow-up of a consultation process about land management issues undertaken by the Corsican Regional Parliament. The aim of this consultation is to support a forthcoming land management regulation to be enacted by the regional parliament. We show on a last part the tight boundaries between these two ways of regulation in a context of sovereignty dispute between statal and local authorities.

II. RESORT TO THE COURT AS EXPRESSION OF LAND USE CONFLICTS

The regulation of environment safeguarding rests inter alia on the legal capacities offered to citizens, associations and public institutions to resort to the courts and then enforce the objectives of sustainable development determined by the law. The ways the judges intervene in this field are various: regulation of harmful effects within the framework of private law conflicts, repression of pollution and various infringements against environment by means of a specialized penal policy. To understand the interests conflicts between economic activity and environment safeguarding, we chose to concentrate on disputes aiming at public authorities decisions and activities (i.e. administrative law dispute in French law), insofar as these situations make it possible to establish bonds between the legal level and the political level of regulation: conflicts between local elected representatives and state administration are solved indeed within this legal frame.

Rather than an analysis of lawyer being interested in case law interpretations, we are located from the sociological and economic point of view, attentive for the use of legal institutions analyzed in an empirical way: we focus on the way the actors implied in the cases and on the rules which they mobilize. From this point of view, we studied the activity of the qualified administrative court on the corsican territory (court of Bastia) over a five years period (1998-2002).

A. Environment conflicts and planning conflicts

The cases administrative courts dealt with relate to the environment safeguarding in various ways. A first level is properly that of environment law, connected to disputes aiming at the activities of state administration and local authorities as regards pollution control and protection of natural spaces. In Corsica, the disputes over the studied period relate for example to authorizations concerning working out of careers, garbage management, spring water collecting, pollution risks for rivers linked to small hydroelectric infrastructures.

But this level is corresponding in practice to a very weak share of the courts activity: over the studied period, it represents 24 cases, among which associations and amenity societies are sure very active, since they are acting in every three lawsuit. Moreover, these cases do not concern coastal spaces as a majority, but rather the interior of the island, as it is the case for water management and electricity issues. Cases relating to agricultural questions are more numerous over the period (114), but they more often deal with financial problems (state assistances for farmers and breeders) that spaces management.

On the other hand, among the cases connected to land use conflicts issues, there is no doubt that planning law disputes are the most frequent cases. The planning law cases (1152 files) are far more numerous than environmental and agricultural cases: in fact a quarter of the court activity over the studied period, that is to say more twice than the national average. In a paradoxical way, it is thus not in the environment and agriculture cases that should be looked after the core of spaces legal regulation concerning natural and agricultural protected spaces, but rather in planning law cases applying to these areas.

B. The protection of littoral spaces as the core of planning law cases

Littoral spaces are subjected in Corsica to an important economical pressure related to building projects. The planning law cases are of course more numerous in the littoral districts insofar as the are the most inhabited areas in Corsica. But a detailed study highlights that, among these littoral areas, tourist districts are above all concerned with these disputes. It is what shows cartographic representation at figure 1, worked out from a more restricted sample corresponding to three year of the court’s activity (1998-2001). The commune of Bonifacio, concerned with building projects linked to tourist activities, seems for example to be the most litigious area, despite a smaller population than other districts in Corsica.
However, a finer study of these conflicts seems necessary to explain its economic and social significance, as well as the place of environmental issues. In table 1, we thus expose concepts most frequently discussed in planning law cases, starting from an detailed analysis corresponding to one year of decisions, that is to say 296 cases (the data presented by the table are not to be added up, because certain cases can refer to several categories at the same time).

In this table, one can distinguish three types of categories:
- general planning law cases categories, not particularly related to environmental issues. Thus, the most frequent category concerns “density rules” building projects must take into account.
- those specific to littoral spaces, and which are linked to protecting rules of these spaces (statutory rules edicted in 1985 by the “littoral spaces Act”, loi "littoral"): "spaces close to the shore", "remarkable spaces". They are very often mentioned in the cases. Some of these categories apply at the same time at littoral spaces and montain spaces.
- finally, a third type of categories deal with protecting rules for natural or agricultural spaces, but these rules are not specific to littoral spaces: "wooded areas", "protected agricultural spaces"

<table>
<thead>
<tr>
<th>Categories</th>
<th>Frequency (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>General rules of density</td>
<td>32</td>
</tr>
<tr>
<td>Spaces close to the shore</td>
<td>26</td>
</tr>
<tr>
<td>Urbanization in continuity</td>
<td>20</td>
</tr>
<tr>
<td>Remarkable spaces</td>
<td>17</td>
</tr>
<tr>
<td>New hamlets</td>
<td>15</td>
</tr>
<tr>
<td>Natural risks</td>
<td>3</td>
</tr>
<tr>
<td>Wooded areas</td>
<td>3</td>
</tr>
<tr>
<td>Agricultural spaces</td>
<td>2</td>
</tr>
</tbody>
</table>

These data highlight that court activity as regards planning law disputes is largely concerned with environmental issues, and that within these issues, the littoral spaces topics prove to be dominating. Furthermore, if certain categories can as well be related to protecting rules for moutain spaces, a detailed examination shows that the disputed projects are located most of the time on the littoral districts. Another teaching of these results is the low number of reference to protecting rules aiming agricultural grounds. A first element of explanation is that enforcement of protecting rules relating to littoral spaces makes superfluous the resort to protecting rules of cultivated spaces. But one can also conclude from it that in costoal areas zones economic interests related to building projects, for residential and tourist use, are more opposed to environmental interests that to agricultural interests.

A first conclusion of these data is that judges are brought to control littoral spaces strictly. It means that district representatives authorizing these disputed building projects, are subjected to a constant and regular control. But the simple report of the quantitative importance of these cases remains insufficient: it is necessary to identify the " cases providers", i.e. the actors who are at the origin of the disputes and mobilize courts in order to exert a pressure on local authorities.

C. The control of state administration

Planning law cases are related to the contestation of individual decisions (building license, various authorizations and certificates), but also to collective range decisions like the vote of district plans by disctrict councils These documents are supposed to determine the localization principles of specialized district areas (housing, agricultural or natural areas) through planning rules and territorial mapping. Since the decentralization reforms in France in the 1980s and the cancellation of state administration supervision, district councils and there mayors have widened competences on this matter. Local state administration agents however continue to exert an important control by subjecting a posteriori to the administrative courts the decisions of elected officials they consider contrary with the law (submitted for purposes of “legality control”). The judges are used thus as referees between state administration and elected representatives in the
event of conflicts unsolved by the negotiated way.

For the regional representatives favourable make the protecting rules of littoral spaces more flexible, the control exerted on planning decisions through resort to courts by state administration and associations (amenity societies), is considered to be excessive. For some, it constitutes one of the causes to the brake of tourist development in the island, sacrificed for environmental protection. If we calculate a “court resort rate” in this field (ratio between planning law cases and building licenses delivered by mayors), it appears that approximately six licence is likely to be sued : 200 cases for 1200 licences over the studied period. (statistics source relating to licenses are collected by state administration). The legal risk thus appears relatively high, even if we miss comparable data on the national level. But in same time, the argument according to which protecting rules would constitute a brake for development seems unjustified, insofar as Corsica knew a growth rate of building licences higher than the national average rate during the last decade (+7,7% against +4,9% on national level).

However, the files analysis shows that resort to court by state administration (represented by the prefect) is massive: datas concercing files against district councils and mayors decisions show that more than 60 % of actions are brought by the prefect, 30% by private individuals and only 6% by associations. Daily conformity control of planning law decisions seems to be principally ensured by state administration. Moreover, the success rate in courts of the state representant appears relatively important: in most of the cases for 1200 licences over the studied period. (statistics source relating to licenses are collected by state administration). The legal risk thus appears relatively high, even if we miss comparable data on the national level. But in same time, the argument according to which protecting rules would constitute a brake for development seems unjustified, insofar as Corsica knew a growth rate of building licences higher than the national average rate during the last decade (+7,7% against +4,9% on national level).

The local state administration thus appears particularly vigilant in the control of planning rules in coastal districts. But these datas must also be interpreted from the perspective of political relations between state administration and local elected representatives. Indeed, the significant number of legal procedures initiated by administration means that the preliminary procedures of mediation frequently lead to a failure. The externalisation conflict management by resort to court rather than by friendly negotiation signifies that the political contexte of territorial governance in Corsica is marked by persistent tensions between local state administration and representatives.

III. AN EXPERIMENT OF TERRITORIAL REGULATION: THE CORSICAN REGIONAL PLAN

The important judicial control in planning law matters can be then considered as the consequence of tensions between administration and local elected representatives. These tensions also lead to a lack of planning regulation at the local level. As planning local authorities, mayors and district councils have to elaborate district plans. But only a minority of districts are equipped with such plans : most of them are coastal districts, and among them, a great number was nullified by the judges because of their noncompliance with the environment protecting rules (most of the time as a consequence of judicial actions from state administration).

Such a political context led the regional elected representatives to make pressure on the national government and parliament, when a new regional statute was drafted in 2002, in order to obtain legal powers in planning law matters. As a result, the regional plan created by the Corsican Statute Act gave to local representatives a strong instrument for reforms. According to the law, the plan procedure is entrusted to the executive Council of the regional Parliament, which organizes a consultation phase widely opened to various institutional actors of the island, before the drafting and the final vote of the plan by the regional Parliament. The following analyses came from an observation of this consultation phase in 2004-20005, through the activity of working groups set up by representatives. Four groups actually dealt with environment and land use topics: “environment”, “agriculture”, “tourism” and a group devoted to “littoral and mountain areas”, where most of discussions concerned planning law matters.

The regional plan the representatives must work out is at the same time a planification and regulation document. On one side, long term strategies of regional economic development as to be planified (tourism, agriculture, transport, housing, public services, public assistance to companies, environmental protection) and specified at the level of each territory. However, this plan does not carry in itself any budgetary decision, which are related to distinct procedures (financial negotiations with the State, debate and vote of regional budget in local Parliament). For these reasons, the
political heart and the attention of public opinion focused on the other, “regulating” and normative side of the plan. Therefore, the “littoral and moutain areas” working group gathered most of participants, and the most active one, among them mayors and other local representative of touristic districts.

This situation brings participants of other groups (“agriculture” for example) to join it or claim common meetings. Representatives of farmers fear that discussions would ignore such topics as protection of cultivated grounds, if most of planning law matters should be debated in the “littoral and moutain areas” group.

They also fear in particular a confrontation of interests reduced to the tourism/environment debate (deregulation of planning rules versus limitation of urbanization in natural spaces), forgetting the tourism/agriculture debate (limitation of urbanization in agricultural areas). Their opinions are nevertheless convergent with those of environmentalist associations to preserve the current restricting rules.

For contradictory reasons, farmers, associations and district representatives meet to claim a regional plan with a small scale cartography, the one for protection purposes, the other to guide for the control of district plans and building authorizations. For the regional elected representatives on the one hand, “remarkable or characteristic spaces”, selected for their ecological interest, as well as a one hundred meters littoral corridor, are completely protected from urbanization; in addition, in "spaces close to the shore", urbanization must be limited and justified by economic needs (tourist activities requiring the proximity of the sea, for example).

\[ \text{Fig. 3. Organization of the consultation procedure.} \]

This brings to light the importance of national standards. However, the debate among representatives and other institutional actors began only after the publication of an important document elaborated by the local state administration: the "Atlas of littoral spaces Act". Carried out by state administrations responsible for planning and environment matters, it is based at the same time on case law, interpretations of legal rules by the state administration itself, and on a scientific expertise concerning natural resources. Published before the regional plan, the atlas is a cartographic interpretation of the protecting rules mentioned above, on a relatively fine scale (1/25000). Stripped of normative value, this chart nevertheless is considered by administration agents as a long term decision guide for the control of district plans and building authorizations. For the regional elected representatives on the contrary, the future regional plan is intended to replace and nullify this map.

The strong symbolic value of remarkable spaces (some of which are recognized on the international level) explains why tensions sharply oppose environmentalist associations and elected representative concerning their borders, even if the latter affirm that the plan will modify only 10% of the surface proposed by the state administration map.

But the strategic discussions maybe relate to the

### Categories of spaces concerned

| Legal categories discussed |
| Littoral districts | Green zones | Urbanization in continuity | Existing agglomerations |
| Spaces close to the shore in littoral districts | Definition of spaces close to the shore | Limited extension of urbanization | Activities needing the proximity of the sea |
| “100 meters corridor” in littoral districts | Urbanized spaces | Activities needing the proximity of water |
| Remarkable or typical spaces in littoral districts | Definition of remarkable spaces |
delimitation of the “spaces close to the shore”. Indeed, it is on this type of spaces that requests of mayors are most numerous within the working group. If these spaces are not characterized by an absolute prohibition against building projects, they nevertheless are framed by important constraints, mentioned above. However, as the national Act only gave a large definition for them, judges imposed their own criteria, which lead in certain cases to extend their surface in an important way. Thus, current case law fix the border of theses spaces with qualitative and not quantitative criteria (such as: the hill crest next to the shore). Such definitions can lead to important disparities according to the geographical situation of the district, and numerous mayors would like other, more restrictive and quantitative criteria to delimitate this protected spaces. Regional elected officials finally proposed that the regional plan should distinguish between different littoral areas: coastal areas with small beaches and close urbanized spaces (Corsican Cape, Gulf of Porto), coastal areas with small beaches and hills (Balagne, area of Sartène), areas of vast beaches with distant mountainous back-country (area of Ajaccio and Propriano).

Moreover, spaces close to the shore prove to be strategic in the discussions for two other reasons. On the one hand, law specifies that in these spaces, a preliminary authorization of state administration is necessary for any building project, except if the projects concerned are in conformity with the rules of a regional plan. Therefore, the elaboration of this plan seems to be strategic for district representatives.

On the other hand, a second criterion must be taken into account: the delimitation of areas subjected to protecting rules of littoral spaces, and of those subjected to protecting rules of mountain spaces. Indeed, moutain spaces are also protected from an excessive urbanization by legislation (“Mountain Act” enacted in 1985 as the same time as “Littoral spaces Act”), resorting to similar legal categories as for littoral areas: urbanization in continuity, environmental integration of new building groups and hamlets. Otherwise, the national political agenda interfere in such matters with the local agenda: member of national parliament elected in moutain areas recently succeeded in obtaining the vote of an act limiting these protecting rules in an important way: moutain district councils can indeed authorize by a vote exemptions from the limits imposed on urbanization.

Because of the particular geographical shape of the island (a "mountain in the sea"), many corsican districts are subjected at the same time to both protecting rules (for moutain and littoral spaces). Consequently, it can prove to be judicious for district representatives to classify most of the district spaces in areas subjected to the more flexible Moutain Act rules. In addition, the statistical study of planning law disputes showed us that protecting rules of moutain spaces do not constitute an important stake for lawsuits. For this strategic purpose, the category of “spaces close to the shore” can be used as a legal tool to delimit borders between the two kind of spaces: beyond the border of spaces close to the shore, only the Moutain act rules should be enforceable.

Thus, the existence of various categories of protected spaces makes it possible for local representatives to organize planning rules in order to get more flexible solutions among the different level of protection.

The experiment of territorial governance carried out by the regional representatives on planning law topics aims at substituting a political regulation for the judicial and administrative regulation. The regional plan then becomes a tool to reinforce the power of distric representatives against judges and state administration. But this political context leads to other interrogations, relating to the legitimacy of each institutional actor to arbitrate land use conflicts (between building projects connected to touristic development and environmental protecting rules). However, the legal capacities of regional representatives seems to be limited, as the intervention of state administration in planning and environmental topics, both on the local political and judicial agenda, still remains important.

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