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RÉPUBLIQUE FRANÇAISE

MINISTÈRE DE LA JUSTICE

COURT OF APPEAL OF AIX-EN-PROVENCE

High Court of Marseilles

The Public Prosecutor

CRIMINAL POLICY FOR THE ENVIRONMENT

ENVIRONMENTAL CRIMINAL POLICY



Public Prosecutor of MARSEILLES

- Special features of competence and issues
- The Public Prosecutor's criminal policy
- Measures implemented
- Illustration: water criminal policy

ENVIRONMENTAL CRIMINAL POLICY



Special features of competence

- 2nd city in FRANCE, 850,000 inhabitants,
45% of dept. pop. (heavy urbanization, industrial and commercial fabric: ICPE, waste, pollution, town planning...)
- Important maritime image (fishing, traffic regulations, pollution..) and independent Port (CITES...),
- Many protected areas (maritime, PNC) very busy,
- Fire risk.

ENVIRONMENTAL CRIMINAL POLICY

Consequence: very diverse environmental litigation.

More than 150 procedures per year on average:

- Fight against forest fires: 5 to 10
- Town planning in classified areas: 20
- Facilities classified for the environment: 5
- Pollution (soil, freshwater, maritime except JULIS): 5 to 10
- Species preservation (including Cites): 20
- Maritime fishing: 40
- Hunting: 20
- Waste: 20
- Billposting: 10

To which we should add the traffic policy for classified areas (land and sea)

ENVIRONMENTAL CRIMINAL POLICY

Judicial measures implemented.

- Formation of specialized judgment
- A referring magistrate within the prosecution
- A specialized assistant
- Relationships with recognized associations
- Specialized investigative services (SR, OCLAESP) for complex cases
- Special courts: the JULIS (marine pollution) and the Public Health Division (PSP: several files),
- An active partnership with the devolved administrations and public institutions (relationship between criminal policy and administrative sanctions, PV quality, implementation of the plea agreement, alternative course ...),
- Operational mechanisms: RCCI unit, COLAEN, GOC.

ENVIRONMENTAL CRIMINAL POLICY

SPECIFIC FEATURES OF ENVIRONMENTAL CRIMINAL LAW

- Very technical (issue of training judges and investigators: "The science of an engineer with the rigor of a lawyer" Bruno COTTE)
- Question of environmental crime scene,
- Limited number of procedures (limited means of controls, priority to rehabilitation-regularization)
- Power of public prosecutor by devolved administrations and public institutions (little by conventional OPJ),
- Sanctions sometimes insufficient (pedagogy),
- Question of the place of criminal law with respect to other responses (civil, administrative ...) and therefore the relationship between the judicial and administrative spheres.

ENVIRONMENTAL CRIMINAL POLICY

ILLUSTRATION: THE WATER CRIMINAL POLICY

- Power of public prosecutor: PV ONEMA essentially (10-15/year),
- Judicial investigation by non-specialized services: need for accurate PV and complete court notification,
- Identification of the party(ies) responsible (complex legal arrangements, legal persons, natural persons...),
- Multiple qualifications (pollution, non observance of administrative measures, water flow, species circulation and management...),
- Difficulties in terms of pollution: link of causation between pollution-activity and demonstration that the latter has had harmful effects on health, flora or fauna.
- Procedural features (plea agreements, powers L216-13 EC, adjournment under payment penalty with a view to restoring the aquatic environment),
- Role of administrative policy (cessation of illegal activities and rehabilitation of settings) - search for complementarity.

ENVIRONMENTAL CRIMINAL POLICY

SOME EXAMPLES

- Pollution discharged into the sewerage network in connection with poor network maintenance (Huveaune River)
- Pumping from river during prohibition / restriction period (Summer)
- Discharge of harmful substances in ground water (garage),
- Pollution of the Durance by carpet cleaning with cleaning products
- Water supply non-compliant and with no consumer information.

ENVIRONMENTAL CRIMINAL POLICY

Concrete examples of concerted judicial action:

- The Calanques Operational Group: GOC
- Operational Committee for the Fight Against Damage to the Environment: COLAEN of BOUCHES DU RHONE

ENVIRONMENTAL CRIMINAL POLICY

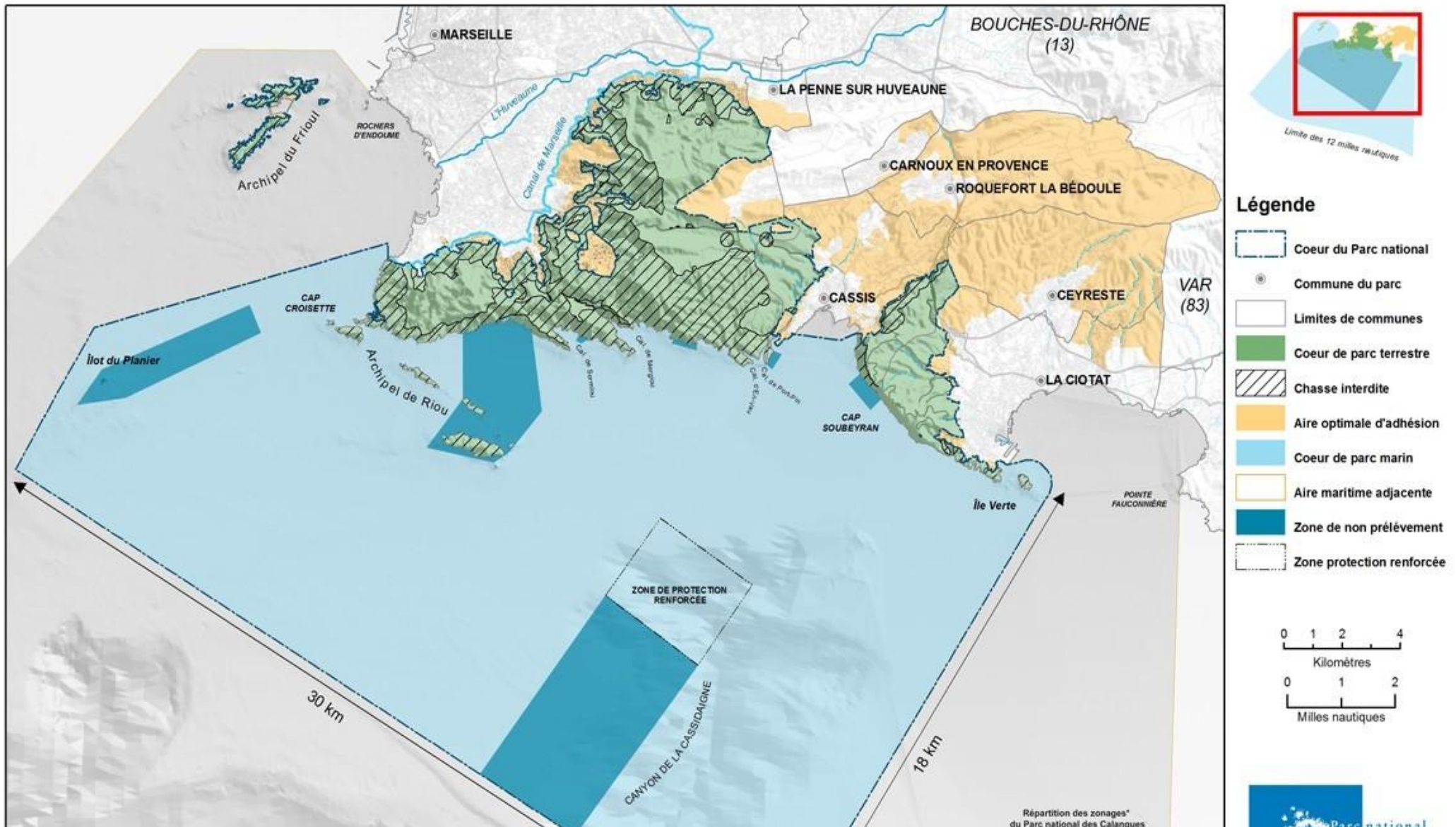


The National Park of Calanques

- Creation on 18 April 2012
- Major environmental issues: the only continental, marine and peri-urban park in EUROPE
- 158,000 ha of which 90% at sea:
Heart of the Park: 52,000 ha (reg. Spec.)
Area opt. of accession: common law
- Specific requirements = specification of an adapted criminal policy
- Presentation of criminal policy at PNC on 11 July 2012
- Creation of **GOC**

ENVIRONMENTAL CRIMINAL POLICY

Périmètres du Parc national des Calanques



ENVIRONMENTAL CRIMINAL POLICY

A tool: The Calanques Operational Group

- Due to specific offenses at the heart of the Park and those of common law
- Due to important environmental, economic and social issues
- Due to a particular administrative and geographical entity recognized worldwide
 - implementation of **GOC** = specific instance composed of control services and administrations under the supervision of the public prosecutor, to create a stronger network and to ensure specific and appropriate judicial follow-up
 - special monitoring of judicial operations within the PNC: PV sheet, dashboard consultation meeting.

ENVIRONMENTAL CRIMINAL POLICY

Criminal priorities applicable within the PNC

- We need to precisely define the offenses appearing as the most serious in terms of their impact on the environment, the action to be taken by the officials and the follow-up by the public prosecutor
- Selected topics:
 - Town planning
 - Fires
 - Hunting
 - Fishing
 - Fauna
 - Flora
 - human activity
 - maritime activity
 - traffic

ILLUSTRATION OF VERBAL INSTRUCTIONS

Predicate offenses (NATINF) 1 - Marine fishing with gear in areas where its use is prohibited (7059)	Violation	S
2- Marine fishing in areas where it is prohibited (2596) - ZNP - ZPR	Violation	S P
3- Marine fishing with gear which is prohibited (2593) – <i>poaching, electric reel</i>	Violation	P
4- vessel operating with no safety precautions - no navigation permit (4761)	Violation	P

Criminal policy

Systematic correctional policy for commercial fishing and alternative opportunity for recreational fishing.

THE CRIMINAL POLICY WITHIN THE NATIONAL PARK OF CALANQUES

HUMAN ACTIVITIES

PV

Predicate offenses (natinf)	1- display of an advertisement in the heart of the Park (5873)	Violation	P
	2 - opposition to inspection of bag, game bag, pocket game in the heart of Park (10068)	C5	P
	3 - abandonment, dumping and unauthorized deposit of waste or object in the heart of Park (25899) using a vehicle (25900)	C3	P
		C5	S
	4 - unauthorized organization of sporting and cultural events in the heart of Park (25924)	C5	P
	5- unauthorized use of sound instrument (3474) – <i>if professional</i>	C2	P S
6- irregular exercise of commercial and handicraft activities at heart of Park (25921) – <i>including celebration evenings with sound coverage.</i>	C5	P S	

Criminal policy

Prosecution where verbalization is systematic
Remaining: magistrate's evaluation

ENVIRONMENTAL CRIMINAL POLICY

GOC actions:

- Continuous action of inspectors and OPJ (ONF, ONCFS, GM...)
- Targeted and harmonized actions:
 - Hunting in Oct (ONCFS, ONEMA, ONF, PNC)
 - Barasse: motor-driven traffic and use of fire/watch fire in April 2013 (ONF, ONCFS, PNC)
 - L'escalette: pb of town planning and PC in February 2013

Planned actions:

- Floating night clubs
- Trawling in ZNP
- Parking on access track (DFCI)

ENVIRONMENTAL CRIMINAL POLICY

COLAEN : an approach between public prosecutors



Department of
BOUCHES DU RHONE
(13): 3 public
prosecutors

- MARSEILLES
- AIX EN PROVENCE
- TARASCON

→ Different specific issues
and problems

ENVIRONMENTAL CRIMINAL POLICY

Operational Committee for the Fight Against Damage to the Environment (COLAEN)

- Approach of judicial coordination of the 3 public prosecutors on environmental policies
- Interest of judicial cooperation in a complex context with 70 classes of agents and 25 special police agents for the environment
- Operational committee, associated with MISEN in strategic focus and chaired by the prefect
- Implementation on 15 November 2012 with all 3 public prosecutors
- 2 meetings per year to specify targeted control operations

ENVIRONMENTAL CRIMINAL POLICY

Operational Committee for the Fight Against Damage to the Environment (COLAEN)

Objectives:

- Respond effectively and in the court to environmental infringements
- Boost the actions of the 3 jurisdictions on the issues at stake, common, transverse or complex
- Make judicial action visible and legible

ENVIRONMENTAL CRIMINAL POLICY

Operational Committee for the Fight Against Damage to the Environment (COLAEN)

Actions underway:

- Problem of free or unauthorized dumping with strong environmental issues (pollution, urban planning) and financial issues → departmental or regional problem
 - GLTD action on a town in the department in April 2013: agricultural area, various debris and construction, town planning, SP, ground water pollution ...
 - Identical action planned on an area of Marseilles
- Traffic in protected natural areas: National Parks of Calanques, Alpilles, Regional Park of Camargue
- STEP issues (conformity, pollution...)
- Pesticides: rice fields and drainage canals (Camargue) → TARASCON Public Prosecutor → other public prosecutors (other crops and water systems affected)

ENVIRONMENTAL CRIMINAL POLICY

WHAT IS THE PLACE OF ENVIRONMENTAL CRIMINAL LAW?

Necessary for many reasons:

- Imposed by international law (including directive 2008/99),
- Means of investigation (expertise, searches, international judicial cooperation...),
- Sanctioning of most serious conduct (offenders, non-compliance with administrative orders, irreparable damage....),
- Fight against organized environmental criminality (CITES trafficking, wastes...), reconstitution of financial flows.
- Social stigma (including image damage),

But it must be complementary to the administrative response (e.g. restoration) and such complementarity is built through dialogue.