

## For “Stop Linky Loire”, this trial in Saint-Étienne will be a turning point

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The group that is campaigning and even taking legal action in the Loire against Enedis's notorious Linky meter is confident that a decision by the Saint-Étienne court, upheld on appeal in Lyon a month ago, in favour of a plaintiff from the Loire, will set a precedent. Following a conference given by Professor Fontana, head of the occupational health and pathology department at the CHU (University Teaching Hospital) in Saint-Étienne, which was strictly devoted to taking stock of what is known at this stage about "electro-sensitivity", Stop Linky Loire discussed the court's decision.

*"The decision handed down by the Lyon Court of Appeal is particularly isolated and in no way reflects case law on the installation of Linky meters",* says Enedis. The day after the press conference organised by Stop Linky & 5G Loire, IF Saint-Étienne asked the state-owned company for its views on the 2023 judgements - a decision by the Saint-Étienne Court of First Instance that went against it and was upheld by the Court of Appeal - concerning the Joseph Cascina case. The EDF subsidiary (formerly ERDF), forced by the courts to remove the Linky meter from this resident of Saint-André-le-Puy, points out that *"the legislative and regulatory framework for their deployment has been confirmed by the vast majority of court rulings, such as those handed down by the Courts of Appeal in Paris, Versailles, Toulouse, Rennes, Aix-en-Provence and Orléans"*. For Denis Nicolier, it's obvious: *"They play it down, that's their usual technique"*.

Denis Nicolier, a former computer science teacher from the Loire, also points to *"a decision by the Bordeaux Court of Appeal in 2020 condemning the compulsory nature of Linky"*. Denis Nicolier says he is *"attached to individual freedoms"*, and describes himself as the "leader" of the Stop Linky 5G Loire collective. A collective, not an association, relaying locally the activities of the national Stop Linky & 5G network, which he co-founded in the Loire in 2017. It has 530 members, or at least supporters, according to him. Denis Nicolier's activism is matched by a very similar one within a second local collective, "Halte au contrôle numérique" ("Stop digital control"), which echoes the first. This collective was born out of the affair of the microphones or sound sensors (which were intended to assist the municipal police by being triggered in the event of loud and unusual noise) in 2019 that the City of Saint-Étienne wanted to install in the streets of the Beaubrun Tarentaize Couriot district. The project was finally abandoned following advice from the CNIL (French Data Protection Authority).

### The case of Joseph Cascina

Having fought its own legal battles over the Enedis meter, Stop Linky Loire has provided "moral and strategic" support for the fight led by Joseph Cascina. Joseph Cascina, a 59-year-old resident of Saint-André-le-Puy, was there on Wednesday evening alongside the collective, designated as an "EHS" (electro-hypersensitive person) to tell his story. *"In January 2020, there was a knock at the door to install a Linky meter as announced by letter 2 months before, insisting that it was compulsory. I wasn't too keen on what they were saying, but hey... Like a lot of people, we had our*

questions, but we just let it happen. I'd never been involved in any activities opposing Linky, or felt anything to do with electro-sensitivity until then. But once the meter was installed, it was immediate: permanent migraines that, strangely enough, lessened or even disappeared as soon as I moved away from home.” Joseph Cascina says he "tried everything" before deciding to go to court in September 2022 to get Enedis to replace his meter, sometimes to the point of doubting himself.

“Of course, I contacted Enedis before going to court. To no avail. All I could point to were the terrible headaches I'd been having since the installation: I didn't make them up! I spoke to the mayor about it, and sent lots of letters to Enedis, of course, but also to SIEL and even the prefect.” On the medical front, Joseph Cascina has obtained four certificates in 2 years, even thinking of having his teeth removed “just in case. But it didn't change a thing”. The journey began initially with a general practitioner, 4 days after the onset of symptoms. Then there was the *ENT specialist* in Thizy (Rhône). Then, before undergoing a brain MRI scan that produced no results, a consultation with Professor Luc Fontana, head of the Occupational Health and Pathologies Department at Saint-Étienne University Hospital. Fontana, who was present before the part of the Stop Linky press conference devoted to the legal aspect (a part he did not attend, leaving the room), was very measured in his comments (see below) about the current state of knowledge on electro-sensitivity. He was careful not to describe any scientific link between the symptoms experienced and the Linky meter, because such a link has not yet been established.

### **Electro-sensitivity: Under study at the CHU in Saint-Étienne**

On the other hand, his point of view - not on Linky per se - but on the existence of electro-sensitivity echoes the comments of ANSES. (Agence nationale de sécurité sanitaire de l'alimentation, de l'environnement et du travail - French Agency for Food, Environmental and Occupational Health Safety.) ANSES, which reports to the Ministry of Health, among others, estimates that 5% of the French population suffers from electro-sensitivity. In 2023, it launched the first large-scale French scientific survey on this subject, in which the CHU of Saint-Étienne is also participating. Professor Fontana does not deny the reality of the symptoms. Those of the few cases per year who come specifically to consult him on the more global subject of electro-sensitivity than the Linky case, of which Joseph Cascina was one. And therein lies the subtlety: the certificate he issued to Joseph Cascina, on which - among other things - the decision of the Court of Justice in Saint-Étienne and then of the Court of Appeal is based, indicates the reality of the syndrome of “*a condition defined in itself*” and “*the causes of which have not been scientifically established*”... Enedis has also challenged the evidential value of medical certificates, which it claims merely report the patient's complaints and declarations.

According to the Court of Appeal, “*the syndrome mentioned by the practitioners is by definition attributed to electromagnetic fields, so that the coincidence between the appearance of the syndrome and the installation of a communicating meter, which generates such fields, constitutes a strong element in favour of a causal link validly retained by the doctors in the absence of other avenues to explain the said symptom*”. Extract from the order issued by the Saint-Étienne judicial court, citing Professor Fontana's diagnosis: “*Joseph Cascina presents symptoms that could be classified as a syndrome of electromagnetic hypersensitivity or idiopathic environmental intolerance attributed to electromagnetic fields*”. This confirms the previous and parallel

conclusions of his colleagues that the plaintiff is “*probably affected by the syndrome of intolerance to electromagnetic fields or electro-hypersensitivity*”. This is more than enough to provide evidence of suffering and of the reality of the symptoms experienced (headaches, tinnitus) in the eyes of the courts, and therefore theoretically to justify sick leave, even if this was not the most important issue in the case of Joseph Cascina, who is also on disability.

### **“This will set a precedent”**

Joseph Cascina was relentless in his demands to have his Linky meter removed and an old one put in its place, so he decided to go to court. The court ruled twice in his favour. In its ruling of 5 January, the Saint-Étienne Magistrates' Court, relying on doctors' certificates, the fact that it had looked into other possible causes of his migraines (MRI, dental work), the “persistence of symptoms” and the “proven social inconvenience”, demanded that the meter be removed and replaced with an old one. This was done - with a month's delay - last April, despite an appeal by Enedis, the decision being enforceable. “*This is very rare. We know of only one other equivalent case in Aix-en-Provence*”, says Didier Nicolier. “*I would also add that this is the first time I've seen a judge take such an interest in trying to assess and understand the reality of the suffering experienced. This was once again the case at the Lyon Court of Appeal*”. The Court upheld the Saint-Étienne ruling on 29 November.

“*We have great faith in the value of these judgements. What has changed is that the pathologies have been recognised, a link established, and the precautionary principle (contested by Enedis<sup>1</sup>) put forward.*” This will set a precedent. In its counter-argument, Enedis contests “*the existence of imminent harm*”, arguing that “*all the scientific literature and independent French scientific authorities confirm that exposure to the waves emitted by Linky meters has no impact on human health*”. Enedis concludes that “*a causal link between the symptoms cited and the installation of the Linky meter cannot be established with the degree of evidence required before a summary proceedings judge. The various measurements carried out by independent laboratories have shown that the Linky meter poses no danger to either health or the environment. The ANSES report, updated in May 2023, confirms a low level of exposure to radio waves, similar to that of other household electrical or electronic devices.*”

### **An appeal to the Supreme Court is still possible**

*IF Saint-Étienne* contacted a local lawyer and asked him to reread the order of the Saint-Étienne Court of First Instance and then the decision of the Court of Appeal. He confirmed their importance, as well as the soundness and relevance of Stop Linky42's analysis of these rulings. “*However, Enedis still has the option of appealing to the Supreme Court. But it is not really in their interest to do so*” says Didier Nicolier. “*If the Lyon Court of Appeal's ruling is upheld, the case law would then be automatic, administrative in a way, making it possible to dispense with the courts to have these meters replaced. In the case of Bordeaux, and the assertion that Linky is not compulsory, they abandoned their appeal to the Supreme Court before the end of the case when they read the*

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1. Enedis argues that “*the precautionary principle is only applicable to public authorities with normative, legislative or regulatory powers, and it stresses that the rulings handed down by the Grenoble and Bordeaux Courts of Appeal condemning Enedis on the basis of the precautionary principle remain isolated and relate to the specific litigation concerning asbestos*”.

*plaintiffs' brief*". Enedis has until 30 January to decide whether or not to appeal. Joseph Cascina claims that three quarters of the symptoms he experienced on a daily basis disappeared immediately after the removal of his Linky meter.

## **Electro-sensitivity: what we know, what we don't know**

How can electro-sensitivity be defined in the absence of in-depth scientific studies on the subject? In early 2018, however, the ANSES officially recognised *"the reality of disorders suffered by people intolerant to electromagnetic waves"* (5% of the French population). Admittedly, at this stage for reasons that are scientifically *"unexplained"*, but at the same time recommending *"their management"*. To find out more, the ministerial agency this year launched a call for volunteers for a vast nationwide study. Around ten university teaching hospitals are involved (300 people are taking part), including Saint-Étienne via its Occupational Health and Pathologies Department, headed by Professor Fontana. *"Around thirty people are currently being studied. People complaining of electro-sensitivity have often been told that it's all in their heads. This adds psychological suffering to their physical suffering. Especially as they are already socially and professionally isolated because of their avoidance strategies"*, explains Prof Fontana.

### **"I see 5-6 cases a year"**

For Luc Fontana, the symptoms - headaches, fatigue, discomfort, tinnitus - are real. *"I see 5-6 cases a year"*, continues Luc Fontana. *"But I have no idea how widespread the phenomenon is among the population of the Loire. And before making a link with electro-sensitivity to computers, relay antennas or meters, the mechanism of which we know absolutely nothing about scientifically - any more than we know the typical profile of patients (age, sex, profession, etc.) - we first carry out all possible tests to rule out other potential causes of these symptoms."* The rare certainty, says the doctor, is that these symptoms do not worsen over time. What about the effectiveness of the protective clothing sometimes used? *"No scientific proof either. I have no radical opinion. If it helps a person with real symptoms, so much the better."* The aim of the ANSES study is therefore to gain a better understanding of the phenomenon, starting by identifying the population complaining about it.

Standards do exist, but as with radioactivity and air pollution (the latter is regularly tightened), their protective effectiveness is regularly challenged. In the case of air, the WHO's recommendations have become considerably more stringent than current European standards, despite the fact that Europe is at the top of the world in terms of requirements...

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