

AVOSETTA QUESTIONNAIRE

CLIMATE LITIGATION

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FRANCE

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[1] State of play at national level:

In your particular Member State, have cases been decided by the national courts, and / or are there cases pending before the courts, that aim to deliver better climate protection? Are there "horizontal" cases between private parties and / or "vertical" ones between private parties and public authorities – or both? If yes, briefly characterise them. Actions challenging public authorities could be aimed: (1) at high level target setting for greenhouse gas emission (GHG) reduction; or (2) at the taking of more concrete measures reducing emissions (such as emissions limits for automobiles); or (3) at projects causing emissions as a side effect (such as a new runway or highway). Briefly indicate who are the claimants; what are the standing requirements; what is the objective of the action, and what is the reasoning on the substance of the case.

Three main categories of climate litigation in France

◆ ACTIONS AGAINST THE PUBLIC AUTHORITIES

LIABILITY LITIGATION

[Notre affaire à tous et autres contre l'Etat français : Tribunal administratif de Paris 3/2/2021, N°1904967, 1904968, 1904972, 1904976/4-1, Association Oxfam France, association notre affaire à tous, Fondation pour la nature et l'homme, Association Greenpeace France](#)

This action was brought by 4 associations against the State before the administrative jurisdiction in march 2019. This action followed the petition "Affaire du siècle" launched by these associations which gathered more than 2 million signatures in France in 2019 considering the State's failure to act on climate issues. The plaintiffs asked to the judge to recognize the State's failure to act and to order to the State to take all the measures to reduce the greenhouse gas emissions compatible with keeping global warming below 1.5 C. The application for an injunction is attached to the main request for the main claim for compensation of one euro for ecological damage due to the State liability. They also invoked the recognition of a general obligation to fight against the climate change and the recognition of the right to live in a sustainable climate system. In February, the public rapporteur recognized the State's fault for not having respected its trajectory for reducing the greenhouse gas emissions; she therefore recognized the ecological damage resulting from this non-compliance with the trajectory proposed to award one symbolic euro for moral prejudice of three of the applicants ; she also proposed that the Court gives the government time before enjoining it to take several measures to stop the worsening of the ecological damage and to meet its greenhouse gas reduction targets". In its ruling of 3/2/2021, the administrative Court of Paris recognized the ecological damage linked to climate change and held the French State liable for failing to fully meet its goals in reducing greenhouse gases. The tribunal recognized the fault of the State et the ecological damage resulting by the non-respect of the climate commitment by the State; it also recognized the moral prejudice of the four applicants (one symbolic euro). Before ruling on the conclusions of the four applicants, the tribunal ordered an additional instruction to submit the unnotified observations of the competent ministers to all the parties within two months from the date of the notification of this judgment. In April 2021, the applicants have presented complementary observations to the tribunal. In //, the ministry published an action climate plan to reinforce the implementation of the national strategy low carbon & the national adaptation plan to climate change and the law project on climate and resilience has been adopted by the national Assembly at the first reading in the beginning of May.

LEGALITY LITIGATION :

○ [Commune de Grande Synthe et Damien Carême \(maire\) contre l'Etat 19/11/2020, N° 427301](#)

The municipality of Grande-Synthe (near Dunkerque) and Damien Carême (major in 2018) brought an appeal against the State before the Council of State, following the refusal of the Government to accept their request in 2018 for additional measures to comply with the objectives of Paris agreement. The Court considered that the action of this coastal municipality which is particularly exposed to the effects of climate change is admissible. In November, the Court ordered the government to send it within three months all the elements likely to justify that the greenhouse gas reduction objective resulting from the Paris agreement (-40/ by 2030) could be met. In the light of all these elements, the Court will judge whether the State's refusal to take

additional measures as requested by the applicants is compatible with the compliance with the trajectory set to achieve the 2030 objective or if this refusal is deemed illegal, to order that new measures be taken by the government.

- o [Affaires du triangle de Gonesse: Administrative Tribunal of Cergy 6/3/2018, Collectif pour le triangle de Gonesse, n°1610910, 1702621, Administrative Appeal Court of Versailles, 11/7/2019, Europacity Triangle de Gonesse, n°18VE01634, n°18VE01635, n°18VE02955](#)

Action brought by several associations requesting the annulment of a town planning document defining the development of the Roissy area (territorial coherence plan) because of its climate footprint. The "Triangle de Gonesse" is the name of an area of 750 hectares of agricultural land and the project consists of the urbanization of 300 hectares of agricultural land located to the south of this area. This legal action followed several other actions for annulment before the judges which publicized the case; in November 2019, the government announced the abandonment of the most decried part of the project for the area (the shopping center Europacity was no longer seen by the government as the "right response to the challenge of the territory and its ecological transition". In the decision of the Administrative Tribunal of Cergy in March 2018, the judge underlined the insufficiency of the impact assessment of the project due to the absence of consideration of the CO2 emissions induced by the displacement of tourists in the perspective of the creation of Europacity (annulment of the order); but the Administrative Court of Appeal invalidated this interpretation considering that the assessment of the climatic impacts of the project was limited to the emissions during the realization of the project (strict interpretation of the indirect effects).

◆ **ACTIONS AGAINST COMPANIES**

[Notre affaire à tous & autres contre Total Tribunal de Nanterre N° RG 20/00915 - N° Portalis DB3R-W-B7E-VQFM](#)

Five associations and 14 local authorities have brought an action against Total considering that this company did not take account sufficiently of the climate risks it generated, in contradiction with the obligation of due diligence prescribed by the Law 2017 on the duty of vigilance. Several associations had already put pressure on Total before this judicial action and the company has revised its Vigilance Plan for its second edition but not sufficiently for the plaintiffs in 2020. In February 2021 (11/2/2021), the Tribunal de Nanterre declared itself competent to assess the request presented by the plaintiffs (Total considered that the dispute fell within the jurisdiction of the commercial court). The plaintiffs asked the Court to order Total to adopt and implement sufficient measures to reduce climate risks and assume its responsibilities.

◆ **ACTIONS AGAINST ACTIVISTS**

Since 2019 several actions have been brought by the public prosecutor's office against activists (eg. Association action non violente COP21) who took down the portrait of the President of the French Republic E. Macron in several town halls in France. Activists justify their civil disobedience action considering that the President does not respect the French climate commitments in particular to comply with the Paris agreement. Such state failure constitutes a current threat of imminent danger. They invoked the existence of a state of necessity that obliged them to act in this way and they concluded that this exceptional situation exempted them from the charges against them (eg. The theft of the portrait (which they also denied)). They also invoked the freedom of expression (eg. argument accepted by the Tribunal de Grande instance de Bordeaux) and the climate emergency confirmed by the scientific data. Several criminal Courts (tribunal correctionnel) have sentenced activists to small fines (around 250 euros), but few have released defendants (the appeal Court of Lyon Tribunal correctionnel de Lyon, de Strasbourg, d'Auch, Tribunal de grande instance de Bordeaux 2021); appeal proceedings have been filed (the Appeal Court of Lyon has reversed the judgement of the tribunal correctionnel de Lyon) and few are still ongoing.

[2] **Interconnections between developments at national and supranational level:**

Where relevant, please connect the national experience to date with developments in climate litigation at the supranational level (e.g. proceedings before the CJEU and the ECtHR).