

**The role of Climate Litigation in the Energy Transition**  
*Special reference to French jurisprudence*

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**The Energy Transition in a COVID Altered World**

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## Introduction

**Energy transition** issues related to **climate change**

Nations play a **decisive role in the matter**. Also France.

Reminder: In France, Administrative Law structures a **special jurisdiction**, proper to Public Law: **Administrative courts**.

Since 1789, there is a **specialized judge**:

- who knows the **public services** mandates;
- that gives interpretation to the **general interest**;
- that **judges** the Administration (public bodies) and **protects** citizens;

Today, the **administrative courts and judges**, are also about **climate change**.

Only an **administrative judge** can remind a Nation / Administration, its **responsibilities** when engaging in the Energy Transition world.

What is the **French notion of Energy transition**?

In which context **energy transition jurisdictional decisions** are taken?

French government's **failure to take further action to reduce greenhouse gas emissions**, can be considered a violation of domestic and international law?

**1. The Energy Transition notion « à la française »**

“**Legislative motorization**” consequence of commitments related to the energy transition process;

Concerns for **adapting the legal system**:

- **Law 2015-992** of August 17, 2015 on **Green Growth Energy Transition**
- **Law 2019-1147** of 8 November 2019 **Energy and Climate**
- **Bill Project n. 3875**: on **fighting against climate change** and **strengthening, resilience** facing its effects (*Premium procedure*; accelerated).

A **multi-semantic energy transition notion**:

- **Law 2015-992**: Art. L-123-1-4 of the Town Planning Code: concept of **positive energy** and **high environmental performance**: efficiency.
- Development of **renewable energies**
- France must be **exemplary in energy** and **environment**.

- Buildings with a **low carbon footprint**, constructed while **minimizing their contribution to greenhouse gas emissions** over their entire life cycle, from their construction to their deconstruction;
- Encourage owner to carry out **energy performance work**, the Government submits to Parliament an **evaluation report concerning** the establishment of a **financial mechanism** aimed at encouraging, via a **bonus**, owners whose property has achieved those objectives of energy performance
- **Penalties** if not respected: **criminal** dimension.
- **Allocation of subsidies** for the energy renovation of housing occupied by households with **modest incomes**: fight against **vulnerable and underserved populations**.
- a special fund contributing to the **fight against fuel poverty (précarité énergétique)**

- Priority **Energy Transition** requirement: to improve **network and accessibility of territories**: development and deployment of **public transport** with low greenhouse gas emissions and atmospheric pollutants.
- The law of August 17, 2015: law of **action and mobilization** which commits the whole country: **citizens, companies, territories, public authorities**.
- strengthen **energy independence**, reduce greenhouse gas emissions and give everyone specific tools to **accelerate green growth**.
- the objective being to increase the **installed capacity of renewable energies by 50%** by 2023.

**Energy and climate law n. 2019-1147, November 8 2019**

- aims to respond to the **ecological and climate emergency**. It includes this emergency in the **energy code** as well as the **objective of carbon neutrality** by 2050 (divide greenhouse gas emissions by 6 by at least six by then).
- **gradual phasing out of fossil fuels** and the development of **renewable energies**

- **Bill Project February 10, 2021:**

- Acknowledgment of the existence of an **ecological crisis**
- development model towards a **carbon neutral society**, more **resilient**, **fairer** and more **united**, sought by the Paris Climate Agreement
- the **decarbonisation** of production methods and **circular economy** (*dealing with **waste and pollution**, keeping **products and materials in use**, **regenerating natural systems***)
- support the **ecological transition** of local communities by supporting the **local** variation of **national objectives**, concerted and adapted to the reality of each territory. **Geographic dimension**
- strengthens the **power of local elected officials** to experiment, regulate and control as close as possible ET.
- support all **citizens in the transition** to a society **more respectful of nature** and **natural** balances
- better **understand and respond** to the challenges of **climate change**: educational aspect.

- **information on products and services**, regulating advertising messages (fossil fuels):  
consumer citizen will become an **actor of change**
- **environmental justice** is strengthened since **ecological crimes** will now be **penalized** when they deliberately go against laws that **protect the environment** and nature
- The major aspects of the bill project: **consumption, production and work, travel, housing, food, changes in the law**

There are concerns for adapting the **legal system to ET society requirements**.

- Bill project 2021 particularity, the **CITIZENS**:
  - **participatory democracy**: *Citizen's convention for the climate*, for a fairer ecological transition
  - exercise in **deliberative democracy** (150 citizens, from different background, representative of France's diversity and wealth, worked for nine months and meeting experts to propose **concrete measures aimed at reducing national** greenhouse gas effect of at least 40% by 2030)
  - targeting **social justice**.

149 proposals were adopted, submitted to the Government on June 21, 2020. These proposals will be implemented by regulatory, legislative or other modalities.

**Energy Transition falls within the framework of traditional administrative litigation.**

**Three decisions** are to be analyzed here:

- **Conseil d'Etat, Assembly, July 10, 2020** (*from a decision of July 12, 2017 which ordered 13 areas of the territory to develop and implement air quality plans reducing nitrogen dioxide concentrations in 12 areas, and PM10 fine particles in three zones, under the limits set by Article R-221-1 of the Environment Code and to transmit them to the European Commission; the Government will submit 14 roadmaps transmitted to the Commission; these documents were not sufficiently detailed*); **6 months deadline to execute 2017 decision; 10 Millions** Euros penalty fee (*astreinte*) every 6 months.
- **Commune de Grande-Synthe, November 19, 2020:** (*January 23, 2019, the city of Grande-Synthe sued the French government for insufficient action on climate change; for French government's failure to further reduce greenhouse gas emissions. This, violates domestic and international law, including the European Convention on Human Rights, the Paris Agreement, the French Environmental Code, and the French Environmental Charter*). **Request more documents** (*supplement d'instruction*) to decide. To be provided in **3 months**.
- **Administrative Court of Paris, February 3, 2021:** 4 NGOs; **ecological damage** established (obligation to fight against climate change), notion of **emergency to fight against climate change** exists. Request more documentation (*supplement d'instruction*) to be provided in **2 months**.

○ **Administrative Litigation Climate Change Snapshot:**

- **Classic** administrative litigation, **specific** jurisdiction, these are problems that **remain complex**:

- Administrative law remedy: Appeal for annulment for excess of power (Recours pour Excès de Pouvoir) against the implicit decisions of rejection (administrative silence) of the PR, PM, Minister of ecological and solidarity transition; silence to **take legislative measures** to make “the **climate priority**” compulsory, by prohibiting measures likely to increase **greenhouse gas emissions**.

\***Acts of government**: a municipality (or a citizen) cannot oblige the government to present a bill (these are relations between the **constitutional public powers**, goes beyond the scope of administrative jurisdiction authority)

- **Order to take measures in 6 months**, or to provide documentation in **2 or 3 months**.

- Sends several **interpretative preliminary ruling** of interpretation to the CJEU (Commune Grande-Synthe).

- **Active legitimation** (qualité pour agir): who is affected by climate change? Who is entitled to claim? Who and What determines who is affected? (NGO; Association?). The notion of “**climate citizens**” remains **limited**. It is unclear why the Conseil d’Etat (Decision July 10, 2020) and the Paris Administrative Court 2021 rule out certain associations and others not (Statutes). E.g.:

\* Municipality of Grande-Synthe, **yes**

\* Mayor of the municipality, **no**

- There is no **direct effect of the Paris Agreement**: and it must be interpreted in accordance with **national law**.

- Concept of **ecological damage**. The TAP 2021 established a **technical analysis**.

Limits to **climate disputes**: Litigation against a Nation: The French administrative judge was **hesitant** about the State.

The judge sends comments that are almost complacent to France. Some favorable treatment can be seen:

- TAP 2021: **additional instruction**, 2 months deadline. The judge asks the French Administration to come and **justify itself**, postpones the decision (unlike *Urgenda*, case in the Netherlands, filed in front of a civil court. The Netherlands, condemned).

- CE Decision Ass. July 10, 2020: **6-month deadline for executing the CE decision July 12, 2017**. Otherwise, 10 million euros penalty per semester

Would **private companies** receive the same treatment?

The administrative judge becomes a **technical judge**, he shows an effort of **understanding** and analyzing. The 2021 bill seeks to make **citizens understand**. **Pedagogical law**.

**New challenges** exists for administrative courts:

- The Conseil d'Etat seems to be changing, we are moving from **traditional branches** of law, to **hyper-specialized courts in environmental and climate change** law.
- **Experts** speak, **memories** circulate (on emissions; fine particles, *Particulate Matter 10 - PM10*-; volumes of nitrogen dioxide). The analysis of the **evidence remains essential**, though technical.
- The Conseil d'Etat in Grande-Synthe 2020, cites legal provisions of **different origin**: national, European and international. **Complexity, friction?** Should not be.
- European law obliges countries to take decisions. States must respect **European commitments**. These are **not just programmatic decisions** for Administrations.

## Conclusions

### Paradox:

France is **one of the most active countries** in the implementation of **climate change policies** (Paris Agreements; Ambitious in terms of the international agenda)

However, it seems that a **certain condescension** is granted to the French Administration in this matter.

French Administration has an aura of **certain permissiveness** from Administrative Law Courts in matters of **climate change**.

**But Society** (in a direct or indirect way) seems to originally (TAP Associations 2021) push the **jurisprudence to condemn the state**, forcing specific actions to be taken.

**Besides, over Media coverage** of climate disputes, we can see the French judge intention **“to catch up” his delay** in climate policy litigation.

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