

The Role of Climate Litigation in the Energy Transition
Non-State Actors and French Case Law (Part II)

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The Energy Transition in a COVID Altered World

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Preliminary Remarks on Climate Litigation in France

- ❑ Climate Litigation as A New Challenge for French Administrative Courts
 - Complexity of Climate Issues
 - ❖ *Technical expertise*
 - ❖ *Climate System, and Energy Issues*
 - ❖ *Processes and Technologies being Developed*
 - ❖ *Technical Reports, etc.*
 - Multi-Faceted Claims
 - ❖ *Preventive Claims*
 - ❖ *Proactive Claims*
 - ❖ *Remedy Claims*
 - Diversity of Applicants
 - ❖ *Non-State Actors*
 - ❖ *Individuals*
 - ❖ *Sub-State Actors*

I. Oxfam France v. France also referred to as Affaire du Siècle [Case of the Century]

❑ Court: Administrative Tribunal of Paris (4th Section/1st Chamber)

* Handed down: February 3rd, 2021

* Designated: “Affaire du Siècle”

❑ Petitions before the Court

* Four Claimants: Oxfam France Association + Notre Affaire À Tous Association + Fondation Pour la Nature et l’Homme + Greenpeace France Association

* One Defendant or Respondent: French State

❑ Main Issues before the Court

* Inaction of State about Climate Change

* State Does not meet CO₂ reduction targets

➤ Moral Damage

➤ Ecological Damage

❑ Main Claims before the Court

* Order the State to Pay Symbolic Sum of 1 euro => Compensation for Moral Damage

* Order the State to Pay Symbolic Sum of 1 euro => Compensation for Ecological Damage

* Order the Prime Minister and Competent Ministers => Fix all State’s shortcomings regarding its Climate Obligations

Review of Climate Litigation in France

II. Commune de Grande-Synthe v. France

- ❑ Court: French Conseil d'Etat (6&5th Joint Chambers)
 - * Handed down: November 19, 2020
 - * Designated: “Commune de Grande-Synthe Case”
- ❑ Petitions before the Court
 - * Two Claimants: Commune de Grande-Synthe Borough + M. B... A...
 - * One Defendant or Respondent: French State
- ❑ Main Issues before the Court
 - * Bend the Curve of Greenhouse Gas Emissions
 - * Mandate Climate Priority through Legislative or Regulatory Initiatives
 - * Prohibit any Measure to Increase Greenhouse Gas Emissions
 - * Take Immediate Measures to Adapt to Climate Change
- ❑ Main Claims before the Court
 - * Annulment for Excess of Power=> Silence kept by President, Prime Minister and Minister of Energy Transition [Request to Bend the Curve of CO₂ Emissions]
 - * Implementation of Climate Change Adaptation Measures =>
 - * Adoption of legislative and regulatory provisions = making climate priority mandatory
 - * Order the Prime Minister and Minister of Energy Transition => Take Necessary Measures and Provisions within a Period of Six Months
 - * Refer the Question of Interpretation of Provisions of International/European Instruments to Court of Justice of the European Union => Paris Agreement (arts. 2, 3, and 4) + Decision No 406/2009/EC of 23 April 2009 (art. 3)

Review of Climate Litigation in France

III. Amis de la Terre France v. France

❑ Court: French Conseil d'Etat (Assembly)

- * Handed down: July 10, 2020

- * Designated: "Amis de la Terre France Case"

❑ Petitions before the Court

- * Two Claimants: Amis de la Terre France Association + Coalition of 67 Non-Profit Organizations + 9 individuals

- * One Defendant or Respondent: French State

❑ Main Issues before the Court

- * Partial Failure to Execute French Conseil d'Etat Ruling on July 12, 2017 => Which Quashed Implicit Decisions resulting from Silence kept by President, Prime Minister, Minister of Energy Transition, and Minister of Health as to compliance to European Directive 2008/50/EC of May 21, 2008

- * Refusal to Take Appropriate Measures, including Initiate, Draw up and Revise Air Quality Plans

- * Sanction against Partial Failure to Execute => Impose on the State a Periodic Penalty Payment per Semester until Complete Execution

❑ Main Claims before the Court

- * Rule that French Conseil d'Etat Judgement on July 12, 2017, has not been Properly Executed as of March 31, 2018 => Partial Failure to Execute

- * Impose a Periodic Penalty Payment on the State to Ensure the Proper Execution of the Judgement

- * If no Justification as to Measures Taken to Ensure the Execution within a Month = A Penalty of 100,000 euros per Day of Delay

Review of Climate Litigation in France

IV. Amis de la Terre France v. France

- ❑ Court: French Conseil d'Etat (Litigation Section/6&1st Joint Chambers)
 - * Handed down: July 12, 2017
 - * Designated: "Amis de la Terre France Case"
- ❑ Petitions before the Court
 - * Two Claimants: Amis de la Terre France Association
 - * One Defendant or Respondent: French State
- ❑ Main Issues before the Court
 - * Implicit Decisions Resulting from Silence kept by President, Prime Minister, Minister of Energy Transition, and Minister of Health as to compliance to European Directive 2008/50/EC of May 21, 2008
 - * Refusal to Take Appropriate Measures Aiming to Reduce Concentrations of Fine Particles, and Nitrogen Dioxide
 - * Initiate, Draw Up and Revise Air Quality Plans in 12 Metropolitan Areas
 - * Sanction against State Inaction
- ❑ Main Claims before the Court
 - * Annulment for Excess of Power => Implicit Decisions Resulting from Silence kept by President, Prime Minister, Minister of Energy Transition, and Minister of Health
 - * Violation of the Law => by Refusing to Draw Up, for the Zones Affected by these Exceedances, Air Quality Plans that Comply with EU Directive Provisions and Allow the Period during which the Limit Values are Exceeded to be as Short as Possible
 - * Order a Review of All Non-Compliant Air Quality Plans Throughout the State
 - * Injunction to the President, Prime Minister and Competent Ministers => Take Necessary Measures to bring Concentrations of Fine Particles and Nitrogen Dioxide within the Limit Values Throughout the State

What Did Courts Hold?

Rulings by Administrative Courts in Climate Litigation

❑ Administrative Tribunal of Paris: February 3rd, 2021, *Oxfam France v. France*

- ✓ Order the State to Oxfam France, Notre Affaire À Tous, Fondation Pour la Nature et l'Homme and Greenpeace France the Sum of One Euro each as Compensation for Moral Damage
- ✓ Reject the Four Petitions Seeking Payment of a Symbolic Euro as Compensation for Ecological Damage
- ✓ Deferral of the Ruling for Supplementary and Further Instruction as regards the Remaining Claims Relating to the Worsening or Aggravation of Ecological Damage with the Failure to Take all Measures to Achieve Objectives France has set Itself in terms of Reducing Greenhouse Gas Emissions

❑ French Conseil d'Etat: November 19, 2020, *Commune de Grande-Synthe v. France*

- ✓ Reject Claims Regarding Silence Kept President, Prime Minister, and Relevant Ministers as to Regulatory and Legislative Initiatives Aiming to Make Climate Priority Compulsory or Implement Measures of Immediate Adaptation to Climate Change
- ✓ Matter of Public Policy: As a result, Court does not Have Jurisdiction
- ✓ Defer the Ruling for Supplementary and Further Instruction as regards the Remainder of Claims
- ✓ Set a Deadline for Parties to Provide the Court with Additional Elements: 3 Months

What Did Courts Hold?

Rulings by Administrative Courts in Climate Litigation

☐ French Conseil d'Etat: July 10, 2020, *Amis de la Terre France v. France*

- ✓ Provisional Order of Periodic Penalty Payment against the State: if State does not justify having fully executed French Conseil d'Etat Ruling on July 12, 2017 within six months
- ✓ Rate of Penalty Payment Set at 10 Million Euros per half-year
- ✓ Order the Prime Minister to Report the Complete Execution of the Ruling to the Report and Studies Section (Conseil d'Etat) and Hand out a Copy of Measures Taken

☐ French Conseil d'Etat: July 12, 2017, *Amis de la Terre France v. France*

- ✓ Quash Implicit Decisions by President, Prime Minister, and Relevant Ministers
- ✓ Order to take Necessary Measures so that Air Quality Plans are Elaborated and Implemented Throughout the State
- ✓ Order to take Necessary Measures so that Air Quality Plans are Revised and Properly Implemented Throughout the State
- ✓ Set a Deadline for State Authorities to Draw Up Plans and Transmit them to the European Commission before 31 March 2018
- ✓ Find the Periodic Penalty Payment Claim Irrelevant and as a Result Exclude the Claim

What Is Going On?

Discussion

❑ **Role of Courts: Classic Judge Faced with New Challenges**

- ✓ Except for the case before the Paris Administrative Court, most cases are decided by the French Conseil d'Etat.
- ✓ French Conseil d'Etat: Judge of First and Last Resort in the Proceedings when it comes to Litigation of Excess of Power or Judicial Review of Administrative Acts
- ✓ Litigation on Legality or Objective Litigation: Only the Administrative Acts are Challenged in this Specific Procedure
- ✓ Written Procedure: Filing a Petition + Written Memoranda
- ✓ Debate: All the Debate is Concentrated on One File following a Specific Instruction [instruction + report of the rapporteur + conclusions of the public rapporteur = written documents]
- ✓ Climate Litigation is Fostered by Claims Alleging the Illegality of Administrative Acts like Decrees, Decisions, etc.
- ✓ Claim Being that by Performing an Act the Administrative Authority (President, Prime Minister, etc.) has Exceeded its Power;
- ✓ Courts do Judicial Review of the Act and Hold it to be Illegal or Dismiss the Petitioner: Annulment means that the Act is Deemed to have Never Existed

❑ **Role of Actors in the Proceedings: Way Beyond the Simple Role of Custodian of State Commitments**

- ✓ Direct Role of Citizens or Individuals
- ✓ Direct Role of Non-State Actors
- ✓ Direct Role of Sub-State or Local Public Actors
- ✓ Important Role of Coalitions of Actors
- ✓ Strong Effort to Hold the State Accountable

Where Are We Now?

Discussion

- ❑ Administrative Tribunal of Paris: February 3rd, 2021, *Oxfam France v. France*
 - ✓ Administrative Tribunal of Paris to Render its Judgement in 2021
 - ✓ Having Already Found the State Partially Responsible for Global Warming (Failure to Meet its International and National Commitments)
 - ✓ The State Could be Obligated to Remedy Ecological Damage or Take Material Steps Forward to Prevent it

- ❑ French Conseil d'Etat: November 19, 2020, *Commune de Grande-Synthe v. France*
 - ✓ French Conseil d'Etat to Rule on the Remaining Claims: in the Summer of 2021 [the Ruling is long awaited]
 - ✓ French Government was bound to Justify its Efforts as to its Greenhouse Gas Reduction Strategy for 2030: Information was Provided to the Conseil d'Etat in February 2021
 - ✓ If the State Refusal is Deemed Unlawful: Further Actions Will Be Ordered

- ❑ French Conseil d'Etat: July 10, 2020, *Amis de la Terre France v. France*
 - ✓ French Conseil d'Etat to Rule on the Remaining Claims: First Half of 2021 [the Ruling is long awaited]
 - ✓ The Judgement Can Be Adjusted Downwards or Upwards Depending on the Efforts Actually Made by the State and Information Provided Regarding the Complete Execution of the Ruling on July 12, 2017
 - ✓ The State Could be Obligated to Effectively Pay the 10 million of Periodic Penalty Payment if Another Partial Failure to Execute is Held

The conclusions we have reached are set out in the first part of this presentation.

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