

French State ordered to compensate victims of air pollution for the first time

In two judgments handed down on June 16, 2023, the Paris Administrative Court recognized for the first time the existence of a causal link between the bronchiolitis and ear infections affecting two children and the French State's failure to take action in terms of air pollution.

These two judgments have been issued in a context marked by increased sanctions against the French State in environmental matters^[1].

In these two matters, two families who had lived near the Paris ring road and whose children suffered from respiratory illnesses, filed an action to claim compensation for the damage they suffered as a result of the French State's culpable failure to deal with air pollution. While the French State's culpable inaction had already been established in air pollution matters, this is the first time that a judge has acknowledged the existence of a causal link between the exceedance of pollution thresholds and these illnesses. The French State was ordered to pay the families 3,000 and 2,000 euros, respectively.

Causal link

Analysis framework

The Paris Administrative Court first recalled the judgment issued by the Court of Justice of the European Union ("CJEU") on December 22, 2022 in case C-61/21 concerning European Directives on air quality. These Directives contain air quality limit values.

In its judgment, the CJEU ruled that:

"Articles 3 and 7 of Council Directive 80/779/EEC of July 15, 1980 on air quality limit values and guide values for sulphur dioxide and suspended particulates, Articles 3 and 7 of Council Directive

85/203/EEC of March 7, 1985 on air quality standards for nitrogen dioxide, Articles 7 and 8 of Council Directive 96/62/EC of September 27, 1996 on ambient air quality assessment and management, Article 4(1) and Article 5(1) of Council Directive 1999/30/EC of April 22, 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air, and Article 13(1) and Article 23(1) of Directive 2008/50/EC of the European Parliament and of the Council of May 21, 2008 on ambient air quality and cleaner air for Europe, must be interpreted as meaning that they are not intended to confer rights on individuals capable of entitling them to compensation from a Member State under the principle of State liability for loss and damage caused to individuals as a result of breaches of EU law attributable to that Member State."

While the Paris Administrative Court inferred therefrom that European Directives on air quality do not confer specific rights on individuals to obtain compensation for the loss and damage resulting from breaches of these Directives, it considered that this did not preclude that the French State could be held liable under French law.

The Paris Administrative Court, therefore, considered the liability of the French State from the French administrative liability law perspective:

"It is up to the court asked to rule on an individual dispute concerning the consequences for the concerned person of exposure to pollution peaks resulting from the fault of the State, to investigate, in light of the latest scientific knowledge discussed before it, whether there is no probability that such a link exists. If such a probability exists, the court must examine the circumstances of the case and acknowledge the existence of a causal link between the exposure to pollution peaks suffered by the concerned person and the symptoms he/she experienced only if these symptoms appeared within a normal timeframe for this type of disease, and, furthermore, if it does not appear from the case file that these symptoms can be considered as resulting from a cause other than exposure to pollution peaks."

Link between respiratory illnesses and pollution levels above air pollution thresholds

The expert reports confirmed the existence of a (non-exclusive) link between the alleged symptoms and pollution.

In the first case, the Paris Administrative Court noted that:

"Scientific studies establish an epidemiological and statistically significant link between infant asthma and pollution, particularly with regard to nitrogen dioxide (NO₂, a marker of pollution caused by motor vehicles), particulates with a diameter of less than 2.5 microns (PM 2.5) and

ozone. However, pollution is not the only explanation for bronchiolitis in children, as the respiratory syncytial virus (RSV) has been identified as responsible for 60-80% of bronchiolitis episodes. Pollution peaks favor the onset of these viral infections, with periods of several days to several weeks between the pollution peak and respiratory symptoms, triggering virus-induced asthma in infants. Each pollution peak can trigger wheezing symptoms that are not necessarily infectious in nature. Other factors may contribute to the occurrence of these episodes, such as allergies, parental smoking, exposure to household chemicals, or weather conditions. **However, statistical studies estimate that 30% to 50% of severe bronchiolitis are due to pollution.**

In the case at hand, the child was diagnosed with asthma. On several occasions, the symptoms coincided with pollution episodes exceeding air pollution thresholds. The Paris Administrative Court also noted the absence of other factors related to the child's immediate environment (smoking, allergies, etc.). Above all, it noted that until moving to Southern France, the family lived in Saint-Ouen (Seine-Saint-Denis), 700 meters from the ring road. Since the move to Southern France, no episodes of respiratory discomfort have been recorded, and the disease-modifying treatment has been discontinued.

In the second case, the Paris Administrative Court pointed out:

*"Scientific studies provide arguments in favor of the existence of a link between pollution and the occurrence of otitis media, particularly with regard to oxygenated nitrogen derivatives, compounds produced by internal combustion engines that irritate the respiratory tract. They showed a link between rising concentrations of particulate pollutants and an increase in these pathologies, within periods of two to three days after the increase in concentrations. **These studies have led experts to consider that around 30% of otitis episodes are due to this type of pollution, i.e., a little less than one otitis episode out of 3 or 4 is due to pollution. The studies also recall that the causes of otitis media can be multiple, the main risk factors being living in a community, as well as parental smoking.**"*

In the case at hand, the child had suffered from repeated episodes of otitis media. The symptoms had coincided with pollution episodes exceeding air pollution thresholds, no other factors had been identified, the family lived close to the Paris ring road, and a marked improvement in health was observed after the family moved outside the Paris region.

It should be noted that in both cases, the victims were infants when the symptoms first appeared, and that the families' relocation outside the Paris region had led to a marked improvement in their health condition.

For all these reasons, the Paris Administrative Court concluded that part of the symptoms suffered by the child in each case was caused by pollution levels above air pollution thresholds that resulted from the fault of the French State.

Damage

Regarding the child, compensation for various types of damage was requested but the Paris Administrative Court only acknowledged the existence of damage that resulted from the suffering endured:

- Suffering endured: To compensate for both physical and mental suffering, the Paris Administrative Court ordered the French State to pay 2,000 euros in damages in each case;
- Loss of amenity: While the impossibility of engaging in leisure activities was invoked by the plaintiffs, the Paris Administrative Court considered that it had not been proven that the child *“could have engaged in a specific leisure activity”* (in the first case) or *“would have participated in such an activity prior to the surgery”* (in the second case);
- Disruption of living conditions: The Paris Administrative Court considered that it has not been proven that this damage was distinct from the suffering endured;
- Moral damage due to mental anguish caused by the French State’s inaction: The Paris Administrative Court considered that anxiety *“is not so exceptional as to be compensated separately from the suffering endured”*;
- Moral damage due to anxiety about contamination: Again, the Paris Administrative Court ruled that the plaintiffs had failed to provide *“personal and documented”* demonstrating that the child had been exposed *“due to the occurrence of these exceedances of pollution thresholds, to a high risk of serious pathology and reduced life expectancy”*.

Regarding the parents, compensation for various types of damage was also requested but the Paris Administrative Court only acknowledged the existence of damage that resulted from disruption in living conditions in one of the two cases:

- Suffering endured: The Paris Administrative Court ruled that the parents had not demonstrated that they had themselves suffered as a result of the French State’s fault;
- Disruption of living conditions: In the first case, the Paris Administrative Court found that the child’s pathologies had disrupted family life and ordered the French State to pay 1,000 euros in damages;
- Moral damage due to mental anguish caused by the French State’s inaction: Again, the Paris Administrative Court found that anxiety *“is not so exceptional as to be compensated separately from the suffering endured”*;
- Moral damage due to anxiety about contamination: Just like for the child, the Paris Administrative Court considered that the plaintiffs had failed to provide *“personal and documented evidence”* demonstrating that they were exposed *“due to the occurrence of these exceedances of pollution thresholds, to a high risk of serious pathology and reduced life expectancy”*;
- Pecuniary damage (impact on the parents’ professional life, medical and travel expenses, moving and

job transfer expenses): In the second case, in addition to compensation for non-pecuniary damage, compensation was also requested for pecuniary damage. The claims were dismissed in their entirety for lack of evidence.

As such, to claim compensation, it is necessary to be able to accurately document medical consultations, treatments, etc. and each of the impacts on the family's daily life (schooling, leisure activities, professional and family life) and pollution levels.

Given that nearly 40,000 deaths per year in people aged 30 and over are attributable to exposure to fine particulates, also known as "particulate matter" (PM2.5)^[2] and that the deployment of low-emission zones (*zones à faibles émissions* or "ZFE") in France's major metropolitan cities raises major difficulties^[3], this type of litigation should become widespread in the future.

[1] See our articles on the Grande Synthe case ([Grande Synthe case, Season 3: The judge tries to keep up the pressure on the French Government to achieve the objective of reducing greenhouse gas emissions by 40% by 2030](#)) and on the French State being ordered to comply with air pollution standards in France's main conurbations ([Air pollution: The French State fined again](#)) published on our Blog in June 2023 and October 2022, respectively.

[2]

<https://www.santepubliquefrance.fr/presse/2021/pollution-de-l-air-ambient-nouvelles-estimations-de-son-impact-sur-la-sante-des-francais> (in French only)

[3] See the report of the French Senate's fact-finding mission published on June 14, 2023: <https://www.senat.fr/rap/r22-738/r22-7381.pdf> (in French only)

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