

Global warming (“Case of the century”): The French State must repair the ecological damage before December 31, 2022

For the first time, on October 14, 2021, the Paris Administrative Court ordered the French State to repair the consequences of its failure to combat climate change^[1].

The Court ordered that the overrun of the greenhouse gas emissions cap set by the first carbon budget (2015-2018) be compensated by December 31, 2022 at the latest.

It should first be recalled that, in March 2019, the associations Oxfam France, Notre Affaire à tous, Fondation pour la Nature et l’Homme, and Greenpeace France filed four petitions before the Paris Administrative Court for wrongful failure by the French State to act on climate change.

The Court was asked to enjoin the Prime Minister and the competent ministers to put an end to all the failures of the French State to meet its obligations in the fight against climate change or to mitigate the effects thereof, to repair the ecological damage, and to order the French State to pay them the symbolic sum of one euro for their moral damage.

Eight months ago, the Paris Administrative Court condemned the French State for its partial failure to meet the objectives it had set for itself in terms of reducing greenhouse gas emissions and ordered further investigations before ruling on the assessment and concrete methods of compensation for this damage.

Based on the work of the IPCC (Intergovernmental Panel on Climate Change) and ONERC (*Observatoire National sur les Effets du Réchauffement Climatique*, i.e., National Observatory of Climate Warming Effects), the Paris Administrative Court recognized in a February 3, 2021 judgment the existence of an ecological damage related to climate change. It also ruled that the French State was liable for the partial failure to meet the targets it had set for reducing greenhouse gas emissions^[2].

After ruling for the first time that the action for compensation for ecological damage provided for in the French Civil Code was admissible and could be brought against the French State, the Court held that the

existence of such damage was reflected in particular in the constant increase in the Earth's average global temperature, which was responsible for a change in the atmosphere and its ecological functions.

The judges then examined whether there was a causal link between this ecological damage and the various alleged failures of the French State in the fight against climate change. They considered that the French State should be held liable for part of this damage as it had failed to meet its commitments to curb greenhouse gas emissions.

As regards the compensation for the ecological damage, the Court emphasized that such compensation should be primarily in kind, with damages being awarded only if the remedial measures are not possible or insufficient. For that reason, it dismissed the plaintiffs' claim for pecuniary compensation.

However, the Court held that the plaintiffs were entitled to claim compensation in kind for the ecological damage caused by France's failure to meet its greenhouse gas emission reduction targets. In order to determine the measures to be imposed on the French State to compensate for the damage caused or to prevent its worsening, the judges ordered further investigations.

The Court still had to rule on the assessment and concrete methods of compensation for this damage.

In its judgment of October 14, 2021, the Court first indicated that it was up to it to verify whether **the damage caused by the overrun of the first carbon budget was still present and whether it had already been the subject of remedial measures as of the date of the judgment**. On the other hand, it considered that it was not for the Court to rule, as the associations requested, on the sufficiency of all the measures likely to make it possible to achieve the objective of reducing greenhouse gases by 40% by 2030 compared to their 1990 level, as this question had been addressed by the *Conseil d'Etat* (French Supreme Administrative Court) in its *Commune de Grande-Synthe* decision dated July 1, 2021.^[3]

The Court then noted that the greenhouse gas emissions cap set by the first carbon budget for the 2015-2018 period had been exceeded by 62 million tons of "carbon dioxide equivalent" (Mt CO₂eq). As the assessment of the damage is to be made at the date of the judgment, the Court indicated that the substantial reduction in greenhouse gas emissions in 2020^[4], although linked primarily to the effects of the COVID-19 health crisis - not to a specific action by the French State - must be taken into account as it allows, in part, to compensate for the damage. In the end, the Court found that the damage ought to be assessed at 15 Mt CO₂eq.

Regarding the actions to be taken to compensate for the damage, the Court ordered the Prime Minister and the competent ministers *"to take all useful sectoral measures likely to repair the damage up to the uncompensated share of greenhouse gas emissions under the first carbon budget"*. The Court added that the content of these measures was a matter on which the French Government was to freely decide, and that it was not for it to substitute itself to the French Government in this respect.

The Court specified that the ecological damage caused by excess greenhouse gas emissions is continuous and cumulative in nature, since exceeding the first carbon budget has resulted in additional greenhouse gas emissions, which will be added to the previous ones and will produce effects for the entire lifetime of these

gases in the atmosphere, i.e., approximately 100 years.

Consequently, the compensation for this damage implies not only the adoption of measures to put an end to it, but also that these measures be implemented within a sufficiently short period of time to prevent the aggravation of the damage observed.

The Court, therefore, ordered that **the damage of 15 MtCO₂eq be remedied by December 31, 2022 at the latest** and found that there was no reason at this stage to impose a periodic penalty payment with this injunction.

[1]

<http://paris.tribunal-administratif.fr/Actualites-du-Tribunal/Communiqués-de-presse/L-Affaire-du-Siècle-l-Etat-d-evra-reparer-le-prejudice-ecologique-dont-il-est-responsable> (in French)

[2] <http://paris.tribunal-administratif.fr/Actualites-du-Tribunal/Communiqués-de-presse/L-affaire-du-siecle> (in French)

[3]

<https://www.conseil-etat.fr/actualites/actualites/emissions-de-gaz-a-effet-de-serre-le-gouvernement-doit-justifier-sous-3-mois-que-la-trajectoire-de-reduction-a-horizon-2030-pourra-etre-respectee> (in French)

[4] As of July 28, 2021, greenhouse gas emissions are expected to be 396 Mt CO₂eq for the year 2020, a difference of about 40 Mt CO₂eq from the annual target of 436 Mt CO₂eq.

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