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Créée par Nicolas Hulot



Press Release

INACTION OVER CLIMATE CHANGE : LET'S FIGHT FOR JUSTICE

CLIMATE CHANGE, IT'S TIME FOR *L'AFFAIRE DU SIÈCLE*: 4 NGOS ARE SUING THE FRENCH STATE FOR ITS FAILURE TO ADDRESS THE MOST URGENT PRIORITY OF OUR TIME

Faced with an unprecedented climate emergency, *Fondation pour la Nature et l'Homme* (FNH), *Greenpeace France*, *Notre Affaire à Tous* and *Oxfam France* decided to sue the French State for its failure to adequately address climate change and for the non-implementation of international, European and national climate objectives. Considering that they are acting in the public interest and for the good of the global community, these NGOs are asking citizens to support their action through www.laffairedu siecle.org.

Since 1960, the scientific community has been able to solidly establish the causes of climate change. Nevertheless, every French government so far has repeatedly postponed the adoption of adequate policies that could have helped avoid the climate catastrophe. Despite its long-term involvement in global climate talks, France is not taking further steps to successfully tackle climate change: in this perspective, it should be reminded that the French State committed to do everything in its power to limit the global temperature rise to below 2 °C (and eventually, below 1.5° C), by ratifying the Paris Climate Agreement and many other European programs focused on greenhouse gases reduction and renewable and sustainable energy.

France has failed to respect both its international commitments and its own national climate policies: this serious failure is therefore likely to engage its responsibility.

On 17 December 2018, The 4 NGOs took a first step towards a lawsuit against the French State, by formally addressing a *lettre préalable indemnitaire* (letter of formal notice) to Prime Minister Edouard Philippe and 12 members of the government. This is part of a legal proceeding known as *recours en carence fautive* (action for failure to act), targeting the public authority's failure to intervene when the law requires a duty to act. The four plaintiffs reproach the French State its inadequacy in implementing proper measures that could effectively tackle climate change in France, in violation of a statutory duty to act.



On these terms, this duty to act has been inferred by the counsels for the plaintiffs from the **French Constitution**, the **European Convention on Human Rights** and many other **international agreements** (including the *Stockholm Declaration*, the *World Charter for Nature*, the *Rio Declaration on Environment and Development*, the *United Nations Framework Convention on Climate Change*, the *Kyoto Protocol* and the *Paris Climate Agreement*), **European legislation** (including the *Renewable Energy and Climate Change Package* and other EU directives) and **domestic policies** (including statutory laws such as *Grenelle I* and the Act of 17 August 2015 on *energy transition for green growth*).

It is therefore reasonable to infer from this legal framework the existence of a *principe général du droit* (general principle of law) requiring the French State to effectively tackle climate change.

Furthermore, the NGOs are claiming compensation for the moral damage suffered by their members as well as the ecological damage that affected the environment.

Faced with the risks of climate change, citizens around the world are taking legal action with the purpose of defending the relevance of their rights: most recently, Dutch judges ordered, in the name of human rights protection, the implementation of a more ambitious national strategy in terms of greenhouse gases reduction; in Colombia, 25 young activists managed to obtain a Supreme Court decision ruling against deforestation and emphasizing the need for climate stability; in Pakistan, a farmer's son was successful in his legal claim aimed at protecting the right to life and dignity from climate change threats.

In France, *Fondation pour la Nature et l'Homme* (FNH), *Greenpeace France*, *Notre Affaire à Tous* and *Oxfam France* are supporting and sharing a call for climate action with all those citizens that will identify with this common purpose.

Two collectives of Youtubeurs, known as “On est prêt ” and “Il est encore temps”, have already made clear their support for L’Affaire du siècle, by publishing an endorsement video.

▪ **What’s behind L’Affaire du siècle (the Trial of the century)**

The Intergovernmental Panel on Climate Change made clear, once again, the reality of the climate urgency: with its new special report released on October 8, 2018, the Panel exposed an alarming picture of climate change impacts on global environment, human health, fundamental rights and social equality, by stating that we should expect even more catastrophic effects if temperatures climb to 1.5° Celsius over pre-industrial levels.

In France, the average temperature has increased by about 1.4° Celsius since 1900, dangerously affecting the environment, human health and social justice.

Through international cooperation and domestic policies, France committed to tackle climate change, but failed to meet its binding climate goals.

That is why 4 NGOs are filing a lawsuit against the French State.

- **The action for failure to act against the French State**

4 NGOs and their counsels decided to file an action for failure to act against the French State. This type of lawsuit, known as *recours en carence fautive*, is generally used in French law to target public authority's failure to intervene when the law requires a duty to act.

The 4 plaintiffs argue that the French State has not been able to successfully implement an effective strategy to tackle global warming, and that it is therefore in breach of international and statutory climate obligations.

In March 2019, the lawsuit will be heard for the first time by the *Tribunal Administratif de Paris* (Administrative Court of Paris), where the causal relationship between the State's inaction and the continuous escalation of climate change will be clearly established.

In March 2019, the lawsuit will be formally filed at the *Tribunal Administratif de Paris* (Administrative Court of Paris). There will be a delay of approximately two years before the case is heard by a judge, who will decide on its admissibility.

As a matter of fact, this type of causation has already been established in several significant precedents. French administrative judges characterized the existence of a causal relationship in public health cases, where the public authority failed to properly exercise its statutory prerogatives. For example in the *Mediator* case (Conseil d'Etat, 9 Nov. 2016 n°393108) and in the *Algues Vertes* case (CAA de Nantes, 1st Dec. 2009, n°07NT03775), where the French State was found liable for both the delayed transposition and non-implementation of EU directives. Similar decisions have been reached in the contaminated blood scandal (Conseil d'Etat, 9 Apr. 1993, n°138652) and through the Hepatitis B Vaccine lawsuits (Conseil d'Etat, 9 Mar. 2007, n°267635). Along these lines, the State has also been found liable for failing to adequately implement the law in order to prevent well-established and predictable risks linked to asbestos exposure (Conseil d'Etat, 3 Mar. 2004, *Ministre de l'emploi et de la solidarité c. Consorts Botella*).

Climate change is a global-scale phenomenon that finds its source in a large number of different causes, since anthropogenic emissions that give rise to atmospheric warming are produced in all countries by innumerable entities (governments, business, individuals). On these terms, it is not possible to specifically assess the consequences on climate change that every single State induces with its actions or inactions. Nevertheless, States must be held responsible for the implementation of effective strategies aimed at successfully tackling climate change. Denying this principle would mean admitting that States can get rid of their sovereign prerogatives and responsibilities, including their role as regulator and supervisor in the public health issues and environmental protection.

- **A multi-step legal proceeding**

On 17 December 2018, *Notre Affaire à Tous*, *FNH*, *Oxfam France* and *Greenpeace France* addressed their concerns to the French State through a *lettre préalable indemnitaire*: this formal request, a 40-page-long letter, has been officially sent to French Prime Minister Edouard Philippe and to ministers for an Ecological and Inclusive Transition, of the Economy and Finance, of Public Action and Accounts, of Territorial Cohesion, of Europe and Foreign Affairs, of Solidarity and Health, of Agriculture and Food, of Overseas France, of Labor, of Higher Education, Research and Innovation, of National Education.

The formal request draws attention to the global context and to climate-related risks that are already affecting France and the rest of the world. It highlights the public authority's failure to act and urges to adopt specific strategies of climate adaptation and mitigation.

French authorities will only have two months to formally submit their response. If its content is not sufficiently adequate to ensure its purpose, the 4 NGOs will complete the legal procedure by bringing a case in front of the Administratif Court of Paris in March 2019, where the dispute will be likely to proceed for about 2 years. If their claims are rejected, the 4 plaintiffs will be able to appeal the unfavorable judgment in front of the Administrative Court of Appeal. In the event of another negative outcome, the verdict could be appealed again in front of the *Conseil d'Etat*, the French administrative court of last resort.

- **The new chapter of a global climate justice movement that already proved its strength**

Citizens around the world are increasingly affected by States' failure to effectively address the climate emergency. They are seeking justice and taking climate action to the courtroom in order to challenge their government's inadequate climate policies or to obtain injunctions and other legal remedies that would require States to respect binding climate objectives.

Climate change lawsuits are exponentially growing on a global scale. In approximately 10 years, University of Columbia's Sabin Center for Climate Change already listed almost 1.000 cases worldwide. If some of these actions are inevitably brought by companies with the purpose of challenging strict and progressive climate regulations, an overwhelming majority of new lawsuits are backed by members of civil society, individuals and local communities. These legal proceedings are often addressed to the most polluting corporations, demanding them to compensate the material and human cost of their activities or to fully comply with climate-related principles such as precaution and due diligence, or even to adopt sustainable climate policies that would be consistent with the 1.5° C trajectory. Therefore, in a large number of climate lawsuits, including *L'Affaire du siècle*, the defendant is not a private entity but a State, faced with the request to ensure climate stability and to protect the rights of present and future generations.

Fondation pour la Nature et l'Homme (FNH)

Founded in 1990 by Nicolas Hulot, *Fondation pour la Nature et l'Homme* works to implement a fair and inclusive vision of the world that respects both the environment and the human welfare. Its main goal is to promote a radical change in collective and individual habits by supporting international and domestic environmental projects, with the purpose of ensuring the ecological transition of our society.

Greenpeace France

Greenpeace is an international confederation of independent organizations that act in accordance with the principle of non-violence, with the purpose of protecting the environment and the biodiversity while promoting peace on the global stage.

Notre Affaire à Tous

In France, the NGO *Notre Affaire à Tous* (Our Common cause – Act together for climate justice), considers law as a subject as well as a tool of mobilization to protect the commons and the living. Founded in 2015, the association is part of the global landscape of climate litigation and aims to initiate and support legal steps in favor of social and environmental justice.

Oxfam France

Oxfam France is an international organization that focuses on sustainable livelihood and development by mobilizing citizens in order to achieve poverty eradication. Oxfam is present in more than 90 countries, fighting the structural causes of injustice and related poverty.

Press contacts :

Fondation pour la Nature et l'Homme

Manuela Lorand - 06 98 45 46 91 – m.lorand@fnh.org

Greenpeace France

Magali Rubino - 07 78 41 78 78 - magali.rubino@greenpeace.org

Notre Affaire à Tous

Marie Toussaint - 06 42 00 88 68 - marie@notreaffaireatous.org

Oxfam France

Caroline Prak - 06 31 25 94 74 - cprak@oxfamfrance.org