« AFFAIRE DU SIÈCLE » (CASE OF THE CENTURY): BRIEF ON THE LEGAL REQUEST SUBMITTED TO THE ADMINISTRATIVE COURT OF PARIS ON 14 MARCH 2019

REMINDER OF THE REQUESTS

On 15 February 2019, the Minister of State, Minister of Ecological and Solidarity Transition, has rejected the request of the organizations Notre Affaire à Tous, Greenpeace France, Oxfam France and Fondation pour la Nature et l'Homme (the foundation).

They requested, on the one hand, compensation for the damages suffered as a result of the State's failure to tackle climate change and, on the other hand, that the State be enjoined to put an end to all its deficiencies as regards fight against climate change.

Today, they are going before the administrative court of Paris to ask:

- To enjoin the Prime Minister and all competent ministers to put an end to all the State's failures to meet its obligations - general and specific - regarding the fight against climate change or the mitigation of its effects, to remedy the "ecological prejudice" (*préjudice écologique*), and in particular, in the shortest time possible, to :
    - Take proper measures to reduce greenhouse gas emissions in the atmosphere - in due proportion considering global emissions, and taking into account the particular responsibility accepted by developed countries - at a level compatible with the objective to contain the rise of the average temperature of the planet below the threshold of 1.5 °C compared to pre-industrial levels ;
    - Take, at least, all necessary measures to achieve France's targets for reducing greenhouse gas emissions, developing renewable energies and increasing energy efficiency[1] ;
    - Take the necessary measures to adapt the national territory to the effects of climate change ;
    - Take the necessary measures to protect citizens' lives and health from the risks of climate change.
- To sentence the State to pay them the symbolic sum of 1 euro for their moral prejudice.

[1] These objectives are set by the law n ° 2009-967 dated 3 August 2009 on the programming of the implementation of the Environment Grenelle, the law n ° 2010-788 dated 12 July 2010 on national commitment for the environment, the law n ° 2015-992 dated 17 August 2015 on the energy transition for a green growth, the decree n ° 2015-1491 dated 18 November 2015 relating to the budgets and the national low-carbon strategy, the decree n ° 2016-1442 dated 27 October 2016 relating to the Decision No 406/2009/EC of the European Parliament and the Council dated 23 April 2009 on the share of the effort, Directive 2009/28/EC of the European Parliament and the Council dated 23 April 2009 on the promotion of the use of energy from renewable sources, Directive 2012/27/EU of the European Parliament and the Council dated 25 October 2012 on Energy Efficiency, Regulation (EU) 2018/842 of the European Parliament and the Council dated 30 May 2018 on binding annual reductions of greenhouse gas emissions by Member States from 2021 to 2030 and the Directive 2018/2001 of the European Parliament and the Council dated 11 December 2018 on the promotion of the use of energy produced from renewable sources.

REMINDER OF THE FACTS AND LEGAL ARGUMENTS

FACTS

1.

On 8 October 2018, the Intergovernmental Panel on Climate Change (the "IPCC") published its latest report on the consequences of a global warming of 1.5 °C, which is in line with the previous 2014 report on climate change. These reports provide an overview of the latest scientific knowledge about climate change.

As a member of the IPCC Plenary Assembly, the French State has adopted the "Summary for Policymakers" of the 2018 and 2014 IPCC reports, thus demonstrating its adherence to the scientific consensus resulting from these reports according to which, notably:

- Greenhouse gases ("GHG") emitted by human activities ("anthropogenic emissions") have already caused global average temperatures ("global warming") to rise by about 1 °C over the period 1850-1900 (so-called "pre-industrial"). Given this, the magnitude of global warming will depend on current and future anthropogenic GHG emissions (**i**) ;

- The consequences of climate change, associated with global warming, have a deleterious effect on environment, health and human life. As global warming increases, these effects get worse and, for some of it, become irreversible beyond 1.5°C (**ii**) ;

- Only a drastic and quick reduction of anthropogenic GHG emissions is likely to avoid a global warming above 1.5°C (**iii**).

2.

(i) In its 2014 report, the IPCC already observed that:

> « *Global warming is unequivocal and, since the 1950s, many of the changes observed are unprecedented over decades or even millennia. The atmosphere and the ocean have warmed, the amounts of snow and ice have diminished, and sea level has risen.* »

This 2014 report also reported a direct link between global warming and the total volume of the GHG emissions caused by human activities. Therefore, the total magnitude of global warming shall be determined by our current and future GHG emissions.

According to the 2018 IPCC report, human activities have already caused global temperatures to rise by about 1 ° C in comparison with pre-industrial levels.

Most importantly, this last report reveals that the increase will inevitably continue at a level of around 0.2 °C per decade, due to past GHG emissions and their cumulative effect. If the rate of the increase of anthropogenic GHG emissions continues in the years to come, the report estimates that the global warming threshold of 1.5 °C will be reached between 2030 and 2052.

3.

(ii) Regarding the impacts of climate change on the environment, human health and human life, the 2014 and 2018 IPCC reports highlight, first, the direct impact of the rise in global temperatures on melting ice and temperature of seas and oceans, which in turn contribute to the rise in sea levels.

These reports also evidence the link between climate change and "*extreme weather and climate phenomena*" such as "*heat waves, droughts, floods, cyclones and forest fires*".

In addition, all these phenomena, associated with seas and oceans acidification, also have a significant impact on biodiversity. According to the 2014 IPCC report:

> *« A large fraction of species faces high risks of extinction due to climate change during the 21st century and beyond, especially as climate change interacts with other stressors (high confidence degree). Most plant species cannot naturally shift their geographical ranges sufficiently fast to keep up with current and high projected rates of climate change in most landscapes; most of the small mammals and freshwater molluscs will not be able to keep up at the rates projected under RCP4.5 and above in flat landscapes during this century (high confidence degree). Future risks seem high since we know that global natural climate change, which is lower than the current anthropogenic climate change, caused significant ecosystem shifts and species extinctions during the past millions of years. Marine organisms will be threatened by a progressive reduction of oxygen concentration and by oceans acidification of great magnitude (high confidence degree), the associated risks being exacerbated by rising extreme temperatures of the ocean (medium confidence degree). Coral reefs and polar ecosystems are highly vulnerable. Coastal systems and low-lying areas are threatened by sea level rise, which will continue for centuries even if the average temperature of the planet is stabilized (high confidence degree).* »

Finally, the 2014 IPCC report underlines the negative impact of climate change on food security and water resources:

> « *Due to projected climate change by the mid-21st century and beyond, global redistribution of marine species and reduction of marine biodiversity in sensitive regions will challenge the sustained fisheries productivity and other ecosystemic services (high confidence degree). With respect to wheat, rice and maize crops in tropical and temperate regions, climate change without adaptation should negatively impact the production in case of local increase of the average temperature of 2°C or more in comparison with late 20th century levels [...] According to the previsions, climate change will reduce renewable surface water resources and renewable groundwater resources in most of the dry subtropical regions (robust evidence, high coherence degree).* »

Furthermore, the works of the IPCC evidence the fact that impacts of climate change worsen as GHG emissions and global warming increase. In this respect, the 2014 report stated that:

> "*If they continue, GHG emissions will cause extra warming and a lasting modification of all components of the climate system, increasing the likelihood of serious, widespread and irreversible consequences for populations and ecosystems.*"

In the same vein, the 2018 report points out that:

> "*Any further increase in temperature, no matter how small, has an importance, all the more so as a warming of 1.5 ° C or higher will increase the risk associated with permanent or irreversible changes, such as the disappearance of some ecosystems* ".

In addition, this latest report identifies many aggravations from the consequences of climate change in the context of a scenario of a global warming of 2 ° C compared to a warming of 1.5 ° C:

- First, episodes of heat waves will be more intense and longer in case of warming of 2 °C, as well as the risks related to suffering precipitation deficits and floods in certain regions.

- Second, sea level will be higher, with a difference of about 10 cm between the scenarios of 1.5 or 2 ° C. Consequences will be major for coastal zones, islands and zones of deltas in particular, where they have the majority of the population of the planet.

- Third, the impact on biodiversity will be more pronounced with a warming of 2 ° C than with a warming of 1.5 ° C. The terrestrial, freshwater and coastal ecosystems and their services for humanity will be further affected. In addition, the rise in ocean temperature and its associated impacts in terms of increased ocean acidity and lower oxygen levels will be enhanced. As a result, the risks to marine biodiversity, fisheries and ecosystems, as well as their functions and services for humanity will be greater. In particular, the risk of irreversible loss of many marine and coastal ecosystems increases with warmer temperatures.

- Fourth, the risks related to health, livelihoods, food security, water supply, human security and economic growth are higher in a rising temperature scenario of 2 ° C than 1.5 ° C. Thus, the risks of morbidity and mortality related to heat, ozone and certain vector-borne diseases, such as malaria and dengue fever, will be greater. In addition, maize, rice and wheat yields will be more affected, particularly in sub-Saharan Africa, South-East Asia, Central and South America. Similarly, the projected decline in food availability will be greater at 2 ° C than at 1.5 ° C in the Sahel, southern Africa, the Mediterranean, central Europe and the Amazon. Finally, in a 2° C warming scenario, energy, food and water sector risks could overlap in time and space, which would create new risks and would worsen existing dangers and vulnerabilities that may affect an increasing number of people and regions.

- Fifth, adaptation will be more difficult for ecosystems, food and health systems at 2 °C than at 1.5 °C, it being specified that, even in the event of a warming of 1.5 °C the least developed or island countries will remain exposed to multiple and significant climate risks.

Ultimately, as summarized in the press release accompanying the 2018 IPCC report, "*the limitation of global warming to 1.5 °C and not to 2 °C would minimize the effects, with heavy consequences on ecosystems, health and wellbeing of the populations, making it easier to achieve the United Nations Sustainable Development Goals*".

4.

(**iii**) The 2018 IPCC report notes that in order to have a reasonable probability of not exceeding the global warming threshold of 1.5 °C, GHG emissions should be reduced by 45% by 2030 from 2010 levels and achieve carbon neutrality by 2050, well beyond the current commitments to reduce GHG emissions made by States under the Paris Agreement. It also states that in the absence of a substantial reduction in global GHG emissions by 2030, it will be impossible to limit global warming to 1.5 °C in the 21st century. In this context, mitigation measures for GHG emissions based on future and uncertain CO_2 capture and storage technologies will become indispensable.

That being said, this 2018 report states that it is still technically possible to contain global warming at 1.5 °C, provided, however, that rapid and far-reaching transitions in the energy fields are implemented as regards land use, urban planning and infrastructure including transport, buildings and industrial systems, involving deep reductions in GHG emissions from all these sectors, as well as a significant increase in investments for mitigation measures.

Finally, the IPCC 2018 report highlights the benefits of implementing these transitions, including in relation to the Sustainable Development Goals. It states that such transitions can be facilitated by increased public policies and investments for mitigation and adaptation, and by accelerating innovation and behavioural change.

5.

In France, the average temperature increased by around 1,14 °C on the metropolitan territory for the decade 2000-2009 compared to the reference 1961-1990, which was already marked by an increase of the temperatures compared to the averages of the pre-industrial era.

This increase in temperature, associated with other manifestations of climate change (see above), causes harmful consequences on the environment, health and human life.

Thus, impacts of climate change on the environment are notably reflected, in France, in the melting of glaciers, the rise in sea level - around 4.3 centimetres in the last ten years - coastal degradation, marked by worsening coastal erosion[2], and loss of biodiversity.

In addition, climate change has significant impacts on people's health and lives.

On the one hand, it increases the exposure of the population to extreme climatic phenomena worsened by climate change - heat waves, droughts[3], forest fires[4], extreme rainfall and floods in the Mediterranean region in particular[5], cyclones in the overseas territories[6], etc. - as illustrated in the following map:

[2] See Portail du réseau national des observatoires du trait de côte « Chiffres clés » : http://observatoires-littoral.developpement-durable.gouv.fr/chiffres-cles-r9.html ; voir également : Géolittoral, Le portail de la mer et du littoral « Indicateur national de l'érosion côtière » : http://www.geolittoral.developpement-durable.gouv.fr/premiers-enseignements-r476.html.

[3] See http://www.meteofrance.fr/climat-passe-et-futur/impacts-du-changement-climatique-sur-les-phenomenes-hydrometeorologiques/changement-climatique-et-secheresses.

[4] Météo-France, « Changement climatique et feux de forêts », http://www.meteofrance.fr/climat-passe-et-futur/impacts-du-changement-climatique-sur-les-phenomenes-hydrometeorologiques/changement-climatique-et-feux-de-forets

[5] En ce sens, voir :

- Météo-France, « Changement climatique et épisodes méditerranéens », http://www.meteofrance.fr/climat-passe-et-futur/impacts-du-changement-climatique-sur-les-phenomenes-hydrometeorologiques/changement-climatique-et-episodes-mediterraneens ;

[6] S. FOUCART, « Ouragans : des phénomènes aggravés par le réchauffement climatique », *Le Monde*, 17 septembre 2018 : https://www.lemonde.fr/planete/article/2018/09/17/ouragans-typhons-des-phenomenes-aggraves-par-le-rechauffement-climatique_5356170_3244.html

Climate change: mapping of the visible impacts and the impacts yet to come by 2050
(*source : https://www.ecologique-solidaire.gouv.fr/observatoire-national-sur-effets-du-rechauffement-climatique-onerc*)

Thus, the French Ministry of Ecology, Sustainable Development and Energy estimates that 62% of the French population is strongly or very strongly exposed to climate risks, i.e. to natural hazards likely to be aggravated by climate change (floods, forest fires, storms and cyclones, avalanches, ground movements).

On the other hand, climate change increases the risk of existing or new pathologies - increased production and dispersal of allergenic pollen[7], aggravation of atmospheric pollution with ozone, expansion of insects transmitting infectious agents[8].

[7] See : Impacts du réchauffement climatique Santé et Société, Indicateur de pollen de bouleau, ONERC, 19 janvier 2017, https://www.ecologique-solidaire.gouv.fr/impacts-du-changement-climatique-sante-et-societe ; L. HAMAOUI-LAGUELET et autres, « Effects of climate change and seed dispersal onairborne ragweed pollen loads in Europe », 2015.

[8] See: Ministère des solidarités et de la santé, « Moustiques vecteurs de maladies », 28 juin 2018 : https://solidarites-sante.gouv.fr/sante-et-environnement/risques-microbiologiques-physiques-et-chimiques/especes-nuisibles-et-parasites/moustiques-vecteurs-de-maladies ; voir également : Bulletin épidémiologie hebdomadaire, « Borréliose de Lyme et autres maladies transmises par les tiques », N° 19-20, juin 2018 : http://invs.santepubliquefrance.fr/beh/2018/19-20/pdf/2018_19-20.pdf ; J. SEMENZA, « Vector-borne diseases and climate change: a Europeanperspective », FEMS Microbiology Letters, 365, 2018, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5812531/pdf/fnx244.pdf.

Moreover, the French government admitted the reality of this situation, in a document entitled "*Action for the climate of the French State*" attached to its decision of rejection dated 15 February 2019. According to this document, it recognizes that:

> "*We are living in a state of climate emergency, where dramatic consequences are already significant. France is not spared, as evidenced by the disasters that affected Saint-Barthélemy and Saint-Martin, the Aude and the Var departments, or the drought that our farmers were confronted with last year.*
> *[...]*
> *We are convinced that, despite our action, some effects of global warming will be felt on our fellow citizens. It is therefore necessary, now, to prepare measures to limit the impact on populations, in particular in terms of climatic disasters (floods, storms, droughts, fires ...) which will be more and more frequent and violent* ".

6.

However, despite this acknowledgment - and the known risks of severe environmental and health damages related to climate change – the French State continues to underperform its obligations regarding climate change.

Indeed, although it is bound by a general obligation to tackle climate change - which implies, in particular, taking measures intended to protect the natural environment and, more broadly, to limit, and if possible, eliminate the dangers related to climate change - as well as specific obligations to reduce GHG emissions, improve energy efficiency, develop renewable energies and reduce vulnerabilities caused by climate change, it is clear that the French State does not respect the objectives assigned to it and is continuously neglecting its mission to prevent and protect the citizens and the environment.

Thus, French GHG emissions have increased since 2016, so that over the 2015-2018 period, they exceed the annual limits set by decree on the national low-carbon strategy (*SNBC*). Similarly, recent studies reveal that the State will not be able to meet the European and French targets for reducing energy consumption and developing renewable energies.

To a larger extent, the State has delayed, or refrained from, adopting measures to eliminate or, at least, limit hazards and risks, yet established, related to climate change, and has not implemented any mechanism for monitoring and evaluating these measures, in order to be able to comply with its obligations.

This situation reveals, if not the delay or absence of adoption by the State of adequate measures to fight against climate change, at least the inadequacy or insufficiency of the measures adopted.

7.

In this context, by letter dated 17 December 2018, the organizations and the foundation solicited from the Prime Minister, the Minister of the Ecological and Solidarity Transition, the Minister of Solidarity and Health, the Minister of Agriculture and Food, the Minister of Territorial Cohesion and Relations with Local Authorities, the Minister of Transport, the Minister of the Economy and Finance, the Minister of Public Accounts, the Minister of Europe and Foreign Affairs, the Minister of the Interior and the Minister of Overseas, compensation for damages they believe to have suffered due to misconduct and failure to act of the State as regards fight against climate change.

By a decision dated 15 February 2019, the Minister of the State, who is also Minister of the Ecological and Solidarity Transition, rejected the request of the organizations and the foundation.

Therefore, the organizations and the foundation request from the administrative court of Paris to condemn the State to pay 1 euro in compensation for the damages suffered, and to deliver an injunction against the Prime Minister and the competent ministers, to remedy all the failures of the State to perform its obligations - general and specific – with respect to fight against climate change, or to mitigate the effects and to repair the ecological prejudice (*préjudice écologique*).

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LEGAL ARGUMENTS

I.A *Misconduct and failure to act (carence fautive) of the State to tackle climate change*

8.

The Administration is accountable when it does not fulfil pre-existing obligations or when it refrains from taking action where it has the obligation to do so. In the latter case, it can be held liable on the grounds of failure to act (*carence fautive*).

As a matter of fact, if public entities are free to choose the means to ensure the respect of their obligations, however, they must reach the result required by these obligations. Failing that, they can be held liable for misconduct.

French administrative courts were briefly reminded these principles pursuant to which they have condemned the State many times because it failed to fulfil its obligations regarding public health or environment (to that end, see the asbestos case in French jurisprudence: CE, Ass. 3 March 2004, the Minister of Employment and Social Solidarity vs. Cts Bourdignon, req. n°241150 ; CE, 3 March 2004 the Minister of Employment and Social Solidarity vs. Cts Xueref, req. n°241153 ; CE, 3 March 2004 the Minister of Employment and Social Solidarity vs. Thomas, req. n°241152 ; CE, 3 March 2004 the Minister of Employment and Social Solidarity vs. Botella, req. n° 241151 ; on the contaminated case : CE, Ass.9 April 1993, req. n°138852 ; on the contamination from nitrates : CAA of Nantes, 1 December 2009, the French Minister of State, the French Minister of Ecology, Energy, Sustainable Development and Land Planning, req. n°07NT03775).

9.

That being said, in the first place, the State is subject to a general obligation to tackle climate change pursuant to the Charter for the Environment (i), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ii) and the general principle of law providing the right of every person to live in a preserved climate system (iii). Among other things, this means taking steps intended to protect natural environments and more broadly, to implement measures in order to limit and, if possible, to eradicate dangers related to climate change.

10.

(i) First of all, the obligation to fight against climate change is based on the constitutional recognition of the right of every person to live in a healthy and ecologically balanced environment, as provided for under the 1st article of the Charter for the Environment.

Secondly, this obligation finds a specific legal basis in the obligation of environmental care, derived from articles 1 and 2 of the Charter for the Environment. Public authorities have to meet this obligation (to that end : Cons. Const., 8 April 2011, Mr. Michel Z. and others [neighborhood nuisance and environment], dec. n°2011-116 QPC, cons.5 ; CE, 14 September 2011, Mr. R, req. n°348394, Lebon) and it implies that they have to implement all appropriate measures to prevent harm against the environment and preserve people's lives.

Moreover, the content of this duty of care implies that the State must take all necessary measures to identify, avoid, reduce and compensate the consequences of climate change. Indeed, the duty of care is to be understood not only as an obligation to identify risks of harm against the environment

related to climate change, but also as an obligation for the State to act in order to prevent those risks from happening, and where required to eliminate them by adopting measures to fight efficiently against climate change.

Therefore, both under the right of every person to live in a healthy and well ecologically balanced environment and on the duty of environmental care, the State is under an obligation to implement all necessary measures to efficiently fight against climate change.

11.

(ii) Such perspective on the duty of the State is also applicable regarding the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights.

Indeed, pursuant to the principles enshrined in articles 2 and 8 of the Convention – establishing respectively "*the right to life*" and the "*right to respect for private and family life*" - the European Court rules that protecting life, health and private and family life involves protecting the environment, and imposes on the States positive obligations.

First, it compels the States to implement a "*legislative and regulatory framework aiming at an efficient prevention against damages on the environment and human health*", to ensure the inhabitants' protection of life and health against environmental risks, whether they originate from a natural or anthropogenic cause. (to that end: ECHR, 30 November 2004, Öneryıldız vs. Turkey, case n°48939/99 ; ECHR, 20 March 2008, Boudaïeva vs. Russia, case n°15339/02, 21166/02, 20058/02, 11673/02 and 15343/02).

Secondly, it constrains the State to take preventive practical measures to protect an individual whose life is at risk (to that end: ECHR, 30 November 2004, Öneryıldız vs. Turkey, case n°48939/99, §90 ; ECHR, 27 January 2009, Tatar vs. Romania, case n°67021/01, §88 ; ECHR, 30 March 2010, Bacila vs. Romania, case 19234/04, §61).

Yet, it is recognized that climate change poses a global, immediate and direct risk for the right to life and the right to respect for private and family life that are guaranteed by the Convention. In addition, there is a risk of serious and multiple harms to the rights aforementioned.

Consequently, the States are required to implement a legislative and regulatory framework and to adopt practical measures meant to fight efficiently against climate change.

12.

(iii) Finally, the obligation to tackle climate change relies on a general principle of law regarding the right to live in a sustainable climate system.

While this general principle has not been explicitly recognized by French law yet, it is nonetheless, like other general principles of law, in line with "*the general state of law and the spirit of the legislation"* and results from *"the requirements of the legal consciousness of our times and the requirements of the Rule of law*" according to Professor René Chapus.

This legal consciousness is particularly true on two levels.

First, this legal consciousness arises from the textual recognition of the co-dependency between the fight against climate change and the sustainable development of human societies. Thus, it

results from a body of texts – national (such as the preamble of the Charter for the Environment, article L. 110-1 of the French Environment Code, etc.) or international (the Stockholm Declaration, the World Charter for Nature, the Rio Declaration, the United Nations Framework Convention on Climate Change, the Kyoto protocol, the Paris Agreement, the Climate action and renewable energy package for 2020, the Decision n°406/2009/CE of the European Parliament and of the Council dated 23 April 2009, etc.) - that reducing GHG emissions has one goal : ensuring a sustainable climate for current and future generations, which means favorable to the development of human life. Therefore, both international and national laws imply that fight against climate change - resulting in an obligation to maintain a sustainable climate system - imposes on States an obligation to adopt public policies aiming at preserving an environment favorable to a sustainable development of human societies.

Then, this legal consciousness relies on the bond explicitly established between the existence of a sustainable climate and the enjoyment of human rights. Such bond was first established at international level by several organizations – the Human Rights Council, the Office of the United Nations High Commissioner for Human Rights, the Human Rights Committee of the United Nations, the Conference of the Parties, the UN's Committee on Economic, Social and Cultural Rights. Furthermore, European Union law recognizes the existence of a bond between climate sustainability and the guarantee of human rights. Finally, more recently, several national jurisdictions have ruled in that respect – the Pakistani Court, the Colombian Supreme Court, the Oslo district Court and the Hague Court of Appeal.

Eventually, it appears that fight against climate change relies on the guarantee of a "sustainable climate system", which constitutes a prerequisite for promoting sustainable growth, as well as the enjoyment of human rights for current and future generations.

Administrative authorities are subject to this general principle of law and have to respect it while exercising the powers conferred on them by law.

13.

In the second place, specific obligations are imposed on the State regarding fight against climate change.

(i) With respect to mitigation of climate change, these obligations result from a body of texts originating from European Union law and national law (see: footnote page n°1, p. 1).

The State has the responsibility to implement those obligations with quantified objectives on reducing GHG emissions, energy performance and renewable energies. More specifically, the State has to adopt sectoral and transversal measures to reach the defined goals.

(ii) Then, as regards adaptation to climate change, the State has to take all necessary measures to reduce vulnerabilities caused by climate change, to limit its negative impacts and to increase positive effects at national and geographical levels.

14.

It is clear that France does not meet the objectives regarding the reduction of GHG emissions, energy performance and renewable energies. Furthermore, measures, recommendations and sectoral and transversal objectives identified in the aforementioned legislative and regulatory tools were not implemented, or insufficiently, nor reassessed.

That is why French GHG emissions have raised since 2016, in such a way that on the 2015-2018 period they exceeded the annual limits established by the national low-carbon strategy decree (SNBC). Similarly, recent studies reveal that the State will not be able to reach the objectives that have been assigned to it concerning the reduction of energy consumption and the development of renewable energies.

In particular, concerning the reduction of energy consumption, the State deferred or did not take the necessary measures to reach its objectives. This is demonstrated, notably, with the formal notices addressed to France by the European Commission in 2015 and 2019 for breach of the obligation of transposition of the 2012/27/EU Directive dated 25 October 2012 of the European Parliament and the Counsel relating to energy efficiency.

On a wider scale, administrative authorities have failed to implement several action plans and programs imposed by the law relating to the mitigation of climate change – national plan in favor of renewable energies, energy and thermal renovation plan for existing buildings, multiannual programming of energy (*programmation pluriannuelle de l'énergie*), national low-carbon strategy, national plan for adaption to climate change, etc.

In this regard, it is important to note that in the document entitled "the French State action in favor of climate" attached to the decision of rejection dated 15 February 2019, the Government recognizes that "*France has to redouble its efforts at national level to implement its public policies*", while admitting "*structural gaps that can be explained by a delay in the past years in the transport industry, the construction industry and to a lesser extent the agricultural sector*".

Likewise, regarding adaptation, it was not until 2011 that public authorities adopted their first adaptation plan (PNACC1). In addition, this plan was reassessed very late, in November 2018 (PNACC2) to be brought into conformity with the new national and international normative framework – in particular, with the Paris Agreement. Therefore, to this day, this plan cannot be considered as an adequate measure in response to the climate emergency clearly asserted in the 2018 IPCC report.

All these results highlight a serious disregard by the State of its specific obligations and demonstrate, in the meantime, a violation of its general obligation to tackle climate change.

This situation constitutes, already, a failure of the State to fulfil its obligations for which it can be held liable.

15.

This situation also confirms the inaction of the State to fight against climate change, which can be analysed from two different perspectives.

First, the State refrained from adopting measures to eradicate, or at least limit, the threats and risks, yet established, related to climate change. Nor it implemented the necessary follow-up measures to comply with its obligations. Thus, there is a threat to the environment, the life and the health of individuals resulting from the worsening of GHG emissions, and an obvious insufficiency of follow-up measures that should be implemented by the State to evaluate the adequacy of measures taken in order to reduce these GHG emissions. This double observation is enough to constitute a failure to act (*carence fautive*) of the State in the implementation of its duty of care regarding the fight against climate change.

Then, measures adopted by administrative authorities are not sufficient to ensure the enforcement of the legislative and regulatory framework intended to fight against climate change. For good reason: the observation of the increase of GHG emissions – or at least, their absence of diminution – is enough to prove either the inadequacy of action plans, strategies and programs adopted by the regulatory authority, or the inability of the latter to enforce them.

Eventually, it appears that the regulatory authority did not implement the necessary measures to satisfy the obligation imposed on it by the national and European lawmaker in order to fight against climate change.

This situation reveals a failure to act (*carence fautive)* of the State in the implementation of its obligations – general and specific – regarding the fight against climate change, for which it could be liable.

I.B ***As regards the moral prejudice***

16.

According to a constant jurisprudence, an association or a foundation for the protection of the environment may argue moral prejudice when the rights and collective interests it defends are infringed upon (in that respect: CE, Sect., 18 mai 1979, Association judaïque Saint-Seurin, Rec. p. 218 ; CE, 19 février 1982, Comité de défense du quartier Saint-Paul, req. n° 09899, Rec. T. p. 746; CAA de Nantes, 1er décembre 2009, Ministre d'État, ministre de l'Écologie, de l'Énergie, du Développement durable et de la Mer c/ Association « Halte aux marées vertes » et autres, req. n° 07NT0377).

17.

The fight against climate change, for the protection of the environment and more generally for the protection of fundamental rights, is provided for by the articles of association of the organizations and the foundation.

The faults committed by the State in the fight against climate change harm the collective interests defended by the organizations and the foundation, as they constitute an obstacle to the achievement of their statutory object.

Thus, these faults impede the efforts made by the organizations and the foundation to protect the environment, which consist, notably, in the organization of symposia, exhibits and other events, the edition of information and communication material, or the carrying out of field actions and advocacy work aimed at raising awareness of the citizens and public authorities about the climate emergency.

In these conditions, the organizations and the foundation are entitled to seek compensation for the moral prejudice incurred as a result of the breach by the State of its – general and specific – obligations in the fight against climate change.

For this reason, they are entitled to request the award of compensation amounting to 1 (one) Euro.

I.C ***As regards the ecological prejudice***

18.

Article 1247 of the French civil Code states that "*is repairable, under the conditions set forth in this section, the ecological prejudice consisting of non-negligible damage to the elements or the functions of ecosystems or to the collective benefits drawn from the environment by mankind*".

Article 1246 of the same Code specifies that "*any person responsible for ecological prejudice is liable for the remediation thereof*".

Article 1249 indicates that "*the compensation of ecological prejudice shall be effected, as a priority, in nature"* and that *"where legally or factually impossible, or where compensation measures are insufficient, the judge shall sentence the responsible party to pay damages which shall be allocated to the remediation of the environmental damage, to the claimant or, where the latter is not able to take adequate measures to this end, to the State*."

Finally, article 1252 provides that "*regardless of the compensation of ecological prejudice, the judge, pursuant to such a request […] may prescribe reasonable measures in order to prevent or put an end to the damage*".

19.

In this context, the ecological damage constitutes an objective damage, distinct from any personal repercussions.

The ascertainment of the ecological damage implies two cumulative conditions: on the one hand, a "*non-negligible*" damage, and on the other hand, damage to "*the elements or functions of ecosystems or collective benefits drawn from the environment by mankind*".

20.

In this case, it is established that climate change – resulting from, among other things, the increase of GHG emissions compared to preindustrial levels – causes a serious and certain harm, not only to the environment and the ecosystems, but also to the collective benefits drawn from the environment and ecosystems by mankind, notably in terms of health and food safety. Thus, climate change is directly responsible for the ecological damage.

Yet, it is established that the negligence and failure to act (*carence fautive*) of the State to tackle climate change directly contribute to the worsening of climate change, as they lead to a surplus of GHG emissions which prevents the State to comply with its goals of reduction of its emissions, as set by national and European laws.

In other words, the wrongful acts committed by the State in the fight against climate change are the direct cause of damages to the environment and health and cause an actual ecological prejudice (*préjudice écologique certain*).

Consequently, the organizations and the foundation are entitled to seek compensation for the ecological prejudice, or at least, to request the judge to prescribe the necessary measures to end it and prevent the aggravation of the prejudice.

I.D ***As regards the injunction request***

21.

Pursuant to article L.911-1 of the French Code of administrative justice and case law, the administrative judge in charge of the full proceedings (*recours de plein contentieux*) may, when drawing the corresponding conclusions, enjoin the public entity to put an end to its behavior or compensate for the effects.

The administrative judge may grant the request under two conditions. Firstly, he must verify that the faulty behavior of the public entity is still persisting on the date on which the judge makes a decision and secondly, that the prejudice for which the victim is asking reparation for is also still persisting on the date on which the judge makes a decision.

This case meets both conditions.

22.

Under these circumstances, the organizations and the foundation are entitled to request an injunction against the Prime Minister and the competent ministers to implement the necessary measures to end the moral prejudice incurred, as well as the ecological prejudice (see page 1 for details on the requested injunction).

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