

Press Release/ Climate change trial against TotalEnergies: a worrying ruling that the action brought by associations and local authorities is inadmissible

Paris, 6 July 2023 - In the climate litigation brought against TotalEnergies by a coalition of associations and local authorities (1), the pre-trial judge of the Paris judicial court has ruled that the action was inadmissible. Based on a worrying interpretation of the law on duty of vigilance and the provisions on ecological damage, this decision restricts access to justice for associations and local authorities. After several years of proceedings, the court refuses to examine the impact of TotalEnergies' activities on climate change.



In January 2020, a coalition of associations and local authorities [sued](#) TotalEnergies before the Nanterre court. Joined in [September 2022](#) by three additional local authorities and Amnesty International France, the coalition demands the oil company to take the necessary measures to comply with the 1.5°C target of the Paris Agreement, in accordance with the law on [duty of vigilance](#).

The procedure was initially delayed by TotalEnergies, which contested, [unsuccessfully](#) the jurisdiction of the judicial court in favour of the commercial court. Since 2022, the case has been referred to the pre-trial judge of the *Tribunal judiciaire de Paris*, which now has sole jurisdiction over cases relating to the duty of vigilance and is responsible for deciding certain procedural issues.

In an order handed down today, the Pre-Trial Judge declared the legal action inadmissible. This is a worrying decision, given that several other legal actions based on the duty of vigilance legislation have also been declared inadmissible in recent months: [Tilenga and EACOP projects in February](#), the [Suez/Chile case](#) in June, and [EDF Mexico](#) in December.

The judge ruled that TotalEnergies had not been duly served with formal notice on the grounds that the demands set out in the summons were not strictly identical to those in the formal notice sent to the multinational in June 2019. This condition of strict identity between the demands in the formal notice and those in the summons simply does not exist in the law on the duty of vigilance.

Although the law on the duty of vigilance does not impose any mandatory "discussion" or "conciliation" phase between companies and the associations or individuals affected, this order, as well as previous decisions, uses a lack of dialogue as a pretext for ruling the legal actions inadmissible. And even if the coalition had contacted, exchanged views with and met with the company's directors before the formal notice was served, which is **not required by law**, the judge did not take these various prior exchanges into account, considering that "mere meetings cannot constitute a formal warning". All the more so since TotalEnergies showed no willingness to engage in dialogue or to make any progress prior to the legal action.

The judge also ruled that certain associations and local authorities were inadmissible for lack of legal standing to take legal action to prevent ecological damage, in direct contradiction with the position of

the Conseil d'État in the *Grande-Synthe* decision (2). While action for ecological damage is open to "any person with an interest or standing to sue", such as "associations" and "local authorities", this decision restricts their ability to take legal action to prevent the risk of serious damage to the environment caused by the activities of a multinational. **Ultimately, this decision once again prevents a judicial debate on the climate inaction of a multinational.**

The judge also considered that local authorities would have no interest in taking action, on the grounds that the effects of climate change would be global and not limited to their territory. Opening access to justice to local authorities in climate matters would make litigation "impossible to control", even though it is currently the only action brought before the courts by local authorities exposed to the effects of climate disasters.

The duty of vigilance requires multinationals to prevent the risks of human rights, health and environmental damage caused by their activities. The coalition therefore strongly deplors this decision, which runs counter to numerous reports highlighting the urgency of climate change (3).

The associations and local authorities are considering what legal action should be taken in response to this order. The coalition remains convinced that **legal action is essential to combat the impunity of multinationals in the area of climate change.** Despite the very disappointing initial rulings on actions based on the duty of vigilance, the organisations and local authorities involved in the coalition will continue to mobilise the legal levers to ensure that those responsible for climate disruption are held to account for the consequences of their activities at both global and local level.

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NOTES

(1) Sherpa, Amnesty International France, France Nature Environnement, Notre Affaire à Tous, ZEA, Eco Maires and the towns of Paris, New York, Arcueil, Bayonne, Bègles, Bize-Minervois, Centre Val de Loire, Champneuville, Correns, Est-Ensemble Grand Paris, Grenoble, La Possession, Mouans-Sartoux, Nanterre, Sevrans and Vitry-le-François.

(2) The Conseil d'Etat's first decision, no. 427301 of 19 November 2020, granted the town of Grande-Synthe, as well as Paris, Grenoble and Notre Affaire A Tous, the three applicant organisations in this case, standing to sue the State in a climate dispute. More specifically, the Conseil d'Etat's decision does not impose the particularity of ecological damage on the plaintiff local authorities and associations.

(3) UN-HLEG, [Integrity matters net zero commitments by businesses financial institutions, cities and region, November 2022](#); IEA, [Net Zero by 2050, A Roadmap for the Global Energy Sector, May 2021](#).