



ENERGY TRANSITION  
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Non-State Actors on Climate Litigation: Les Amis de la Terre France, and the  
Coalition that Made the State Look Bad.

*Les Amis de la Terre France v. French Government*  
Conseil d'Etat - Assembly - July 10, 2020 - n° 428409

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I. Introduction

A letter dated June 22, 2015, Les Amis de la Terre France, an NGO working in the field of environment and climate change, addressed the French government, including the President of the Republic, the Prime Minister and the ministers in charge of the environment and health. The purpose of this letter was to ask the government to take all appropriate measures to reduce—throughout the national territory—concentrations of fine particles and nitrogen dioxide within the limit values set out in Annex XI of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe. Subsequently, another letter, dated August 3, 2015, from Les Amis de la Terre France called on the same authorities to design one or more plans relating to air quality, the purpose of which was to define the appropriate measures to reduce—in each of the zones, areas and agglomerations of the national territory concerned—the concentrations of fine particles and nitrogen dioxide within the limit values set out in Annex XI of the same directive.

The silence of these authorities on these matters came to be understood as a rejection of Les Amis de la Terre France's requests. As a result, Les Amis de la Terre France brought the matter to the notice of the French Conseil d'Etat by a claim on October 26, 2015, supplemented by a reply brief dated June 16, 2017. They sought the annulment of the implicit rejection decisions resulting from the silence of the President of the Republic, the Prime Minister, the Minister of Ecology, Sustainable Development and Energy and the Minister of Social Affairs and Health.

The matter was discussed and documented, and the Conseil d'Etat handed down its ruling on July 12, 2017. In this regard, the Conseil d'Etat held that:

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“Article 1: The implicit decisions of the President of the Republic, the Prime Minister and the ministers in charge of the environment and health refusing to take all necessary measures and to draw up plans in accordance with Article 23 of Directive 2008/50/EC of 21 May 2008 to reduce, throughout the national territory, concentrations of fine particles and nitrogen dioxide below the limit values set out in Annex XI of this Directive are annulled.

Article 2: The Prime Minister and the Minister for the Environment are hereby enjoined to take all necessary measures to ensure that a plan relating to air quality is drawn up and implemented for each of the zones listed in point 9 of the grounds for this decision, enabling concentrations of nitrogen dioxide and fine particulate matter PM10 to be brought back below the limit values laid down in Article R. 221-1 of the Environment Code within the shortest possible period of time, and to forward it to the European Commission before 31 March 2018.”

A year later, the French government has not complied, or at least not fully. The constant surveillance of non-state actors has led to a new complaint. On October 2, 2018, an action was filed with the registry of the secretariat of the report and studies section of the Conseil d’Etat by Les Amis de la Terre France and a coalition of other non-state actors and nonprofit organizations and individuals. The coalition included 67 associations and 9 individuals who argued that the State has disregarded and violated European and domestic law regarding air quality and clean air.

## II. The Facts and Proceedings

Originally, this case was led by a composite coalition of non-profits.<sup>2</sup> Seven Individuals were also involved in these proceedings. France was the defendant.

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<sup>2</sup> The coalition was composed as follows: The association Les amis de la Terre - Paris, Association de défense contre les nuisances aériennes (ADVOCNAR), Association France nature environnement - Ile de France, Association Les amis de la Terre - Val de Bièvre, Association France nature environnement - Provence Alpes Côte d’Azur, Association France nature environnement - Bouches du Rhône, le Collectif anti nuisance L2, Association Cap au nord, Association de défense du site du Réaltor et de son environnement, Association RAMDAM, Association Sauvons la Mathilde, Association NOSTERPACA, Association CIRENA, Association Rires sans frontière, Association nature du nogentais (ANN), Association Les amis de la Terre - Loire Atlantique, Association Autrement pour les aménagements des contournements (motorways and railways) de l’habitat et de l’Est, Association Les amis de la Terre - Côte d’Or, Association Défense des intérêts des riverains de l’aérodrome de Pontoise-Corneilles en Vexin,..., Association SOS Paris, Association Nos villages se soucient de leur environnement (NOVISSSEN), Association Champagne-Ardenne nature environnement (CANE), Association Les amis de la Terre - Dunkerque, Association pour la sauvegarde du patrimoine et de l’environnement à Antony, Association Greenpeace France,

The purpose of the application by the non-state actors was to obtain a ruling from the French administrative court, in particular the Conseil d'Etat, that the State had failed to execute its decision no. 394254 of July 12, 2017, in which the Conseil d'Etat had quashed "(... ) the implicit decisions of the President of the Republic, the Prime Minister and the ministers in charge of the environment and health refusing to take all appropriate measures and to draw up plans in accordance with Article 23 of Directive 2008/50/EC of May 21, 2008, on ambient air quality and cleaner air for Europe making it possible to bring concentrations of fine particulate matter and nitrogen dioxide throughout the national territory below the limit values set out in Annex XI to that Directive."

Moreover, it is important to recall that this decision had ordered the French officials to adopt measures aiming at the implementation of a plan relating to the quality of the air in conformity with the European rules in certain identified zones. In addition to the fact that the coalition of non-state actors asked the Conseil d'Etat to note this non-execution, it expected the judge to pronounce against the State a penalty payment of 100,000 Euro per day of delay, within a period of one month, if it did not justify having adopted measures when the decision was made. Finally, the coalition requested that the French State be ordered to pay 3,000 Euro in legal fees.

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Association de défense de l'environnement et de la population de Toussieu (ADEPT), Association Val de Seine vert, Association pour la Sauvegarde de Boulogne Nord-Ouest (ASBNO), Association Toulon Var déplacements, Association inter village pour un environnement Sain (AIVES), Association Marennes contre les nuisances, Association COFIVER, Association Respect environnement, the Fédération Fracture, the Association Union française contre les nuisances des aéronefs (UFCNA), Association Forum sud francilien contre les nuisances aériennes, Association Environnement 92, Association Chaville Environnement, Association Comité riverains Aéroport Saint-Exupéry (CORIAS), Association France nature environnement - Centre Val de Loire, Association Les amis de la Terre - Nord, Association Actions citoyennes pour une transition énergétique solidaire (ACTEnergieS), Association de concertation et de proposition pour l'aménagement et les transports (ACPAT), Association Comité des intérêts de quartier (CIQ) Saint Jean de Tourette Protis, Association vexinoise de lutte contre les carrières cimentières (AVL3C), Association Alertes nuisances aériennes (ANA), Association Nord écologie conseil, Association France nature environnement - Guadeloupe, Association Notre affaire à tous, Association de protection des collines peypinoises (APCP), Association France nature environnement - Bourgogne Franche-Comté, Association Breathe, Association Vivre et agir en Maurienne, Association Alofa Tuvalu, Association Les amis de la Terre - Landes, Association Les amis de la Terre - Meurthe et Moselle, Association France nature environnement - Paris, Association Sommeil et santé, Association niçoise pour la qualité de l'air et l'environnement et de la vie, Association Réseau vert Provence, Association Fédération Alsace nature, Association de défense de l'environnement de Chaponnay, Association Défense des riverains de l'aéroport de Paris, Association Union des calanques littoral, Association Collectif régional associatif nord environnement (CRANE) solidaire, Association Virage énergie, Association Le fer autrement, Association Collectif contre les nuisances aériennes de l'agglomération toulousaine et la commune de Marennes.

I have already mentioned at the beginning the first case that gave rise to the decision of the Conseil d'Etat of July 12, 2017.

The argument of Les Amis de la Terre France was therefore that the State was obliged to respect the jurisdictional decisions rendered by the Conseil d'Etat in climate matters. In this sense, when the State had not enforced them, it was normal that associations could force it to such an obligation before the jurisdictions that had rendered such decisions. In this respect, the first problem that the judge resolved was that of the admissibility of the request due to the large number of applicants.

In its decision, the Conseil d'Etat recalled that, by virtue of the provisions of articles L. 911-4 and R. 931-2 of the Code of Administrative Justice, it can only impose a fine in the event of non-execution of a decision it has rendered, when the matter is referred to it by the parties to the proceedings or by the parties referred to in the act that led to the proceedings. In this respect, the Conseil d'Etat had excluded from the procedure several non-State actors who, in view of their corporate purpose, could not be considered as interested parties, in accordance with the provisions of articles L. 911-4 and R. 931-2 of the Code of Administrative Justice.<sup>3</sup>

However, the Conseil d'Etat had retained the admissibility of the request with regard to the association Les Amis de la Terre-France, which had already been a party to the proceedings that gave rise to the decision of July 12, 2017, but also the rest of the coalition of non-State actors, including the natural persons requesting it, which it had considered could be considered interested parties within the meaning of these same provisions.

### III. The Merits

Les Amis de la Terre France had argued that the State had not executed the decision of July 12, 2017. That in this respect, the non-execution of the decision of

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<sup>3</sup> The list reads as follows : the Association nature du nogentais, the association Les amis de la Terre - Loire Atlantique, the association Les amis de la Terre - Côte d'Or, the association NOVISSEN, the association Les amis de la Terre - Dunkerque, the association France nature environnement - Centre Val de Loire, the association Les amis de la Terre - Nord, the association Nord écologie conseil, the association France nature environnement - Guadeloupe, the association France nature environnement - Bourgogne Franche-Comté, the association Alofa Tuvalu, the association Les amis de la Terre - Landes, the association Les amis de la Terre - Meurthe et Moselle, the association CRANE solidaire, the association Virage énergie, the association Rires sans frontière, whose territorial scope of action does not cover any of the areas concerned by the injunction issued by the decision of July 12, 2017, on the other hand, the NOSTERPACA association, the Toulon Var déplacements association, the AVL3C, the Sommeil et santé association, the Le Fer autrement association, the Sauvons la Mathilde association as well as the Réseau vert Provence association.

the Conseil d'Etat had to be sanctioned by a penalty payment or the 'astreinte' pronounced against the State. However, the decision of July 12, 2017, pronounced the annulment of the implicit decisions of the President of the Republic, the Prime Minister and the ministers in charge of the environment and health, which impeded the preparation of plans in accordance with Article 23 of Directive 2008/50/EC of May 21, 2008, aimed at containing the concentration thresholds of fine particles and nitrogen dioxide, at the national level, below the limit values set out in Annex XI of the said Directive.

An injunction was made to the Prime Minister and the Minister in charge of the environment to take measures leading to the elaboration of a plan relating to the quality of the air likely to reduce the concentrations of nitrogen dioxide and fine particles PM10 to values below the limits fixed by the article R. 221-1 of the code of the environment within the shortest possible time. This plan had to be transmitted to the European Commission before March 31, 2018.

Les Amis de la Terre France's argument is that the French administrative judge can impose a fine in order to obtain the execution of its decisions under articles L. 911-3, L. 911-4 and L. 911-5 of the administrative justice code. In this respect, the Conseil d'Etat could impose a penalty payment on any legal person under public law or any organization under private law responsible for the management of a public service. It could render such a decision when ruling on the merits of the parties' claims or when the decision it had rendered had not been executed. However, the very purpose of the astreinte is to obtain from the legal person of public law or the organization of private law in charge of the management of a public service that it carries out the obligations which the court decision puts at its charge. However, such a penalty payment does not apply to the State when the latter is the debtor of the penalty payment. Consequently, the court may choose to allocate this fraction either to a legal person governed by public law, enjoying the necessary autonomy with respect to the State, and whose object is related to the dispute, or to a legal person governed by private law, with a non-profit purpose, whose object covers actions of general interest.

It is important to note that the directive of the European Parliament and of the Council of May 21, 2008, on ambient air quality and cleaner air for Europe creates obligations for the States concerning the definition of objectives concerning ambient air quality. Its objective is to avoid, prevent or reduce harmful effects on human health and the environment. Under its Article 13, which sets limit values and alert thresholds for the protection of human health, the directive provides that:

'1. Member States shall ensure that, throughout their zones and agglomerations, levels of sulphur dioxide, PM10, lead and carbon monoxide in ambient air do not exceed the limit values laid down in Annex XI.

In the case of nitrogen dioxide and benzene, the limit values laid down in Annex XI may not be exceeded from the dates specified therein.

Compliance with these requirements shall be assessed in accordance with Annex III.

The margins of tolerance laid down in Annex XI shall apply in accordance with Article 22(3) and Article 23(1).

2. The applicable alert thresholds for concentrations of sulphur dioxide and nitrogen dioxide in ambient air shall be the thresholds specified in Annex XII, Section A.'

This results in a dual obligation. It concerns first of all fine particles, since the texts applied on January 1, 2005, as well as the provisions of article 13 of the directive of the European Parliament and of the Council of May 21, 2008, then its annex XI. On the one hand, that in all their zones and agglomerations, the levels of fine particles PM10 in the ambient air of each State are maintained under the threshold of 40 µg/m<sup>3</sup> on average per calendar year. On the other hand, that in the same zones, the levels of fine particles PM10 in the ambient air may in no case exceed 50 µg/m<sup>3</sup> per day more than 35 times per calendar year.

This obligation then applies to the level of nitrogen dioxide, which must be kept below the threshold of 40 µg/m<sup>3</sup> on average per calendar year, in accordance with the provisions of the directive, which sets January 1, 2010, as the starting point for limiting concentrations. Again, in order to prevent exceedances in zones or agglomerations, the authorities must ensure that predicted exceedances do not occur and, above all, that they do not exceed the periods specified in the directive.

Article 23 of the directive therefore specifies that measures must be taken immediately when the above-mentioned exceedances occur. It is provided that Member States shall ensure that air quality plans are adopted when, inter alia, the levels of pollutants in ambient air exceed the limit values or target values in a zone or agglomeration on their national territory. The purpose of these plans is to enable the States to recover the corresponding limit value or target value provided for in Annexes XI and XIV. However, it is especially important that these air quality plans contain 'appropriate measures to ensure that the period of exceedance is as short as possible.'

Indeed, it appears that the objective here is necessarily twofold: on the one hand, to reduce the extent of air pollution risks over time and, on the other hand, to ensure that targeted action is taken. In this respect, the plan must also cover the

information listed in Annex XV of the directive. In two rulings by the Court of Justice of the European Union, including its judgment C-404/13 of November 19, 2014, and its judgment C-636/18 of October 24, 2019, the Court indicated that when the requirements that result from Article 13 had not been met, the states must indeed put in place an air quality plan in accordance with Article 23. However, the Court admitted that the states actually had a 'margin of appreciation' to choose the measures to be adopted, while ensuring that the period during which the limit values were exceeded was as short as possible.

The coalition of actors also argued that, in addition to European law, the French state was obliged to comply with its own domestic law. It results indeed from article L. 221-1 of the environment code, that '(...) Air quality standards defined by decree in the Conseil d'Etat are set, after advice from the National Agency for Food, Environmental and Occupational Health Safety, in accordance with those defined by the European Union and, where appropriate, by the World Health Organization. These standards are regularly re-evaluated to take into account the results of medical and epidemiological studies (...).'

It is in this sense that the provisions of article 23 of the directive had been transposed by articles L. 222-4 and L. 222-5 of the environment code. These stipulate that an atmospheric protection plan must be drawn up whenever—in all agglomerations of more than 250,000 inhabitants—measures concerning air quality are not respected. These include the air quality standards provided for in Article L. 221-1 of the Environmental Code, or the specific standards provided for in 2° of I of Article L. 222-1 of the Environmental Code.

This transposition into French law makes it possible, above all, to achieve the objective of reducing the concentration of pollutants in the atmosphere within the zone in question to a level that complies with these standards. At the very most, it allows public actors a significant margin of action, since it provides for the use of alternative measures under the second paragraph of I of Article L. 222-4 of the Environmental Code. In this respect, it is exceptionally possible to resort to measures in another framework, i.e. other than an air pollution control plan, which, because of their effectiveness, make it possible to contain the exceedances.

The whole point of this argument is that there is nothing to prevent other measures being taken to achieve the same result. In reality, the public authorities have the power of choice concerning the process that allows them to reduce pollutant emissions to a level compatible with the air quality standards provided for in Articles L. 221-1 and R. 221-1 of the Environmental Code. In other words, it is accepted that the plans for the protection of the atmosphere take the place of plans relating to air quality, but it is not excluded that the authorities can resort to other types of measures contributing to the same result. Especially those that are proven



to be effective. However, for such a quality, that of plan relating to the quality of the air, is retained, it is necessary in any case that the adopted measures mention all the information envisaged in the article R. 222-15 of the code of the environment, quite specifically 'the information on all the engaged or planned actions tending to reduce the air pollution with the foreseeable evaluation of their effect on the quality of the air (...).'

This is not enough, because it must also include 'indicators of the means, particularly financial means, necessary for their implementation,' the 'timetable for their implementation' and 'the estimated improvement in air quality that is expected and the timeframe for achieving these objectives.' Despite the strict appearance of the above, it must at most be demonstrated that the period during which the pollutant concentration limits are exceeded has been reduced.

It is important to emphasize that the coalition of non-state actors has brought to light a crucial fact. Indeed, the data provided by the French government to the Conseil d'Etat confirm this. Originally, twelve administrative air quality monitoring zones (AQMA) were affected by the injunction issued by the July 12, 2017, decision.<sup>4</sup>

Between 2016 and 2018, the maximum annual average concentration of this pollutant had only decreased for nine of them.

While the limit value of concentration in the annual average, that the article R. 221-1 of the code of the environment provides, was exceeded in ten of them in 2018. In 2019, in order to ensure the monitoring of ambient air quality, some new terminologies had been used in the framework of the division of the regions into administrative zones. These had highlighted the exceedance of the limit value in eight ZAS, including the zone at risk - outside agglomeration (ZAR) Arve Valley, the zone at risk - agglomeration (ZAG) Grenoble, the ZAG Lyon, the ZAG Marseille-Aix, the ZAG Paris, the ZAR Reims, the ZAG Strasbourg and the ZAG Toulouse.

In this regard, the Conseil d'Etat's ruling emphasizes that:

'Moreover, on the three zones concerned by the injunction issued with regard to the concentration of fine particles PM10 (ZUR Martinique, Paris - Ile de France and ZUR Rhône-Alpes), if the concentration limit value in annual average was exceeded in 2018 only in the ZAG Paris, the limit value of 50 µg/m<sup>3</sup> in daily average was exceeded more than 35 times in two ZAS (up to

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<sup>4</sup> These include: Grenoble Rhône-Alpes, Lyon Rhône-Alpes, Marseille Provence-Alpes-Côte-d'Azur, Montpellier Languedoc-Roussillon, Nice Provence-Alpes-Côte-d'Azur, Paris Ile-de-France, Saint-Etienne Rhône-Alpes, Strasbourg Alsace, Toulon Provence-Alpes-Côte-d'Azur, regional urban zone (ZUR) Champagne-Ardenne, Toulouse Midi-Pyrénées and ZUR Rhône-Alpes.

68 days in the ZAG Paris and 44 days in the ZAG Fort-de-France), these data being confirmed by provisional data for the year 2019.'

In order to execute the decision of the Conseil d'Etat of July 12, 2017, the French government had taken a series of measures. These fourteen "roadmaps" published on April 13, 2018, were transmitted to the European Commission on April 19, 2018. It is recognized that the documents prepared for this purpose constitute an effort. They give more or less precise details of each area concerned, the concrete actions to be carried out, the terms of reducing pollutant emissions, the timetable for the implementation of these actions as well as the means likely to be mobilized.

However, beyond their apparent ambition, these documents do not provide any estimates related to the improvement of air quality, let alone details on the timeframe for achieving the objectives. In the eyes of non-state actors, this does not comply with the requirements of Article R. 222-15 of the Environmental Code, in other words Annex XV of the Directive of 21 May 2008.

Of the Twelve administrative monitoring zones (ZAS) of air quality concerned with the injunction issued by the decision of July 12, 2017, only two plans for protection of the atmosphere had been revised. These include the Arve Valley and the Ile-de-France. As for the rest of the areas, no action had been initiated regarding the revision of the plans. However, the two revised plans still posed various problems. The Ile de France atmosphere protection plan, adopted on January 31, 2018, is based on a series of twenty-five challenges assigned to different sectors of activity, identifies the competent public persons and the emergency measures to be taken, including the objectives and means of implementation. The plan refers to 2025 as the deadline for a return to the NO<sub>2</sub> and PM<sub>10</sub> concentration limits. Such an argument, however, is not likely to meet the requirement of the directive and the provisions of the environmental code that the periods of exceedance should be as short as possible.

On the other hand, adopted on April 29, 2019, the plan for the protection of the atmosphere of the Arve Valley is presented as including "precise and detailed measures," 'credible modeling of their impact allowing to expect compliance with the limit values of concentration of nitrogen dioxide NO<sub>2</sub> and fine particles PM<sub>10</sub> in this area by 2022.' Thus, this plan had been considered likely to promote proper implementation of the decision of July 12, 2017.

This double situation alone is indicative of the problems in the implementation of the 2017 decision, without even taking into account the other zones covered, which have not given rise to any concrete measures.

In this relentless effort, the coalition of actors was able to lead the Conseil d'Etat to conclude that the State cannot be considered to have taken sufficient measures to ensure the full execution of the decision of July 12, 2017. In other words, the State has not executed the decision of the Conseil d'Etat which ordered it to comply with both European law and French domestic law. In this respect, it is concluded that only the Arve Valley Atmosphere Protection Plan can be considered to be in conformity with Article 23 of the 2008 Directive and Article R. 221-1 of the Environmental Code.

As for the rest, the French State, despite an apparent effort concerning the revision of the Ile de France atmosphere protection plan, has not undertaken anything concerning each of the administrative monitoring zones in which the NO2 and PM10 concentration limit values are set. These include the ZAS Grenoble and Lyon, for the Auvergne - Rhône-Alpes region, Strasbourg and Reims, for the Grand-Est region, Marseille-Aix, for the Provence-Alpes-Côte-d'Azur region, Toulouse, for the Occitanie region, and Paris, for the Ile-de-France region, with regard to nitrogen dioxide concentration levels. In conclusion, this minimal effort would not any case bring 'the concentration levels of these two pollutants below these limit values in the shortest possible time.'

## X. The Ruling of the Conseil d'Etat

In this case, the Conseil d'Etat reached the conclusion that as of July 10, 2020, the State had only partially executed the decision of July 12, 2017. All of the exhibits provided during the proceeding and the evidence of execution of said decision all converge towards this conclusion. Due to the time elapsed since the intervention of the decision of the Conseil d'Etat, it is only a partial execution, which implies that the State has not complied with the requirements arising from European Union law and its domestic law.

But also, that the State has literally disregarded 'the seriousness of the consequences of the partial failure of execution in terms of public health and the particular urgency that results from it.' That this situation by nature had led the Conseil d'Etat to pronounce against the State a penalty of 10 million Euro per semester until the date on which the decision of July 12, 2017, will have received execution. Provided that the State justifies the complete execution of the decision of July 12, 2017, within six months from the notification. The amount of the penalty payment may be revised every six months when the penalty payment is settled.

Thus, to ensure effective execution of the decision, 'the Prime Minister shall communicate to the Report and Studies Section of the Conseil d'Etat copies of the acts justifying the measures taken.'

## XI. The Aftermath of the Decision

In January 2021, the Report and Studies Section of the Conseil d'Etat (SRE) has, in application of article R. 931-7 of the French Code of Administrative Justice, asked the government to present the measures that have been taken for the execution of the 2020 ruling. According to the SRE, the information provided by the government led it to consider that the measures adopted by the State could not be considered as likely to put an end in a certain way in the shortest possible time to the excesses still observed in certain zones, 'so that the execution of the decision of the Council of State cannot be considered as being completely completed'.

The SRE then decided to refer the matter to the Conseil d'Etat on May 5, 2021.

In a decision rendered on August 4, 2021, the Conseil d'Etat considered that 'although all of the measures put forward by the defendant Minister should have the effect of continuing to improve the situation observed to date, the uncertainties surrounding the adoption or the conditions of implementation of some of them, as well as the absence of a reliable assessment of their effects in the areas concerned, do not make it possible, in the present state of the investigation, to consider that they will be of such a nature as to put an end to the exceedances that have still been observed, or to consolidate the situation of non-exceedance within a period of time that can be considered to be the shortest one possible'.

It follows that the State cannot be considered to have taken sufficient measures to ensure the complete execution of the decisions of the Council of State of July 12, 2017, and July 10, 2020. Consequently, the judge decided to order the liquidation of the penalty payment for the period from January 11 to July 11, 2021, inclusive, without moderating or increasing its rate.

However, in view of the amount of this penalty payment and the association Concerning the distribution of the amount of the fine, the Conseil d'Etat considered that Les Amis de la Terre France, the sole claimant in the initial proceedings that, in order to avoid undue enrichment, that it is appropriate to allocate only to the association Les Amis de la Terre France, the only applicant in the initial proceedings that led to the decision of July 12, 2017, a fraction of the sum of 10

million Euro to be liquidated. The remainder of the penalty is then shared between entities that they are carrying out actions in the fight against atmospheric pollution and the improvement of the quality of the air (the Agency for the Environment and Energy Management (ADEME); - the Center for Studies and Expertise on Risks, the Environment, Mobility and Development (CEREMA); - the National Agency for Health, Food, Environmental and Occupational Safety (ANSES); - the National Institute for the Industrial Environment and Risks (INERIS)) and the associations (NGO) approved to monitor air quality under Articles L. 221-3 and R. 221-9 of the Environmental Code, which are competent in the areas concerned (Air Paris, Atmo Auvergne Rhône-Alpes, Atmo Sud and Atmo Occitanie).

Under these conditions, the Conseil d'Etat ruled that the State will have to pay, as a provisional liquidation of the penalty payment for the period from January 11 to July 11, 2021 : - the sum of 100,000 Euro to the association Les Amis de la Terre France, - the sum of 3.3 million Euro to ADEME, - the sum of 2.5 million Euro to CEREMA, - the sum of 2 million Euro to ANSES, - the sum of 1 million Euro to INERIS, - the sum of 350,000 Euro to Air Paris and Atmo Auvergne Rhône-Alpes each, and the sum of 200,000 Euro to Atmo Occitanie and Atmo Sud each.

## XII. Conclusion

This case highlights the importance of the role of the state in the overall process of energy transition. In doing so, it reminds us that there are indeed basic principles. The State is primarily bound by its international commitments under European law and by its domestic legislation on air pollution, which is directly related to climate change. It means for the State that it is not enough today to assert a primary, plastic and light voluntarism through the adoption of legal instruments which impose requirements to which the State does not have in reality the intention to submit. In order for the State to be considered as having a major role to play in the new energy system, it is essential that it submit to the law it has made. As we can see here, the action of NGOs in democratic society, beyond the ordinary pressure they exert, is reaffirmed with the various legal actions in the field of climate. This first case opened the way to a series of cases on the responsibility of the State in matters of climate change and energy transition. In this case specifically, the role of the coalition of actors should not be neglected, because if in the first case only Les Amis de la Terre France was a party to the trial, this time they constituted a coalition of NGOs with individuals directly concerned about the health risks resulting from air pollution. This is probably now a general trend, since in the rest of the cases that will be brought before French administrative judges, NGOs will

present themselves as a coalition, involving on the one hand the plaintiffs in the lawsuit and the interveners as experts on the issue on the other hand. In some cases, local public actors, such as mayors or members of municipal councils, are added to the coalition in actions against the State. This is therefore an important point to bear in mind, because it is a new dimension of ecological democracy that is emerging. This type of action is also to be expected against private companies in the future.

This case also highlights the importance of the role of the French administrative court, even if the French Conseil d'Etat is usually more protective of the state than anything else.

There is no doubt that the Conseil d'Etat in its recent decisions is making a considerable effort to enforce climate law and to make the State behave in a more responsible way. This is indeed an important step forward that should be welcomed, as the impact of these decisions will be very significant in the national legal order and will also encourage judges in lower courts to support this impulse. Although this remarkable step forward is to be commended, observers of the case law of the Conseil d'Etat will not fail to note the need for this court to show great courage when it comes to holding the French State accountable for its actions. From the first case in 2015 and which led to its judgment of July 12, 2017, it would have condemned the State to the payment of the fine at the request of Les Amis de la Terre France. Now, the ecological transition will only really take place if courageous judges who note the violation of the law, immediately sanction this situation. It is simple to consider that if the State holds to its international commitments, submits to European law and to its internal law, it would not limit itself to committing only the local authorities of one region (out of twelve) to adopt or reform these policies aiming at climate protection. The stakes are high, but France remains attached to its industrial heritage. For this reason, the State is hiding behind climate voluntarism and the signing of international and European treaties and agreements, but when it comes to applying them, it is tiptoeing around.

The difficulty of taking concrete action on climate is obvious, including reducing air pollution thresholds, abandoning economic projects that guarantee a competitive position on a regional or international level. It thus appears that the energy transition as a social transformation poses a real democratic problem. The traditional public authorities seem to be overwhelmed by the problem, and non-state actors are now appealing - in addition to their own political action - to the judge as a fundamental pillar of democratic society. It is certain that judges are not yet very comfortable with this complex and technical litigation. All this reveals that the energy transition can only be achieved in a pluralistic system, in which States should now accept that groups of individuals demonstrate the current limits of

State efforts before the courts. But also, that they accept that these non-state actors accompany them on the important aspects of their activity and give a practical character to these efforts. More than ever, the energy transition raises the question of democratic pluralism.