French Minister of the ecological transition

General Office

Paris, the 23rd of June, 2020

Legal affairs department

Division of the environmental, town planning and housing legal affairs

Office of legal affairs of environmental risks

The Minister

to

Ladies and Gentlemen presidents and counsellors composing the administrative Court of Paris

---

Track number : 1904698 NOTRE AFFAIRE A TOUS
Case followed by : Martial LEMEE
xxx.xxx@developpement-durable.gouv.fr
Tel. 01 40 81 60 60 **Fax**: 01 40 81 88 70
Courriel: ajeuh4.daj.sg@developpement-durable.gouv.fr

Subject matter : Case n°1904968 - Association Notre Affaire à tous against the French Minister of the Ecological Transition - **Statement of the case**

You transfered to me the request, registered the 14th of March 2019, by which the association Notre Affaire à tous is requesting to your jurisdiction, in the last condition of its writings :

- That the State be sentenced to pay to the Association the sum of one euro as a compensation for the psychological damage that it esteems have suffered because of what it qualifies State’s failures in regard to tackle climate change ;

- That the State be sentenced to pay to the Association the sum of one euro as a compensation for the ecological damage ;

- That the Prime Minister and ministers involved put an end to the State's failure to comply with its obligations in the fight against climate change or to mitigate its effects, to cease ecological damage, to take the necessary precautions to reduce greenhouse gas emissions in the atmosphere, in proportion to worldwide emissions and taking into account particular responsability consented to by developped countries in that regards, to maintain the rise of global average temperatures below the 1,5°C [34,7°F] limit compared to preindustrial levels by taking into account France's surplus of greenhouse gas emissions since 1990 and additional efforts that the pursuit of this objective entails; to take all necessary measures to reach France's objectives in terms of reduction of greenhouse gas emissions, development of renewable energies and the increase in energetic efficiency ; to take all

necessary measures to the adaptation of the national territory to the effects of climatique change in order to ensure the protection of the life and health of citizens against risks induced by climate change ;

- To charge the State 3,000 euros in application of article L.761-1 of the French Code of Administrative justice.

This request demands the following observations on my part.

I. REMINDER OF FACTS AND PROCEDURE

In a mail addressed to the Prime Minister, the Minister of Ecological transition, to the Minister of solidarity and health, to the Minister of agriculture and alimentation, to the Minister of the cohesion of territories and relations with territorial collectivities, to the Minister for Public transportation, to the Economy and Finances minister, to the Minister for Public Accounts, to the Minister for Europe and Foreign Affairs, to the Minister of Internal Affairs and to the Minister for Overseas territories the 17th of December 2018, the associations Notre Affaire à Tous, Greenpeace France and Oxfam France and the Fondation for Nature and Mankind have requested:

- On the one hand, the compensation of the psychological and ecological damages due to the f ailures of the State regarding the fight against climate change

- On the other hand, to put an end to these failures and :

That all the useful measures to enable the stabilization, on the whole national territory, of the greenhouse gases concentrations in the atmosphere to a level that enables the rise of the average temperature of the planet to be contained to 1.5°C according to the preindustrial levels combined with the appropriate objective for the developed countries and the countries in development, to be taken ;

That all the required measures to the adaptation of the national territory, and especially the vulnerable zones to the climate change effects to be taken ;

That all contribution, direct or indirect, of the French State, to climate change to be stopped

That all the measures enabling to reach, on the whole national territory, the goals set regarding the decrease of greenhouse gas emissions, the development of renewable energies and the increase of energetics efficiency.

By a mail of the 15th of February 2019, the State Minister, Minister of the ecological transition rejected these requests.

By a request, recorded the 14th of March 2019, the association Notre Affaire à tous is requesting your court to sentence the Stat to the compensation of its moral and ecological damage and to pronounce various injunctions towards the Prime Minister and the relevant Ministers.

II. DISCUSSION

A. The main argument, regarding the absence of fault of the State

The association Notre Affaire à tous maintains that the State is neglecting its general obligations of combatting climate change and its specific requirements regarding mitigation and adaptation to climate change following the Paris Agreement (1.), the European Convention on the Protection of Human Rights and Fundamental Freedoms (the ECHR) (2.), the Law of the European Union (3.) and national law (4.).

1. On the alleged violation of obligations resulting from the Paris Agreement

The applicant association maintains that the State has not respected its obligations resulting from the Paris Agreement, specifically regarding Articles 2, 4 and 7.

Under the terms of Article 2 of the Paris Agreements :

> *"1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:*
>
> *(a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;*
>
> *(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production; and*
>
> *(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.*
>
> *2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances"*

Under the terms of Article 4 of the same Agreement:

> *"2. (...)Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.*
> *3. Each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances.(...)"*

Finally, under the terms of Article 7 of this Agreement:

> *"1. Parties hereby establish the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development and ensuring an adequate adaptation response in the context of the temperature goal referred to in Article 2."*

However, according to consistent legal precedents, "*the stipulations of a treaty or an agreement duly incorporated in the internal jurisdictional order in respect of article 55 of the Constitution can effectively be invoked to support a demand calling the invalidation of an administrative act or avoiding the application of a law or an administrative act conflicting with the jurisdictional norm they are containing, <u>from the moment they create rights that private individuals can directly claim</u>*" being specified that "*a stipulation must be recognized of direct effect by the administrative judge while, in view of the expressed intention of the parties and to the general scheme of the treaty invoked, along with its content and terms, <u>it is not aimed exclusively to determine relations between States and does not require the intervention of any further act to produce effect towards the private individuals</u> ; that the absence of such effects could not be deduced of the only circumstance that the stipulation appoints parties States as subjects of the obligation it defines*".(CE Assemblée 11 avril 2012, GISTI, N°322326 p. 142).

In this case, the invoked stipulations did not create rights that private individuals could directly invoke.

In this sense, the aforementioned Article 2 and 7 of the Paris Agreement define the Agreement's objectives, and Article 4 obligates the Parties States to establish, communicate and update their national contributions, along with taking internal measures to reach the agreed objectives.

Equally, the advancement principles defined by these Articles apply to national contributions, particularly that of the decrease in emissions objective, where it is considered that each decrease objective must be more ambitious than the previous one.

Consequently, the invoked stipulations that do not produce any specific effects regarding private individuals are not directly invokable.

However, the objectives defined in Articles 2 and 7 of the Paris Agreement have been transposed in European law as well as into national law, and are respected in both. Furthermore, following the example of the European Union, at this stage, France has in fact communicated one national contribution, meaning that any violation of Article 4 cannot be admitted.

Therefore, the association Notre Affaire à tous cannot maintain that the State has deliberately neglected its obligations resulting from the Paris agreement.

<u>2. On the alleged violation of the obligations resulting from the Convention on the Protection of Human Rights and Fundamental Freedoms (the ECHR)</u>

The Claimant supports that, by refusing to adopt new measures to tackle climate change, the State has violated Article 2 (Right to Life) and Article 8 (Right to the Respect of Private and Family Life) of the Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR).

Regarding this, the Claimant invokes a decision pronounced by an Appeal Court of the Netherlands, on 9/10/2018, confirming a judgement of First Trial on 24/06/2016, ordering the Dutch government to reduce its greenhouse gases emissions in the country by at least 15% in 2020 compared to 1999, based on Articles 2 and 8 of the ECHR.

The positive obligation to take all the necessary measures to protect life as understood in the Article 2 of the ECHR implies that States have the duty to implement a legislative and administrative framework to ensure the effective prevention of any risks to health that would jeopardize the Right to Life.

States must also carry out a positive obligation to guarantee the respect of the Right to Private and Family Life, by taking, with all due diligence, appropriate and measures adapted to the issues, when in the presence of a serious, real, and immediate risk for life, health or physical integrity or else, and any disturbances that could prevent the respect for their private and family life [mentionné comme cela dans l'arrêt, sinon plus littéral = that could prevent the full use of their house] (see for example the Case of Guerra and Others v. Italy : ECHR, 19th February, no 116/1996/735/932).

In the current instance, France did implement an important legislative and regulatory body to organize the fight against greenhouse gas emissions. As it appears from the defense memoire and from the State Minister's answer to the preliminary demand of compensation (applicant production n°2, cf below), this legislative body, constituted of a variety of public policies, involving a various actors, was implemented several years ago in order to tackle climate change.

Therefore, France has put goals more ambitious than those resulting from its European and international engagements, and they are paying off : thus, regarding greenhouse gas emissions, the data of the year 2020 as available in the report SECTEN of July 2019[1], represents a significant decrease in emissions in comparison to 2017 (-4.2% in actual datas, except forest and land field) with weaker final electric consumptions, all within the context of an increase of global emissions in the vast majority of more developed countries.

In light of this, the Claimant association does not uphold any argument to the end of establishing any failure of the State regarding the protection of the population within the meaning of Articles 2 and 8 of the ECHR.

3, On the alleged violation of obligations resulting from European Union Law

The association Notre Affaire à Tous claims that the State did not respect its obligations resulting from European Union Law, specifically the goals regarding the decrease of greenhouse gas emissions (3.1), the improvement of energy efficiency (3.2) and the increase of renewable energy (3.3).

3.1 The goals regarding the decrease of greenhouse gas emissions

The claimant invokes the violation of the so-called "Sharing the Effort" decision n°406/2009/CE of the European Parliament and Counsel of 23/04/2009, which defines the goals of reduction of greenhouse gas emissions which each Member State is required to achieve by 2020.

Firstly, the decisions of European courts do not systematically have direct effect when they designate one or several countries of the Union. This effect must be examined on a case by case basis, regarding the kind, the meaning and the terms of the dispositions in question. The binding effect that Article 189 of the Treaty on the Functioning of the European Union (TFEU) gives to a decision gives the disposition of the decision the power to be invoked by individuals against their Member State, but it requires an unconditional and sufficiently clear and precise obligation, it is noted that. The implementation of the decision must occur at a determined time, as this disposition can only be invoked if the Member State refrains from implementing the decision or does not implement it correctly at the expiration of the determined time. (ECJ, 6 October 1970, *Franz Grad c. Finanzamt Traunstein*, aff. 9-70 ; ECJ, 10 November 1992, *Hansa Fleisch Ernst Mundt GmbH & Co. KG*, aff. C-156/91).

In this particular case, the decision imposes on France a goal to decrease its greenhouse gas emissions outside the carbon market (system of trade of European quotas) and outside of field called land use (LULUCF for "land use, land-use change and forestry") by -14% in 2020 compared to the reference year 2005.

This commitment imposes the respect of a greenhouse gas emissions quota, expressed in the form of annual quotas allocated by the European Commission, which includes flexibilities, allowing Member States, under certain circumstances, to invoke quotas held in reserve, or to obtain a quota transfer from another Member State. Compliance to this decision will be evaluated in 2023, after the publication of the definitive greenhouse gas emissions data for the year 2020. The temporary trend observed at this point already indicates a -17% decrease.

Under these circumstances, these decision's disposition could not be considered as creating an individual right that the claimant could effectively claim.

However, it should be highlighted that the European commitments for 2020 are less demanding than those that France has set for itself with its national carbon budgets, defined by the decree n°2020-1456 of 21/04/2020, on the basis of Article L 221-A of the Code of the Environment.

The greenhouse gas emissions' projections of France, as presented in the national low carbon strategy, adopted in April 2020[2] and in the final national integrated energy-climate plan[3], as notified to the European Commission; project a reduction of greenhouse gas emissions outside of the carbon market

1 The Secten report established by CITEPA provides data, graphics and analysis on greenhouse gas emissions and atmospheric pollutants in France, accessible to a wide audience. It completes others inventory reports (CCNUCC, CEE-NU/NEC, GIC, NAMEA, etc) realized in several institutional settings. Available here: https://www.citepa.org/fr/activites/inventaires-des-emissions/secten

2 by the decree n°2020-457 of the 21st of April 2020

and outside of LULUCF, of -17% in 2020 compared to 2005, going beyond the assigned goal for France that was a -14% decrease in 2020 compared to 2005.

According to the SECTEN Report of July 2019, national emissions outside land fields were stable between 2015 and 2016 (+ 0,2%), and slightly increased between 2016 and 2017 (+0,9%), especially due to [economic] elements (low price of energy, unavailability of the nuclear plant, climate conditions) and then significantly decreased between 2017 and 2018 (-4,2%). The trend for the years 2018 - 2019 remains downwards (-0,9% outside of the land fields).

This relative stability until 2017 must be placed in a broader context : it succeeds an important decrease of emissions between 2013 and 2014 (-6,3% in actual emissions and -2,0% when adjusted for climate). Furthermore, in 2017, French greenhouse gas emissions decreased of 15,2% compared to 1990, in a context where population grew by 15,4%. Per capita French local emissions decreased from 9,5 t CO2eq to 6,9 to CO2 eq between 1990 and 2017, meaning a reduction of -26,6%. In the same period, GDP increased by 51,8%, therefore, the intensity of the emissions per unit of GDP decreased of -44,2%, reflecting the absence of correlation between emissions and economic growth.

In 2017, greenhouse gas emissions in France, outside of the carbon market and outside UTCATF reached 353 MtCO2e, below the fixed allowance of 358 MtCO2e for the year 2017. This has generated a surplus of 5MtCO2e. Hence, the surplus accumulated between 2013 and 2017 is 127 MtCO2e.

In order to give solidify France's commitment to exceed the 2020 greenhouse gas emissions reduction goals, a Ministerial Direction was transferred to the Depot and Consignment Office (Caisse des dépôts et des consignations) on 30/03/2020, for the annulment of 100 MtCO2e from the quotas surplus. This annulment will prevent France to use this part of the surplus to comply with its requirements until 2020n or to transfer these allowances to another Member State, even though the Sharing the Effort decision would allow it. Following this decision, the allowance surplus is limited to 28 MtCO2e.

Furthermore, in 2018, greenhouse gas emissions outside the carbon market and outside LULUCF reached 343 MtCO2e, or an emission decrease of -13.8% compared to 2005, already close to the assigned goal for France for the year 2020.

These indicators show that the goals fixed for France for 2020 will mostly be reached, so that the cause of action based on the violation of the decision of the 23rd of April 2009 can be considered as groundless.

Finally, the applicant claims that the State has violated the EU Regulation 2018/842 by the European Parliament and Counsel of the 30/03/2018 regarding the binding annual reductions of greenhouse gas emissions by Member States from 2021 to 2030, contributing to the action for the climate in order to respect the commitments taken as part of the Paris Agreement and modifying the regulation (EU) n°525/2013.

This Regulation establishes obligations regarding Member States' minimum contributions, for the period 2021-2030, in order to reach the EU goal to reduce by 2030 its greenhouse gas emissions, outside the carbon market and outside UTCATF, by 30% compared to levels in 2005. It provides a similar mechanism to the one from the Decision of 23/04/2009, by assigning to France a reduction goal of -37% in 2030 compared to 2005 for the same scope. The trajectory proposed by France in the low-carbon national strategy, adopted in April 2020, aims to go beyond this goal with a reduction of greenhouse gas emissions, outside the carbon market and outside UTCATF of -40.2% in 2030. In any case, it could not be held against the State, in 2020, to not respect goals that have until 2030 to be reached.

Therefore, this ground of action would be dismissed.

3.2. Targets for increasing renewable energies

The association Notre Affaire À Tous invokes Directive 2009/28/EC of the European Parliament and Council of 23/04/2009 on the Promotion of the Use of Energy Produced from Renewable Sources, which sets an objective for France to increase the share of energy from renewable sources in its final energy consumption

3 https://www.ecologique solidaire.gouv.fr/sites/default/files/2019%2002%2014%20projet%20de%20PNIEC%20France_Version %20consolidee.pdf

to 23% by 2020, with a sectoral target of 10% in the transport sector. These objectives were confirmed by Directive 2018/2001 of 11/12/2018 on the Promotion of the Use of Energy from Renewable Sources.

This Directive has been transposed into national law, in particular by Law 2015-992 of 17/08/2015 relating to the energy transition for green growth, Article 1(III) of which enshrined these objectives in Article L. 100-4 of the Energy Code.

Consequently, the applicant would not be able to rely on the infringement of this Directive, unless it can be shown that the Directive has not been correctly transposed (see.., holding that, if "any litigant may rely, in support of an action brought against a non-regulatory administrative act, on the precise and unconditional provisions of a directive", it is only "when the State has not taken the necessary transposition measures within the time limits set by the directive", CE Ass. 30 October 2009, Ms. Perreux, no. 298348, p. 407).

Assuming that the claimant intends to argue that the legislative and regulatory transposition framework is inadequate, in that it would not enable the objectives set to be achieved, they wrongly link the issue of the development of renewable energies to that of the reduction of greenhouse gas emissions.

In fact, the reduction of emissions can be achieved regardless of meeting the renewable energy objectives are met.

On the one hand, within the energy mix, there are other energy sources with low greenhouse gas emissions other than renewables, such as nuclear energy, which, by substituting for the emitting fossil fuels of coal, oil and gas, can reduce greenhouse gas emissions. Similarly, substitutions within fossil fuels, such as replacing oil or fuel oil with gas, also leads to reductions in greenhouse gas emissions, while leaving the share of renewables unchanged.

On the other hand, action on the energy mix is not the only lever available to the Member States to achieve the greenhouse gas emission reduction objectives defined at the European level, as long as these objectives are not broken down by the sector of activity and do not prejudice the means used to achieve them. For example, a reduction in overall energy consumption could just as well lead to a reduction in emissions without any change in the share of renewable energy.

The means drawn from the inadequacy of the programming of renewable energy development cannot therefore usefully demonstrate a violation of France's commitments to limit greenhouse gas emissions.

Regardless, since the deadline for achieving the objectives set for renewable energy sources has not expired, no breach of the Directive could be invoked to date. In this respect, it should be noted that the Directive does not provide for special measures in the event that the national targets are not met.

The argument alleging infringement of Directive 2009/28/EC would therefore not be upheld.

3.3. Energy efficiency improvement targets

The association Notre Affaire À Tous maintains that the State is not respecting the objectives it is required to meet under the 2012/27/EU Directive on Energy Efficiency.

Once again, this Directive has been transposed into national law and notified to the European Commission. The applicant cannot therefore usefully rely on its infringement, unless it can show, that it has not been correctly transposed.

Assuming that the Claimant association intends to argue that the legislative and regulatory framework for transposition is inadequate, in that it would not make it possible to achieve the objectives set, it would again be incorrrect to establish a direct link between the issue of energy efficiency and the issue of reducing greenhouse gas emissions, which depends on numerous other factors.

Above all, however, the deadline for achieving the objectives set by the Energy Efficiency Directive has not yet expired, meaning that any claim of its violation could not be upheld. As stated in Article 1 of the Directive, these objectives are set at the EU level for 2020 and 2030. Article 3(4) of the Directive states that "no later than 31 October 2022, the Commission shall assess whether the Union has achieved its main energy efficiency target for 2020". Furthermore, while the Directive requires States to set targets (Article 5 for the renovation of State buildings, Article 7 for the energy savings target), it does not provide for any specific measures in the event that the national targets are not met – contrarily, to the 2008/50/EC of 21 May 2008 Directive on air quality, for example, which requires States to take action in the event of persistent

exceedances of limit values – as the basis for the ruling of the CJEU ClientEarth of 19 November 2014 (C-404/13), from which the decision of the Council of State of 12 July 2017 Association "Les Amis de la Terre", (no. 394254, published in the ECR) draws its consequences.

Finally, the Claimant association does not provide any specific evidence that the objectives set will not be met, especially seeing as numerous measures have been put in place to support the energy renovation of buildings (applicant production no. 2; see below). The annual report that France submits to the European Commission each year under Articles 5 and 7 of the Directive[4] to specify the paths taken to achieve its objectives shows that these paths are satisfactory.

All these elements demonstrate that, contrary to what is claimed, France is increasing its efforts to save energy in order to achieve its European energy efficiency objectives in accordance with its commitments under Directive 2012/27/EU.

The argument derived from the violation of this Directive would therefore not be upheld.

4. On the failure to fulfil obligations under national law

The association Notre Affaire À Tous maintains that France has failed to fulfil its obligations under the Charter of the Environment (4.1.), a general principle of the right to live in a sustainable climate system which your jurisdiction is asked to recognise (4.2.) and of the law, in particular of the Code of the Environment (4.3.).

4.1. On the alleged failure to comply with the obligations arising from the Charter of the Environment

The Claimant association submits that the State is in breach of Articles 1 and 2 of the Charter of the Environmental.

The principles guaranteed by the Charter of the Environment are binding on public and administrative authorities in their respective fields of competence. However, their scopes are not absolute, and their practical implementations must be reconciled with other principles of equal value.

According to Article 1 of the Charter of the Environment:

> *"Everyone has the right to live in a balanced environment which respects health".*

According to Article 2 of the Charter:

> *"Everyone has the duty to take part in the preservation and improvement of the environment".*

The *Conseil constitutionnel* (France's highest constitutional court) has recognised the normative scope of this article, in connection with Article 2, to highlight the existence of an obligation of "environmental vigilance" imposed on all persons, not only on public authorities and administrative authorities in their respective fields of competence (Decision No. 2011-116 QPC of 8 April 2011). In addition, the *Conseil d'Etat* (France's highest administrative court) judged "that it is up to administrative authorities to ensure compliance with the principle set out in Article 1 of the Charter of the Environment when they are called upon to specify the methods of implementation of a law defining the framework for protecting the population against risks that the environment may pose to health, and it is up to the administrative judge to verify if, in the light of the arguments before it, the measures taken to apply the law, insofar as they are not limited to drawing the necessary consequences, have not themselves disregarded this principle" (CE, 26 February 2014, Association "Ban Asbestos France", no. 351514, T. pp. 752-871).

This shows that compliance with Article 1 must be implemented by administrative authorities within the framework set by law.

The *Conseil d'état* has specified, with regard to Article 3 of the Charter of the Environment, that conformity with this principle of legislative provisions defining the framework for preventing or limiting the consequences of environmental damage, or the absence of such provisions, cannot be contested before the administrative court outside the procedure provided for in Article 61-1 of the Constitution, but that it is however up to the administrative court, in view of the arguments before it, to verify whether the measures taken for the application of the law have not themselves disregarded this principle (CE, Ass. , 12 July 2013, Fédération

4 https://www.ecologie.gouv.fr/action-france-lefficacite-energetique

nationale de la pêche en France, No. 344522, p.192). Such reasoning can be transposed to Articles 1 and 2 of the Charter.

In the present case, no Priority Question of Constitutionality (Article 61-1 Constitution) was presented by the Claimant association regarding a failure of the legislature to act. Moreover, the Claimant does not contest any regulatory measure for the application of the law in relation to the above-mentioned articles of the Charter of the Environment.

The argument based on ignorance of Articles 1 and 2 of the Charter of the Environment is therefore inoperative.

Moreover, contrary to what the Claimant association claims, a general obligation to combat climate change cannot be inferred from those two Articles.

On the one hand, neither the *Conseil constitutionnel* nor the *Conseil d'état* has affirmed such a principle.

On the other hand, the addition of such an obligation to the block of constitutionality depends on the first article of the Draft Constitutional Law for Reboosting Democracy by inserting a third paragraph in Article 1 of the Constitution:

> *"[the Republic] shall promote the preservation of the environment, biological diversity and action against climate change".*

In its opinion on this draft of constitutional law[5], the *Conseil d'état* stated that:

> *"The Charter of the Environment resulting from Constitutional Law No. 2005-205 of 1 March 2005 introduced rights and duties relating to the environment into the block of constitutionality and proclaimed that "the preservation of the environment must be sought in the same way as the other fundamental interests of the Nation". The proposed provision thus extends France's commitment to this area.*
>
> *The* Conseil d'état *notes that Article 1 of the Constitution is not, in principle, intended to accommodate the formulation of public policies. However, it considers that the fundamental nature of the environmental cause, being one of the most fundamental issues facing humanity, justifies its inclusion in this article alongside the founding principles of the Republic.*
>
> In addition, it is suggested that the verb "to favour" be substituted for the verb "to act". Indeed, the affirmation of a principle of action would impose an obligation to act on the State, at national or international level, as well as in territorial public authorities. However, this would be likely to impose very heavy and partly unforeseeable consequences on its responsibility, particularly in the event of inaction. By prescribing that France "shall promote the preservation of the environment, biological diversity and action against climate change", Article 1 would enshrine the commitment to the environmental cause and invite public authorities to take particular account of this in their public policies. »

On the other hand, the *Conseil d'état* did not note the pre-existence of an obligation to combat climate change, which is already enshrined in the Constitution, notably in the Charter of the Environment.

In any event, and as already indicated, the State has implemented a set of public policies that meet and even exceed the objectives arising from its European and international commitments.

The Claimant association does not adduce any evidence to show that the articles invoked were infringed.

This argument would there not be upheld.

4.2. On the failure to comply with the obligations resulting from the general principle of the right to live in a sustainable climate system

5 https://www.conseil-etat.fr/ressources/avis-aux-pouvoirs-publics/derniers-avis-publies/avis-sur-un-projet-de-loi

The association Notre Affaire À Tous maintains that the State has violated the general principle of the right to live in a sustainable climate system.

As the Claimant notes, this principle has not yet been established in the case law of administrative law.

In any event, and as already indicated, the State has implemented a set of public policies to combat global warming.

The association Notre Affaire À Tous does not therefore provide any evidence to establish a violation of a "general principle of the right to live in a sustainable climate system" which, moreover, is not part of the legal system.

Consequently, this argument would not be upheld.

4.3. On the breach of obligations resulting from legislative obligations

The association Notre Affaire À Tous maintains that the State is failing to fulfil its obligations resulting from legislative obligations, in particular Act No. 2009-967 of 3 August 2009 on programming relating to the implementation of the Grenelle Environment Round Table (Grenelle I Act) and Act No. 2015-992 of 17 August 2015 on the energy transition for green growth, known as the TECV Act, which aims to put in place steering and planning tools to promote the energy transition, including the national low-carbon strategy (SNBC) and the multiannual energy programming (PPE).

On the one hand, Article 2 of the programming law n° 2009-967 of 3 August 2009 relating to the implementation of the Grenelle Environment Round Table sets objectives for reducing greenhouse gas emissions by 2050 and recalls certain objectives set by European Union law.

The deadline for achieving these objectives has not expired, so no violation of this legislative provision could be raised.

On the other hand, according to the terms of Article L. 222-1 A of the Environmental Code:

> *"For the period 2015-2018, and then for each consecutive five-year period, the national ceiling on greenhouse gas emissions called the "carbon budget" is set by decree. »*

Under the terms of Article L. 222-1 B of the same code :

> *« I. - The national low-carbon development strategy, known as the "low-carbon strategy", established by decree, defines the procedure for conducting the policy of mitigating greenhouse gas emissions under conditions that are economically sustainable in the medium and long term. It takes into account the specificity of the agricultural sector, ensures that the action plan focuses on the most effective measures, taking into account the low mitigation potential of certain sectors, in particular enteric methane emissions naturally produced by ruminant livestock, and ensures that it does not replace national mitigation efforts with an increase in the carbon content of imports. This strategy complements the national climate adaptation plan provided for in Article 42 of Act No. 2009-967 of 3 August 2009 on the implementation of the Environment Round Table.*
>
> *II. - The decree setting the low-carbon strategy allocates the carbon budget for each of the periods mentioned in Article L. 222-1 A by major sectors, in particular those for which France has made European or international commitments, and by categories of greenhouse gases when the stakes justify it. The breakdown by period takes into account the cumulative effect of the emissions considered with regard to the characteristics of each type of gas, in particular the length of time it remains in the upper atmosphere. This distribution takes into account the specificity of the agricultural sector and the evolution of the natural carbon storage capacities of soils. (...) »*

It is on the basis of these articles, derived from the TECV law, that the Decree No. 2015-1491 of 18 November 2015 on national carbon budgets and the national low-carbon strategy was adopted,

covering the periods of 2015-2018, 2019-2023 and 2024-2028 and Decree No. 2020-457 of 21 April 2020 on national carbon budgets and the national low-carbon strategy, covering the periods of 2019-2023, 2024-2028 and 2029-2033.

The Claimant association submits that the public authorities have failed to take appropriate measures to ensure compliance with carbon budgets.

However, these sources are programmatic in nature, the TECV law having intended to put in place steering and planning tools to promote the energy transition, including the national low-carbon strategy (SNBC) and the multiannual energy programming (PPE).

Carbon budgets, like the national low-carbon strategy, define a greenhouse gas emission reduction trajectory, which is subject to review and adjustment in the line with the results obtained and new ambitions.

Therefore, the SNBC describes France's roadmap for conducting its climate change mitigation policy. It provides guidelines for implementing the transition to a low-carbon economy in all sectors.

It defines nation-wide greenhouse gas emission reduction targets in the short and medium term - carbon budgets[6] - and long-term objectives. The SNBC is one of the two components of French climate policy, alongside the National Climate Change Adaptation Plan component, specifically implemented for the French policy of adaptation.

Carbon budgets are a tool for respecting the trajectory proposed by the SNBC. They can be modified depending on the results achieved and the difficulties encountered, without calling into question France's ability to meet its European and international commitments, which are less ambitious than those it has set for itself.

Accordingly, failure to meet the targets set by the first carbon budget would not in itself constitute a violation of the provisions of Articles L. 222-1 A and L. 222-1 B of the Environmental Code. Moreover, the Claimant association cannot rely on the non-compliance with the second carbon budget, which covers the period, just begun, 2019-2023, a budget that was revised by decree no. 2020-457.

The State has put in place major measures to reduce greenhouse gas emissions in the transport, agriculture and construction sectors, which are detailed in adverse production No. 2 and infra for the most recent, the effects of which are real, as shown by the results for 2018, as a downward trend. The Claimant association would therefore not be justified in classifying them as insufficient with regards to the objectives set at the European and national level for the 2020 and 2030 deadlines.

Following the Minister of State's letter, Parliament adopted three laws reinforcing the State's obligations in the fight against climate change, in addition to a revised national low-carbon strategy and a new multiannual energy programme.

Firstly, **Act No. 2019-1147 of 8 November 2019 on Energy and the Climate** reinforces France's climate and energy objectives and provides for means of achieving them. It also integrates France's objective of carbon neutrality by 2050 into the law. It provides for a 40% reduction in fossil fuel consumption compared to 2012 by 2030, compared to 30% previously. The law confirms the end to coal-fired power generation by 2022. It also introduces a greenhouse gas emission cap for existing fossil fuel electricity generation plants (set by decree for plants with more than 0.55 tonnes of carbon dioxide equivalent per megawatt-hour of electricity produced). Photovoltaic solar panels or any other renewable energy production or greening process will have to be installed for new warehouses and commercial buildings (at least 1,000 square metres of land area). In order to achieve 33% renewable energy in the energy mix by 2030, as set out in the multiannual energy programming, Article 4 of the Energy and Climate Act implements the legal framework for the environmental assessment of projects, with the aim of facilitating their completion for the installation of photovoltaic solar panels or the use of geothermal energy. France will allocate a budget of €71 billion of investment in renewable energies over the whole period of the EPP (i.e. until 2028). The law supports the development of the low-carbon and

6 https://www.ecologie.gouv.fr/strategie-nationale-bas-carbone-snbc

renewable hydrogen sector with the prospect of reaching between 20-40% of total industrial hydrogen consumption by 2030, in particular by setting up support and traceability systems for virtuous hydrogen.

To put an end to "thermal strainers" (housing whose energy consumption falls under classes F and G), a series of measures has been taken to support the population, particularly those on the most modest incomes, in a renovation process. The aim is to renovate all thermal strainers within ten years. The law thus forbids, from 2021, the owner of a property considered as a thermal strainer to increase the rent between two rentals without having renovated it. Owners will be able to ask for a financial contribution from the tenant if and only if the renovations allow the energy strainer to be removed. From 2022, when a property considered to be a thermal strainer is put up for sale or rent, the energy performance diagnostics must be supplemented by an energy audit, with the buyer or tenant being informed of the future energy expenses for which he would be responsible (via the deed of sale or rental or the property advertisement, for example). From 2023, for new rental contracts, the decency criterion for extremely energy-intensive housing will be specified, with a maximum threshold of final energy consumption per square metre per year: this measure will enable tenants to obtain renovation work from landlords. Finally, by 2028, the law will include an obligation to carry out work on thermal strainers, with the aim of achieving class E. From 2022, mention of this obligation will be compulsory in the advertisements of the property concerned. In the event of non-compliance, a series of sanctions will be defined in 2023 by Parliament, as part of the five-year energy programme created by the energy-climate law.

The law also established the High Council for the Climate, an independent advisory body that will assess France's climate strategy and the effectiveness of the policies implemented to achieve its ambitions. The National Low Carbon Strategy (SNBC) was confirmed as the tool for steering French action. It will be reviewed every 5 years and may be adjusted and sharpened according to the evolution of France’s emissions.

Finally, France is also committed to a green budget approach. In concrete terms, an annual report on the environmental impact of the draft finance bill will be produced in order to require the Government to be transparent about the ecological impact of its actions. This report will be submitted prior to parliamentary discussions on the finance bill and will enable parliamentarians to ensure that the budget is compatible with the objectives of the Paris Agreement. Corporate environmental reporting is also being improved: companies and financial actors will have to present their green investments and explain how their environmental policy is implemented.

Secondly, **the Mobility Orientation Act No. 2019-1428 of 24 December 2019** hugely tansforms the policy of mobility, with the aim of making daily transport cleaner.

The objective of complete decarbonisation of land transport by 2050 is enshrined in the law, with a trajectory of - 37.5% CO2 emissions by 2030 and an objective of ending the sale of cars using carbonaceous fossil fuels by 2040.

The mobility orientation law enhances the ambition expressed by the TECV law to make vehicules managed by the State and local authorities greener, to illustrate the exemplary nature of public players. In addition, in order to increase the demand for electric or rechargeable hybrid vehicles, it imposes, for the first time, the obligation on companies to make their vehicules greener.

The law provides the means to achieve these objectives by reinforcing the deployment of recharging infrastructures for electric vehicles (IRVE) to support demand: equipment or pre-equipment of mandatory recharging stations in car parks with more than 10 spaces in new or renovated buildings, creation of a right to recharge in shared properties, the simplification of voting rules for work on electrical installations in condominiums, the possibility of free recharging in the workplace, and a sharp reduction in the cost of connecting IRVEs to the electricity network, with a view to increasing 5-fold recharging points by 2022.

It will also be encouraged to make the road vehicle fleet greener, by the development of Low Emission Zones (LEZs) facilitated by law, allowing communities to limit traffic exclusively to the least polluting vehicles, according to criteria of their choice. Similarly, State aid for the conversion of old polluting vehicles (conversion bonus) and for the acquisition of clean vehicles (electric vehicle bonus) has recently been further reinforced as part of the automobile recovery plan.

The law also makes the markable shift towards encouraging the least emitting methods of transport, as one of the levers of the decarbonisation of the transport sector.

It sets up an unprecedented bicycle plan to triple its share of travel with the creation of a €350 million "active mobility" fund, combatting against theft with the gradual generalisation of bicycle marking and secure parking, the creation of a sustainable mobility package and the generalisation of cycling lessons at school. In addition, a €50 bicycle repair grant has been in place since 11 May 2020. Between 11 May and 19 June 2020, it has already made it possible to repair more than 200,000 bicycles.

A plan to make carpooling a daily solution is also being established by allowing local authorities to subsidise carpoolers, by opening up the possibility of creating reserved lanes on the outskirts of metropolitan areas and by setting up a "sustainable mobility package".

The "sustainable mobility package" enables all private and public employers to contribute to the home-to-work travel costs of their employees getting to work by carpooling or cycling, as well as with other shared mobility services. The package, which has been in force since May 2020, amounts to up to €400 per year, tax and social security free for private employees. It replaces the bicycle mileage allowance, the implementation of which was limited because it was considered too complex. This package provides employers with a flexible tool to support these virtuous modes. For State employees, the "sustainable mobility package" for cycling and car-sharing is capped at 200 euros per year.

The "sustainable mobility package" can be combined with the employer's contribution to the public transport travel card, up to a limit of 400 euros per year (there is no limit for the amount of the public transport travel card).

The law also provides for measures to encourage changes in behaviour, such as the obligation to accompany any advertising for motorised land vehicles with a promotional message in favour of active or shared mobility or public transport.

Finally, as part of the financial planning of the mobility guidance law, the 2020 Finance Act No. 2019-1479 of 28/12/2019 increases the contribution of the most emitting methods of transport to the financing of mobility: reduction of 2 cents in the exemption from domestic consumption tax on energy products (TICPE) for road transporters and an unprecedented eco-contribution from the air sector.

Thirdly, **Law n° 2020-105 of 10 February 2020 on the fight against waste and the circular economy** also contributes to the effort of the reduction of greenhouse gas emissions. The transition to a circular economy, by making it possible to reduce the national production of waste, by transforming residual waste into a resource, by increasing the material productivity of the economy, by incorporating recycled material into products, by fighting against plastic pollution, and extending the life of products has a significant effect on reducing CO_2 emissions. The law's recycling targets will reduce France's carbon impact as much as the planned closure of the four coal-fired power stations in France.

In addition, as of 1 January 2022, internet service providers and mobile operators will have to display information on the amount of data consumed, as well as the equivalent of the corresponding greenhouse gas emissions. This information will make consumers aware of the impact of their activity and digital consumption on the environment and the climate. Their access providers could thus be led to improve their CO_2 balance.

Finally, a **revised national low-carbon strategy and new multiannual programmes were adopted by decrees the n°2020-456 and 2020-457 of 21 April 2020.**

The revised strategy sets out a new greenhouse gas emissions reduction path to achieve France's carbon neutrality target by 2050. It sets out new directions within the framework of strengthened governance in all sectors of activity.

The new multiannual energy programme sets out the orientations and priorities for the action of public authorities for the management of all forms of energy on the metropolitan territory, in order to achieve the energy policy objectives defined in Articles L. 100-1, L. 100-2 and L. 100-4 of the Energy Code. It is thus planned to put an end to the sale of thermal vehicles in 2040 and to extend the system of energy saving certificates. With regard to the energy efficiency of buildings, emphasis will be placed on the

renovation of existing buildings and on new high-performance buildings integrating renewable energies. Finally, regarding electricity production from renewable sources, it is planned to double the installed capacity by 2028 (compared to 2017).

Consequently, the Court could only conclude an absence of any wrongful violation of the State regarding the combat against climat change in the scope of its competences.

The law creates the High Council for Climate, an independent advisory body, expected to evaluate France's climate strategy along with the political measures implemented to achieve its ambitions. The National Low Carbon Strategy (abbreviated as SNBC) was approved as a tool to pilot national performance. It will be reviewed every five years and is subject to adjustments and improvements depending on the evolution of the country's emissions.

Finally, France also commits to the framework of a green budget. An annual report on the environmental impact of the draft budget bill will be produced as a means to impose transparency on the French government with regards to the ecological effects of its activities. This report is to be submitted prior to parliamentary discussions concerning the draft budget bill and will enable the members of French Parliament to ensure that the budget is compliant with the objectives of the Paris Climate Agreement. Corporate environmental reporting is also improved: businesses and financial actors shall present their green investments and explain the environmental policies that they have in place.

Secondly, the law № 2019-1428 from 24 December 2019 (the Law on the Orientation of Mobilities) profoundly transforms the policy on transport and aims to make cleaner daily modes of transport.

The target of a total decarbonisation of terrestrial transport by 2050 is included in the Law, with a trajectory of -37,5% of CO_2 emissions by the year 2030 and an objective to end sales of fossil fuel cars before 2040.

The Law on the Orientation of Mobilities supports the Law on the Energy Transition to Green Growth by enlarging its ambition to clean vehicles managed by the State and local communities in order to illustrate the exemplary attitude of public actors. Moreover, to increase the demand for electric vehicles and rechargeable hybrids, the law, for the first time, imposes on businesses objectives regarding making their own vehicles greener.

The law allows to achieve these objectives by reinforcing the deployment of a Recharging Infrastructure for Electric Vehicles (RIEV), necessary to meet demand: mandatory equipment or pre-equipment with recharging terminals in parking lots of more than ten places in new and renovated buildings, creation of an actionable right for electric outlets in residential blocks, and the simplification of voting rules for work on electric installations in collective dwellings, the possibility to recharge for free at work, a significant cost reduction for connections of RIEV to the electric network, all with the purpose to multiply by 5 before the year 2022 the number of recharging points.

The greening of vehicle fleets would also be encouraged through the development of Low Emissions Zones (LEZ), enabled by a law that gives local communities the right to limit car circulation exclusively to the least polluting vehicles, according to a criterion of their choice. Likewise, within the framework of the car transport re-launch plan, the State has once again increased the allowance dedicated to the converting of old polluting vehicles (conversion subsidy) and the acquisition of new ones (electric vehicle bonuses).

The law also makes the transfer to less polluting emitters into one of the main methods of decarbonisation of the transport sector.

It introduces an unprecedented initiative to triple the use of bicycles as a means of transport via the creation of a 350 million euro fund 'Active Mobilities', by tackling theft with the help of the progressive generalisation of bicycle marking and protected parking spaces, the development of sustainable mobility payments, and the generalisation of cycling lessons in schools. In addition, a 50 euro allowance for bicycle repairs was put in place on 11 May 2020. From 11 May to 19 June 2020, it had already helped to repair more than 200,000 bikes.

A scheme to turn car sharing into an every-day method of transport was also developed. It gave local communities the possibility to subsidise its users by creating exclusive roadways on the outskirts of metropolises and by introducing a 'sustainable mobility payment'.

The sustainable mobility payment permits all public and private employers to contribute to the cost of the home-to-work commute of their employees, done by car sharing, cycling and other means of shared mobility. Launched in May 2020, this contribution can reach up to 400 euros a year, free from tax and social payments, and applicable to employees of the private sector. It replaces a kilometre-based bike compensation whose implementation was deemed too complex. The sustainable mobility payment gives employers a flexible tool to support these virtuous modes of transport. For State-employed individuals, the payment for bicycles and car sharing is capped at 200 euro per year.

This payment is cumulative with the employer's contribution to public transport season tickets within limits of 400 euro per year (whereas contributions to public transport costs remain unlimited).

The law also provides measures to encourage changes in behaviour, such as the creation of a duty to accompany every advertisement for terrestrial engine-equipped vehicles with a promotional message supporting active and shared mobilities as well as public transport.

Finally, as part of financial planning for the Law on the Orientation of Mobilities, the budget law № 2019-1479 from 28 December 2019 for the year 2020 increases the contribution to the funding of mobilities by the most emitting methods of transport: a two cent reduction of the exoneration from inland consumption tax on energy products (ICTEP) for road carriers, coupled with an unprecedented eco-contribution by air transport.

Thirdly, the law № 2020-105 from 10 February 2020 on the Circular Economy and Tackling Waste also contributes to the reduction of greenhouse gas emissions. The transition to a circular economy produces significant effects on the reduction of CO2 emissions, in particular, through the reduction of the national waste output, the transformation of residual waste into resources, the increase in matter productivity of the economy, the incorporation of recycled matter into products, the fight against plastic pollution and the prolongation of the lifespan of products. The objectives of the recycling law will allow for France to reduce its carbon impact, as much as the additional plans for the closure of four carbon power plants.

In addition, from 01 January 2020, internet providers and mobile operators will have to disclose the information regarding the quantity of data consumed, along with the corresponding equivalents of greenhouse gas emissions. This information will give consumers more awareness about the impact that their activities and consumption have on the environment and climate. Providers of internet connection would therefore also be encouraged to improve their CO2 footprint.

Lastly, a **national revised low-carbon strategy and a new multiannual programme were adopted by the decrees № 2020-456 and 2020-457 from 21 April 2020**.

The revised strategy establishes a new trajectory for the reduction of greenhouse gas emissions with an objective for France to achieve carbon neutrality by 2050. It formulates new orientations as part of a reinforced administration in all sectors.

The new multiannual energy programme sets out the orientations and priorities for the action of public authorities for the management of all forms of energy on the metropolitan territory, in order to achieve the energy policy objectives defined in Articles L. 100-1, L. 100-2 and L. 100-4 of the Energy Code. Here, the State plans to put an end to the sales of combustion-powered vehicles in 2040 and to extend the system of energy saving certificates. As for the energy efficiency of buildings, the focus will be directed to the renovation of existing buildings as well as to the construction of more efficient ones, which would also integrate renewable energies. Finally, referring to the production of renewable electric energy, it is planned to double the installation capacities by 2028 (relative to the year 2017).

Consequently, the Court could only conclude an absence of any wrongful violation of the State regarding the combat against climate change in the scope of its competences.

B. As a secondary argument: the absence of a causal link

Even if the State's fault by negligence denounced by the organisation Notre Affaire à Tous were established, the organisation does not demonstrate a causal link between this negligence and the invoked damages.

In fact, by reducing the causes of climate change to a single, particular, supposed inaction of the French State, the plaintiff advances an argument which could not be valid due to the complexity and combination of the sources of this phenomenon and to the high number of actors involved in it.

As the Ministry of State had mentioned in its correspondence from 15 February 2019: *'France represents about 1% of the global population and emits every year 1 % of greenhouse gas' (the opponent's evidence, doc №2)*[7]. Thus, given the amount of greenhouse gas emissions of other countries, the French State alone cannot be held accountable for climate change as a consequence of such emissions coming from France. Even if the French State's responsibility is to be extended to the emissions produced by consumption taking place on the French territory (the French carbon footprint), it must be noted that the volume of such

7Sources : key climate figures, ed 2020, CGDD

emissions would still falls below 2 % of global emissions[8]. Compared by population or gross domestic product, CO_2 emissions from the French territory prove to be among the lowest in the G20 group (5.2 tCO_2 per resident and 134 tCO_2 /$ in 2017)[9].

Furthermore, the State has would not be able to block the entirety of greenhouse gas emissions from the French territory, because a substantial part of such pollution originates in the conduct of industrial and agricultural activities and comes from individual choices and decisions which may not always be influenced by state policies.

It should be noted that anthropic (human-related) greenhouse gas emissions in France are mainly related to five sectors: 29% - transport, 20% - the residential and services sectors, 19% - agriculture, 18% - the production industry and 11% - energy transformation (source: SECTON report).

In light of this, the above-mentioned Articles 1 and 2 of the Constitution foresee that a duty of environmental vigilance concerns the entirety of actors, and not only public authorities and administrative bodies with regards to their respective field of competence. It is possible that this kind of objective be pursued through joint actions of different public authorities, followed up by the adjustment of private individuals' behaviour.

In these circumstances, local authorities also play an important role, as the State must stay within the limits of Article 72 of the Constitution, whereby local authorities must be free to manage local matters. The Region is the leader in management of climate, quality of air, energy and intermodality (cross-modal transport). It is tasked with producing a plan of regional adjustment, sustainable development and equality of the territories (abbreviated in French as SRADDET). The region manages road transport outside urban areas as well as local railway lines, which can be developed even further. As for the Department, this unit’s competence covers planning the renovation of housing and the fight against energy poverty. It carries out construction, adjustments and maintenance of departmental roadways, and consequently, can choose to develop the more climate friendly methods of transport. Communes and public institutions of inter-communal cooperation have powers in the field of mobility and urban planning. They develop and implement 'climate-air-territorial energies' plans, urban transport plans, and local urbanism plans. Once a 'climate-air-territorial energies' plan is adopted, local authorities become coordinators of energy transition on their territories. In addition, they are also competent to act as traffic police (in zones of restricted circulation), to manage the creation of bicycle and car sharing lanes as well as to install electric terminals.

With reference to the industrialisation, the European system of emission quotas exchange, named EU ETS (European Union emission trading scheme) has been in force since 2005 and imposes a structural framework by setting a common EU ceiling for emissions from industrial buildings, energy production and air transport for flights within Europe. Industrial buildings and operators of flying engines covered by the EU ETS must hold an approved surveillance plan and declare their greenhouse gas emissions on an annual basis. The plan is part of the exploitation permit necessary to run an industrial building. Every year, operators must submit emissions declarations to the competent authorities. The data for the corresponding year must also be verified by a certified verifier.

Upon verification, the operators must conclude a yearly 'emission quota' corresponding to each tonne of greenhouse gas produced. The emissions ceiling, i.e. the maximum amount of quotas emitted every year, is fixed at a European level. It is this ceiling that allows to set a limit on total emissions of such businesses. In the interest of emission reduction, the ceiling decreases annually and, for the sectors of activity subject to the EU ETS, does so at a pace sufficient to achieve the European target of -21% emissions in 2020 compared to 2005, and of -43% for the year 2030 compared to 2005. To meet their obligations, the legally accountable businesses have three options to obtain quotas:1. Buy them directly from governments through a bidding system; 2. Exchange them on a secondary market (in practice, the price of a transaction of this kind is the same as in the bidding system); 3. Receive free quotas, allocated in correspondence with the European regulations. In this way, this framework results in setting a price for emissions: A company whose greenhouse gas emissions exceed its quota is obliged to buy the extra units in order to comply with its quota restoration obligations. However, a company that produces less emissions can sell its spare quotas. Businesses are therefore motivated to bring down their emissions, provided that the amount of necessary investment is inferior to the market prices of the quotas. Given that the ceiling decreases with time, the price is expected to grow, leading thereby to a reduction of increasingly expensive emissions.

8Source : key climate figures, ed 2020, CGDD
9Source : key climate figures, ed 2020 CGDD

Apart from this, every company of more than 500 employees must prepare a report on its greenhouse gas emissions footprint (abbreviated in French as BEGES), accompanied by a transition plan designed to reduce greenhouse gas emissions, as required by Article L 229-25 of the French Environmental Code.

Finally, in relation to private persons, action relies on the introduction of incentives to steer their behaviour in a direction more favourable for environmental protection, namely measures inviting to adopt less polluting methods of transport and carry out energy-saving home renovations to limit greenhouse gas emissions.

As a result, the State, attempting to avoid excessive restrictions on individual and constitutionally protected freedoms, cannot be held responsible for each individual who does not commit virtuous actions.

Moreover, although the State puts in practice the tools to orient individual behaviours, personal reluctance of citizens is often hard to overcome. For instance, as is shown by an example from car traffic, produced by the Centre of studies and expertise on the risks, environment, mobility and development (abbreviated in French as CEREMA), 40% of all trips in cities are less than three kilometres long. Applied to the whole of France, 25% of trips correspond to such distance limit[10].

It is therefore obvious that individual behaviours along with economic choices concerning activities in agricultural, industrial and tertiary spheres, as well as insufficient means and lack of actions from competent local authorities, all contribute to the emission of greenhouse gas.

Thus, taking into account the multitude of causes of climate change and the existence of the important legal and regulatory framework designed to fight it, a certain and direct link of causality between the alleged inactivity of the State and climate change cannot be established.

With the conditions necessary to engage the responsibility of the State being unmet, the court would reject this claim.

C. A secondary argument: the absence of damages

The organisation Notre Affaire à Tous asks to be compensated for moral prejudice with the amount of one euro and to be compensated for ecological damage with the same amount.

1. On the moral prejudice

The plaintiff mentions that *'the aggravation of climate change or, at the very least, the impossibility to tackle it, imputable to the fault of the State, infringes the collective interests, defended [by the plaintiff]'* (additional submission, p. 83)

The prejudice, whose appreciation depends on harm to collective interests which the plaintiff seeks to protect, must be evaluated based on its social objective. The *Conseil d'état* (France's highest administrative jurisdiction) (CS) has clarified that the burden of proof of personal prejudice lies upon organisations, including authorised organisations (CE 30 mars 2015, № 375144, T. pp. 764-815-841-842-871)

With the argumenta of the plaintiff being limited to the quotes of its statute, the plaintiff does not demonstrate any infringement of public interests it purports to defend. Neither does it show the personal character of the invoked prejudice.

Hence, the existence of moral prejudice is not established.

2. On the ecological prejudice

The plaintiff claims that *'the faults committed by the State had brought about an environmental damage, characterised by the aggravation of climate change or, at the very least, the impossibility to tackle it'* (additional submission, p. 87)

Although compensation for ecological prejudice is stated in the Articles 1246 and the following of the French Civil code (the Civil code), this legal tool, which covers a non-personal prejudice and is open in particular to *'the approved organisations or those established not later than five years before the filing of the claim aimed to protect nature and environment'*, cannot be used in administrative courts.

10https://www.cerema.fr/fr/centre-ressources/newsletters/transflash/transflash-ndeg-398-juin-2015/chiffre-du-mois-40

In any event, the plaintiff, who is not approved on the national level as an organisation working for environmental protection, does not prove the purpose of their activity to be aimed at protection of nature and defence of the environment. Therefore, the plaintiff's interest to act within the meaning of Article 1248 of the Civil code is not established.

Finally, the organisation Notre Affaire à Tous does not demonstrate that the supposed fault committed by the State could have caused an ecological prejudice separate from the alleged moral prejudice (see CS, 26 February 2016, *The French Ministry of ecology, sustainable development and energy v. Organisation for protection of wild animals*, № 390081).

The court will thus be unable to indemnify such prejudice.

D. Regarding the conclusions for injunction

The ensemble of the previous arguments proves that the national legal framework does enable France to guarantee the fulfilment of its European and international commitments.

In fact, it must be noted that, should your court recognise the claims of the plaintiff, it would be able to do so only partially.

In reality, some of the measures requested stem from the field of law, and this court is not competent to injunct the French Prime Minister to submit a project of law to the French Parliament:

> *'the fact that, within the meaning of Article 39, the Prime Minister does not submit a project of law to the Parliament, has roots in the relations between the public constitutional powers and, on this account alone and without need to invoke French international commitments, is outside the competence of the administrative justice'* (CS, 26 November 2012, *M. Krikorian and Others*, № 350492, T. pp. 528-629-646 ; see also, Sect., 18 July 1930, *Sieur Rouché*, published in Recueil; 9 May 1951, № 13699, *French students national mutual insurance company*, published in Recueil; CS, 29 November 1968, *Sieur Tallagrand*, № 68938, published in Recueil; CS, 14 January 1987, *Association of telecommunications engineers*, № 57518, mentioned in the register of Recueil).

The conclusions for the injunction would therefore be rejected.

III. CONCLUSIONS

Based on the entirety of these considerations, I conclude to reject the request.

On the account of the Minister and by delegation,
Director of Legal Affairs

Aurélie Bretonneau