Access to justice in environmental matters

France

I Constitutional Foundations

An ”Environmental Charter” was introduced into the French Constitution by the Constitutional Law n° 2005-205 of March 1, 2005.

The Constitutional Environmental Charter consists of 10 items. It recognizes the fundamental rights and duties relating to environmental protection in three main principles: the precautionary principle, the prevention principle and the polluter pays principle. This Charter does not state a right of access to justice, but Article 7 provides that "Everyone has the right, under the conditions and limits defined by law, to access to information about the environment held by public authorities and to participate in the development of public decisions affecting the environment. "

Citizens can invoke these constitutional standards in administrative proceedings and before courts of law, since the "Priority application for a preliminary ruling on the issue of constitutionality" entered into force in March 2010, as introduced under the Constitutional Reform of July 23rd 2008.

Article 55 of the Constitution proclaims the supremacy of treaties over the laws. All the Courts must ensure the respect of this principle (Case law for Administrative courts: CE ass., 1989, Mr. Nicolo). Parties can rely directly under certain conditions on international agreements.

The Aarhus Convention was ratified by France on 8 July 2002 (after approval by Law No. 2002-285 of 28 February 2002). Direct effect of provisions of Aarhus Convention is recognized only for some provisions of the Convention.

II Judiciary

The French legal system is organized on the basis of a fundamental distinction between two orders of courts:

the judicial order dealing with disputes between private individuals or bodies; and the

administrative order dealing with cases involving some form of dispute between citizens and public authorities, a private individual or body (company, association, etc.), and a public body.

Each of them consists of common-law courts and specialized courts.

There are two types of courts: the civil courts and the penal courts.

In first instance, the civil courts are ordinary (regional court) or specialized (district courts, commercial courts, social security courts and the Conseils des prud’ hommes for labor relations disputes between employees and employers commercial courts for disputes involving business people or firms, and social security courts, and the court of rural leases).

The organization of criminal courts distinguish three types of offense:

contraventions (petty offences), tried by police courts,

offences (misdemeanors), tried by criminal courts,

crimes (serious indictable offences) tried by the Assize Court (the only court with lay jurors).

There is a specific court for minors, the Youth Court or juvenile courts, for both civil and criminal cases.

All appeals of the civil and penal court judgments are brought before the court of appeal except for the appeals of rulings of the court of Assizes which lies with another court of Assizes. The rulings of the courts of appeal may be subject to appeal before the Court of Cassation, the supreme court of the judicial order. The “Cour de Cassation” is responsible for examining appeals against the judgments of lower judicial courts, which decides appeals on points of law and procedure and can set aside or quash judgments and remit cases for rehearing to one of the 35 courts of appeal for retrial.

The administrative courts are the ordinary administrative court in first instance. The specialized administrative courts are mainly the National Asylum Court, the financial courts (regional account chambers and Court of Accounts), the disciplinary courts (Court of budgetary and financial discipline, Higher Council of magistrate, ordinal courts, university courts…). The appeal of their judgments is, in principle, brought before the administrative courts of appeal, whose rulings lie, in appeal, with the Council of State.

The Council of State is the supreme administrative court and court of final appeal on the legality of administrative acts. Like the Court of Cassation, it only exercises control over the proper application of the rules of procedure and law by the jurisdictional decisions contested before it. In addition, the Council of State also, in certain disputes such as that of the regulatory acts of the ministers, adjudicates in first and second resort. The Council of State advises also the government on draft legislation and on some draft orders.

The conflict of competence between judicial and adminstrative courts is determined by the Jurisdictional Conflict Court, made up of an equal number of members of the Court of Cassation and of the Council of State.

The Constitutional Council, composed of nine members, is responsible for ruling on the constitutionality of organic laws and legislation submitted to it and for overseeing the proper functioning of elections. It does not have any competency regarding the administration's acts.
There are no special courts in environmental matters. All French courts deal with environmental matters according to their respective competences.
„Forum shopping" does not exist in the French legal system. Competence of Courts is determined by law.
There is no distinction between ordinary appeals and extraordinary remedies in French judicial procedures. There is a distinction between ordinary appeals and referrals ("référés") that allow for interim measures (suspension of an act, payment of an interim compensation) or the investigation or instruction (appointment of an expert). The first instance decisions can be overturned on appeal, and decisions of courts of appeal may be canceled by the supreme court of cassation (Council of State or Cassation court).
Powers of administrative judges are broad including for first instance judges. The administrative judge may set aside an unlawful administrative decision. Judges may also order the administration to review this annulled decision by specifying the content of this new decision.
There are no specific rules of judicial procedures in environmental matters, there are only two exceptions before administrative courts.
The first, Articles L. 122-2 of the Environmental Code and L. 554-11 of the Code of Administrative Justice, allows the suspension of a license or an approval decision on the implementation of interventions or works if due to their size or impact on the natural environment it should have been subject to an EIA, but this was not carried out.
The second, Articles L. 123-12 of the Environmental Code and L. 554-12 of the Code of Administrative Justice, allows the suspension of a decision authorizing the implementation of interventions, structures, or works subject to a prior public inquiry, if an appication raised a serious doubt as to the legality of the decision: where the findings of thecompetent authority are unfavorable, or when the required public hearing has not taken place.
In both cases, the condition of urgency that is required to order the suspension of an act is as a rule a presumption
Normally, judges, especially administrative judges, do not have the right to bring a case to a Court, only parties including citizens, NGO's, companies, administrations and public authorities may. But there is an exception: legal action may be initiated ex officio in criminal matters by the Prosecutor of the Republic. This is also possible in the field of environmental matters.

III Access to Information Cases

The general legislation on access to administrative documents (Act N° 78-753 of 17 July 1978, as amended by Act N° 79-583 of 11 July 1979 on motivation of administrative acts and improving relations between the administration and the public and by Art. 7 of Act N° 321 of 12 April 2000 on the rights of citizens in their relations with the administrations) established the freedom of access to administrative documents. This law covers all documents held by the administration (whether they emanate from the administration or whether they have a third party origin) and which by their nature, subject matter, or use are connected with the exercise of a public service activity. This law provides that access to administrative documents shall not be granted if consultation or disclosure of these documents would prejudice secrets protected by the law.
The right of access to information about the environment is exercised under the general conditions defined by the Act of July 17, 1978 and the special provisions of the Environmental Code.
The illegal administrative decisions related to this topic can be cancelled by Administrative courts after notice of a national commission.
The article R.421-5 of the Administrative Courts Code provides: "The deadline for appealing against a decision referred to the court are binding only if it has been mentioned, as well as the remedies in the notification of the decision."
In Environmental matters, an implicit refusal to disclose information is necessarily illegal because this decision has not been notified to the applicant by a written reasoned decision specifying the means and periods of claim before an administrative court.
Law No. 78-753 of 17 July 1978 established an independent Commission on Access to Administrative Documents (CADA), which is responsible for ensuring respect for freedom of access to administrative documents. The C.A.D.A. also has jurisdiction in matters concerning access to information about the environment. The case must first be brought to this commission before bringing it to the administrative court. The procedure is provided for in sections 17, 18 and 19 of Decree No. 2005-1755 of 30 December 2005 concerning freedom of access to administrative documents. An applicant who has experienced a refusal to communicate has to bring the question to the CADA within two months from the notification of the refusal. In the period of one month following receipt of such notice, the competent authority shall explain its position to the CADA. If the competent authority confirms its initial denial or does not respond within two months from referral to CADA, the applicant may appeal to the administrative court for annulment.
Courts may order the administration to produce requested information. Courts can also annul the decision to deny access and, therefore, draw the consequences of a refusal.
Courts can order information to be disclosed.

IV Access to Justice in Public Participation

A facility operated or owned by any person or entity, public or private, which may pose hazards or inconveniences to residents, health, safety, public health, agriculture, environmental conservation, protection of sites and monuments, is referred to as a "classified facility for the Protection of the Environment (ICPE)" in France, and is subject to a special legal regime described by the Environmental Code. There are about 500000 of such facilities in France.
The legislation on classified installations for environmental protection organize three different regimes depending on the severity of the dangers and disadvantages: the authorization, the reporting, and a recent intermediate regime simplifying authorization, referred to as "registration" (Order No. 2009-663 of 11 June 2009 and Decree No. 2010-368 of 13 April 2010).
Under the regime of prior authorization, the right to operate is granted after an "impact study" and a "public inquiry".
The appeal to a superior administrative authority against an administrative decision is always possible (it is a general principle of case law). Unless a special rule states it is optional.
The general principle is that administrative decisions can be taken to Court directly if no specific procedural rules are in place (for instance as in the case of access to environmental information). There are no specific rules as regard public participation and related decisions.
In the absence of specific rules provided by law about the necessity of an administrative claim, administrative decisions can be brought to an administrative court directly.
The administrative courts review the procedural legality and the substantive legality of all administrative decisions.
The courts study the material, technical findings and calculations when they are considered belonging to the decision.
The legality of administrative planning is controlled by the administrative courts. The conditions regarding legal standing, rules of evidence, rules on hearing or extent of review by the court are not specific in this field.
About legal standing: any physical person who is empowered to go to court may refer to the administrative judge. This capacity is assessed according to the rules of civil law. Therefore non-emancipated minors, as well as the major persons placed "under the safeguard of justice" due to mental faculties or those under penal convictions leading to their legal judicial interdiction are not able to go to court. However, the administrative jurisprudence admits that certain persons, while they are incapacitated according to the civil code, have the capacity to exercise appeal for excess of power against decisions affecting "the fundamental principle of the right to habeas corpus."

Legal persons or groups may lodge an appeal against the measures affecting their own interests (existence, estate, activity, operating conditions), as well as, request damages for the material and moral damage they suffer. But they also may go to court to defend the collective interest of those they represent, insofar as the regulation or the disputed measure harms this collective interest.
In administrative litigation, as in private legal proceedings, the plaintiff bears the burden of proof. However, this principle is applied somewhat differently in administrative litigation, notably when the elements of proof are in the hands of the administration or, in the case of liability, based on the principle of presumption the petitioner is exempt from establishing the fault he/she alleges and oblige the administration to prove that it committed no error. Considering the inquisitorial nature of the proceeding, the administrative judge, who has significant investigative powers, actually contributes significantly in establishing the facts. If need be, he/she may order the disclosure documents or proceed him/herself to certain investigations by directly examining acts or documents, by visiting locations, by attending hearings or expert assessments.
Article L. 6 of the code of administrative justice enshrines the principle that "proceedings shall be held in a public hearing".
The rule of legality has varying requirements as it is interpreted and implemented by the administrative court. Notably, the rule does not exclude administrative authorities with the freedom of action illustrating what is called their “full power to act”.
When the administration has a choice between enacting a decision and abstaining from any decision or between two or more decisions of different content but equally compliant with the law, the judge is not always bound to control the appropriateness of the choice made by the administration.
In addition, subject to the rule of legality is more or less rigorous depending on whether the judicial control is introduced as a “normal control” or a ”restricted control.” Control will be restricted to cases where the controversial decision was made in exercising discretionary power, that is, when the legality of the decision has to be assessed. In this case, the administrative judge will control whether the decision is based on a factual error, legal error, or of abuse of power, but the control of the facts’ legal appreciation will only focus on obvious mistakes of assessment. In the usual cases where the administration’s decision is guided by legal criteria and where, therefore, the judge carries out a normal control, all the errors in the legal qualification of the facts will be controled.
In certain cases, normal control and restricted control are exercised according to specific terms. Thus, the restricted control does not include the search for an obvious error of assessment when the decision results from a sovereign administration’s assessment (example of examination juries).
The judge also has power to balance the administrative decision’s advantages and disadvantages; the decision will only be legal if it is appropriately reflecting the facts.
The environmental impact assessment (screening or scoping decision) is a part of the procedure for authorization of an installation classified for environmental protection. It is possible to apply for annulment against this authorization or approval of the project before administrative courts for a lack or insufficiency of the EIAhttp://158.167.220.151:8180/ejusticeportal/beta/300/EN/access_to_justice_in_environmental_matters?FRANCE&action=printContentPdfMS&member=1&cdbPdf=1#_ftn1[1]. But it is not possible to act directly before courts against this EIA.
The final authorizations can be reviewed by courts. The conditions regarding legal standing, rules of evidence, rules on hearing or extent of review by the court are not specific in this field.
The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they relate to the decision. The environmental impact study is controlled because it is the main aspect of the procedural legality.
Proving an interest in taking legal action is the main condition to be fulfilled for an appeal’s admissibility.
Except for the exceptional case where a public authority is vested with a legal warrant empowering it to act against the measures it considers as illegal (cases of a prefectorial application for judicial review), the interest justifies the exercise of the appeal. This interest, whose existence is assessed at the time of the appeal, may be of a different nature: moral or material, individual or collective.
In all cases, it must be personal, legitimate and pertinent. The first of these requirements prevents a person from acting without warrant on behalf of another, or claim only his quality as a citizen, consumer or elected official to oppose an act’s legality. The necessity of a protective interest opposes the fact that an appeal aims to safeguard an irregular or immoral situation. Finally, the status from which the petitioner acts must be related to the disputed decision. In addition, the interest must be direct and certain, that is directly and certainly wronged by the disputed decision.
The administrative courts review the procedural legality and the substantive legality of IPPChttp://158.167.220.151:8180/ejusticeportal/beta/300/EN/access_to_justice_in_environmental_matters?FRANCE&action=printContentPdfMS&member=1&cdbPdf=1#_ftn2[2] decisions as well as the legality of all administrative decisions. They have also to study the material, technical findings, calculations and the IPPC Documentation if these elements are considered to belong to the decision. The courts study the material, technical findings and calculations when they are considered as belonging to the decision.
The arguments presented in support of an action for annulment of an administrative decision (appeal for abuse of power) are classified into two categories: external and internal legality.
The external means of illegality are related to the implementation of the act: incompetence of the author of the act, procedural illegality, defect or irregularity (including failure to state reasons)
Legality of the means are related to the content, the substance of the act, and error in fact or error in law:
error in law: application of a rule of law which is not applicable or misinterpretation of the applicable rule
error in fact: error in the characterization of the facts or manifest error of assessment when the judge is exercising limited control,
and abuse of process or power.
It is not necessary to participate in the public consultation phase of the IPPC or EIA procedure or to make comments to have a standing before administrative courts.
The appeal for abuse of power is widely open to litigants, but it is not an "actio popularis." In order to be eligible to have access to justice, the claimant must justify an "interest" connected with the content of the decision, which is understood, however, fairly liberally and broadly by the administrative courts. This interest must be direct, certain and actual.
The power of injunction is available for Administrative Courts in all matters.
For a long time, the administrative judge refused to address injunctions to the administration, including for the execution of his/her decisions. The only recourse for the decision’s beneficiary was to launch another appeal against the administration’s inertia. The law of February 8, 1995, confers to the administrative courts the possibility of addressing to the administration injunctions to take an execution measure in a determined direction or to rule again in a pre-determined timeframe.
In this regard, one must refer to the court with specific request for injunction. Public bodies or private law institutions responsible for management of a public services are subject to this injunction.
The injunction power is matched with a possible penalty. This penalty must be requested, except before the Council of State, which can pronounce it automatically and, in addition, enjoys the support of specialized department responsible for following the execution of its decisions.

About classified installations for the protection of the environment, the administrative judge has a power of injunction against the prefect. It can seek to implement any measures it considers necessary.

V Access to Justice against Acts or Omissions

Claims can be brought directly against private individuals or private companies before ordinary civil courts or criminal courts. The criminal courts may impose a fine on the private person (there is also a possibility for an individual to be sentenced to jail), when s/he caused an environmental damage. But this is only possible if this incrimination has previously been criminalized by law. There is no general incrimination in environmental matters, so the penal judges must refer to the enumerated written list of the Penal Code. The civil judges may sentence individuals or private companies to compensate an environmental damage when three conditions are met:

(1) the author is responsible for this damage,

(2) this action has caused compensable harm,

(3) and there is a causal link between the action and the damage.

Some liability regimes of civil law can result in liability even in the absence of fault (liability for things or for others vicariously, or for defective products). The operator of a facility can also be ordered to clean up a polluted site (rehabilitation).

Claims for the protection of the environment can be submitted directly to the administrative courts against public bodies (the State or local public authorities). These remedies allow the Administrative Courts to cancel illegal administrative decisions (e.g. permissions), to impose new requirements for private operators in order to improve environmental protection, or engage the liability of the State or local public authorities. This responsibility is most often sought in cases of deficiency found in the power of control managed by public bodies. But the examples are rare. The Council of State sometimes shares the responsibility between the State and the municipality (see for example: CE, July 13, 2007, Municipality of Taverny, No. 293210). The law of 1 August 2008 published for transposition of the EU Directive of 21 April 2004 did not create a principle of subsidiary liability of the State in case of impossibility to implement the polluter pays principle.

Article L 165-2 of the Code of the environment, resulting from Law No. 2008-757 of 1 August 2008, provided the intervention of a decree to designate the competent authorities in environmental liability matters. A decree No. 2009-496 published on 30 April 2009 has designated several authorities within the state, according to the types of projects, plans and programs: the Minister for the Environment, the General Council of Environment and Sustainable development, the prefect of the region, another prefect coordinator, or a maritime prefect (for sea areas).

There are no specific rules about requests for action in environmental matters. Responsibility of the State can not be claimed directly before administrative courts. The claim brought to a judge is always an appeal filed against the explicit or implicit rejection of the State or against a positive answer regarded as insufficient.

There are no specific rules concerning conditions of court review in environmental liability matters in French law. Lawyers have to refer to the general principles of the responsibility of the State. Administrative judges may quash the dismissal of the claim and condemn the State if (1) it is the responsible for the damage, (2) if this action (or lack of action more often) has caused compensable harm, and (3) there is a causal link.

When an unlawful administrative decision in environmental matters is canceled, the administrative courts must, on request of the applicant, require the competent public authorities to draw the consequences of this cancellation.

There are several environmental liability regimes. Each of them is based on specific conditions. Before Administrative courts, the responsibility of the polluter may be sought on the basis of "the IPPC regulation" (the operator's liability), the rules about waste management (responsibility of the holder), or the specific regime established by the Law of 1st August 2008. Before Civil courts, environmental damages can be compensated on the basis of the common civil liability regimes (for misconduct, negligence, and sometimes without any fault) or special duties (abnormal neighborhood disturbances, damage caused by certain types of pollution: hydrocarbons and nuclear facilities). The criminal courts may punish for environmental damage that have been previously criminalized (also look at answer number one).

VI Other Means of Access to Justice

All general court proceedings, administrative, civil or criminal are likely to be applied in environmental matters. There are not really other specific rules in this area.

There are not specific public authorities responsible for ensuring access to justice in environmental matters. The Ombudsman, the Public Prosecutors and all jurisdictions can intervene in the field of environmental law.

The Ombudsman was created by the law of 3 January 1973 on the model of the Swedish Ombudsman. This is an "independent administrative authority" responsible for improving relations between citizens and public administrations. The Ombudsman intervenes in disputes between citizens and public authorities. He is responsible for proposing solutions to amicably solve the disputes. This authority has changed its name since March 31, 2011, it is now called "Defender of Rights."

The Prosecutor of the Republic (Procureur de la République) is the magistrate who is responsible for leading "public action" within the jurisdiction of the "Tribunal de Grande Instance (TGI)," the main civil and penal court at the first instance level. The Prosecutors are subject to the authority of the Minister of Justice. The tasks of the Prosecutors shall be exercised mainly in criminal matters. He is responsible in accordance with the principle of prosecutorial discretion to prosecute offenders or not (also in environmental matters).

When a criminal offense relating to the environment occurred, private prosecution is available.

There are two possibilities of claims before the administrative courts in cases of administrative inaction or inappropriate action:

the action for annulment against an unlawful administrative decision: called "appeal for abuse of power".

the action for damages against a public authority when it is shown that this inaction or inappropriate action caused a prejudice.

VII Legal Standing

Article 31 of the Civil Procedure Code recognizes legal standing to those who have an interest and standing. The claimant must show a legitimate interest protected by law, and a personal and direct interest ("no one argues with attorney"). The law also allows legal persons; including associations; NGOs; and professional, legally created, unions to defend the common interests of their members. The interest to bring a case to a court must be vested and present, but the courts have sometimes recognized the admissibility of actions when the interest is in the future or uncertain.

These civil law concepts are found in the jurisprudence of administrative courts with a pragmatic and extensive interpretation. The "appeal for abuse of power" is wide open against any administrative decision, but the quality of citizen life is not sufficient for acting: it is not an "actio popularis." In order to be eligible to exercise it, the claimants have to justify an "interest conferring locus standi", which is direct, certain, and current (CE, 21 Décembre, 1906, Union des propriétaires et des contribuables du district de la Croix - Seguey - Tivoli, Recueil Lebon, page 962 - CE, December 21, 1906, Union of owners and taxpayers of the district of Cross-Seguey - Tivoli, Recueil Lebon page 962).

These principles apply to all applicants: individuals, legal persons of private law, French or foreign associations, NGO's, etc.

There is no mechanism of “actio popularis” in France.

The Ombudsman cannot intervene in proceedings before courts or question the validity of a judicial decision. However, the Ombudsman may issue injunctions to the public authorities when they refuse to execute a court decision in favor of the applicant.
The Public prosecutors do not have any interest to act before administrative courts. They can act only in criminal matters.
All other public institutions have legal standing to act before administrative courts when they have interest to claim or to defend.
There are no EIA and IPPC specific rules about legal standing of individuals/NGOs and access to justice for environmental matters.

VIII Legal Representation

Before the first instance administrative courts (art. R. 431-2 of the code of administrative justice), representation by legal counsel is imposed in matters of full jurisdiction: essentially monetary or contractual litigation. The other disputes are implicitly excluded from the rule of compulsory representation. Before the administrative courts of appeal (art. R. 811-7 of the code of administrative justice), the obligation of legal counsel is the rule (only exceptions: disputed excess of power in relation to public service and disputed highway traffic violations).
Before the first instance courts as well as before the appeal courts, the State is exempt from having a lawyer.
The rule of compulsory representation is broader before the Council of State: this is the rule in cassation (except for some situations such as the litigation of social aid). With respect to excess of power in first and last instance, counsel is not compulsory.
The absence of a lawyer is sanctioned by the inadmissibility of the request, after a failure of the regularization.
The environmental law is one of the indications of specialization in use in the lawyer profession (Decree of 28 December 2011, Official French Gazette No. 0301 of December 29, 2011, page 22577). The website of each bar includes a list of lawyers specialized in this matter. Any environmental association may act on behalf of individual victims of prejudice, when it received a mandate to do so. It can also act against any administrative decision that may adversely affect the environment.

IX Evidence

In administrative litigation, as in private legal proceedings, the burden of proof is born by the plaintiff. However, this principle sees mitigation in administrative litigation, notably when the elements of proof are in the hands of the administration or, in the case of liability, in the hypothesis of presumptions exempting the petitioner from establishing the fault he/she alleges and oblige the administration to prove that it committed no error.
Considering the inquisitorial nature of the proceeding, the administrative judge, who has significant investigatory powers, actually contributes significantly in establishing the facts. If need be, he/she may impose the communication of documents or proceed him/herself to certain investigations by directly examining acts or documents, by visiting locations, by attending hearings or expert assessments.
The parties can always introduce new evidence. But the procedure applicable to administrative courts is called "inquisitorial": it means that the judge is the master of the procedure. He communicates the arguments presented by the litigants. He also may require parties to produce new documents to establish proof of the facts. He may also order an expertise.
The procedure in administrative courts is different from the one before the ordinary civil courts. Before civil courts the parties conduct the trial by asking the judge to order an investigation, an expertise. The administrative judge is not bound by the request of the parties: it is not compulsory to resort to expertise when it is requested by a party, if the judge considers that the documents of the case are sufficient to form a conviction. However, he may order an expertise even if no such request is expressed by the parties.
The judge is never bound by the result of an expert. He must always evaluate the studies with a critical eye. His solution may be based on other elements of the case which challenge the conclusions of an expert report. This old principle has been expressly stipulated by Article 22 of the Act of July 22, 1889 applicable to administrative courts and is also a case law of the Council of State.

X Injunctive Relief

According to case-law, the principle of the immediate enforceability of administrative decisions is a fundamental rule of public law (CE., Ass., 2 juillet 1982, Huglo et autres). Thus, administrative decisions can be immediately executed, irrespective of a court action. The classical action submitted to the court against such decisions doesn’t have a suspensive effect. There are some exceptions mainly in the field of immigration or taxation law, but not in environmental matters.
There is a possibility for injunctive relief against administrative decisions in administrative judicial procedures in environmental matters, as in all matters. This possibility doesn’t exist before administrative courts against actions or omissions of other private parties. But such procedure can be implemented by ordinary civil courts (“référé civil”).
In emergency cases, the interim stay of execution enables the suspension of the execution of an administrative decision until a judge has ruled on this decision’s legality. The petitioner must demonstrate the urgent nature of the case and that there is serious doubt about the legality of the decision in order for the judge to rule on a provisional measure within a few days.
It is possible to appeal the decision of an administrative court regarding injunction. This appeal must be brought directly to the Council of State.

XI Costs

Legal costs include court fees and attorneys' fees.
Court costs are defined by section 695 of the Code of Civil Procedure. Those costs are regulated or tariffed charges:
the bailiff's fees (the law provides that acts introducing the trial and also the judgments shall be sent to the opponent by a bailiff);
fees known as "postulation and advocacy "(Decree No. 72-784 of August 25, 1972, revised in 1975) which are divided into a "flat fee" depending on the nature of the trial, and a "proportionate interest" calculated on the financial impact of the trial;
and the "expert fees".
There are no bailiff's fees nor costs postulation in the administrative courts.
Lawyers' fees. These fees are called "unrecoverable" because they can not be refund (returned) since they are not "legally required."
Expenses incurred by the lawyer in connection with the execution of his mission on behalf of his client: tax stamps for registration fees, rights advocacy, publicity rights, fees of expert, bailiff fees, etc.
The stamp duty was suppressed for the requests recorded since January 1, 2004. But since 1 October 2011, any person who seeks justice shall pay a tax stamp of € 35. This amount must be paid at each level of the procedure: first instance, appeal, cassation.
Lawyers' fees are set freely between the parties and their counsel: it is not possible to give an estimate.
The costs of an expert in court are set by the judge. For example in 2009, the Ordinary Court of Appeal and the Administrative Court of Caen suggested applying the following schedule:
Fees for the expert: 90 euros for one hour to 180 euros and beyond depending on the complexity of the case.
Typing: 7 euros per page.
Photocopy: 0,42 euros per page, to 1,5 euro for a color copy.
Documents available on CD: 20 euros each.
Postage: according to postal rates.

Fee-kilometer: 0.60 to 0.80 euro / km.
Travel, hotel, meals: according to justifications.
http://www.upem.org/conditions-generales/
The costs of an injunctive relief/interim measure are the same as for a main action.
Legal costs are usually paid by the losing party. Under Article L 761-1 of the Code of Administrative Justice: "In all instances, the losing party must pay the other party the amount determined by the judge in respect of costs incurred. The judge takes into account the equity or the economical situation of the convicted party. He may even automatically, for reasons based on similar considerations, tell that there is no grounds to condemn.". However, administrative courts usually limit the costs to be paid to a couple of thousands of Euros.

XII Financial Assistance Mechanisms

There are no specific rules concerning litigation costs of proceedings in environmental matters. There is only one tax before administrative courts. A law of 29 July 2011 created a special tax of 35 euros to be paid upon filing of a proceeding before a court (administrative or otherwise). This tax is a condition of admissibility of the application. The beneficiaries of legal aid don't have to pay this tax (look at answer to question number 2).
There is “legal aid” in France. The current legal aid scheme is governed by the Legal Aid Act (No 91-647 of 10 July 1991) and Decree No 91-1266 of 18 December 1991. It covers:
Legal aid: financial aid for court proceedings and out-of-court settlement proceedings;
Aid towards advocates’ fees in criminal proceedings that are available as an alternative to prosecution (settlement and mediation), for legal assistance for those held by the police for questioning, and for disciplinary proceedings in prisons;
Access to the law (information, guidance, free legal consultation). Legal aid entitles the recipient to free assistance from an advocate or other legal practitioner (bailiff, avoué, notary, auctioneer, etc.) and to exemption from court costs.
Legal aid is also available in environmental matters without any specific rules.
Legal aid is subject to requirements as to resources, nationality, residence and admissibility. You may receive legal aid if the average of your combined resources for the preceding calendar year does not exceed a certain threshold set by statute each year. You are entitled to legal aid if you are a French national or a citizen of the European Union or a foreign national habitually, lawfully residing in France. Habitual and lawful residence in France is required as a matter of principle. Legal aid is given if the action is not manifestly inadmissible or devoid of substance. These conditions also apply to NGO’s.
Most Trade Unions and consumer NGO's offer a free legal support given by lawyers to their members. Most lawyers also offer a free initial interview. There are no specific practices in environmental matters.
Legal clinics are quite new organizations in France. There are currently 4 Law Clinics in France, two on civil law and two on human rights (
La maison du droit of the University of Paris II ; The Law Clinic of the University of Tours ; The fundamental rights law clinic of the University of Caen ; The Euclid Law Clinic of the University Paris Ouest Nanterre). None of them deal with environmental cases.
There are also more and more specialized lawyers in environmental law and numerous NGO's for the defense of the environment in France. Some of them are recognized as public utilities by the State like France Nature Environment (FNE) which is the French federation of associations for the protection of nature and the environment. It gathers 3,000 NGO's (on a geographical or thematic basis).

XIII Timeliness

There is a principle that an implicite negative decision occurs when the administration does not respond after a period of two months to a request sent by a claimant (Article 21 of the Law of April 12, 2000).
In several fields, the Law established a regime of tacit acceptance. The silence of the administration then causes the appearance of a tacit acceptance within the period fixed by law. Apart from this hypothesis, the responsibility of a public authority may be pronounced by an Administrative court when it is proved that this delay is abnormal and has resulted in a prejudice to the claimant.
There are no special time limits set by law for judicial procedures in environmental matters.
We also have to distinguish the proceedings on the substance and the emergency procedures.
In the case of substantive proceedings, the target set by Parliament to the Administrative courts, at any level (first instance, appeal and cassation), in the annex to the annual law on state budget, is to give a decision within a maximum period of one year.
In the case of emergency proceedings, the court decision comes usually within a week to a month at most, sometimes 2 or 3 days.
There is no legally set time-limit for proceedings on the merits. But there are limits for emergency proceedings: for example, when it is a procedure about a threat to fundamental freedoms the judge shall make his decision within 48 hours.
There is an important principle issued by a case law made in 2002. "Litigants are entitled to have their requests judged within a reasonable time under the principle issued by article 6 of the ECHR. The breach of that obligation does not affect the validity of the judicial decision. But when the right to get a judicial decision within a reasonable time has caused a prejudice, they can obtain a compensation for the damage "due to the improper management of administrative courts". Reference: Conseil d’Etat Assemblée, 28 juin 2002, Garde des Sceaux contre M. MAGIERA, N° 239575.
http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT000008099419&fastReqId=109660118&fastPos=7 ...
&fastPos=7

XIV Other Issues

An action for annulment against administrative decisions shall be admissible only if it is against an "administrative act adversely affecting" ("acte administratif faisant grief" in French administrative law). An administrative act is considered to be so when it produces legal effects: it changes the legal system or it infringes the rights and obligations of citizens. An act that only occurs in the context of a procedure for developing a subsequent main decision is simply a preparatory act, and can't be challenged before an administrative court. All these general rules are applicable in environmental matters.
The right of access to information on the environment is ruled by general principle issued by the Law No. 78-753 of 17 July 1978 and the implementing Decree No. 2005-1755 of 30 December 2005 on the access to administrative documents, and also by specific norms written in the Environmental Code (Articles L. 124-1 to L. 124-8 and R. 124-1 to R . 124-5). All these texts have been synthesized by a ministerial information circular published on 18 October 2007.
The main website about this topic: French ministry for environment:
https://www.toutsurlenvironnement.fr/Aarhus/lacces-du-citoyen-a-la-justice
Conciliation, transaction and arbitration are methods to settle disputes that do not have as much room in administrative litigation as in private law disputes. Article L.211-4 of the code of administrative justice provides the administrative tribunals with general jurisdiction for conciliation. But this provision is rarely used, considering the very nature of administrative litigation and the fact that in contractual matters there is already a mechanism for the amicable settlement of disputes with the committees of amicable settlement of the markets. The right to compromise is given to public corporations to settle their disputes. Most of the time, the transactions they sign with private individuals constitute private law contracts and do not fall within the competence of the administrative judge. The public authorities are subject to a ban on principle to appeal arbitration.

Mediation is not often used in the environmental field, but the idea is becoming more and more popular in France. And there are a lot of new studies about this question: how to develop mediation in environmental matters? An interesting conference was organized in April 2012 by „The Institute for Research and Education on Negotiation" with a summary published on „Mediation, method of solving environmental conflict?" (In French).

http://gcft.fr/wp-content/uploads/2012/05/CR-SIRENE-29.pdf

XV Being a Foreigner

Article 1 of the French Constitution proclaims the principle of "equality before the law for all citizens regardless of origin, race or religion." Many laws have extended this article of the Constitution, prohibiting discrimination, particularly those based on gender, disability, age, or sexual orientation. Article 225-1 of the Penal Code precisely defines the notion of discrimination from a list of many criteria. But there are not anti-discrimination clauses regarding language in the procedural laws in France (look at answer number 2 and 3).

The French language should be used particularly in the courts. This principle is very old. It was proclaimed by a royal ordinance signed in the city of Villers-Cotterets (name of this royal decision) on August 15, 1539. This act is considered to be the "official birth certificate" of the French language. It was incorporated into Article 2 of the Constitution and specified by law n ° 94-665 of August 4, 1994 "about the use of French."

If it is necessary, translation is provided and paid by the government in court procedures, but only in immigration, asylum, and penal cases.

XVI Transboundary Cases

This issue mainly concerns the implementation of environmental responsibility. The environment knows no borders. The only recourse for the victim of a transboundary pollution, is to bring this case before a national court of the State where the infringement is originating from, or the State in whose territory the infringement has its effects. The admissibility of an action before a French court is possible under several conditions related to the jurisdiction of the courts and the principle of territoriality of the law. Non-resident foreigners may invoke the provisions of French law. But to establish cross-border responsibility is difficult under the current rules. There is a difficulty for judges to articulate the common law of civil liability, with the particular environmental liability established by the Act of 1 August 2008 on environmental liability. This transposition of Directive No. 2004/35 of April 21, 2004, is codified within the environmental Code (Title VI "Prevention and repair some damage to the environment"), which remains virtually unimplemented. A major study was published about this issue in January 2012 (70 pages):

http://dr-petrole-mr-carbone.com/wp-content/uploads/2012/09/CP-1.pdf

The French Environmental Code in English:

http://www.legifrance.gouv.fr/content/download/1963/13739/version/3/file/Code_40.pdf

This topic can be also studied using a famous case in France after the wreck of the tanker ship Erika from Malta in December 1999 in international waters inside the French Exclusive Economic Zone (EEZ) off the coast of Brittany. This accident polluted 400 km of the coast. The owner and the manager of this vessel charterer, the classification society, were convicted of this pollution by the Civil Court of Appeal of Paris by judgment of 30 March 2010.

The concept of public interest is not specific in a transboundary context. The general rules are applicable (especially about admissibility of requests through the concept of legal interest).

The French administrative law recognizes equal access to administrative courts for persons or NGO's residing abroad, on the same basis that the applicants residing in France. But foreign residents have no access to legal aid. The Administrative Court of Strasbourg decided in 1983, in the case known as "potash mines of Alsace", that legal persons of foreign public law may have an interest to act before a French administrative court. An interesting study about that topic in the field of water management, published in 2007 in French : Jochen Sohnle, « Le dispositif juridique de l'Europe pour appréhender les conflits transfrontaliers sur l'eau », Lex Electronica, vol. 12 n°2, Automne / Fall, 2007, especially pages 17 and 18 :

http://www.lex-electronica.org/docs/12-2_sohnle.pdf

A jurisdiction clause is possible in civil matters. It takes the form of a contractual provision whereby the parties agree to entrust the settlement of a dispute to a court which does not normally have jurisdiction. This may concern the subject matter jurisdiction or territorial jurisdiction. This clause may relate only to disputes arising from the contract. But this mechanism is forbidden for public contracts and for public litigations before an Administrative Court.

[1] Environmental impact assessment (EIA)

[2] Integrated polluton prevention and control (IPPC)

Last update: 14/09/2016