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The "Commune de Grande Synthe" decision: a major step forward for climate justice in France

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On November 19, the French State Council (Conseil d'État) handed down an interim judgment largely favorable to the plaintiffs in the case brought before it by the commune of Grande-Synthe (Nord department, on the outskirts of Dunkirk) following the government's implicit refusal to take additional measures to comply with the objectives of the Paris Climate Agreement and, in this specific case, to limit the impacts of climate change, particularly the risks of flooding of this coastal commune.[1](#) In this blog post (to be read in parallel with Lucien Chabason's post on the issue), Marta Torre Schaub analyses the legal scope of this decision relating to France's climate commitments, the duty to provide climate information and, ultimately, the strengthening of climate justice.

Spearheading the fight against climate change² and undoubtedly emblematic for future developments in climate litigation in France,³ the decision of the State Council innovates on three points: It opens up a two-way dialogue on the climate emergency, first between civil society and the administration—through the judiciary and the courts—and then between judges and the administration; it also clarifies a certain number of points relating to France's climate commitments and their consequences for the administration of the State; and finally, it confirms the importance of compliance with the obligation to provide information on the part of the administration.⁴

Opening up a multiscale dialogue

The judicial itinerary of the Grande-Synthe commune's petition to the State Council is the result of a dynamic process that has been underway in France since November 2018, initiated by the youth climate movement led by Greta Thunberg, the petition of the Affaire du Siècle with more than a million signatures and the widespread response of civil society following the publication of Intergovernmental Panel on Climate Change (IPCC) Report on Global Warming of 1.5°C.⁵ In addition to these various civil society initiatives, a "dialogue of judges" is also taking place, feeding climate justice in France at both the international⁶ and national⁷ levels.

The Grande-Synthe decision thus makes it possible to initiate a dialogue between civil society, judges and the administration. Faced with the silence of the latter, it is the judges who are now called upon to exercise their power of control over the action of the State. It remains to analyse the purpose and scope of this control.

The State Council has developed a two-step reasoning to deliver the first foundations of climate justice in France.

Towards a consolidation of France's climate commitments

First of all, it recalls in its decision that the Paris Climate Agreement is a treaty whose objectives can no longer be ignored by French law and that the administration must take this into account when developing its public policies and in order to better orient and guide national law. It thus implicitly recognises the need to have a national reference framework consistent with its objectives as well as those set out in the European commitments. Moreover, while the State Council considers that the Paris Agreement only imposes an obligation close to an obligation of vigilance (due diligence) on the French State, and that the latter remains "master of the precise level of the effects of the Agreement on national law",⁸ it confirms that the government nevertheless has an obligation to follow in its legislative, regulatory and administrative acts the objectives set by the Paris Agreement and to which France has committed itself.⁹

With regard to domestic legislation that must include these commitments, the State Council recalls the primary role of the National Low-Carbon Strategy (SNBC in French),¹⁰ which makes it possible to set and define these objectives, and the fact that "the State, local authorities and their respective public institutions [must] take into account [...] in their planning and programming documents that have a significant impact on greenhouse gas emissions [...]".

Towards the recognition of a climate information "duty"

On the basis of a substantiated demonstration of the "gap" between France's climate policies and its related objectives under the Paris Agreement and European Union law, the State Council asked the State to provide more information (additional instruction) within three months, implicitly indicating that it must now explain these objectives. The judge is indeed there in his role of control of public action, and we can see there the outline of an emerging obligation of climatic "justification" of administrative acts and legislative and regulatory measures.

This obligation to provide climate information, notwithstanding its innovative character in terms of climate law, is part of the "right to information" in environmental matters,¹¹ and its corollary, the "duty" to inform. The judges are here reminding the administration of its obligations to provide information, first with respect to the State Council itself, and then with respect to citizens; they are thus merely exercising their power of control over the action of the administration, to which they indirectly remind of the terms of the directive of June 7, 1990 on access to information on environmental matters. Moreover, this obligation echoes the transparency obligation present in the Paris Agreement, which contributes to giving it normative force in the international community and in national laws, and thus to strengthening climate justice.

¹ (in French) <https://www.conseil-etat.fr/actualites/actualites/emissions-de-gaz-a-effet-de-serre-le-gouvernement-doit-justifier-sous-3-mois-que-la-trajectoire-de-reduction-a-horizon-2030-pourra-etre-respectee>

² M. Torre-Schaub, « Plainte de Grande-Synthe. Pourquoi la décision du Conseil d'État fera date », The Conversation, 23 novembre 2020 <https://theconversation.com/plainte-de-grande-synthe-pour-inaction-climatique-pourquoi-la-decision-du-conseil-detat-fera-date-150654>

³ On these issues, see: M. Torre-Schaub, Justice climatique. Procès et actions, Paris, CNRS éditions, 2020 ; M. Torre-Schaub (dir), « Les contentieux climatiques en France », Dossier spécial, REEL, mai-juin, 2019 ; C. Huglo, Le contentieux climatique. Une révolution judiciaire mondiale. Paris, LGDJ, 2018 ; R. Radiguet, « Objectif de réduction des émissions de gaz ... à effet normatif ? », JCP Administratif, décembre 2020.

⁴ This last point is in line both with the spirit of the Paris Climate Agreement—obligation of transparency and sharing of information—and with the environmental information obligation imposed on France by the Council of Europe since 1998 (cf. the Aarhus Convention).

⁵ <https://www.ipcc.ch/sr15/>

⁶ Urgenda Case in the Netherlands; actions by mayors in the United States (New York and California).

⁷ Various decisions rendered on air pollution, in particular State Council (SC) 12 July 2017 Decision No. 394254 and SC 10 July 2020 Decision No. 428409.

⁸ On this issue, see S. Robert-Cuendet, « L'invocabilité du droit international devant le juge administratif français » in M. Torre-Schaub (dir), Les dynamiques du contentieux climatique, Paris, Mare & Martin, 2020, p.p. 147-167. See also A.-S. Tabeau, « Les circulations entre l'Accord de Paris et les contentieux climatiques nationaux : quel contrôle de l'action climatique des pouvoirs publics d'un point de vue global ? », RJE 2017, hors-série 17, p. 229.

⁹ A.-J. J. Saiger, « Domestic Courts and the Paris Agreement: the need for a comparative approach », Transnational Environmental Review 2019, p.p. 1-18 ; S. Robert-Cuendet cit. p. 162.

¹⁰ (in French) <https://www.ecologie.gouv.fr/strategie-nationale-bas-carbone-snb#:~:text=Adopter%20pour%20la%20premi%C3%A8re%20fois,2050%20par%20rapport%20%C3%A0%201990>).

¹¹ This right is first legally based in the Aarhus Convention, in Directive 2003/4/EC of 28 January 2003, and in Article 7 of the Environmental Charter. A right that is exercised under the conditions defined by the Code of Relations between the Public and the Administration, and by the Environmental Code. "The right of access to information relating to the environment is characterized by an extensive scope of application, a limitation of the legal grounds for refusing to disclose information, methods of disclosure or refusal that differ on certain points from the right of access to administrative documents, several measures designed to facilitate access to information, as well as the obligation to ensure the public dissemination of certain categories of information relating to the environment". See for example <https://www.actu-environnement.com/ae/news/droit-acces-public-information-environnement-circulaire-35486.php4>