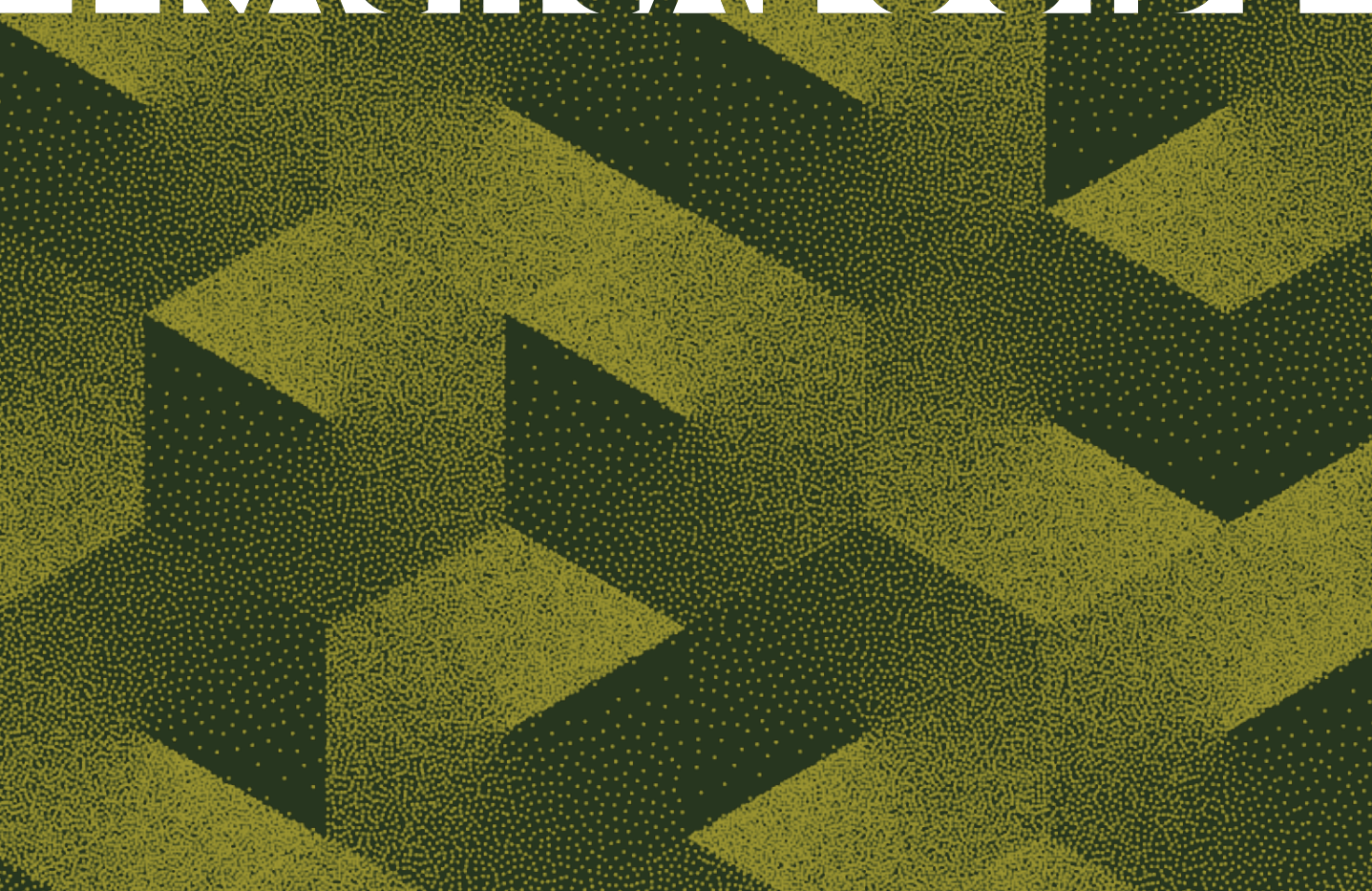
Environmental Law Working Group
of the *Conseil National des Barreaux*

1st Edition
September 2025

THE LAWYER'S ROLE IN PROTECTING AND IMPROVING THE ENVIRONMENT

PRACTICAL GUIDE



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EDITORIAL

Julie COUTURIER

Laurence ROQUES

The response to the multiple challenges posed by the triple planetary crisis (climate change, loss of biodiversity, pollution) is one of the most pressing concerns of our fellow citizens at the time of publication of this guide.

While this response is clearly scientific and political in nature, it must be backed up by law and justice if it is to be effective. How can the environment be protected without a solid legal basis for preventing, punishing and compensating for damage? How can the environmental impact of projects be measured, offset and reduced without an administrative system of prior assessment and inspection based on substantial resources?

The lack of effectiveness and complexity of environmental law is often criticised, as it relies on the goodwill of the stakeholders involved, whose interests are often contradictory. Judges and lawyers therefore become the guarantors of its application.

Against this backdrop, it has become essential for the legal profession and its representative bodies to tackle this cross-cutting topic encompassing civil, administrative, criminal and international law, and treat it as a core rather than marginal issue.

The creation of the Environmental Law Working Group reflects the *Conseil National des Barreaux*'s determination to support French lawyers in addressing the challenges posed by the ecological crisis for our justice systems and in understanding the new practices and professions emerging from the resulting regulations.

Composed of lawyers, judges, academics and scientists, this working group is intended as a forum for reflection, discussion and comparison of practices. This rich mix is a strength when it comes to expressing needs and solutions for all those involved in the law.

Lawyers play a key role in stopping, preventing and punishing environmental damage. The increase in environmental and climate-related litigation in recent years, the development of environmental justice and the specialisation of judges require the profession to continue to educate itself and act as a driver of major litigation to combat any shortcomings on the part of political policymakers and private stakeholders.

We are conscious of the complexity, for French lawyers, of navigating the many French and European environmental regulations. The technical nature of this litigation, which involves a very wide range of stakeholders and draws on several areas of expertise (scientific, legal, geographical), means that many of our colleagues require clarification on which courts to apply to or which procedures to use.

This led to plans for a guide on the role of lawyers in protecting and improving the environment. This guide is the result of extensive interprofessional collaborative work carried out by all the experts in the Environmental Law Working Group, to whom we extend our warmest thanks.

We hope that this guide, the first of its kind, will provide the most comprehensive overview possible of the issues and players involved in this essential subject, given the challenges facing our ecosystems.

Don't hesitate to grab a copy and circulate it within your respective Bars and networks.

Enjoy your reading!

Julie Couturier, President of the CNB

Laurence Roques, Head of the Environmental Law Working Group.

THANKS

The *Conseil National des Barreaux* would like to thank all those who contributed to this guide, and in particular:

- **Laure Abramowitch,** lawyer at the Dijon bar, member of the *Conseil de l'Ordre* (Bar Association Council)
- **Hugo Bertin,** legal expert to the CNB's Environmental Law Working Group
- **Florence Bouvier,** President of the Bayonne *Tribunal Judiciaire* (District Court)
- **Antoine Clerc,** lawyer at the Lyon bar
- **Vincent Delbos,** honorary magistrate
- **Jérôme Graefe,** lawyer at the Paris bar
- **Patricia Savin,** lawyer at the Paris bar
- **Doris Sieurin,** lawyer at the Nantes bar
- **Louise Tschanz,** lawyer at the Lyon bar, specialising in environmental law
- **François Zind,** lawyer at the Strasbourg bar, specialising in environmental law

INTRODUCTION

"Everyone has a duty to play a part in protecting and improving the environment."

Article 2 of the French Environmental Charter, which has constitutional status, is one of the rights and duties of the State, citizens and companies. Added to these basic principles are numerous environmental laws and regulations, as well as procedural innovations, all against the backdrop of an unprecedented increase in the effects of climate change and the growing number of threats to biodiversity.

In this context, there has been an increase in litigation in the environmental sphere for several years now[1]. Students, judges, lawyers and departmental administrations are educating themselves in environmental law, which is a distinct branch of law: cross-disciplinary (public law, private law, criminal law, international law), interdisciplinary (climatology, biodiversity, geography, etc.) and covering novel temporal and spatial scales for legal practitioners.

The purpose of this guide is to show how lawyers can *"play a part in protecting and improving the environment."* It is a practical tool, to help students choose their career path, to support lawyers who wish to develop new skills, and, more generally, for organisations and the general public who are interested in these issues.

CONTEXT AND CHALLENGES OF THE GREEN TRANSITION

Incorporating environmental protection issues is not simply creating a new, isolated area of law, but represents a profound transformation impacting the entire French legal system. This revolution is reshaping the contours of traditional legal disciplines and is forcing legal practitioners to adopt a fresh approach to their expertise.

This systemic transformation requires lawyers to acquire cross-disciplinary skills. Mastering purely legal aspects is no longer sufficient: understanding the technical, economic and scientific issues involved in the green transition has become essential. Legal professionals are now required to understand the mechanisms of the energy transition, the principles of the circular economy, the challenges of biodiversity, climate change, the ecosystem approach, and even international non-financial reporting standards.

1. "*Between 2015 and 2019, public prosecutors' offices dealt with 86,200 cases involving perpetrator(s) relating to pollution or environmental damage litigation*", *Infostat Justice*, SDSE, No. 182, April 2021.
"*18,200 cases relating to environmental litigation handled by the public prosecutor's office in 2021*", Ministry of Justice *Service Statistique Ministériel de la Justice*, SDSE, 31 January 2023.
As regards civil litigation arising from claims for compensation for damages caused by an environmental nuisance and for compensation for environmental damage, "*1,118 cases decided on the merits in this respect in 2018, compared with 713 in 2010*"; B. Cinotti, J.-F. Landel, D. Agoguet, D. Atzenhoffer, V. Delbos: *Une justice pour l'environnement. Mission d'évaluation des relations entre justice et environnement* [Environmental Justice. Assessment of Relationship Between Justice and the Environment], CGEDD/IGJ, October 2019, p. 21.
"*In total, in 2018, the administrative courts handed down around 19,000 judgements in cases relating to spatial planning, environmental and urban planning litigation, i.e. an average of 8% of the cases adjudicated*", *ibid.* p. 22.

Lawyers must also develop a forward-looking outlook to anticipate rapid regulatory changes and effectively advise their clients within a constantly-changing legal environment. This expertise requires extensive ongoing education and legal monitoring that encompasses scientific and technological aspects.

UNDERSTANDING THE GREEN TRANSITION AND ITS LEGAL FRAMEWORK

The main legal challenges of this transition involve balancing the urgency of climate change with legal certainty, reconciling economic and environmental interests, and adapting the law to technological innovations and new economic models.

The French legal framework for the green transition is based on a number of constitutional and legislative structural principles, such as the 2004 French Environmental Charter, which forms part of the French body of constitutional law, and enshrines the right to a balanced environment and the duty to preserve it for future generations.

The fundamental principles underlying this legal framework include the precautionary principle, the principle of prevention, the polluter pays principle, the principle of public participation and information, and the principle of non-regression. These principles, far from being mere declarations of intent, are acquiring increasing normative scope and influencing the interpretation of all legal rules.

THE RIGHTS AND DUTIES OF THE STATE, COMPANIES AND CIVIL SOCIETY

The State and local & regional authorities

The French state has constitutional obligations in terms of the environment, reinforced by international and European commitments. Compliance with national climate targets, protecting biodiversity and guaranteeing the right to a healthy environment are now absolute obligations, as demonstrated by the *Affaire du Siècle* case[2].

Furthermore, in a remarkable decision on 9 April 2024, the Strasbourg Court held that Article 8 of the Convention establishes a right to effective protection, by the state authorities, from the serious adverse effects of climate change on life, health, well-being and quality of life.

Local and regional authorities have a particular responsibility for implementing the green transition at local and regional level, mainly through local and regional Climate, Air and Energy Plans and regional development plans.

2. Refers to the legal action by four organisations (*Notre Affaire à Tous, Fondation pour la Nature et l'Homme*, Greenpeace France and Oxfam France) seeking to have the French state held liable for the inadequacy of public policies to combat climate change, to limit it to 1.5°C above pre-industrial levels, as required by the Paris Agreement.

Companies and social responsibility

The requirements for companies are being considerably strengthened with the gradual extension of non-financial reporting obligations, the emergence of a requirement for environmental due diligence and the integration of climate risks into corporate governance.

Corporate social responsibility (CSR) is evolving from a voluntary approach to a binding legal framework. The Corporate Sustainability Reporting Directive 2024/464 of 14 December 2022 (CSRD), the EU Taxonomy Regulation 2020/852 of 18 June 2020 and future regulations on climate due diligence are transforming the obligations of companies.

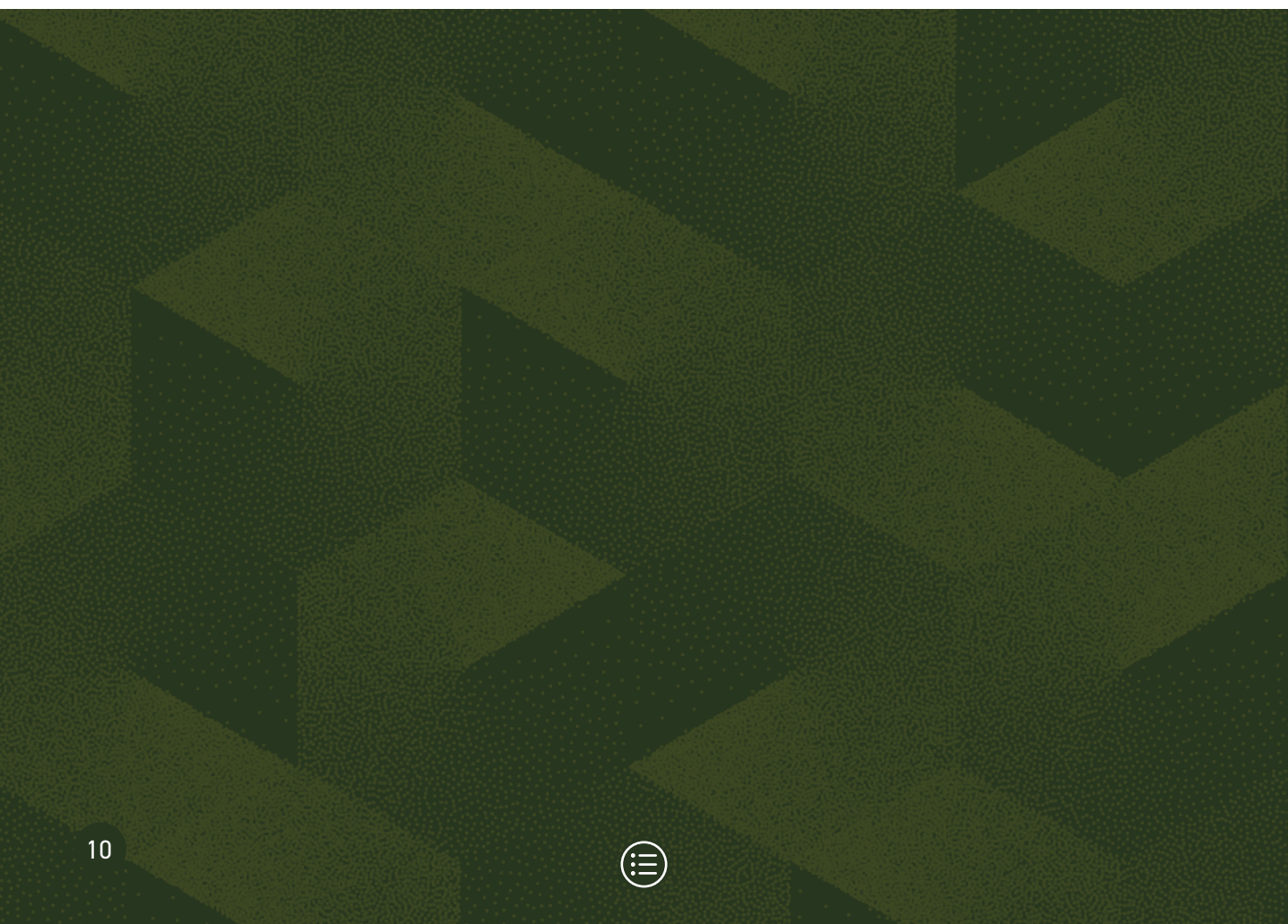
Companies are now required to integrate environmental issues within their strategy, and measure and reduce their carbon footprint, protect biodiversity in their value chains and report on their non-financial performance in accordance with increasingly more stringent standards.

Citizens' rights

Citizens' rights in terms of the environment are being strengthened with the gradual recognition of a fundamental right to a healthy environment, the extension of the possibilities for legal action in the area of climate justice and the implementation of the fundamental principle of public information and participation.

Indeed, the right to environmental information, the right to participate in public decision-making that has an impact on the environment and the right of access to justice in environmental matters are the pillars of environmental democracy, enshrined in the Aarhus Convention adopted on 25 June 1998 and gradually incorporated into French law.

This transformation of the legal landscape requires lawyers to have an in-depth understanding of the interplay between law, science and public policy, as well as an ability to continuously adapt to the swift regulatory changes that characterise this rapidly-developing field.



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BEING AN ENVIRONMENTAL LAWYER

TRAINING

The number of training courses available in environmental law has grown considerably in recent years, given the prevailing issues involved in this area and the gradual recognition of the need to train those working in the legal and justice fields.

The legal profession is, in principle, **restricted to holders of a 2nd year master's degree (M2) in law** since 1 January 2025 **or a qualification or diploma recognised as equivalent** by the Order of 31 December 2024 and the Certificate of Aptitude for the Legal Profession (CAPA) issued by a Regional Centre for Professional Training of Lawyers (CRFPA).

This guide therefore provides an up-to-date list of masters-level university courses in environmental law.

Listing university-issued diplomas specialising in environmental law will also help legal practitioners and lawyers who wish to acquire a professional qualification, which is often inter-professional and generally offers greater flexibility in terms of the timetable.

Academic training

List of 2nd year master's degrees in environmental law

- Aix-Marseille Université
  - Master's in Environmental Law (common 1st year programme and one of the following specialisations in the 2nd year):
    - Law of the Environmental Transition
    - Energy Law
    - Corporate Environmental and Social Governance
    - Urban Planning and Environmental Law
- Université de Lille
  - Master's in Public Law - specialising in real estate, construction, environment and urban planning

- Université de Limoges
  - 1st & 2nd year Master's in Environmental and Urban Planning Law
  - 2nd year Master's in International and Comparative Environmental Law

- Université Lyon 3:
  - Master's in Environmental and Urban Planning Law
  - Master's in Global Climate Change Law
  - Master's in Environmental Risk Management

- Université de Montpellier
  - Master's in Environmental Law
    - Environmental and Sustainable Development Law and Management
    - Food and Agroecology Law

- Université de Nantes
  - Master's in Environmental and Urban Planning Law
    - Specialising in Environmental and Green Transitions Law

- Université Paris 1 Panthéon-Sorbonne
  - Master's in Environmental and Urban Planning Law
    - Master's in Environmental Law
    - Master's specialising in Sustainable Development, Environmental Management and Geomatics

- Université Paris-Panthéon-Assas
  - 2nd year Master's in Health Law - specialising in Health and Environmental Protection

- Université Paris Ouest Nanterre-La Défense
  - Master's in Sustainable Development and Environmental Economics

- Université Paris-Cité
  - Master's in Public Law - specialising in Sustainable Development Law

- Université Paris-Saclay
  - Master's in Environmental Law
  - 2nd year Master's in Corporate Environmental, Safety and Quality Law (ESQE)

- Université de Perpignan
  - Master's in Environmental and Urban Planning Law - specialising in Urban Planning and Sustainable Development Law

- Université de Reims Champagne-Ardenne
  - Master's in Environmental and Urban Planning Law - specialising in Public and Private Environmental Law

- Université de Rennes
  - Master's in Environmental Law - specialising in Socio-Ecological Law and Transitions
- Université de Strasbourg
  - Master's in Environmental and Urban Planning Law
- Université Toulouse-Capitole
  - Master's in Public Law - specialising in Environmental Law
- Université de Tours
  - Master's in Environmental and Urban Planning Law - specialising in Environment, Territory, Landscape

List of university-issued diplomas (DU)

- Université Catholique de Lille - Faculty of Law
  - University-issued Diploma (DU) in Environmental Law
- Université Grenoble-Alpes
  - University-issued Diploma (DU) in Environmental Law
- Université Paris 1, in partnership with ENM (French National School for the Judiciary) and CNB (project)
  - Relaunch of the University-issued Diploma (DU) in Environmental Law
- Université de Montpellier
  - University-issued Diploma (DU) Measuring the Effectiveness of Environmental Law. - Legal Indicators in Environmental Law
- Université de Bordeaux
  - University-issued Diploma (DU) in Environmental Law
- Sciences Po Paris, has just opened the first European school dedicated to the green transition combining expertise in law, economics and social sciences.
- Université de Guyane (Cayenne)
  - University-issued Diploma (DU) in Environmental Law on the Guiana Shield

Legal clinics

- Sciences Po Paris: Environmental Justice and Green Transition
- Aix-Marseille Université: Environmental Clinic

Training of lawyers

At a time when environmental issues are increasingly arising before French and international courts, and environmental crimes are exploding, training for all those involved in the law, particularly lawyers, is essential. And even though there has been an increase in litigation in recent years, one thing is clear: apart from the fact that positive law is still restrictive, lawyers are not yet making full use of the procedures and tools available in environmental law, mainly due to a lack of training tailored to their needs.

In the policy report on consideration of environmental aspects, adopted on 13 January 2023 by the CNB's General Assembly, the institution had already undertaken to support lawyers and help them become active players in combating climate change, and to improve the profession's expertise in assisting clients in environmental matters.

The new responsibilities entrusted to lawyers by the recent Directive 2022/2464 on corporate sustainability reporting and Directive 2024/1760 on due diligence require particular technical skills that lawyers who do not yet work in this market will have to acquire through appropriate training.

The specific nature of environmental litigation, which by its very nature is local, requires a decentralised solution that seems particularly well-suited to the organisation of training for lawyers: 11 regional professional training centres and 164 bars acting as legal witnesses and relays for the environmental problems encountered in the territories they cover.

However, the diverse nature of the bars and the distinctive economic, geographical and environmental characteristics of their territories mean that the *Conseil National des Barreaux* needs to provide a number of global solutions in its role of organising the initial and continuing training of lawyers.

These solutions involve not only making certain adjustments to the content of initial training to encourage an interest in the profession and the adoption of best practice as soon as students leave school, but also developing the range of continuing education courses available to colleagues, to enable them to play a full role in this area and, finally, by strengthening the connections between universities and the profession.

Initial training of lawyers

The legal profession is a regulated profession, open to holders of the CAPA (Certificate of Aptitude for the Legal Profession). Initial training is provided by the regional centres for the professional training of lawyers (CRFPA), after a university course.

The rules governing access to the legal profession in France were laid down by the Law of 31 December 1971, as amended by the Law of 11 February 2004, and by the Decree of 21 December 2004 on the professional training of lawyers.

Candidates who pass the examination undertake a programme of practical professional training offered by a bar school. There are 11 CRFPAs in France that provide the professional training required to become a lawyer, and a total of 16 that offer continuing education courses. Since 2005, initial training is a minimum of 18 months (as opposed to the previous one year followed by a two-year internship), organised around practical teaching and internships, spread over three periods of six months:

- six months of training provided by the CRFPAs are devoted to learning the fundamentals, with particular emphasis on professional conduct and the practical aspects of practising as a lawyer. This training is taken jointly by all student lawyers;
- a further six months are devoted to completing an Individual Educational Project (PPI). The aim of this six-month period is to encourage student lawyers to define their personal choices and prepare for their integration into professional life;
- lastly, during the third term, the student lawyers complete an internship in a law firm.

These three periods may be taken in a different order depending on the CRFPA, and may be carried out as part of a work-study programme if requested by the student lawyer.

After consultation with the Training Commission and feedback from student lawyers wishing to practise environmental law, the CNB noted the virtual absence of environmental law practice in the professional training courses offered by the 11 CRFPAs providing initial training in France.

Environmental aspects are only considered on the margins of the 'public law' and 'urban planning law' courses, thus completely neglecting the nevertheless essential civil and criminal aspects of this subject.

However, despite improvements in recent years, training of judges, lawyers and, more generally, those involved in environmental justice (including police and investigators) is still not up to the challenges of this relatively new and fast-growing field.

It is not about teaching environmental law, which is not within the remit of bar schools, but developing an instinctive environmentalism, a culture and a professional approach that includes environmental issues and impacts.

In a report presented at the General Assembly on 17 January 2025, the Environmental Law Working Group proposed a number of recommendations to improve the environmental instincts of student lawyers:

- organise an annual conference of environmental law stakeholders in each CRFPA;
- incorporate environmental issues into the core teaching curriculum;
- expand the range of optional professional training courses in environmental law (mock trials, legal clinics, etc.);
- identify and apply environmental best practice generally within the CRFPAs.

Continuing education for lawyers

In accordance with the regulations in force, the CNB asks each CRFPA to provide at least 10 hours of training in each area of specialisation to enable specialist lawyers to meet their continuing education obligations.

The following continuing education in the field of "environmental law" has been provided nationally:

- 46 hours in 2018
- 93 hours in 2019
- 20 hours in 2020
- 70.5 hours in 2021
- 83 hours in 2022
- 99 hours in 2023
- 227.5 hours in 2024

It should be noted that, in 2024, the The Paris regional school ("EFB") launched the first professional qualification training course in "Litigation Strategies in Environmental Law", which was taken by some twenty lawyers.

Despite trending upwards, the provision of continuing education in environmental law faces a number of major obstacles:

- the lack of existing training courses;
- the difficulty for schools in responding to the specific problems of the regions;
- the duration of the training courses available outside the bar schools which are incompatible with lawyers' time constraints.

The Environmental Law Working Group has therefore made a number of recommendations aimed at expanding the range of continuing education courses in environmental law, adapting them to the needs of the regions and contemporary issues, and involving all legal stakeholders working in this field of practice:

- expand the range of continuing education courses in environmental law by promoting an inter-professional approach;
- forge connections between the environmental experts in the bar associations and the CRFPAs within their jurisdiction;
- organise themed training courses at the CNB on procedures specific to environmental law to enhance the skills of legal colleagues.

Specialisation

The specialisation certificate in "environmental law" recognises a lawyer's expertise in the application of environmental regulations. Such lawyers advise, assist and represent organisations, companies, local & regional authorities and private individuals in managing risks and resolving disputes relating to environmental protection, climate change, biodiversity loss and the effects on health of the current triple planetary crisis.

All lawyers with at least four years' continuous professional practice in environmental law may apply for this specialisation certificate.

This specialisation certificate has a number of advantages:

- it allows you to stand out from the crowd with real added value in an increasingly competitive environment;
- it enhances the image of your practice and makes your expertise more visible to the public;
- specialisation is a guarantee of quality, credibility, and certainty and the value of the lawyer's services for customers;
- the specialisation may be mentioned on all the firm's communication media;
- it allows for clear indexing in the directory of lawyers in France, which can be consulted online by the general public and is regularly updated by the *Conseil National des Barreaux*.

All applicants must submit their applications via the CNB's dedicated platform. The registration fee for accreditation of the specialisation is €800. The accreditation interview, which is based on professional practice, lasts 40 minutes and is conducted before a panel made up of two specialist lawyers, a judge and an academic.

All information can be found on the CNB website.

If you have a specialisation in environmental law, you are required to complete at least 10 hours of continuing education in this subject.

ETHICS, PROFESSIONAL CONDUCT AND THE SOCIAL RESPONSIBILITY OF LAWYERS

The ecological crisis has effectively challenged the myth of a "neutral" profession, composed of experts who are not obliged to consider the consequences of their work. While not all lawyers are likely to play an active role in defending the environment, there is a need for a collective review of the environmental impact of the profession and its role in this area.

The environment is not an interest protected by the rules of professional conduct. This is why, for the time being, it remains a matter of personal ethics and/or voluntary CSR policy for firms.

The social responsibility of lawyers

In the absence of an obligation to do so, the majority of lawyers do not take the environment into account when accepting or handling a case.

The situation is different for lawyers practising environmental law or other environment-related branches of law (urban planning, energy, etc.). The specific characteristics of such practice raise particular issues relating to ethics and professional conduct.

The green transition is no longer an option, but a collective necessity. An increasing number of players are being called upon to re-examine their role in society as part of this transition process, including our profession. Lawyers are becoming strategic players, not only through their advisory and mediation activities, but also through the way they manage and embody their own practice.

As part of its efforts to promote a social responsibility policy for law firms, the *Conseil National des Barreaux* has drawn up a Charter for Responsible Citizen Lawyers and a self-diagnosis tool for law firms of all sizes wishing to assess and improve their practices to support diversity and the environment.

When it comes to the environment, lawyers integrate an environmental policy by disseminating it within the firm. The firm can incorporate responsible practices within its day-to-day operations:

- reducing use of paper (digitisation, selective printing);
- choosing cloud hosting with a low carbon footprint;
- minimising business travel (videoconferencing, soft mobility);
- waste sorting and recycling, responsible purchasing, conserving energy.

Some firms go further by calculating their carbon footprint, setting reduction targets, committing to carbon neutrality or even making a positive contribution by supporting reforestation or voluntary offsetting projects.

This requires enlightened internal governance capable of mobilising the team around the firm's environmental responsibility.

Some firms may adopt an environmental ethics charter, a formalised CSR policy, or even transform into a mission-driven company (*entreprise à mission*).

The lawyer then becomes a stakeholder and witness to his or her own commitment. In the long term, it would not be inconceivable for the profession's rules of conduct to incorporate environmental concerns as a fundamental principle, following the example of professional secrecy or independence. This would make it possible to recognise and provide a framework for this transformation of the lawyer into a practitioner of environmental justice, the guarantor of a law that serves future generations.

Some bar associations have set up CSR committees. The objectives are to gain a better understanding of CSR and its three pillars, including the environmental pillar, gain collective expertise on the subject, take stock of the situation within our profession and raise awareness among our colleagues in order to disseminate best practice.

Several actions can be taken collectively within a bar association to try to reduce the environmental impact of the profession:

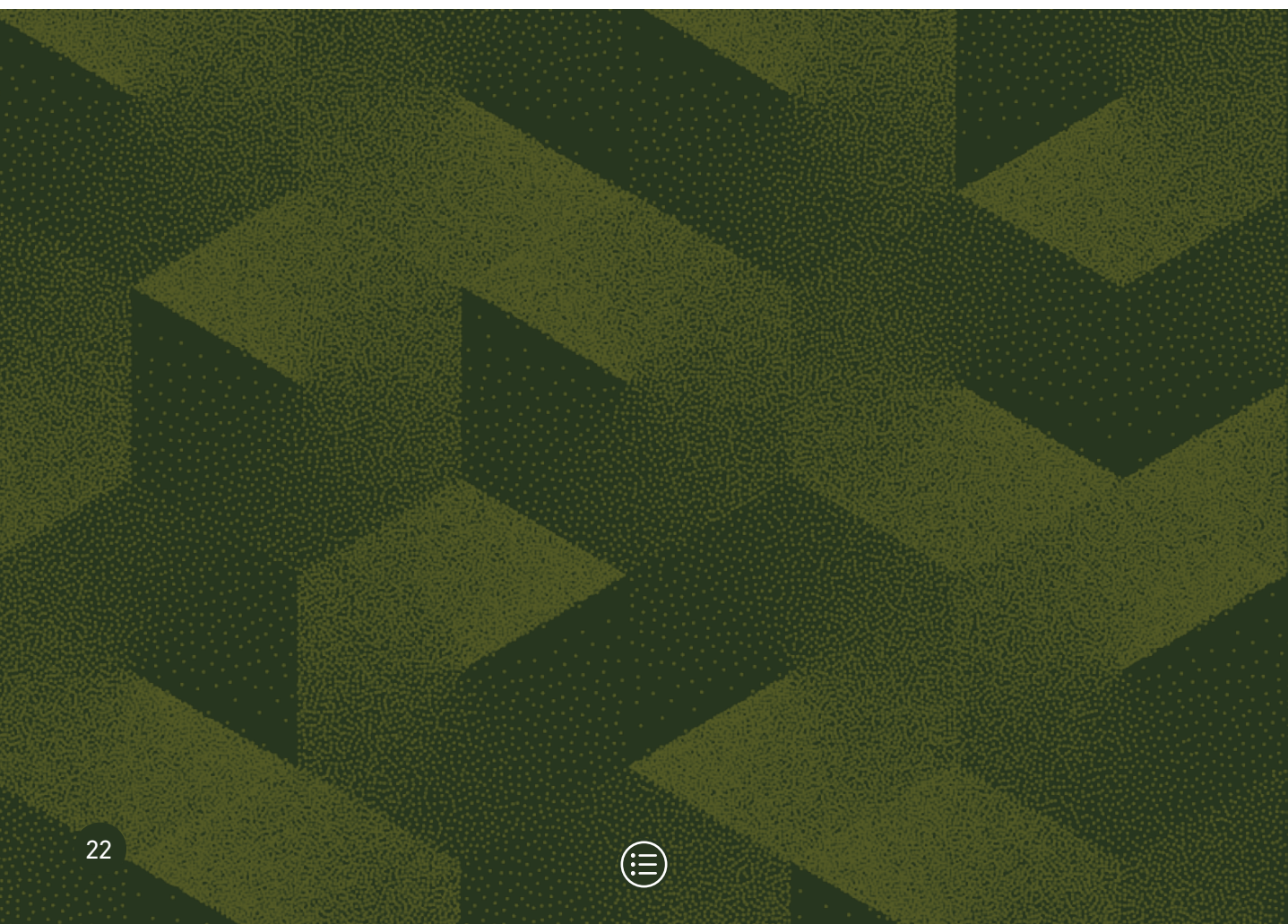
- distributing a best practice guide within law firms;
- distributing a guide to local CSR service providers;
- organising a litter collection walk;
- organising a green week at the bar;
- organising a conference on the social responsibility of law firms (RSCA) and presentation of the CNB charter, with accounts from different perspectives from Clotilde Lepetit and Florence Nèple;
- a practical guide to soft mobility is currently being drawn up, with a particular focus on reducing the number of car journeys by prioritising rail;
- organising a number of Climate Fresk workshops, paid for by the Bar Association Council, for members and the Council's administrative staff;
- organising Biodiversity Fresk workshops for lawyers.

These examples of local, practical, inexpensive and replicable initiatives can sow the seeds of a more far-reaching transition. They highlight the bar association's commitment while creating a shared culture of environmental responsibility. Listing, promoting and sharing them through a dedicated platform could facilitate their roll-out nationally.

A more ambitious conception of the lawyer's social responsibility could, potentially, be envisaged by including the indirect impacts of the profession in the analysis.

When it comes to the climate in particular, the carbon footprint is an imperfect reflection of the lawyer's climate responsibility, which cannot be reduced to just office lighting and business travel. It can't be denied that some lawyers contribute to activities that are incompatible with the decarbonisation trajectory needed to achieve the objectives of the Paris Agreement. It is this blind spot that is addressed by the controversial concept of "advised emissions". This concept refers to the portion of a client's emissions attributable to the lawyer due to his or her contribution to the activity in question.

In addition to the climate aspect, other types of impact could also be considered. Indeed, there is still a widespread view that considers the ecological crisis solely in terms of the climate, even though this crisis also covers biodiversity loss and the accumulation of chemical pollution in the environment. These aspects, less easily quantified, could nevertheless be taken into account. If they are not, the indirect environmental impacts of the profession will continue to be minimised. What's more, beyond the environment, the human and social impacts could also be considered.



THE LAWYER'S ROLE IN THE GREEN TRANSITION

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THE LAWYER'S ROLE IN THE GREEN TRANSITION

Environmental law is a particularly fast-moving area, with an increasing number of standards being issued at national and European level, particularly in the area of ESG (environment, social and governance). This instability means that companies need to be particularly vigilant, both with regard to major legislative developments and trends in case law and regulations.

Environmental and ESG law has thus become a dynamic framework, a standard to be anticipated and actively integrated. This transformation is making the lawyer into a practitioner who helps to move from defensive management to a truly proactive approach to environmental protection.

Lawyers are therefore involved both downstream, in the handling of disputes, and upstream, with an increasingly broad scope of research.

Faced with the challenges of the green transition, lawyers have a central role to play as advisers in understanding and applying environmental laws (2.1). More specifically, lawyers have a new role to play in the application of and compliance with environmental, social and governance (ESG) standards, with the additional possibility of becoming a sustainability auditor (2.2). Of course, lawyers play a key role in litigation (2.3).

THE LAWYER AS LEGAL CONSULTANT: THE LAWYER'S ROLE IN THE APPLICATION OF AND COMPLIANCE WITH ENVIRONMENTAL LAW AND THE GREEN TRANSITION

Lawyers, due to their training and knowledge of increasingly numerous and complex regulatory texts, act as legal drafting consultants to help understand the relevant texts (2.1.1), as compliance auditors (2.1.2) and as mediators and facilitators of the green transition (2.1.3).

The lawyer as legal drafting consultant in environmental law

Environmental law is now a key concern for all economic players. This is particularly true for the industrial sector, which is often directly affected by changing technical regulations, and which does not necessarily always have dedicated in-house legal expertise.

On the one hand, many companies, particularly in the industrial sector, do not have an internal legal department, which fully explains the involvement of an external adviser to help them understand the applicable rules and assess their practical implications. On the other hand, even within entities that do have their own legal departments, it is not unusual for companies to call on a practising lawyer to deal with technical issues. External expertise provides certainty about a legal situation and offers the benefit of an independent perspective.

The aim, in all cases, is not just to identify the risks, but also to help the company understand its obligations, by translating complex requirements into concrete, operational solutions. This advisory role is crucial. It requires an ability to listen to clients, a good knowledge of their business and the capacity to adapt the legal discourse to their specific issues.

Lawyers therefore play an essential role in helping companies to apply the ARC principle: "Avoid, Reduce, Compensate". This approach reflects a concrete commitment to protecting the environment, by helping those most at risk to better understand and apply the rules.

The aim is to enable clients to make informed decisions, assessing both the risks and the room for manoeuvre, in an area where the penalties, both administrative and criminal, can be severe.

The lawyer as compliance auditor

Lawyers have an essential role to play upstream, anticipating legal risks and developing compliance policies. This development is taking place within an increasingly dense regulatory framework, marked by new obligations in terms of sustainability, transparency and responsibility, particularly in the area of ESG.

It is no longer simply a question of acting in response to a dispute or an audit, but of anticipating risks upstream, taking account of the rapidly-changing legal framework. In the face of these constant changes, environmental policies require a long-term outlook. To ensure sustainable corporate compliance, regular legal monitoring is essential. Lawyers play a full role in this.

To prevent environmental risks, companies need to implement effective audits. Lawyers can intervene at every stage: preparation, guidance, analysis of results. They ensure that the audit does not just focus on regulatory obligations, but also covers voluntary commitments and reputational risk.

The aim is to ensure consistency between the company's environmental ambitions and existing or future legal or contractual obligations. Lawyers ensure that these mechanisms are legally sound, compatible with the company's other internal policies and comply with the requirements of the supervisory authorities.

If non-compliance is identified, lawyers will propose an appropriate action plan. They can also assist the company in its dealings with the administrative authorities or within the context of environmental litigation.

In this way, lawyers help to build a genuine compliance structure. They help to translate these objectives into concrete internal rules: charters, codes of conduct, procedures, guides, definition of performance indicators, risk mapping, compliance records, internal audit procedures, etc.

Lawyers provide definite added value in this context. Thanks to their knowledge of the applicable law and experience of administrative and legal practices, they are able to propose compliance measures tailored to the company's business. This entails an ability to anticipate future risks and integrate new requirements into internal processes.

The lawyer as mediator and facilitator of the green transition

Lawyers play a key role in the green transition, as it is being primarily driven by companies. They support their projects, particularly those involving the redevelopment of areas such as industrial or urban brownfield sites.

In this context, lawyers often act as mediators between the various stakeholders: companies, public authorities, consultant engineering firms and environmental experts. In this position, they facilitate exchanges and encourage the search for balanced solutions that respect legal constraints and ecological objectives.

They can also help to establish internal appeal or mediation mechanisms with stakeholders, thereby strengthening the credibility of the company's transparency approach.

The involvement of a lawyer helps to provide legal certainty while supporting the environmental and social aspect of projects. Lawyers are therefore vital facilitators of the green transition, helping companies to adopt sustainable and innovative practices.

THE LAWYER AS LEGAL CONSULTANT: THE LAWYER'S ROLE IN THE APPLICATION OF AND COMPLIANCE WITH ESG LAWS

In the area of ESG, companies are increasingly required to comply with environmental transparency obligations, which may give rise to civil, criminal or administrative liability.

Lawyers can therefore act both as consultants (2.2.1) and, under certain conditions, as certifiers of sustainability reports (2.2.2).

The lawyer as "consultant" in analysing and implementing ESG laws[1]

In the area of ESG, companies are increasingly required to comply with environmental transparency obligations, which may give rise to civil, criminal or administrative liability.

These obligations take a variety of forms: publication of reports, communication of environmental information to authorities, provision of data to consumers. Lawyers play a vital role in structuring this communication and preventing any risk of "greenwashing" or misleading advertising.

Legal assistance initially involves identifying the applicable texts: the French codes and European legislation. Lawyers then help to define the content of the publications so that they are legally compliant.

Communication with stakeholders is an integral part of a company's ESG obligations, both upstream (consultation, participation) and downstream (information, justification, dialogue). Lawyers can assist the company with developing responsible communication strategies tailored to different audiences (consumers, local & regional authorities, NGOs, investors, local residents, etc.).

They ensure that the messaging is clear, fair and consistent. This means not only ensuring that media are compliant (brochures, websites, reports), but also anticipating the legal consequences of certain positions or commitments. For example, a public commitment to carbon neutrality is legally binding on the company if it is made without reservation or condition. Lawyers can also help to devise responses in the event of a crisis (pollution, ESG controversy, implication of a supplier).

Beyond the risks, lawyers add value by helping the company to establish a constructive and credible dialogue with its stakeholders. They can, among other things, assist with implementation of participatory processes, management of public consultation, or even responding to requests for access to environmental information (Aarhus Convention). In this role, they help to enhance the company's legitimacy and the confidence of its stakeholders.

For non-financial reporting specifically, especially since the CSRD directive came into force, the companies that it applies to have been required to publish a sustainability report providing information on their environmental impacts and ESG strategies.

Here, the lawyer can play a decisive role in the legal structure for the report, identifying applicable standards (ESRS), advising on governance of the process and ensuring that the information published complies with regulatory requirements.

Lawyers work with the company's internal teams to secure the collection and processing of ESG data, particularly those of an environmental nature (greenhouse gas emissions, use of resources, impact on biodiversity, etc.). They help to make data traceability more reliable and to anticipate the risks of liability arising from errors or omissions. They may also be asked to review internal audit procedures, document management policies or contractual relationships with data suppliers

1. See "Sustainability Guide - Advice Section", CNB, Law and Companies Committee, 17 January 2025.

"The advisory services that lawyers can provide in this context include, but are not limited to, the following activities for companies subject to the sustainability reporting obligation:

- *assistance with the preparation and drafting of the sustainability report, including, in particular, identifying and processing sustainability data;*
- *establishing transparent channels of communication with stakeholders.*

For companies and stakeholders integrated within the value chain, the role of the lawyer may involve relaying the expectations, concerns and demands of stakeholders with respect to companies subject to the obligation to publish a sustainability report, but also identifying and communicating the relevant information so that these companies can include such information in their management reports.

For all companies involved in mergers and acquisitions, lawyers, in their traditional work of due diligence, negotiation and drafting of contracts for the transfer of shares or sale of a business, include an analysis or specific clauses on sustainability information.

Environmental law, company law and employment law are the three areas of expertise of lawyers who engage in the new practice area of sustainability consulting."[2]

The lawyer as "certifier" of sustainability reports[3]

Following on from the NFRD Directive[4], the CSRD Directive[5] requires sustainability reports to be certified by statutory auditors (CAC) or independent assurance service providers ("IASP").

However, lawyers can also qualify as IASPs, also referred to as *organismes tiers indépendants* ("OTIs" or "independent third-party organisations") in France, under Ordinance 2023-1142 of 6 December 2023.

To do this, the law firm, a legal entity, must be accredited as an OTI by the French accreditation body COFRAC in accordance with standard NF EN ISO/IEC 17029. The requirements are listed in Article R.822-16 of the French Commercial Code. Once accredited, the OTI must then be registered on List V of the High Audit Authority ("H2A")[6].

Within the OTI, lawyers can then act as sustainability auditors, subject to completion of the requisite number of hours of ESG training. Article L. 822-1 of the French Commercial Code sets out the following requirements for sustainability auditors: *"a natural person who is a partner, shareholder or manager, including as a member of a management, administrative or supervisory body, or an employee of an independent third-party organisation, who fulfils the requirements set out in Article L. 822-4 II and is registered on the list referred to in Article L. 822-4 I."*

Lawyers who meet the required conditions may then be entered on List VI of the High Audit Authority, to provide sustainability report certification services.

2. "Sustainability Guide - Advice Section", CNB, Law and Companies Committee, 17 January 2025, p. 15

3. See "Sustainability Guide - Certification Section", CNB, Law and Companies Committee, 7 February 2025

4. Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

5. Directive 2022/2464 of 14 December 2022, *Corporate Sustainability Reporting Directive.*

6. The stages of the COFRAC accreditation procedure are very clearly detailed on pages 19 *et seq.* of the "Sustainability Guide - Certification Section", CNB, Law and Companies Committee, 7 February 2025

OTI lawyers then carry out the audit of the sustainability report with a view to issuing a limited assurance opinion, at the end of which they declare that they have not identified any significant element enabling them to conclude that the subject of the audit is not tainted by any material misstatement.

To carry out their work, sustainability auditor lawyers conduct investigations, interview internal and external stakeholders and gather evidence. They may be assisted by any member of staff or expert of their choice.

With regard to the specific liability of the sustainability auditor, it should be noted that:

> According to Article L. 822-14 of the French Commercial Code, the OTI and the auditor shall not be liable *"[...] for information or disclosures they make in the performance of their duties." This can be explained by the specific nature of the auditor's role, the primary aim of which is to ensure the reliability of the sustainability information published by the company. The reliability of this information is of public interest, as it guides the behaviour of various market players (investors, job seekers, consumers, etc.) towards companies that respect the commitments of the European Green Deal. With regard to interference with the auditing work, H2A investigators have extensive powers. Professional secrecy cannot be invoked against them in relation to their audit activities, but it can be invoked against them in relation to their activities as lawyers. Article L. 820-8 of the French Commercial Code states: "II. - Professional secrecy may not be invoked against the H2A or its departments in the course of performance of their duties, except by officers of the court"). (See Sustainability Guide. - Advisory Section, point 2.3.3.2 - adopted by the General Assembly of the CNB on 17 Jan 2025)."*[7]

In terms of professional conduct, the "certifying" lawyer may not, of course, simultaneously act as "consultant" to the same client.

7. See "Sustainability Guide - Certification Section", CNB, Law and Companies Committee, 7 February 2025, p. 29

THE LAWYER AS ENVIRONMENTAL DEFENDER

Lawyers now play a central role in the practical implementation of the principles of the French Environmental Charter, legislative and regulatory provisions and the defence of fundamental rights and freedoms relating to the environment, both through their role as consultants/advisers and through legal action. This development is transforming the traditional conception of the profession, extending its mission beyond the defence of individual interests to the protection of common environmental goods.

Preventive advice is taking on crucial importance, making it possible to anticipate the legal risks associated with environmental developments and to support economic players in their green transition. Lawyers are therefore becoming a facilitator of transformation rather than a mere defender of vested interests.

Procedural innovation is also a feature of this new practice, with the development of class actions, preventive remedies and alternative dispute resolution mechanisms tailored to environmental issues. In this way, lawyers are helping to adapt the legal system to contemporary environmental challenges.

To achieve this, environmental lawyers often work collectively, with experts to understand the technical and scientific issues involved in litigation and to ensure that these issues are understood, and sometimes with other lawyers to develop a common strategy and pool skills.

Environmental litigation is experiencing unprecedented growth, offering lawyers new avenues of intervention. The Erika case (2008-2012)[8] marked a turning point by establishing the possibility for environmental organisations to obtain compensation for environmental damage, now codified in Article 1246 of the French Civil Code.

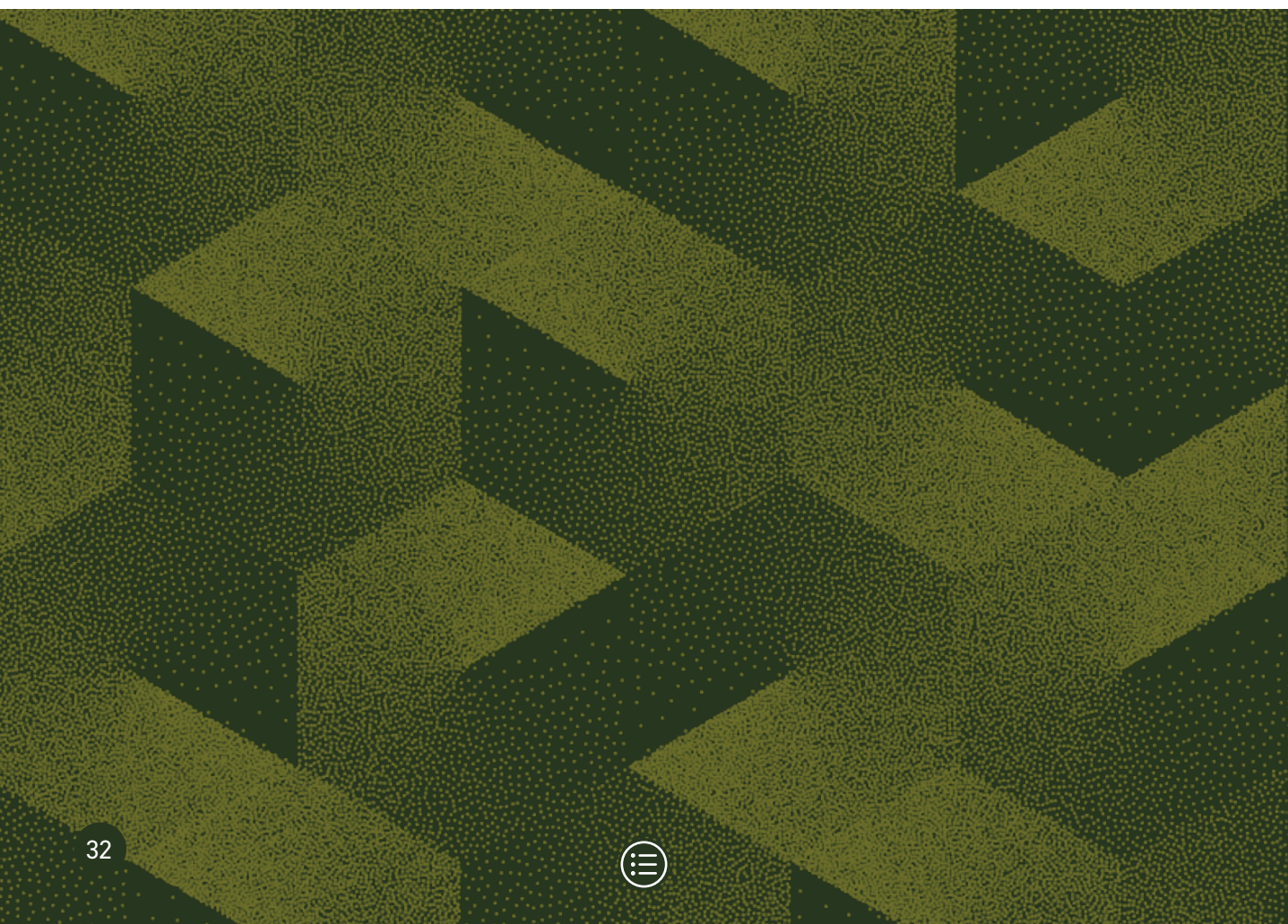
The Grande-Synthe[9] case illustrates the emergence of climate litigation in which local & regional authorities and organisations take the State to court for failing to implement its climate obligations. The emerging case law on climate justice provides a framework for protecting the climate and human rights.

Liability proceedings against companies are also on the increase, as illustrated by the legal actions taken against oil companies for their contribution to climate change[10], or actions based on the duty of care owed by parent companies to their subsidiaries and subcontractors[11].

Legal action taken against infrastructure projects now systematically includes arguments relating to environmental protection, transforming urban planning and development litigation in particular. Litigation relating to motorway projects illustrates this trend.

The advisory opinion of the International Court of Justice of 23 July 2025, issued at the request of the United Nations General Assembly concerning the obligations of states under international law to combat climate change and the legal consequences for those who, through their actions or omissions, have caused significant damage to the climate system and the environment, will contribute significantly to the increase in litigation in this area.

8. Cour de cassation, Chambre criminelle, 25 septembre 2012, 10-82.938
9. CE, 10 mai 2023, n° 467982, Grande-Synthe
10. Not. CA Paris, 18 juin 2024 Amnesty International France et a. RG n° 23/14348
11. TJ Paris, 5 décembre 2023, n° 21/15827, La Poste



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THE LEGAL ENVIRONMENT OF THE LAWYER

THE REGIONAL ENVIRONMENTAL DIVISIONS (PRE)

The creation and operation of the *pôles régionaux spécialisés en matière environnementale* (regional divisions specialising in environmental offences) is a major step forward in terms of better handling of complex litigation in this area. Lawyers, as actors in the judicial chain, must incorporate these specific aspects into their practice in order to best defend interests connected with protection and improvement of the environment.

Overview of the PRE (regional division specialising in environmental offences)

The PREs were created out of a desire to provide the French justice system with a structure suited to the technical nature and growing complexity of environmental litigation. Created by Law no. 2020-1672 of 24 December 2020, the aim of these divisions is to ensure that environmental offences are dealt with by specialist courts on a territorial basis once the cases are of a complex nature.

Also worth noting is that they also, remarkably, have exclusive jurisdiction in civil matters, pursuant to Article L. 211-20 of the French Code of Judicial Organisation, to hear:

- actions relating to environmental damage based on Articles 1246 to 1252 of the French Civil Code;
- civil liability claims under the French Environmental Code;
- civil liability claims based on special liability regimes applicable in environmental matters resulting from European regulations, international conventions and laws enacted to implement these conventions. This applies to environmental liability litigation arising from regimes provided for under European Union law and for compensation for environmental damage under Articles 1246 to 1252 of the French Civil Code.

Geographical distribution of the PRE

A PRE has been established within the jurisdiction of each of the 37 Courts of Appeal, with territorial competence extended to the entire jurisdiction of the Court of Appeal concerned. The precise designation of the seat and jurisdiction of each of these specialised district courts is made by the Decree no. 2021-286 of 16 March 2021.

LEGAL EXPERTS WITHIN ENVIRONMENTAL ORGANISATIONS

Environmental organisations play an essential role in the French legal and social landscape. They work to protect and improve the environment, playing a role in alerting, monitoring, proposing and litigating.

Within these structures, legal experts - whether employees or volunteers, qualified lawyers, legal practitioners, academics, etc. - make a significant contribution to defending and promoting the collective interest. They provide their legal expertise to structure the organisation's activities, defend its interests before the courts and support the implementation of its statutory missions.

The increasing professionalisation of legal functions within organisations is testament to the growing importance of the law in protecting the environment and raises the question of the synergies that should be developed with the legal profession.

The role of environmental organisations

Environmental organisations, whether approved or not, are major players in environmental dialogue, raising public awareness and defending the public interest in environmental matters. They intervene to preserve flora and fauna, combat pollution, ensure compliance with environmental regulations and, more generally, promote greater consideration of the environment in public policies and private activities.

Approval of environmental organisations

Approval, issued by the competent administrative authority (prefect or minister, depending on the scope), attests to the seriousness, representativeness and capacity of the organisation to work in the environmental sphere.

Article L. 141-1 of the French Environmental Code sets out the requirements for obtaining approval, which include the need to have existed for at least three years, the effective carrying out of statutory activities mainly focused on environmental protection, financial transparency and a democratic structure. Approval is granted for five years and may be renewed subject to continued satisfaction of the requirements.

Environmental organisations can be approved at different territorial levels: national, regional and departmental.

Approved organisations have extensive powers:

- participation in environmental debates;
- presumption of *locus standi* before the administrative courts;
- exercising the rights granted to the civil party before the criminal courts for all acts which cause direct or indirect harm to the collective interests it is defending and which constitute an infringement of legal and regulatory environmental provisions;
- ability to lead group actions;
- defending individual interests;
- citizens' right of initiative.

Non-approved organisations have more limited powers. However, subject to strict conditions (length of time in existence, specific statutory object), they may intervene before certain jurisdictions, including the administrative courts, to request the annulment of a regulatory act or to defend the interests they have set out to defend (Art. L. 142-1 of the French Environmental Code). However, in criminal matters, their ability to act is very limited and can only be exercised in specific scenarios (Art. L 142-2 of the French Environmental Code).

Acting as in-house counsel within environmental organisations

In-house counsels working in the organisations provide essential support in carrying out statutory missions. Their main functions are:

- analysis and legal monitoring of changes in environmental regulations;
- drafting appeals and pleadings before the courts;
- assistance in compiling technical and legal files for litigation or public consultations,
- strategic advice for cases;
- assisting management bodies with statutory compliance, governance and management of legal obligations;
- in-house training for members of the organisation on legal issues and litigation methodology.

Impact of the legal professionalisation of organisations

The increasing legal expertise of environmental organisations has made environmental law more effective and given them greater capacity to intervene at all stages of environmental dialogue. Professionalising the legal teams of environmental organisations helps to increase legal certainty, the effectiveness of legal action and the credibility of organisations in the eyes of public authorities and the courts.

Relationship with lawyers and coordination of expertise

The complementarity between in-house counsels and lawyers is crucial to the success of legal action and the defence of collective interests. The coordinating of expertise between the members of environmental organisations and lawyers presupposes a clear division of roles and cooperation based on trust. By working together effectively, it is possible to develop effective legal strategies while benefiting from the legal and technical expertise of environmental organisations.

THE LEGAL DEPARTMENTS OF SPECIALISED INSTITUTIONS

The *Office Français de la Biodiversité*

The *Office Français de la Biodiversité* (OFB - French Office for Biodiversity) was created in 2020 by merging the French Agency for Biodiversity (AFB) and the National Office for Hunting and Wildlife (ONCFS). It is jointly supervised by the Ministries of the Environment and Agriculture. The OFB employs nearly 2,800 staff throughout France.

Its main missions focus on four areas: knowledge and research on biodiversity, environmental policing, support for the implementation of public policies and the mobilisation of civil society. This diversity of activities gives the OFB cross-disciplinary legal expertise that is particularly valuable to environmental law practitioners.

The Regional Directorates for the Environment, Planning and Housing (DREAL)

Their remit covers the full range of public environmental policies: prevention of natural and technological risks, environmental protection, sustainable regional planning, housing, transport and the development of renewable energy. Their expertise focuses in particular on the law on classified installations, a particularly technical sector in which economic and environmental issues are intertwined. This cross-disciplinary approach makes them key players in the regional green transition.

The Departmental Directorates for the Territories (DDT)

Their areas of intervention cover urban planning, housing, natural risks, water and biodiversity, agriculture and forestry. This territorial proximity makes them key players in the practical implementation of environmental and spatial planning policies.

The DDTs manage applications for planning permission, declarations under the Water Law and land clearing applications. In the area of water policing, the DDTs administer declaration and authorisation procedures, check compliance with regulations and initiate formal notice procedures. They are also involved in drawing up local and inter-municipal planning documents.

EXPERTS

Environmental expert opinion assessments play a decisive role in the resolution of environmental litigation, a field whose technical complexity rivals the legal stakes involved. When faced with litigation involving specialist scientific data, complex causal factors and damage that is often difficult to quantify, the courts rely on specialist experts whose contributions largely determine the outcome of proceedings.

This expert opinion assessment takes on a multidisciplinary dimension that is characteristic of contemporary environmental issues. It draws on expertise in ecology, chemistry, hydraulics, climatology, geology, acoustics and the economic assessment of environmental damage.

COMMISSAIRES DE JUSTICE (COURT ENFORCEMENT OFFICERS)

The environmental specialisation of court enforcement officers, although a recent development, is a response to the growing needs associated with the complexity of environmental litigation. This specialisation is officially recognised and enables the professionals concerned to develop technical skills specific to environmental issues, such as *constats de pollution* (written report relating facts concerning pollution) and protective measures on contaminated sites. Determining how the *constat* is conducted is crucial and requires cooperation between the lawyer and the specialist court enforcement officer, since the conditions under which it is carried out (time, duration, technical protocol) must be tailored to the specifics of the situation and the evidential requirements of the planned procedure.

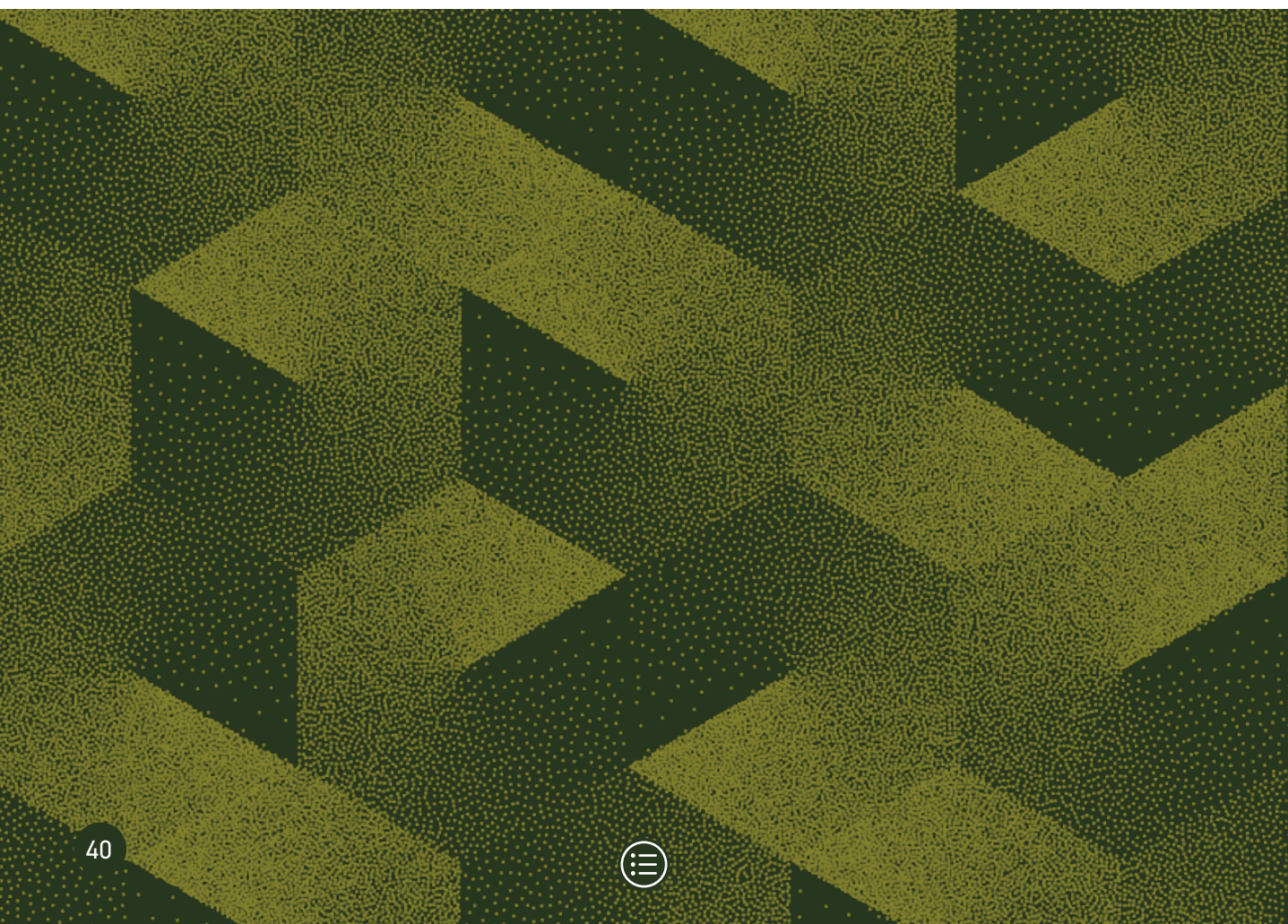
LECTURER-RESEARCHERS

The work carried out in higher education and research institutions, jointly led by universities, the CNRS (French National Centre for Scientific Research), INRAE (French National Research Institute for Agriculture, Food and the Environment) and the specialised *grandes écoles*, constitutes a crucial scientific foundation for the practice of environmental law. Historically, this collaboration began to take shape in the 1970s with the emergence of environmental law as a standalone discipline, spearheaded by pioneers such as Professor Michel Prieur in Limoges. Specialised research centres such as CRIDEAU (Interdisciplinary Centre for Research into Environmental, Spatial Planning and Urban Planning Law) and IDDRI (Institute for Sustainable Development and International Relations) have gradually developed multidisciplinary expertise combining legal, scientific and economic approaches.

Today, the diversity of research projects ranges from the analysis of climate litigation to the challenges of the energy transition, including the protection of biodiversity, waste law and the new challenges of environmental space law. The volume of research is reflected in a rich and diverse publishing ecosystem. Specialist journals are the primary mode of distribution, including the *Revue Juridique de l'Environnement* (RJE), a longstanding reference in the field, and *Environnement et Développement durable* (LexisNexis). This work is also increasingly appearing in national and international non-specialist journals.

The publication of books completes this range of essential references. Conference proceedings, published regularly by university presses, are also a valuable source of alternative perspectives.

Lawyers working in the field of environmental law draw on this body of work on a daily basis through several channels: participation in university conferences and seminars, reading of these publications, direct collaboration with researchers for complex legal expert opinions and continuing education offered by universities. This synergy between academic research and professional practice is extremely valuable and enables practitioners to keep abreast of rapid changes in environmental legislation and to anticipate changes in case law, while at the same time adding to academic analysis with practical issues in the field.



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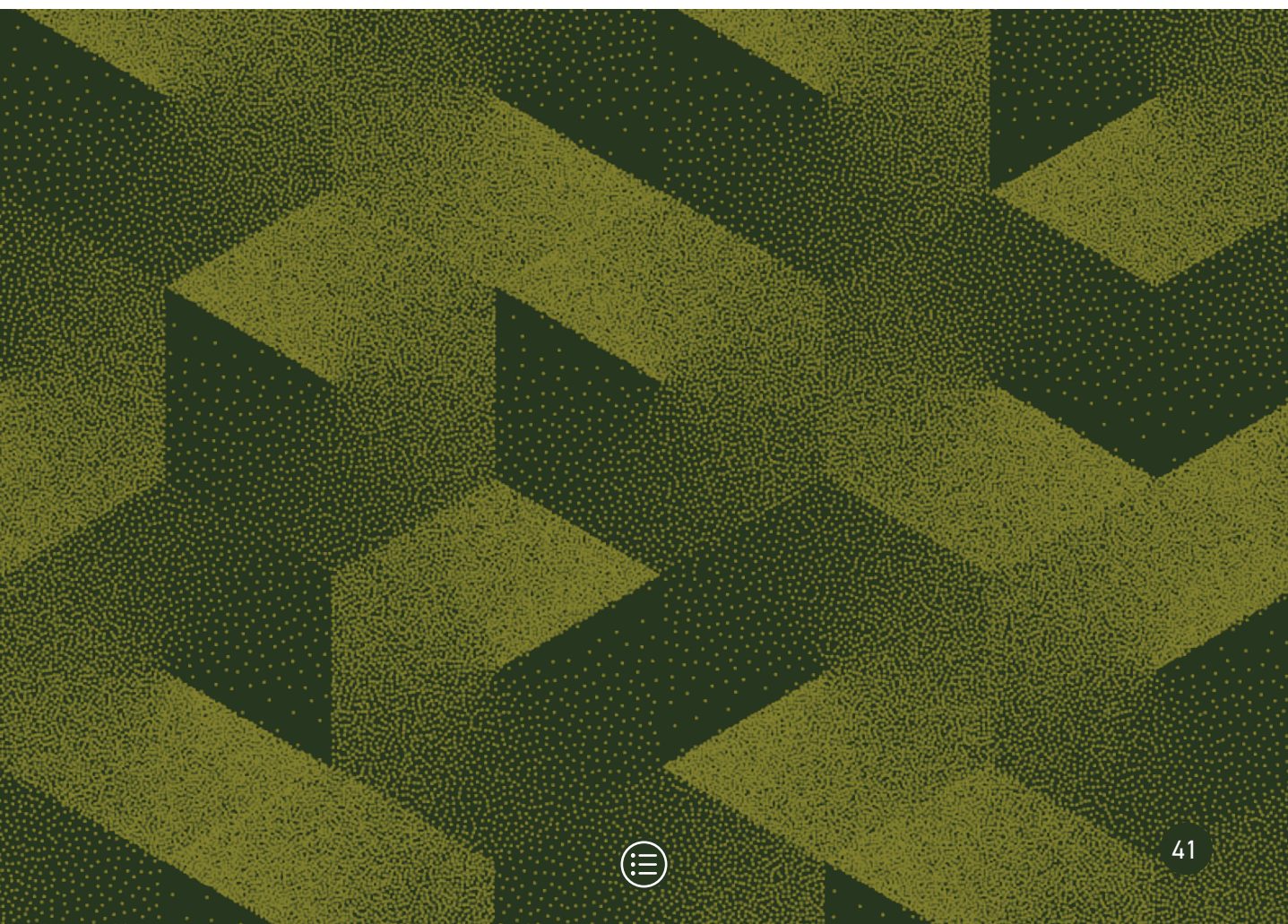

PROCEDURES TO BE USED

EMERGENCY PROCEDURES

The *référé civil* (urgent application for interim relief) in environmental matters

Specific environmental litigation and ordinary civil procedure

Environmental litigation encompasses a wide range of disputes arising under a number of codes other than the French Environmental Code, including general civil law, construction law and urban planning law.

Despite the wide range of subjects covered by environmental law, the tools currently used in civil matters are mainly based on the ordinary procedure and general texts.

Référé* and *requête

The *référé civil* (an urgent application for interim relief with notice to the other party) is one of the tools that can be used to act quickly and forcefully in environmental matters, but it is not the only one and should not be confused with the *requête* (*ex parte* urgent application for interim relief), which is almost more formidable than the criminal procedure. The *requête* enables the president of a court, or the judge delegated by the president, to take measures that are just as effective as the *référé civil*, but without notice to the other party, to officially establish the existence of environmental damage or order its suspension by, *inter alia*, having seizures and *constats* (written reports relating facts) carried out by *commissaires de justice* (court enforcement officers) in private premises (offices, private gardens) in order to ascertain the existence of environmental damage.

We will see how the *référé civil* makes it possible to take action to prevent environmental damage (I), and constitutes a means of proof and "preventive" compensation for the harm caused (II).

The *référé* as a tool for preventing environmental damage.

The principles

Article L. 110-1 of the French Environmental Code sets out the general framework of laws and actions to promote sustainable development:

> *"1° **The precautionary principle,** according to which the absence of certainty, taking into account scientific and technical knowledge at the time, must not delay the adoption of effective and proportionate measures to prevent a **risk of serious and irreversible damage to the environment** at an economically acceptable cost;*
>
> *2° The principle **of preventive** and corrective* **action**, *by priority at source, of environmental damage, using the best available techniques at an economically acceptable cost. This principle implies avoiding damage to biodiversity and the services it provides; failing that, reducing the extent of such damage; and finally, compensating for damage that could not be avoided or reduced, taking account of the species, natural habitats and ecological functions affected"*

This concept of prevention of harm is also found in the French Civil Code:

Article 1251 of the French Civil Code: *"Expenses incurred to prevent the occurrence of imminent damage, to avoid aggravating it or to reduce its consequences constitute compensable harm."*

Article 1252 of the French Civil Code: *"Independently of the compensation of the environmental damage, the judge, on an application to that effect by a person mentioned in Article 1248, may prescribe reasonable measures to prevent or put a stop to the damage."*

These concepts of prevention and compensation for expenses incurred to prevent damage will be found in the arguments developed before the *juge des référés* (judge hearing applications for interim relief), the natural forum for urgent matters and protective measures.

There are a number of ways in which the *référé* procedure can be used to combat actual or potential damage to the environment.

Preventive actions under the *référé* procedure: injunctions, prohibitions, suspensions

Under the *référé* procedure, in urgent cases, where imminent damage or a manifestly unlawful disturbance is established, Articles 834[1] and 835[2] of the French Code of Civil Procedure permit:

- the ordering, in the first case, if **urgency** is established, of measures that are not seriously disputed or that are justified by the existence of a dispute;
- the ordering, in the second case, if the **imminent damage** or the **manifestly unlawful disturbance** is established, of protective or remediation measures.

1. "*In all cases of urgency, the president of the* tribunal judiciaire *[district court] or the* juge des contentieux de la protection *[judge responsible for guardianship and protection matters], within the limits of his or her jurisdiction, may order under the référé procedure any measures that are not seriously disputed or that are justified by the existence of a dispute.*"

2. "*The president of the tribunal judiciaire or the* juge des contentieux de la protection, *within the limits of his or her jurisdiction, may always, even in the event of the claims being seriously disputed, prescribe under the* référé *procedure the protective or remediation measures required, either to prevent imminent damage or to put an end to a manifestly unlawful disturbance. In cases where the existence of the obligation is not seriously disputable, the court may award advance costs to the creditor, or order the performance of the obligation even if it is a positive obligation*".

While the characterisation of a manifestly unlawful disturbance may be subject to debate in environmental matters, the increasing number of scientific reports on the "climate emergency" and biodiversity loss may lead judges to take an increasingly broader view of the concept of urgency.

In the same way, imminent danger will be understood to exist as soon as environmental damage is established or highly probable, without it necessarily being required, at the *référé* stage, to demonstrate the lasting nature or extent of the damage. It goes without saying that the greater the economic stakes, the greater the proof of the significance of the damage will be required by the judge.

The measures that may be taken by the *juge des référés*, once one of the conditions for referral to him or her has been established (urgency, imminent danger, manifestly unlawful disturbance) are very broad:

- in case of urgency, the judge may order **any measures that are not seriously disputed or that are justified by the existence of a dispute;**
- in the event of imminent damage or a manifestly unlawful disturbance, the judge will be able to order **preventive or remediation measures and,** if the obligation is not seriously disputable, **a positive obligation.**

These measures may include prohibition, suspension or injunctions imposing various obligations to prevent or avoid aggravating any damage. It involves situations in which it is possible to apply to the *juge des référés* before environmental harm has been caused, for example:

- for an application to suspend construction work in a wetland area;
- for an application for an injunction against a campsite illegally created in a protected coastal area;
- for an application for the restoration of a watercourse illegally diverted by a private individual on private land;
- for an injunction to suspend the activity of a fisher continuing to fish despite a ban in the Bay of Biscay (to prevent the accidental capture of dolphins) or in the port of Bayonne (ban on drift-net salmon fishing in the Adour river).

The difficulty arises in the interaction between the judicial and administrative spheres in disputes that can sometimes overlap: an application to the *juge des référés* for suspension of work that is harmful to the environment at the same time as an application to the administrative court for cancellation of a fishing permit issued by the prefect (drift-net fishing on the Adour); suspension of operation by the *juge judiciaire* (ordinary judge) of a cheese factory that is polluting a waterway, despite a formal notice deemed to have been complied with by the DDTM (Departmental Directorate for Territories and the Sea) or the DDPP (Departmental Directorate for the Protection of Populations).

Possible changes: a private bill was tabled on 5 December 2023 by Mrs Naïma Moutchou, vice-president of the French National Assembly, taking up a similar bill tabled during the previous government with Mrs Cécile Untermaier to "improve environmental *référés*".

The text proposes better integration of environmental issues:

- In administrative *référé* proceedings: by broadening the notion of urgency under the *référé-suspension* procedure (urgent application for the suspension of an administrative decision), by including the notion of the right to live in a balanced environment among the fundamental freedoms that can be invoked under the *référé-liberté* procedure (urgent application for protection of a fundamental freedom), by expanding the possibility for the judge to suspend an administrative decision in the absence of a sufficient environmental impact assessment;

- In *référé civil* proceedings: extending the possibility of taking protective measures in the event of **serious or lasting** damage.

In addition, the report produced by the "flash" mission on the *référé spécial environnemental* (special procedure permitting urgent applications for interim measures to prevent environmental damage) provides an overview of the situation relating to environmental *référé* procedures and lists nine proposals to better tailor the law to the requirements and constraints specific to environmental matters[3].

The *référé* as a means of preventive proof or compensation of environmental damage

The *référé* as a means of preventive proof

➡ THE EXPERT OPINION ASSESSMENT

The court hearing the case on the merits or under the *référé* procedure may order an expert opinion assessment before ruling on the case or before any trial where there is a legitimate reason for doing so, on the basis of Article 145 of the French Code of Civil Procedure[4].

The expert plays a vital role in civil compensation for loss, as it is he or she who will identify the practical details of this compensation and calculate its cost. Depending on the missions and practices of the courts, the expert may also be tasked with certifying that the remediation work or measures have been carried out properly and to state this in his or her final expert opinion report. This implies good cooperation between the expert and the judge, who will use a standard type expert assessment in the decision which does not necessarily perfectly correspond to the type of assessment expected of the expert, but which he or she will be able to specify during expert assessment meetings between the expert and the parties around the judge responsible for monitoring the expert assessment process. The cost of the expert opinion assessment will also be adapted based on the clarifications provided by the expert from his or her assessment. The involvement of the expert in defining the appropriate compensation or remediation measures and their implementation will be carried out in conjunction with the administrations responsible (DREAL, DDPP, OFB, etc.), but with a judicial approach designed to inform the civil court of any decisions to be taken in the event of a trial on the merits. In some cases, the civil court will pre-empt the criminal court, with the civil expert opinion serving as a basis for the prosecutor to launch a criminal investigation. It may be forgotten, but an expert can, in the same way as a private individual or an environmental organisation, play the role of whistleblower (for example, in the case of unauthorised logging of private woodland by third parties).

The new classification of legal experts, as amended by the Order of 5 December 2022, creates a category of environmental experts that satisfy a genuine need by the courts who appoint them or the lawyers who choose them on a private basis or as part of participatory procedures. It is possible to choose experts specialising in the fields of: air, water, waste, protection of nature, biodiversity and landscapes, radioactivity, technological risks, polluted sites and soils, sustainable development, corporate social responsibility, eco-technology and eco-design, life cycle analysis, eco-labelling, environmental management, auditing and qualification, territory, the living environment, mobility and transport, environmental governance, consultation, mediation and bacteriological pollution.

3. Communication from Mmes Naïma Moutchou and Cécile Untermaier, 10 March 2021

4. "*Where there is a legitimate reason to preserve or establish before any trial, evidence of the facts upon which the resolution of the dispute depends, legally permissible investigative measures may be ordered at the request of any interested party on an* ex parte *interim basis* (requête) *or on an interim basis with notice to the other party* (référé)."

➡ THE *COMMISSAIRE DE JUSTICE*'S *CONSTAT*

In many cases, a request for a legal expert opinion will be made before the *juge des référés* on the basis of a *constat* (written report relating facts) compiled by a *commissaire de justice* (court enforcement officer). Simple photos (for example taken by an environmental organisation of a polluted site) are not sufficient, as the place and date of the photo cannot be guaranteed. The court enforcement officer's report will help to establish the reality of the facts on the basis of which an application for suspension or an injunction can be made as a matter of urgency.

By way of reminder, on the basis of Article 493 of the French Code of Civil Procedure[5], the judge under the *requête* procedure is invested with powers that are just as significant as those of the *juge des référés* without being obliged to comply with the principle of *audi alteram partem*, which may be of benefit when verifying non-compliance *in flagrante delicto* (e.g. theft of oak trees for sale in China).

This order is enforceable upon presentation of an official copy thereof. It may be withdrawn by the judge who issued it or appealed to the first president of the Court of Appeal.

An application may therefore be made to the judge to have *constats* carried out by *commissaires de justice* on land being illegally cleared or in case of the suspected storage of waste on construction sites. In addition to *constats*, the judge may also, under the *requête* procedure, order the eviction of travellers or a circus set up in protected areas, with an injunction to restore the site subject to an *astreinte* (payment of a periodic penalty for non-compliance). The judge can also authorise the seizure of private documents in what amounts to a search carried out by a *commissaire de justice*, to verify fulfilment of an obligation to bring an agricultural facility into compliance or to restore a hedge previously removed illegally.

The *référé* as an effective preventive means of compensation

In *référé* proceedings, compensation can only be taken in the form of an advance on costs or a positive obligation (remediation, compensating for the damages) where the obligation to compensate seems to be indisputable or the measure is urgent.

The same parties who are entitled to bring an action before the court hearing the case on the merits will be able to bring an action before the *juge des référés*, which requires a brief review of the principles governing compensation for environmental damage, before looking at how the *référé civil* procedure differs.

➡ THE PRINCIPLES (RECAP)

In both *référé* proceedings and proceedings on the merits, the question of *locus standi* and capacity arises.

Who is seeking the compensation?

Any person with *locus standi* (Article 31 of the French Code of Civil Procedure): *"An action may be brought by anyone who has a legitimate interest in the success or rejection of a claim, subject to cases in which the law confers the right to bring an action only on persons designated by it to raise or contest a claim or to defend a specific interest."*

5. *"An ordonnance sur requête (*ex parte *interim order) is a provisional decision, issued on an ex parte basis, in cases where the applicant is justified in not calling the opposing party".*

As a result, any person who can show that they have suffered a personal and direct harm has *locus standi*.

Any person with capacity (Article 1248 of the French Civil Code): *"An action for compensation of environmental harm may be brought by any person with capacity and locus standi, such as the State, the Office Français de la Biodiversité, local and regional authorities and groupings thereof whose territory is affected, as well as public establishments and organisations approved or in existence for at least five years on the date the proceedings are instituted, whose object is to protect nature and the environment."*

Thus, even if the damage relates to environmental interests that go beyond the interest of a sole legal person, once harm is caused to the **corporate interest** of an environmental organisation, the organisation will be able to argue that it has *locus standi* to request compensation for the environmental damage it is reporting.

Similarly, the expenses incurred by an organisation to prevent or put a stop to damage may be the subject of an action for compensation on the basis of Articles 1251[6] and 1252[7] of the French Civil Code.

Who compensates?

The polluter pays principle should be applied, based on the following principles:

- **Article 4 of the French Environmental Charter:** *"Every person must, under the conditions defined by law, contribute to compensation for damage they cause to the environment.";*
- **Article 1246 of the French Civil Code:** *"Any person responsible for environmental damage is required to provide compensation for such damage.";*
- **Article L. 110-1 of the French Environmental Code:** the costs arising from measures to prevent, reduce and combat pollution must be borne by the polluter.

In the *référé* procedure, this question must be indisputable so that the judge can order the polluter to pay advance costs or carry out remediation work.

What is being compensated for?

This is certainly the most sensitive issue in the *référé* procedure, but it must be assessed in the light of the general principles defining environmental damage:

- **Article L161-1 of the French Environmental Code:** *"Environmental damage within the meaning of this Title is any measurable direct or indirect damage to the environment that:*

  *1° Creates a risk of serious harm to human health due to the contamination of **soil** (..);*
  2° Seriously affects the environmental, chemical or quantitative condition or ecological potential of water (...);
  *4° Affects the **ecological services,** i.e. the functions provided by soil, water and species and habitats (...)."*

This overriding mandatory provision exclusively governs the relations between operators (natural or legal persons, whether public or private), exercising a for-profit or non-profit economic activity in a professional capacity, and the administrative authority. Under Article L.162-2, it cannot be invoked by a third-party victim.

6. *"Expenses incurred to prevent the occurrence of imminent damage, to avoid aggravating it or to reduce its consequences constitute compensable loss."*

7. "*Independently of the compensation of environmental damage, the judge, on an application to that effect by a person mentioned in Article 1248, may prescribe reasonable measures to prevent or put a stop to the damage.*"

Article 1247 of the French Civil Code: *"Environmental damage consisting of non-negligible **harm** to the **elements or functions of ecosystems** or to the collective benefits derived by humans from the environment may be compensated under the conditions laid down in this Title."*

Environmental damage therefore includes:

- **Damage caused to the environment (environmental damage *stricto sensu*), including:**
  - damage to soil and its functions (contamination, erosion, decrease in organic matter,settlement, slippage, salinisation, sealing and compaction or depletion of soil biodiversity);
  - damage to water (surface or groundwater, territorial waters or seas), aquatic environments (waterways, lakes, water bodies and wetlands) and their functions (hydrological, biological, thermal, physical or chemical disruptions).

- **Damage caused to humans (environmental damage), including:**
  - collective harm: damage to regulating ecological services (water flows, erosion), supply services (alteration of environmental products such as fresh water), or to environmental protection (harm to the collective interests defended by environmental organisations/ administrations or destruction of their efforts);
  - individual harm: economic loss resulting from environmental damage (costs of prevention, limitation, regulation, repair, and communication measures, destruction of property, loss of profits), non-pecuniary loss resulting from environmental damage (damage to reputation, loss of enjoyment), personal injury resulting from environmental damage.

How to compensate?

The *juge des référés* will have to draw on general principles when deciding on advance costs or remediation measures:

- **Article 1249 of the French Civil Code:** *"Compensation for environmental damage shall **as a priority be made in kind.** In the event that it is de jure or de facto impossible or that the remediation measures are inadequate, the judge shall order the person responsible to pay **damages,** to be used for the remediation of the environment, to the applicant or, where the applicant is unable to take the necessary measures for this purpose, to the State. The assessment of the damage shall, where appropriate, take account of any remediation measures already taken, in particular in the context of the implementation of Title VI of Book I of the French Environmental Code."*
- **Article L. 162-9 of the French Environmental Code:** (primary, complementary and compensatory) remediation measures:

*"Primary **remediation** means any measure by which natural resources and their services referred to in the first paragraph return to or towards baseline conditions. The possibility of remediation by natural regeneration should be considered.*

*Where primary remediation does not result in this return to or towards baseline conditions, **complementary remediation** measures must be implemented in order to provide a similar level of natural resources or services as would have been provided if the site had been returned to its baseline condition. They may be implemented on another site, the choice of which must take into account the interests of the populations affected by the damage.*

***Compensatory remediation** measures must compensate for interim losses of natural resources or services occurring between the damage and the date on which the primary or complementary remediation has achieved its full effect. They may be implemented on another site and may not consist of financial compensation".*

➡ "PREVENTIVE COMPENSATION BY WAY OF ADVANCE COSTS, REMEDIATION OBLIGATION OR *ASTREINTE* (PERIODIC PENALTY PAYMENT)

In practice, the *juge des référés* will award advance costs or order remediation subject to a periodic penalty payment for non-compliance.

Advance costs or remediation

On the basis of Articles 834 and 835[8] of the French Code of Civil Procedure, we find:

- **the concept of urgency**, which allows any measures to be taken that are not seriously disputed or that are justified by the existence of a dispute;
- **the concept of imminent damage or manifestly unlawful disturbance**, which makes it possible to order a remediation obligation or, if the obligation is not seriously disputable, to order a positive obligation or payment of advance costs.

The difficulty, however, lies as much in the identity of the liable person as in the characterisation of the damage caused or the nature of the remediation measures required. In these situations, it is true that the *juge des référés* will tend to refer the parties back to the court hearing the case on the merits. However, if such a referral is ordered, it is still possible to bring the case directly before the court hearing the case on the merits without first having to serve a new summons and prepare the case for hearing, on the basis of Article 837 of the French Code of Civil Procedure[9].

Regarding claims for compensation of environmental damage or for the expenses incurred to prevent environmental damage, via advance costs, it should be remembered that once the court finds that the **principle of advance costs has been indisputably established** (for example, property owners who have built a patio on the land around their house draining a wetland or diverting a watercourse), it can **determine the amount of such advance costs** even if it is disputed, based on objective elements (estimated cost of replanting, non-pecuniary loss to neighbouring property owners, etc.).

The *astreinte:*

In order to ensure that the court's decision is effective, in the case of a remediation obligation or positive obligation, including compensation in kind of the harm caused, the *juge des référés* may combine the decision with an *astreinte* (periodic penalty payment) on the basis of Article 1250 of the French Civil Code[10].

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8. Article 834 of the French Code of Civil Procedure: "*In all cases of urgency, the president of the* tribunal judiciaire *or the* juge des contentieux de la protection *within the limits of his or her jurisdiction, may order under the* référé *procedure any measures that are not seriously disputed or that are justified by the existence of a dispute.*" Article 835 of the French Code of Civil Procedure: "*The president of the* tribunal judiciaire *or the* juge des contentieux de la protection, *within the limits of his or her jurisdiction, may always, even in the event of the claims being seriously disputed, prescribe under the* référé *procedure the protective or remediation measures required, either to prevent imminent damage or to put an end to a manifestly unlawful disturbance. In cases where the existence of the obligation is not seriously disputable, they may award advance costs to the creditor, or order the performance of the obligation even if it is a positive obligation.*"

9. "*At the request of one of the parties and where justified on the grounds of urgency, the president of the* tribunal judiciaire *or the* juge des contentieux de la protection, *to which an application has been made under the* référé *procedure, may refer the case for a hearing and set a date for a decision on the merits. He or she shall ensure that the defendant has sufficient time to prepare a defence. The order shall constitute a referral to the court.*"

10. "*In the case of an astreinte, this shall be settled by the judge in favour of the applicant, who shall use it to remediate the environment or, if the applicant is unable to take the measures necessary for this purpose, in favour of the State, which shall use it for the same purpose. The judge reserves the right to settle this periodic penalty.*"

The *astreinte* is settled by the enforcement judge or the judge still hearing the case, taking into account "the behaviour of the person to whom the injunction was addressed and any difficulties encountered by the person in complying therewith". In the event of an external cause, the *astreinte* may be cancelled in whole or in part (Art. L. 131-4 of the French Code of Civil Enforcement Procedures).

The *juge des référés* may reserve the right to settle a periodic penalty in his or her decision, and must do so in the case of environmental damage.

In all cases, the *astreinte* must have a precise duration (one month, two months), failing which there is a risk of the judge who settles the amount of the periodic penalty reducing it.

This measure is the cornerstone of the civil arsenal for ensuring the effectiveness of a compensation or remediation measure ordered by the judge. It should not be confused with damages, which compensate for the private loss suffered by a victim, or a civil fine, which is used to punish an abuse of process.

Mediation or conciliation:

Article 750-1 of the French Code of Civil Procedure, as amended by the Decree of 11 May 2023, provides:

> *"Legal action must be preceded, at the option of the parties, failing which it may be found inadmissible ex officio by the court, by an attempt at conciliation directed by a court conciliator, an attempt at mediation or an attempt at a participatory procedure, where the legal action is aimed at payment of an amount not exceeding €5,000 or where it relates to one of the legal actions referred to in Articles R. 211-3-4 and R. 211-3-8 of the French Code of Judicial Organisation (legal action to have a boundary demarcated by the court, shipping contracts, damage caused to fields and crops, fruit and harvests, trees, fences and farm buildings, redhibitory defects and contagious diseases of domestic animals, sales of fertiliser, soil improvers, seeds and plants intended for agriculture, and substances intended for the feeding of livestock, agricultural warrants, private farming roads, abandoned objects, transportation, plantations, trimming of trees or hedges, cleaning of ditches, easements) or nuisance."*

The parties are exempt from the obligation referred to in the first paragraph in the following cases:

1° If at least one of the parties seeks approval of an agreement;

2° Where the exercise of prior recourse is imposed on the judge making the decision;

3° If the failure to attempt any of the methods of amicable resolution referred to in the first paragraph is justified by a legitimate reason relating either to manifest urgency, or to the circumstances of the case making such an attempt impossible or requiring that a decision be made on an *ex parte* basis, or to the unavailability of court conciliators resulting in the first conciliation meeting being organised more than three months from the date of referral to a conciliator; the applicant must provide proof of the referral by any means and any consequences thereof;

4° If the judge or administrative authority is required, pursuant to a specific provision, to make a preliminary attempt at conciliation;

5° If the creditor has unsuccessfully initiated a simplified small claims recovery procedure, in accordance with Article L. 125-1 of the French Code of Civil Enforcement Procedures.

Article 131-1 of the French Code of Civil Procedure: "*The judge hearing a dispute may, after obtaining the agreement of the parties, order mediation. The mediator appointed by the judge shall be tasked with hearing the parties and comparing their points of view to enable them to find a solution to the dispute between them.*"

Article 127-1 of the French Code of Civil Procedure: "*Where the agreement of the parties provided for in Article 131-1 is not obtained, the judge may order them to meet, within a timeframe determined by the judge, with a mediator tasked with informing them about the purpose of the mediation measure and how it will be carried out. This decision is an administrative measure of the court.*"

Article 774-1 of the French Code of Civil Procedure: "The judge hearing a case involving rights that are freely available to the parties may, at the request of one of the parties or on an *ex officio* basis after obtaining their opinion, decide that they will be summoned to an *audience de règlement amiable* (ASA - amicable settlement hearing) held by a judge who does not sit on the bench.
These measures do not divest the judge initially hearing the case of jurisdiction."

Mediation, an order to attend mediation and, now, *audiences de règlement amiable* (ARA), are all opportunities to get a potential polluter to repair the damage caused via measures that will be discussed and accepted by all parties. For example, an overly keen neighbour who builds a wall on his property, destroying the hedge on his neighbour's land, or another property owner who, over time, completely fails to maintain a ditch for which he is responsible. The intervention of the mediator or the judge in the context of an ARA thus allows for awareness and even education by informing and raising awareness among polluters and destroyers of the environment.

Conciliation also has its place in disputes involving the local administration, many of which concern the environment. Dedicated hearings at the Bayonne *tribunal judiciaire* are now one of the specific jurisdictions provided for by the French Code of Judicial Organisation and listed in Table IV-II of the French Code of Judicial Organisation[11].

11. 7° Actions for damages caused to fields and crops, fruit and harvests, trees, fences and farm buildings, whether such damage is caused by humans, domestic animals or farming tools and machinery;
8° Actions for damages caused to crops and harvests by game;
9° Claims relating to redhibitory defects and contagious diseases of domestic animals, based on the provisions of the French Rural and Maritime Fishing Code or on the agreement of the parties, regardless of how the animals were acquired;
12° Disputes relating to the work required to maintain and ensure the serviceability of private farming roads;
16° Actions relating to the structures and works referred to in Article 674 of the French Civil Code;
17° Actions relating to the cleaning of ditches and canals used for the irrigation of properties or the operation of factories and mills;
20° Disputes relating to the compensation to which the widening or opening of a new bed in non-state owned watercourses may give rise, in accordance with Article L. 215-5 of the French Environmental Code;
23° Actions referred to in Articles L. 211-1 and L. 211-20 of the French Rural and Maritime Fishing Code;
24° Applications made by professional agricultural organisations pursuant to Article L. 632-7 of the French Rural and Maritime Fishing Code in relation to product supply contracts;
25° Disputes relating to the application of Article 1, I and II of Law No. 66-457 of 2 July 1966 on the installation of broadcast receiver antennas and Decrees no. 67-1171 of 28 December 1967 and no. 2009-53 of 15 January 2009 implementing this law;
28° Disputes provided for in Articles R.421-7, R. 422-2-1 and R.423-89 of the French Construction and Housing Code;
.35° For suspension of a hunting licence provided for in Articles L. 428-16 *et seq.* of the French Environmental Code;
36° Requests for the appointment of an expert provided for in Article L. 429-32 of the French Environmental Code;
37° Actions referred to in Articles R. 113-7 to R. 113-10 of the French Construction and Housing Code;
40° Appointments of experts provided for in Article 5 of the Law of 17 July 1856 on drainage;
41° Actions provided for in Article 2 of Law no. 73-1230 of 31 December 1973 governing the leasing of fishing rights in certain private coastal salt-water lakes;
51° Applications for provisional release from escrow of animals and perishable items provided for in article R. 149 of the French Code of Criminal Procedure;
55° Claims submitted pursuant to Articles L. 471-3 to L. 471-7 of the French Rural and Maritime Fishing Code;
56° Claims submitted pursuant to Article R. 124-13 of the French Rural and Maritime Fishing Code;
57° Claims submitted pursuant to Article R. 125-10 of the French Rural and Maritime Fishing Code;
58° Claims submitted pursuant to Article R. 135-5 of the French Rural and Maritime Fishing Code;
59° Disputes referred to in Articles R. 152-26, R. 152-27 and R. 152-28 of the French Rural and Maritime Fishing Code;
60° Claims submitted pursuant to Article R. 213-3 of the French Rural and Maritime Fishing Code;
61° Claims submitted pursuant to Article D. 554-12 of the French Rural and Maritime Fishing Code.

Conciliation is provided for in Articles 128 *et seq.* of the French Code of Civil Procedure:

- it is possible throughout the proceedings;
- it may be conducted by the judge or delegated to a conciliator.

Article 129-2 **of the French Code of Civil Procedure:** *"Where the judge, pursuant to a specific provision, delegates the task of conciliation, he or she shall appoint a court conciliator for this purpose, fix the duration of the conciliator's appointment and indicate the date on which the case will be recalled. The initial duration of the appointment may not exceed three months. This appointment may be renewed once, for the same period, at the conciliator's request."*

- It may be the subject of an order to meet with the conciliator, as in the case of mediation decided by the judge conducting the conciliation.

Article 129 **of the French Code of Civil Procedure:** *"The conciliation shall be attempted, unless specifically provided otherwise, at the place and time deemed favourable and in accordance with the procedures determined by the judge. A judge who is required to make a preliminary attempt at conciliation may order the parties to meet with a court conciliator who shall inform them about the purpose of the conciliation and how it will be carried out, under the conditions provided for in Article 22-1 of Law no. 95-125 of 8 February 1995."*

- Any agreement, even if only partial, is recorded in a statement signed by the parties and, depending on the case, by the judge or the conciliator, which may serve as an enforcement order.

Article 131 **of the French Code of Civil Procedure:** *"Extracts from the statement drawn up by the judge may be issued. They are enforceable. The parties, or the first one of them to take action, may, at any time, submit the statement of agreement drawn up by the court conciliator to the judge for approval. The judge shall rule on the petition presented to him or her without debate, unless the judge deems it necessary to hear the parties at a hearing. Approval shall be a non-contentious matter."*

Conclusion

Not enough environmental cases are referred to the *juge des référés*. Even if the serious dispute can constitute an obstacle, it is not a hindrance if the referral is well supported by solid evidence and clear legal arguments. Furthermore, attitudes are changing: judges and lawyers are being trained in environmental matters and experts are also specialising thanks to the new classification. An **expanded group** of interested professionals, specially trained to raise the alarm and apply to the courts before any environmental harm is caused, is therefore slowly being formed:

- environmental organisations;
- administrations and offices responsible not only for officially establishing the existence of offences, but also for supporting civil society stakeholders in their efforts to adopt "greener" behaviours;
- multidisciplinary environmental experts to assess ecosystem interactions, as well as the concrete short- and medium-term actions likely to protect the environment.

The purpose of this group is to assist the *juge des référés* in detecting the risks of harm, establish the damage caused in an indisputable manner, propose obligations for compensation in kind, assess provisional financial compensation.

Should this system not be supplemented by the invention or creation of an independent body with long-term responsibility for coordinating the actions of the parties, experts, as well as the administrations concerned, and even the investigative services (OFB, environmental inspectors, etc.)?

The difficulty arising from the cost of these actions, particularly the expert opinion assessments or the remediation ordered, could justify the creation of a **civil judicial compensation fund.** This would have the merit of financing expert assessments and offsetting the impecuniosity of polluters. The Canadian example of the Environmental Damages Fund, funded by the sums paid from fines, penalties and court orders or even voluntary contributions for environmental offences, could serve as a model. This money is redistributed to projects that have a positive impact on Canada's natural environment, in the regions where the offences were committed.

Article 305 of the Climate and Resilience Law, which stipulated that *"within three months of the enactment of this law (...) a report proposing ways of allocating the proceeds of the criminal penalties defined in Articles L. 173-3, L. 173-3-1, L. 218-11, L. 218-34, L. 218-48, L. 218-64, L. 218-73, L. 218-84, L. 226-9, L. 331-26, L. 331-27, L. 341-19, L. 415-3, L. 415-6, L. 432-2 and L. 432-3 of the French Environmental Code, Title III of Book II of the same code and Article L. 512-2 of the French Mining Code to the remediation actions made necessary by environmental damage"* could be a starting point for establishing such a fund.

The environmental criminal *référé*

The environmental criminal *référé* is a long-standing procedure in French law, stemming from Law no. 92-3 of 3 January 1992 on water.

Initially intended for water pollution only, this procedure was extended in 2016[12] to Installations Classified for Protection of the Environment, and in 2021[13] to installations being operated illegally.

Article L. 216-13 of the current French Environmental Code states that:

> *"In the event of failure to comply with the requirements imposed under Articles L. 181-12, L. 211-2, L. 211-3 and L. 214-1 to L. 214-6 or the measures decreed pursuant to Article L. 171-7 of this Code or Article L. 111-13 of the French Mining Code, the juge des libertés et de la détention [magistrate tasked with deciding on the remand of a suspect] may, at the request of the Procureur de la République [public prosecutor], acting ex officio or at the request of the administrative authority, the victim or an approved environmental organisation, order, for a maximum period of one year, the natural persons and legal entities concerned to take any necessary measures, including the suspension or prohibition of operations carried out in violation of criminal law.*
> *If an investigation is opened, the examining magistrate shall be competent, under the same conditions, to take the measures provided for in the first paragraph.*
> *The decision shall be taken after hearing the interested party, or summoning the interested party to appear within forty-eight hours, as well as the administrative authority, the victim or the approved environmental organisation, if they so request.*
> *It shall be provisionally enforceable and come to an end by order of the juge des libertés et de la détention or when the decision on the merits has become final.*
> *The person concerned or the Procureur de la République may appeal against the decision of the juge des libertés et de la détention within ten days of notification or service of the decision.*
> *The president of the chambre d'instruction [pre-trial appeal court for decisions by examining magistrate] to whom the matter is referred within twenty-four hours of notification of the decision of the examining magistrate or the tribunal correctionnel [criminal court], may suspend the decision until the appeal has been decided, for a maximum period of twenty days.*
> *The provisions of this article shall also apply to installations classified under Book V (Title I)."*

12. Law no. 2016-1087 of 8 August 2016 on restoration of biodiversity, nature and landscapes
13. Law no. 2021-1104 of 22 August 2021 on combating climate change and strengthening resilience to its effects

These provisions confer jurisdiction on the *juge des libertés et de la détention* to order, for a period of one year, *"any necessary measures"*, which therefore constitute a protective measure, including the suspension or prohibition of operations contrary to criminal law.

As the judge of evidence, the *juge des libertés et de la détention* can only make a decision if he or she has sufficient evidence to order such measures.

The procedure can now be used in the following cases:

- in the event of non-compliance with the provisions applicable to environmental authorisations (authorisation issued prior to the operation of an installation that poses a danger, risk and nuisance to health and the environment, and which relates to the measures and means to be implemented when carrying out the project and during its operation and until its cessation, to avoid, reduce and compensate for the negative effects of these activities);
- in the event of non-compliance with the provisions applicable to the general rules for protecting the quality and distribution of surface water, groundwater and sea water (water quality standards, water use, protection of wetlands, etc.);
- in the event of non-compliance with the provisions applicable to installations, structures, works and developments on water and aquatic environments;
- in the event of non-compliance with a formal notice sent by the authorities to installations which do not have prior authorisation;
- in the event of non-compliance with the ban on hydraulic fracturing.

The report produced by the "flash" mission on the *référé spécial environnemental*[14] makes a number of proposals aimed at strengthening this tool, such as extending the scope of application of the environmental criminal *référé* to all environmental offences.

In the thirty-two years since the procedure was created, it has rarely been used: only about ten times, and mostly since the 2016 and 2021 extensions.

As for the parties, in a decision dated 14 January 2025, the *Cour de Cassation* confirmed that environmental organisations are not parties to the procedure (Cass. crim.,14 janvier 2025, n° 23-85.490).

Only the *Procureur de la République* may apply to the *juge des libertés et de la détention* for necessary measures within the meaning of the aforementioned provisions.

Here again, the report from the "flash" mission on the *référé spécial environnemental*[15] proposes diversifying the possibilities for referral beyond just the *Procureur de la République*.

To date, only the *Procureur de la République* or the person concerned by the measure ordered by the *juge des libertés et de la détention* have the right to appeal the decision taken by the *juge des libertés et de la détention*.

The *Cour de Cassation* also specified that these protective measures may be imposed on all *"persons concerned"*, even if they have not committed any fault such as to give rise to criminal liability.

Furthermore, the *juge des libertés et de la détention* does not need to establish fault in order to impose such necessary measures[16].

14. Communication from Mmes Naïma Moutchou and Cécile Untermaier, 10 March 2021
15. *Ibid.*
16. Cass. crim., 28 janv. 2020, n° 19-80.091, published in the Bulletin

Finally, the *Conseil Constitutionnel* (Constitutional Council) has indicated that a person summoned to a hearing before the *juge des libertés et de la détention* did not have a right to silence, except "*where it appears that he is already a suspect or is being prosecuted under criminal law for the facts about which he is being heard, provided that his statements are likely to be brought to the attention of the trial court*"[17].

The court has recently ordered measures in the following cases:

Little-known provisions	Activities in breach of criminal law	Measures ordered by the judge
Non-compliance with the provisions applicable to environmental authorisations	Unauthorised construction of electricity interconnector between France and Spain	Suspension of works, production of an environmental impact assessment[18]
Non-compliance with the provisions applicable to the general rules for protecting the quality and distribution of surface water, groundwater and sea water	Pollution of the aquatic environment by a sewerage system	Cessation of discharges, water analyses, construction of a combined sewer overflow, installation of a screening system, inspections[19]
	Pollution of the aquatic environment by a wastewater treatment system	Effluent treatment solution, resizing of facilities, assessment, monitoring, periodic penalty payment[20]
	Pollution of the aquatic environment by an agricultural ICPE	Collection of polluted water, inspection of collection systems, management of contaminated water[21]
	Pollution of the aquatic environment by an anaerobic digestion unit	Collection of polluted water[22]
Non-compliance with a formal notice sent by the authorities to installations which do not have prior authorisation	Non-compliance with a waste ICPE formal notice	Suspension of storage activity pending authorisation[23]

17. Cons. const. 15 nov. 2024, Syndicat d'aménagement de la vallée de l'Indre, no. 2024-1111 QPC
18. TJ Bayonne, ord. du 14 août 2024
19. TJ Bordeaux, ord. du 2 avr. 2024
20. TJ Puy-en-Velay, ord. du 5 mai 2022
21. TJ Dijon, ord. du 4 août 2023
22. TJ Nancy, ord. du 12 janv. 2023
23. TJ Strasbourg, ord. du 19 mars 2024

The person concerned is summoned to be questioned by the *juge des libertés et de la détention* within 48 hours of the referral to the judge.

The person may appeal within 10 days of notification of the decision.

This procedure has a number of advantages:

- the judge hears the parties within 48 hours;
- he or she can impose a periodic penalty payment, which is a deterrent;
- in the absence of a clear definition of "any necessary measures", any type of measure can be imagined and proposed to the judge.

The environmental criminal *référé* procedure is therefore very useful and complements criminal proceedings, enabling urgent action to be taken to prevent the irreversible destruction of species and areas.

The administrative *référé* in environmental matters

Lawyers, who play a key role in defending the environment, have a range of emergency procedures at their disposal before the administrative courts to prevent or quickly put a stop to environmental damage, obtain protective measures, establish the existence of damage or conduct an expert opinion assessment. The main administrative *référés* that can be used in environmental matters **are the *référé-suspension (urgent application for the suspension of an administrative decision),* the *référé-liberté* (urgent application for protection of a fundamental freedom), the *référé-mesures utiles* (urgent application for an order requiring an administration to take "necessary measures" to protect rights), the *référé-expertise* (urgent application seeking the appointment of an expert), the *référé-constat* (urgent application to have a situation officially recorded) and the *référé-provision* (urgent application seeking provisional payment of an undisputed amount).** Each is subject to specific conditions for admissibility and suitability.

This array of procedures reflects the specific nature of environmental issues, where urgency can take many forms: imminent risk of pollution, irreversible damage to ecosystems, or the need to preserve evidence of environmental damage.

Even though they are based on the classic mechanisms of emergency litigation in public law, these *référés* differ due to their specific concerns. The potential irreversibility of environmental damage, the difficulty of assessing environmental harm, and the interweaving of public and private interests create a specific procedural context that requires in-depth expertise.

➡ *RÉFÉRÉS* UNDER ORDINARY LAW

From these procedures, **the *référé-suspension*** is the main procedural tool for challenging environmental administrative authorisations. Governed by Article L. 521-1 of the French Code of Administrative Justice, it allows for an order to be obtained suspending an administrative decision where there is justified urgency and serious doubt as to the legality of the decision.

Urgency is often characterised by the imminence of a risk of irreversible damage. The administrative courts are gradually recognising that the start of clearing work, the commissioning of polluting facilities and the land take of natural areas constitute urgent situations justifying suspension.

The *référé-liberté*, an emergency procedure based on Article L. 521-2 of the French Code of Administrative Justice, is also being increasingly applied in environmental matters since the right to a healthy environment was enshrined by the Conseil d'État (CE, 20 septembre 2022, n° 451129).

➜ SPECIAL *RÉFÉRÉS*

The *référé étude d'impact* and the *référé enquête publique* make it possible, under article L. 123-16 of the French Environmental Code, to petition the *juge des référés* to suspend a decision taken without an environmental impact assessment or after negative findings by the *commissaire enquêteur* (official responsible for conducting public information & consultation process) or the *commission d'enquête* (committee appointed to conduct a public information & consultation process), if the decision is based on grounds that, based on the current status of the proceedings, are likely to create a serious doubt as to its legality.

It has been held that an applicant may simultaneously bring before the *juge des référés* claims based on Article L. 521-1 (*référé-suspension* under ordinary law) of the French Code of Administrative Justice and Articles L. 554-11 and L. 554-12 of the same code, which refer to the provisions of Article L. 123-16, which concern applications for suspension of decisions taken following negative findings by the *commissaire enquêteur* or in the absence of an environmental impact assessment (CE, 5 Dec. 2014, n° 369522).

In addition, pursuant to Article L. 122-11 of the French Environmental Code, **the *référé évaluation environnementale*** allows the *juge des référés* to suspend an administrative decision when it is found that no environmental assessment was carried out when developing or amending a plan, programme or project.

In such a case, it is sufficient to prove the absence of an environmental assessment for the judge to grant the application for suspension. Proving urgency or serious doubt as to the legality of the contested act is not required.

This procedure can be used when an environmental assessment is required, but also when it is the result of a case-by-case examination.

However, in the same way as for the *référé-suspension*, this isan action ancillary to a main application for annulment.

As mentioned above, the report of the "Flash" mission on the *référé spécial environnemental* [24] critiques the clarity, timing and implementation of these *référés* and proposes strengthening the existing mechanisms to increase their use in environmental matters.

24. Communication from Mmes Naïma Moutchou and Cécile Untermaier, 10 March 2021

PROCEEDINGS ON THE MERITS

Civil liability actions for environmental damage

Environmental litigation before the civil courts has a variety of legal bases and remedies tailored to the specific nature of environmental damage, with each subject to time limits that reflect the specific nature of environmental damage.

A civil liability action is the main way of obtaining compensation for environmental damage. This action may be based on *responsabilité délictuelle* (tort liability - Article 1240 of the French Civil Code), *responsabilité du fait des choses* (strict liability - Article 1242 of the French Civil Code), or the special liability regimes set out in the French Environmental Code. Action may also be taken on the basis of contractual liability where there is a contractual relationship between the parties (subcontracting contracts, agricultural leases with environmental clauses, clean-up contracts).

The limitation periods for environmental civil liability are governed by the rules of ordinary law, although there are some notable differences. An action for compensation for personal injury resulting from environmental damage is time-barred twenty years from the date of consolidation of the damage (Article 2226 of the French Civil Code). This extended period is justified by the often delayed nature of pathologies linked to environmental exposure.

For property damage and economic loss resulting from environmental damage, the limitation period is five years from the day on which the holder of a right knew or should have known of the facts enabling him or her to exercise it (article 2224 of the French Civil Code). This five-year limitation period applies in particular to damage caused to crops, property, and economic activities dependent on natural resources.

Pure environmental damage, enshrined in the Law of 8 August 2016, benefits from a specific limitations regime.

History of the concept of environmental damage

The concept of environmental damage as a separate category of damage was originally purely a construct of case law. The decision of the Criminal Division of the Cour de Cassation on 25 September 2012 in the case of the sinking of the Erika (*chambre criminelle* n° 10-82.938), recognised the existence of pure environmental damage, distinct from economic or non-pecuniary damage, suffered by the environment itself as a result of the oil spill. This ruling marked a major step forward in recognising the right to compensation for damages caused to the environment itself.

Professor Laurent Neyret's report, submitted in 2013 to the Minister of Justice and the Minister of the Environment, proposed introducing a clear legal framework for compensation for environmental damage[25].

This report made recommendations regarding the definition of environmental damage, the conditions for compensation in kind or in equivalent form, as well as the persons entitled to take legal action.

25. *Association des Professionnels du Contentieux Économique et Financier - Commission "Préjudice écologique" La réparation du préjudice écologique en pratique* [Association of Economic and Financial Litigation Professionals - Commission on "Environmental Damage". Compensation for environmental damage in practice], 2016 report.

Legal framework

These developments in case law and legal doctrine have served as a reference for the legislator which, through Law no. 2016-1087 of 8 August 2016 on restoration of biodiversity, nature and landscapes, enshrined environmental damage in law. Now codified in Articles 1246 to 1252 of the French Civil Code[26], environmental damage is recognised as a separate type of damage resulting from non-negligible harm to the elements or functions of ecosystems, biodiversity or the services they provide.

Article 1249 of the French Civil Code: An action for compensation for environmental damage can be brought by:

- the State;
- the French Office for Biodiversity;
- local and regional authorities;
- public institutions;
- approved environmental organisations;
- any person with capacity and *locus standi*.

Articles 1250 to 1252 of the French Civil Code setting out the rules governing the relationship with other types of liability, including:

- matters relating to strict liability;
- the relationship with administrative or criminal liability;
- specific limitation periods.

Conditions of admissibility of the action

An action for compensation for environmental damage may be brought by a series of claimants defined by law (Article 1248 of the French Civil Code).

The action must be aimed at obtaining compensation in kind as a priority (restoration of the environmental balance that has been disturbed) or, failing that, equivalent compensation in the form of damages.

An action for compensation for environmental damage is time-barred after ten years from the date on which the damage occurred or was discovered by the person claiming compensation (Article 2226-1 of the French Civil Code).

Court jurisdiction

Jurisdiction depends on the person who caused the damage:

In the case of civil proceedings, the ordinary courts are the natural forum for seeking compensation for environmental damage. The regional environmental divisions (PRE), established by Articles 15 to 25 of the Law of 24 December 2020, have special jurisdiction for complex criminal cases and exclusive jurisdiction for all disputes relating to compensation for environmental damage.

The civil jurisdiction of the PREs was established by Decree no. 2022-245 of 25 February 2022, implementing Article L. 211-16 of the French Code of Judicial Organisation.

The PREs thus have exclusive jurisdiction to hear, at first instance, certain civil environmental cases, including:

- actions for compensation for environmental damage (Articles 1246 to 1252 of the French Civil Code);
- actions to prevent or halt environmental damage;

26. Compensation for environmental damage is governed in French law by Articles 1246 to 1252 of the French Civil Code, introduced by Law no. 2016-1087 of 8 August 2016 on restoration of biodiversity, nature and landscapes.
Article 1246 of the French Civil Code:. "Any person responsible for environmental damage is required to provide compensation for such damage."
Article 1247 of the French Civil Code:. "environmental damage means non-negligible harm to the elements or functions of ecosystems, to the collective benefits derived by humans from the environment."
Article 1248 of the French Civil Code:. "Compensation for environmental damage shall as a priority be made in kind.
Where compensation in kind is impossible or insufficient, it shall take the form of an indemnity paid to the State or to an authorised public or private person, to be used for remediation of the environment."

- civil liability claims arising from environmental damage (including damage caused by pollution or chemicals);
- certain civil disputes relating to classified installations, polluted sites or hazardous waste.

Litigants will therefore have to go before the *tribunal judiciaire* sitting as a PRE within the jurisdiction of its court of appeal.

Recent examples from case law

- **Paris Court of Appeal, Cour d'appel de Paris, 7 décembre 2021, n° 20/00001**: confirmation of environmental damage as a distinct category of damage in cases of marine pollution.
- **Marseilles *Tribunal Judiciaire*, TJ Marseille, 15 mai 2023, Association Eau & Rivières de Bretagne c/ Société Portuaire:** award of compensation of €2.4m for marine pollution with application of Articles 1246 *et seq.* of the French Civil Code.
- **Lyons *Tribunal Judiciaire*, TJ Lyon, 6 novembre 2023, Préfet du Rhône c/ société chimique:** order to bring into environmental compliance and recognition of environmental damage affecting the water table.
- **Paris *Tribunal Judiciaire*, TJ Paris, 2 février 2024, Fondation Nicolas Hulot c/ Exploitant agricole:** full compensation for damage caused to a protected wetland, including environmental expert opinion assessment, compensation in kind and additional damages.
- Cour de Cassation, Cass. crim., 26 mars 2024, n° 23-81.41: in a case involving the destruction of protected species, the Court rejected the use of market value as a method of assessing the environmental damage associated with the disappearance of protected species. It reaffirmed the precedence of estimates based on the cost of reintroducing or restoring ecosystems.

Questions and challenges for lawyers

Several hearings conducted by the Working Group with numerous experts in environmental law (judges, lawyers, academics, state agencies) highlighted the challenges and questions encountered by lawyers and, more generally, legal professionals, in actions for compensation for environmental damage under Articles 1246 *et seq.* of the French Civil Code.

- Demonstration of the causal link between the harmful act and the environmental damage.
- Assessment of the non-negligible nature of the damage, which varies widely from one jurisdiction to another.
- Priority of compensation in kind: technical complexity of ecosystem restoration.
- Difficulties of scientific expert opinion assessments and proof (cost of expert opinions, administration of proof, preservation of the environmental "crime scene", etc.).
- Coordination between civil, administrative and criminal proceedings.
- Unequal access to the PREs for claimants, depending on the region.
- The administrative courts no longer hesitate to hold the State liable for inaction or partial fulfilment of its environmental obligations.
- Scientific proof remains essential to establish the causal link between fault and environmental damage.
- Compensation in kind is confirmed as the cardinal principle, as set out in the text, with financial compensation only being awarded when it is shown compensation in kind is impossible.
- Case law tends to favour actions brought by organisations with clearly defined *locus standi*.
- Long-term monitoring of the remediation and use of the sums awarded as compensation in kind (trust option).

Towards a common methodology for practitioners for assessing environmental damage

Assessing and determining the scale of environmental damage is one of today's major challenges. Like the system implemented for personal injury compensation (Dintilhac scale), it is essential to define assessment criteria. Although the Neyret-Martin classification, published in 2012, is an interesting source, it should be updated and supplemented with case law issued on this basis since its publication.

The CNB Environmental Law Woking Group has begun this process of reflection with all those involved in the legal system, including judges and prosecutors, as well as researchers and state agencies, who have been working for several years to assign a value to biodiversity, in units of account, by devising benchmarks.

ADEME and the OFB have used methodologies based on:

- the cost of environmental restoration (remediation or equivalent compensation);
- the environmental equivalence method;
- the value of ecosystem services lost.

Professor Gilles Martin, who appeared before the Working Group in this context, identified several methods for assessing and determining the scale of environmental damage (which are not mutually exclusive):

- **compensation in kind** stricto sensu;
- **fixed valuation** (like old French Office for Forestry method);
- **estimate of the cost of remediation,** even if it cannot be carried out;
- **assessment of the loss by reference to the budget spent as a pure loss** (for example: the budget spent to protect a species - tailored to protected areas);
- **assessment of damage by reference to the value of ecosystem services** (a method that cannot be transposed to all cases; however, whenever possible, it is a good one to apply);
- **assessment of the cost of supporting natural regeneration** (for example, by reference to inspection, monitoring, verification, etc.).

Such a common methodology **would involve creating a shared vocabulary for all stakeholders** (lawyers, judges, insurers, scientists, etc.) so that discussions are based on common terms: it is not about including all aspects that may be revealed by science, but rather to remind the court of the aspects of the damage that should not be overlooked.

In so doing, it would promote legal certainty and consistency in decisions, while reflecting the complexity and uniqueness of ecosystems.

Environmental class actions

➜ From 2016 to 2025: the environmental class action provided for under Article L. 142-3-1 of the French Environmental Code

In French law, the class action was initially created in consumer law, by Law no. 2014-344 of 17 March 2014 on consumer protection (known as the "Hamon Law"). In 2016, the class action was extended to environmental matters (Law no. 2016-1547) and codified in Article L.142-3-1 of the French Environmental Code.

Before the administrative courts, the only environmental class action recorded between 2016 and 2025 concerned an issue relating to waste in Béziers[27].

On 27 May 2025, the *tribunal judiciaire* of Saint-Denis ordered Cise Réunion (a subsidiary of the SAUR group) to pay compensation to thousands of customers for distributing water that was unfit for consumption. This legal action was brought by the consumer organisation *UFC-Que Choisir*.

Rarely used in general and not as successful as expected, the class action has been overhauled to unify the procedural framework. Article L.142-3-1 of the French Environmental Code was repealed by Law no. 2025-391 of 30 April 2025.

➜ Since 2025: the class action under ordinary law provided for under Article 16 of Law no. 2025-391 of 30 April 2025

Law no. 2025-391 of 30 April 2025, implementing various provisions to adapt national law to European Union law in the areas of economics, finance, the environment, energy, transport, health and the movement of persons, repealed all the sector-specific class action regimes and replaced them with a single regime applicable to both ordinary and administrative jurisdictions.

Article 16 of Law no. 2025-391 of 30 April 2025 sets out the new unified legal regime for class actions. This transposition is completed by Decree no. 2025-734 of 30 July 2025 on the procedure applicable to class actions and to the class action register, as well as Decree no. 2025-653 of 16 July 2025 designating the *tribunaux judiciaires* with jurisdiction for class actions.

A Ministry of Justice DACS/DSJ circular dated 1 August 2025 provides a helpful presentation of Article 16 of Law no. 2025-391 of 30 April 2025 and its aforementioned implementing decrees.

Class actions are brought to:

- put an end to the breach;
- obtain compensation for any damage of any type suffered as a result of the breach;
- or to satisfy both of these claims.

As a result, there is no longer a specific environmental class action regime, but only a general class action whose scope now includes the environment.

27. Marseilles *Tribunal Administrative*,TA Marseille, n° 2410073, *Comité de défense de Badones* – Montimas. A ruling has not yet been handed down in this case of alleged breaches by the Béziers Méditerranée intermunicipal cooperation establishment and the Hérault prefect in the treatment of household and similar waste, concerning a non-hazardous waste storage facility (ISDND) located at Saint-Jean de Libron in the municipality of Béziers.

As a transitional measure, persons who meet the conditions for bringing a class action on the date on which the law comes into force retain this option for a period of two years from that date. The class action consists of three stages: (1) the bringing of the class action, (2) the judgement finding the defendant in breach and finally (3) the settlement of damages.

Stage 1
What are the requirements for bringing a class action?

A class action must be brought by a legal entity (organisation or trade union) on behalf of several natural or legal persons in a similar situation.

Class actions can be brought against:

- a person acting in the course of or in connection with his or her professional activity;
- a legal entity governed by public law;
- a body governed by private law responsible for managing a public service.

ENTITIES THAT CAN BRING ANY TYPE CLASS ACTION	**Approved organisations,** i.e. duly-registered non-profit organisations that have received approval to act in class actions
ENTITIES THAT CAN BRING A CLASS ACTION SOLELY TO PUT AN END TO THE BREACH	**Non-approved organisations** duly registered for at least two years that can prove that they have been engaged in effective public activity for at least 24 months for the purpose of defending interests that have been adversely affected, and whose statutory object includes the defence of such interests
ENTITIES THAT CAN BRING A CLASS ACTION ONLY IN CERTAIN AREAS	**Representative trade union organisations** from the private and public sectors, as well as trade union organisations representing judges of the ordinary courts Possibility of bringing a class action: ● in the area of anti-discrimination; ● in the area of protection of personal data; ● or to put an end to a breach by an employer or obtain compensation for damage caused by such breach to several persons subject to the authority of the employer. **General representative farmers' trade unions and fishers' and seafarers' organisations:** where the aim of the class action is to put an end to the breach or to obtain compensation for damage caused by the breach to several of their members

The table below lists the main entities that can bring a class action (non-exhaustive): **NEW - Third-party funding of class actions.** The class action regime now allows applicants to "receive funds from third parties", provided that such funding has neither the purpose nor the effect of the third party having an influence on the bringing or conduct of class actions that is likely to prejudice the interests of the persons represented.[28]

Stage 2
What is provided for in the judgement in the action for injunction to stop a breach and/or for compensation?

The class action regime differs depending on the claim.

Action for injunction to stop a breach

Where the class action seeks to put an end to a breach, the applicant is not required to establish:

- either damage to the members of the group;
- or intention or negligence by the defendant.

The breach is determined by the judge in an objective manner, since the mere finding of breach is sufficient.

The *juge de la mise en état* (pre-trial judge) can order all appropriate interim measures to put an end to the alleged breach, within a time limit set by him or her, in order to prevent imminent damage or to put an end to a manifestly unlawful disturbance.

At the judgement stage, the judge who makes a finding of breach orders the defendant to stop the breach or cause it to be stopped and orders appropriate publicity measures to enable persons likely to be affected by the breach to seek compensation.

When the court imposes an *astreinte* (periodic penalty payment), it is paid into a fund used to finance class actions.

Action for compensation

Where a class action is aimed at obtaining compensation for harm suffered, the applicant must present "individual cases in support of the applicant's claims".

After ruling on the defendant's liability, the court will determine all the conditions for future compensation, including:

- **the criteria for inclusion in the class** of victims and the damage for which compensation can be obtained;

28. An implementingdecree, being prepared by the Ministry of the Economy, Finance and Industrial and Digital Sovereignty, will designate the authority competent to issue approvals enabling a class action to be brought, will specify the procedures for issuing such approval as well as the conditions for making available to the public the list of organisations authorised to bring class actions. It will also specify the publicity procedures for funding of class actions by third parties.

- **the amount of the damage** or all the factors for assessing the damage likely to be compensated if "*permitted by the evidence produced and the nature of the damage*". The court may also award compensation in kind;
- **whether or not a procedure for the collective settlement of damages is implemented** (mechanism not permitted for personal injury).

Stage 3
How does the procedure for settlement of damages work?

There are two stages to the collective settlement of damages: joining the class and then settling the damages.

Joining the class by registering with the applicant

Interested parties may, within the time limits and under the conditions set by the judge who ordered a collective settlement of damages, join the class by registering with the applicant.

Joining the class serves as a grant of power of attorney to the applicant in the action for compensation. It is the applicant who will negotiate the amount of compensation with the defendant and who may seek *exécution forcée* (specific performance) of the decision.

Procedure for settlement of damages (individually or collectively)

Negotiations take place between the applicant and the person who committed the breaches and/or caused the damage.

The court that determined liability is then asked to approve the agreement (which may be partial), reached between the parties.

The court will ensure that the agreement provides sufficient protection for the parties and the victims, and will refuse to approve it if this is not the case (it may send the matter back for negotiation for a further period of two months).

If no agreement is reached, the court will decide on the settlement of the damages suffered.

In addition, if the court has still not been asked to approve an agreement within one year of the date on which the judgement ordering a collective procedure for the settlement of damages has become final and not subject to appeal, the victims regain the right to submit individual claims for compensation in accordance with the rules of the individual settlement procedure (which are specified in the judgement).

In summary: a very interesting new procedural tool, which is just waiting to be used by practitioners!

Criminal actions in environmental law

Environmental criminal law has undergone a major transformation since 2020 and the entry into force of the Law of 24 December 2020 on the European Public Prosecutor's Office, environmental justice and specialised criminal justice, which saw the introduction of *Conventions Judiciaires d'Intérêt Public Environnementales* (CJIPE - environmental deferred prosecution agreements), the creation of *pôles régionaux spécialisés en matière d'atteintes à l'environnement* (PRE - regional divisions specialising in environmental offences) and a significant expansion of the criminal arsenal.

Indeed, 38 PREs have been up and running since 2021 and more than 25 CJIPEs have been concluded since 2021, indicating an acceleration in negotiated justice.

2021 also saw the entry into force of Law no. 2021-1104 of 22 August 2021 on combating climate change and strengthening resilience to its effects, known as the "Climate and Resilience" Law.

This law introduces the offence of ecocide and the offence of endangering the environment, and extends the scope of the environmental criminal *référé* to non-compliance with the requirement for registration, authorisation, approval, certification or declaration required under the nomenclature of installations classified for protection of the environment and installations, structures, works and developments, as well non-compliance with the prohibition on the exploration and production of hydrocarbons via hydraulic fracturing and non-compliance with environmental authorisations.

However, these significant advances should not detract from the problems that still plague environmental criminal law: low prosecution rates, the persistent fragmentation of legislation that makes the subject difficult to understand, and evidentiary difficulties.

Judicial specialisation: the PREs (regional environmental divisions)

The aforementioned Law of 24 December 2020 introduced Articles 706-2-3 of the French Code of Criminal Procedure and Article L. 211- 20 of the French Code of Judicial Organisation to create 38 specialised regional divisions (PRS) for environmental offences, which have been operational since 1 April 2021. As a result, each division has extended jurisdiction over matters within the jurisdiction of the Court of Appeal for:

- the investigation, prosecution and trial of complex environmental offences;
- actions relating to environmental damage (Articles 1246 to 1252 of the French Civil Code);
- environmental liability actions;
- offences committed as part of an organised gang.

The Deputy Public Prosecutor in charge of the PRE is assisted by an assistant specialising in environmental matters.

The Operational Committees to Combat Environmental Crime (COLDEN), which ensure departmental coordination between the Public Prosecutors, representatives of the prefects, the relevant government departments (DDT, DREAL), the specialised criminal investigator judicial police and environmental inspectors.

Enhancement of investigation methods

The Decree of 17 March 2023 transformed environmental inspectors into fully-fledged judicial police officers, giving them enhanced powers: searches and seizures, hearings under oath and coordination of complex investigations.

Headed by the French National Gendarmerie's Environment and Health Command (CESAN), the Central Office for Combating Environmental and Public Health Crime (OCLAESP) has recently dismantled major trafficking operations, including waste trafficking to Southeast Asia (500 tonnes intercepted in April 2024) and pesticide counterfeiting networks.

The main environmental offences

SOURCE	NATURE OF THE PENALTY	NATURE OF THE OFFENCE	BASIS	PENALTIES INCURRED
French Environmental Code	*Délit* (intermediate offence)	General offences: lack of ICPE authorisation	L. 173-1	**1 year, €75,000; aggravated: 3 years, €250,000**
	Délit	Endangering of the environment (immediate risk of serious and lasting damage - at least 7 years - to biodiversity or water)	L.173-3-1	**3 years, €250,000**
	Délit	Environmental pollution	L. 231-1	**5 years, €1 M**
	Délit	Abandonment of waste	L. 231-2	**3 years, €150,000**
	Délit	Ecocide (intentional)	L. 231-3	**10 years, €4.5 M or 10 x gain derived**
	Délit	Damage to biodiversity	L. 415-3	**1 year, €15,000**
	Délit	Destruction of protected species/habitats	L. 411-1	**Penalties vary depending on the species**
	Délit	ICPE without authorisation	L. 514-4	**2 years, €75,000**
	Contravention (minor offence)	Fishing without a licence	R. 436-5	**Fine**

SOURCE	NATURE OF THE PENALTY	NATURE OF THE OFFENCE	BASIS	PENALTIES INCURRED
French Forestry Code	*Contravention*	Clearing land without authorisation	L. 363-1 to L. 363-2	Fine
French Rural and Maritime Fishing Code	*Délit*	Destruction of hedges	L. 126-3 to L. 126-5	Fine
French Urban Planning Code	*Délit*	Illegal construction	L. 480-4	6 months, €300,000
French Mining Code	*Délit*	Operating without authorisation	L. 512-2	5 years, €375,000

Joining a criminal case as a civil party

Individuals who suffer direct and personal damage as a result of an environmental offence, provided that a causal link has been established between the offence and the damage suffered, may join a criminal case as a civil party (*constitution de partie civile*) to obtain compensation for their damages.

Article L. 141-1 of the French Environmental Code[29] states that organisations that have been active for at least three years, whose statutory object is related to environmental protection and whose territorial approval covers the location of the offence (local, departmental, regional, national), may apply for approval.

This approval gives them the right to take legal action for compensation for direct or indirect harm to the collective interests they defend, to intervene in all proceedings relating to environmental offences, and to access settlement procedures and CJIPEs (information and consultation).

Non-approved organisations may also take action, but must demonstrate sufficiently direct *locus standi*.

Local & regional authorities may also join as civil parties to obtain compensation for any damages within their territory.

29. *"Where they have been carrying out their activities for at least three years, duly-registered organisations carrying out their statutory activities in the area of nature protection and wildlife management, improvement of the living environment, protection of water, air, soil, sites and landscapes, urban planning, or having as their object the combating of pollution and nuisances and, in general, working primarily for the protection of the environment, may be the subject of justified approval by the administrative authority. (...) Such organisations shall be known as "approved environmental organisations". This approval shall be granted under conditions defined by decree of the French Conseil d'État.. It shall be valid for a limited duration and within a specified context taking into account the territory in which the organisation effectively carries out the activities set out in the first paragraph. It may be renewed. It may be revoked where the organisation no longer satisfies the conditions which led to it being issued."*

The diversity of criminal options

As in general criminal law, the *Procureur de la République* has a range of alternatives to prosecution at his or her disposal: *classement sous condition* (conditional termination of prosecution), *avertissement pénal probatoire* (police caution), *ordonnance pénale* (summary judgement), *composition pénale* (plea bargain not resulting in conviction), *transaction* (negotiated settlement), *comparution sur reconnaissance préalable de culpabilité* (CRPC - plea bargain with conviction).

The aforementioned Law of 24 December introduced the CJIPE in Article 41-1-3 of the French Code of Criminal Procedure. Inspired by the anti-corruption deferred prosecution agreement (CJIP), it enables serious environmental offences to be dealt with by negotiation with legal entities charged with offences under the French Environmental Code, related offences (excluding crimes and offences against the person), offences under the French Forestry Code and offences under Title V of Book II of the French Rural and Maritime Fishing Code.

The CJIPE can order the accused party to pay a public interest fine of up to 30% of annual turnover, to compensate the damages caused to the civil parties, and to make provision for a compliance programme for a maximum period of three years, under the supervision of the competent authorities (OFB, DREAL, DDT). Since the Law came into force, more than 25 CJIPEs have been approved by the courts, covering various offences:

- pollution of waterways;
- non-compliant industrial waste;
- breaches of ICPE regulations;
- destruction of protected species;
- illegal waste management.

They can all be viewed online at: https://www.justice.gouv.fr/documentation/ressources/judicial-agreements-dinteret-public

Future prospects

Directive (EU) 2024/1203 of 11 April 2024 on the protection of the environment through criminal law creates new offences relating to import/export contrary to the EU Deforestation Regulation and the illegal abstraction of surface or ground water. It also introduces a national strategy for combating environmental crime (deadline: May 2027) and a dedicated statistical data system.

Administrative litigation

Environmental litigation before the administrative courts is characterised by a variety of remedies tailored to the nature of the disputes, subject to specific time limits that reflect the particular issues involved.

The *recours pour excès de pouvoir* (action for annulment of *ultra vires* acts) is the main route for challenging unilateral administrative acts with an environmental impact. This category covers a wide range of acts: operating permits for Installations Classified for Protection of the Environment (ICPE), single environmental authorisations governed by the French Environmental Code, building permits in sensitive or protected areas, local urban development plans and modifications thereto, prefectoral orders for the protection of biotopes, and land clearing authorisations.

The time limits for bringing a *recours pour excès de pouvoir* are governed by the general principle of a two-month period from the date of notification or publication of the act, in accordance with article R. 421-1 of the French Code of Administrative Justice.

The review by the court covers both the external and internal legality of these acts. As far as external legality is concerned, the procedural requirements in environmental matters are particularly well developed: compliance with public information and consultation procedures (*enquête publique*), consultation of the relevant bodies (municipal councils, departmental commissions for nature, landscapes and sites, the environmental authority), implementation of environmental assessment procedures, etc.

The review of internal legality is stringent, covering the assessment of environmental issues, consideration of scientific studies and compliance with the protection objectives set by law.

The *recours de pleine juridiction* (proceedings of full jurisdiction) is suited to several categories of environmental litigation. It firstly applies to compensation claims relating to environmental damage, which are subject to the ordinary time limits for administrative liability. An action for compensation must be brought within four years of the date on which the damage becomes apparent, although this period may be extended in the case of ongoing or progressive damage. In the case of deferred environmental damage (soil pollution, long-term contamination, etc.), case law accepts that the time limit runs from the time the damage is revealed, thereby taking into account the specific nature of certain environmental damage that only becomes apparent over time.

Procedural requirements for public participation

The Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, ratified by France, sets high standards for public participation in environmental decision-making. These requirements are set out in the French Environmental Code and are subject to detailed judicial review.

The public information and consultation procedure (*enquête publique*) is the most common form of public participation in environmental matters. The court verifies that this procedure was carried out under conditions that allowed the public to be fully informed and participate effectively. This review covers a number of aspects: the completeness and accessibility of the documentation submitted for information and consultation, which must include all the information required to enable the public to assess the issues involved in the project; the duration of the information and consultation procedure, which must be sufficient given the complexity of the project and the scale of the issues involved; the procedures for publicising

the information and consultation procedure, which must ensure that the populations concerned are adequately informed; the independence and competence of the *commissaire enquêteur* or *commission d'enquête* conducting the procedure; and the consideration given to the public's comments in the final decision.

Procedural flaws in the organisation of public participation may result in the administrative decision being annulled. This case law reflects the importance attached by the courts to the procedural rights of the public in environmental matters.

The *locus standi* of organisations and the democratisation of litigation

The *locus standi* of environmental organisations has been the subject of particularly well-developed case law, reflecting the desire to ensure effective citizen review of environmental administrative decisions. This recognition is part of the wider democratisation of administrative justice and the implementation of the "access to justice" pillar of the Aarhus Convention.

The conditions for the admissibility of an organisation's action are strictly set out by the case law. The organisation must prove that it has a statutory object related to environmental protection, which must be sufficiently precise and not limited to general statements. It must also demonstrate effective activity in the environmental sphere.

The link between the association's object and the contested act must be established, as the organisation can only take action in the areas covered by its articles of association. The organisation's geographical scope of intervention also determines its ability to act.

The approval of environmental organisations, provided for in Article L. 141-1 of the French Environmental Code, facilitates the recognition of *locus standi*.

The jurisdiction of the administrative courts in the area of compensation for environmental damage

The administrative courts, which have jurisdiction in cases of damages caused by a public authority or in the context of a public service, have taken the position that they should apply Articles 1246 *et seq.* of the French Civil Code, while relying on the Blanco case law[30] and the public interest requirement.

The administrative court, before which an action for compensation for damages caused by public bodies was brought, held, in a ruling by the *Conseil d'État* of 1 July 2021, no. 1900523 (Commune de Grande-Synthe) that it could order compensation or injunctive measures based on the provisions of the French Civil Code.

30. *Tribunal des conflits*, 8 février 1873, Blanco.

Some recent case law

- Paris Administrative Court, TA Paris, 3 février 2021 (***Affaire du Siècle***): the State convicted for failure to act to address climate change.
- Paris Administrative Court, TA Paris, 29 juin 202, ***Justice pour le Vivant*** **(n° 2019924)**: recognition of environmental damage linked to pesticides.
- Bordeaux Administrative Court, TA Bordeaux, 6 février 2025 (n° 2300568): the court examined an action for civil liability against the State for failure to act following the annulment of an environmental authorisation. It recognised the fault, but dismissed the claim for compensation for environmental damage, as there was no direct link between the failure to act and the environmental damage claimed.
- Rennes Administrative Court, TA Rennes, 13 mars 2025 (n° 2204984), ***Association Eau & Rivières de Bretagne*****:** the court convicted the State for its failure to act to apply the European Nitrates Directive. It awarded €5,000 for non-pecuniary damage to the organisation and ordered the Prefect to put in place concrete environmental remediation measures within ten months.
- Paris Administrative Court, TA Paris, 22 décembre 2023 **(*Affaire du Siècle*) and consequences 2024-2025:** the administrative court recognised the existence of environmental damage linked to exceeding the carbon budget. In 2024, the court dismissed the application for a periodic penalty payment, but the case is still before the Administrative Court of Appeal. The court has confirmed the possibility of liability for failure to act to address climate change.

Litigation before the European Court of Human Rights

Case law on the merits

Recently, the European Court of Human Rights (ECHR) has handed down several major decisions on the merits relating to the environment, climate and pollution, despite the silence of the European Convention, by broadening the interpretation of Article 8 to include protection against the effects of climate change.

In the Grand Chamber Judgement KlimaSeniorinnen v. Switzerland of 9 April 2024, concerning a group of elderly Swiss women who believed that their government's failure to act on climate change was damaging their health and lives, the Court found against the Swiss Confederation for violating Article 8 (private and family life) and Article 6 §1 (access to a court).

For the first time, the Court has recognised the existence of a positive obligation on States to combat climate change, requiring the effective implementation of a clear regulatory framework to reduce greenhouse gas emissions.

In Cannavacciuolo and Others v. Italy (30 January 2025), concerning large-scale pollution in the Italian region of Terra dei Fuochi, with serious health effects, the Court decided that the prolonged inaction of the Italian State resulted in a violation of Article 2 (right to life). In its judgement, the Court ordered the Italian authorities to develop a global strategy to combat pollution.

Other decisions are very interesting. One example is the Burestop v. France judgement of 1 July 2021. The Court held, for the first time, that the right of access to information, which may, under certain conditions, arise from Article 10 of the Convention, would be deprived of its substance if the information provided was insincere, inaccurate or inadequate. It deduced from this that respecting this right necessarily implies that the information provided is reliable, particularly where this right results from a legal obligation incumbent on the State, and that in the event of a challenge in this regard, the interested parties have a right of action enabling the content and quality of the information provided to be reviewed, in the context of *inter partes* proceedings.[31].

Emergency measures before the Strasbourg Court

Rule 39 of the Rules of the European Court of Human Rights allows, in exceptional circumstances, the Court to indicate interim measures where there is an imminent risk of irreparable harm to a Convention right. These measures are binding and temporary, and are designed to guarantee the effectiveness of individual application.

The Court requires a high threshold of seriousness, and in particular that the damage must be imminent and irreversible. Recently, a number of applications have been made in the areas of climate change or the environment. Thus, on 21 May 2024, the Court refused to grant interim measures requested by Alsace Nature association, which had applied to the Court for the suspension of a project for the permanent underground storage of hazardous waste in the former Stocamine mine (Haut-Rhin). The risk to the water table was raised.

Although the Court rejected this application, finding that the applicants had not demonstrated an imminent risk of irreparable harm to a Convention right, this option remains open, provided the conditions laid down are met.

As Article 39 is a powerful procedural tool, exploring the ways in which it can be used is a legal possibility that should be widely explored.

Constitutional litigation: the Priority Preliminary Ruling on the issue of constitutionality (QPC) and the case law of the *Conseil Constitutionnel*[32]

The *Question Prioritaire de Constitutionnalité* (QPC) has become a strategic tool, particularly for NGOs, to verify the compliance of various inadequate environmental standards with the rights and principles guaranteed by the Constitution, its preamble and the French Environmental Charter.

The *Conseil Constitutionnel*, which very early on incorporated the French Environmental Charter into the body of constitutional law, since the introduction of the QPC in 2010, has gradually recognised environmental protection as an objective of constitutional value.

31. See factsheets on the ECHR website on "Climate Change" and "Environment and the European Convention on Human Rights"

32. See the *Conseil Constitutionnel* study "*Dix ans de QPC en matière d'environnement : quelle (r)évolution ?* [Ten Years of QPC in environmental matters: change or revolution?]"

This evolving case law tends to reinforce the normative scope of the Charter, while maintaining a balance with other constitutional objectives, such as freedom of enterprise and legal certainty.

The *Conseil* relies, *inter alia* on Article 1 (the right to live in a balanced environment that respects health) and Articles 2 to 7 (principles of prevention, precaution, reparation, sustainable development and public participation).

In a seminal decision (n° 2019-823 QPC) on 31 January 2020, the *Conseil* explicitly recognised that environmental protection constitutes an objective of constitutional value, based on the preamble to the Charter.

A series of decisions have, in an impressive fashion, defined the contours of this constitutional protection of the environment. Regular consultation of the *Conseil Constitutionnel* website provides an exhaustive and evolving overview of this case law.

Recent QPC decisions include:

- *Décision n° 2021-971 QPC du 18 février 2022 - France Nature Environnement*: the *Conseil* partially censured article L. 144-4 of the French Mining Code, which allowed mining concessions to be automatically extended without an environmental assessment. It ruled that this provision infringed Articles 1 and 3 of the Charter due to the environmental effects not being taken into account before the entry into force of the Law of 22 August 2021.

- *Décision n° 2023-1066 QPC du 27 octobre 2023 - Association Meuse Nature Environnement*, concerning the Cigéo radioactive waste storage project. This decision marked a major change: for the first time, the *Conseil* linked Article 1 of the Charter with paragraph 7 of its preamble, which concerns future generations. It thus recognises an obligation not to compromise the ability of future generations to meet their needs, enhancing the scope of sustainable development.
  - *Décision n° 2024-1126 QPC*: validation of a decree qualifying an industrial project as being of major public interest, while reiterating the requirements of public participation and effective remedy.
  - *Décision n° 2024-1111 QPC du 15 novembre 2024* on the the environmental criminal *référé*: A QPC was referred to the *Conseil Constitutionnel* concerning Article L. 216-13 of the French Environmental Code, which allows the *juge des libertés et de la détention* (JLD) to order protective measures to prevent or limit pollution. The *Conseil* ruled that the provision relating to the right to silence of the person heard by the JLD complied with the Constitution, provided that the person was informed of his or her right to silence before the hearing, thereby strengthening the rights of the defence in the context of the environmental criminal *référé*, while maintaining the effectiveness of this emergency procedure.

Lastly, although an *ex ante* review cannot be implemented by means of legal action, the case law of the *Conseil* in this procedural context clearly goes hand-in-hand with that developed under the QPC regime.

It is important to mention recent decisions:

- *Décision n° 2021-825 DC*: on the Climate and Resilience Law, the *Conseil* affirmed the majority of the provisions, but reiterated that the legislature must guarantee the effectiveness of the right to a healthy environment.
- *Décision n° 2025-879 DC*: on the law adapting national law to EU law, the *Conseil*examined the environmental provisions in the light of the Charter, without censuring them, but emphasising their conformity conditional on their implementation in compliance with constitutional principles.

The referral to the UN Human Rights Committee

Human rights mechanisms, such as the special procedures of the Human Rights Council, the human rights treaty bodies and the Universal Periodic Review, are increasingly focusing on the human rights implications of climate change.

The human rights treaty bodies ("treaty bodies") are committees of independent experts that monitor implementation of the main international human rights treaties. These bodies address the issue of climate change and human rights in a number of declarations, decisions, concluding observations, general comments and general recommendations.

All these documents enable lawyers to present elements of comparative law which carry a certain amount of weight given the reputation and intellectual authority of these bodies. This includes the decisions of the United Nations Human Rights Committee. Although non-binding, they carry considerable intellectual and diplomatic weight, and are likely to serve as an interesting lever for environmental lawyers.

Individual complaints mechanism

The Human Rights Committee has competence to receive and consider individual communications ("individual complaints") from or on behalf of any person or group claiming to be a victim of a violation of the Covenant by a State Party (in accordance with the Optional Protocol to the International Covenant on Civil and Political Rights).

For the Committee to have competence to receive individual complaints, the State Party concerned must have recognised this competence by ratifying the Optional Protocol.

The Committee may request the State concerned to take interim measures to prevent the alleged victim from suffering irreparable harm while the complaint is being examined.

Example of documentation:

- Decision adopted by the Human Rights Committee in the case of Teitiota v. New Zealand concerning a Kiribati climate refugee seeking asylum in New Zealand. General Comment nº 36 (2018) concerning Article 6 of the International Covenant on Civil and Political Rights and the right to life (§.62).

The thematic reports and country reports produced by the Committee (on the basis of the Universal Periodic Review) are also sources that can be drawn upon before the French courts.

The "Aarhus" litigation - the referral to the UN Special Rapporteur on Environmental Defenders

Mandate

Most Special Rapporteurs are attached to the United Nations Human Rights Council, with a mandate covering a specific country or theme. They investigate, receive and deal with complaints, in conjunction with the responsible States.

The distinctive feature of the mandate of the Special Rapporteur on Environmental Defenders, held by the Frenchman Michel Forst, is that it was created within the framework of the legally binding Aarhus Convention, which is based on three pillars: access to environmental information, access to environmental justice, and public participation in decision-making processes affecting the environment.

The mandate was not created by a UN resolution, which is non-binding in nature, but by a decision of the States Parties to the Convention which, in 2021, decided to create a rapid response mechanism against the penalisation of environmental defenders, based on Article 3.8: *"Each Party shall ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalised, persecuted or harassed in any way for their involvement."*

The geographical scope of the mandate is broad: 46 countries have ratified the Convention (mainly in Europe, the Balkans, Central Asia and, on the African continent, Guinea-Bissau). One of its members is little known: the European Union. This implies that the provisions of the Convention apply to not only the Member States, but also to all EU institutions (e.g. the European Investment Bank).

Beyond the 46 Members States of the EU, the mandate has extraterritorial scope: once a company has its headquarters in a country that has ratified the Convention, but operates abroad (via subcontractors, private security companies, etc.), defenders under threat can seek protection from the Special Rapporteur.

Complaints system

A complaint can be submitted (via a dedicated form) to the Special Rapporteur on Environmental Defenders by:

- any member of the public, acting on their own behalf or on behalf of another member of the public;
- a Party to the Convention;
- the secretariat of the Convention.

The Special Rapporteur will consider any complaint, unless he determines that the complaint:

- is anonymous, although anonymous complaints making credible allegations that can be independently verified can be investigated;
- constitutes an abuse of the right to make such a complaint;
- is manifestly unreasonable;
- is incompatible with the provisions of the decision establishing the rapid response mechanism or with the Convention;
- is *de minimis*.

Given the urgent nature of the Special Rapporteur's mandate, complainants are not required to have exhausted domestic remedies before making a complaint.

Resources available to the Special Rapporteur

The Special Rapporteur may, in order to gather information relevant to the proper performance of his mandate and the handling of the complaint, contact (with the consent of the complainant) any relevant institution, body, person, or entity.

He may also be required to carry out information-gathering missions in the territory of the State concerned.

The Special Rapporteur has several measures at his disposal to protect environmental defenders. He can issue an "immediate" or "ongoing" protective measure to the Party concerned, issue public statements, issue press releases, use diplomatic channels and bring the complaint to the attention of other human rights bodies (international or national).

The Rapporteur may also, on the basis of Article 3.8 of the Convention, refer the matter to a Compliance Committee.

Lastly, it is worth highlighting the periodic review mechanism established by the Aarhus Convention, under which the Parties must provide national reports detailing the measures implemented to ensure proper application of the Convention and the difficulties encountered. This report is monitored by the aforementioned Compliance Committee.

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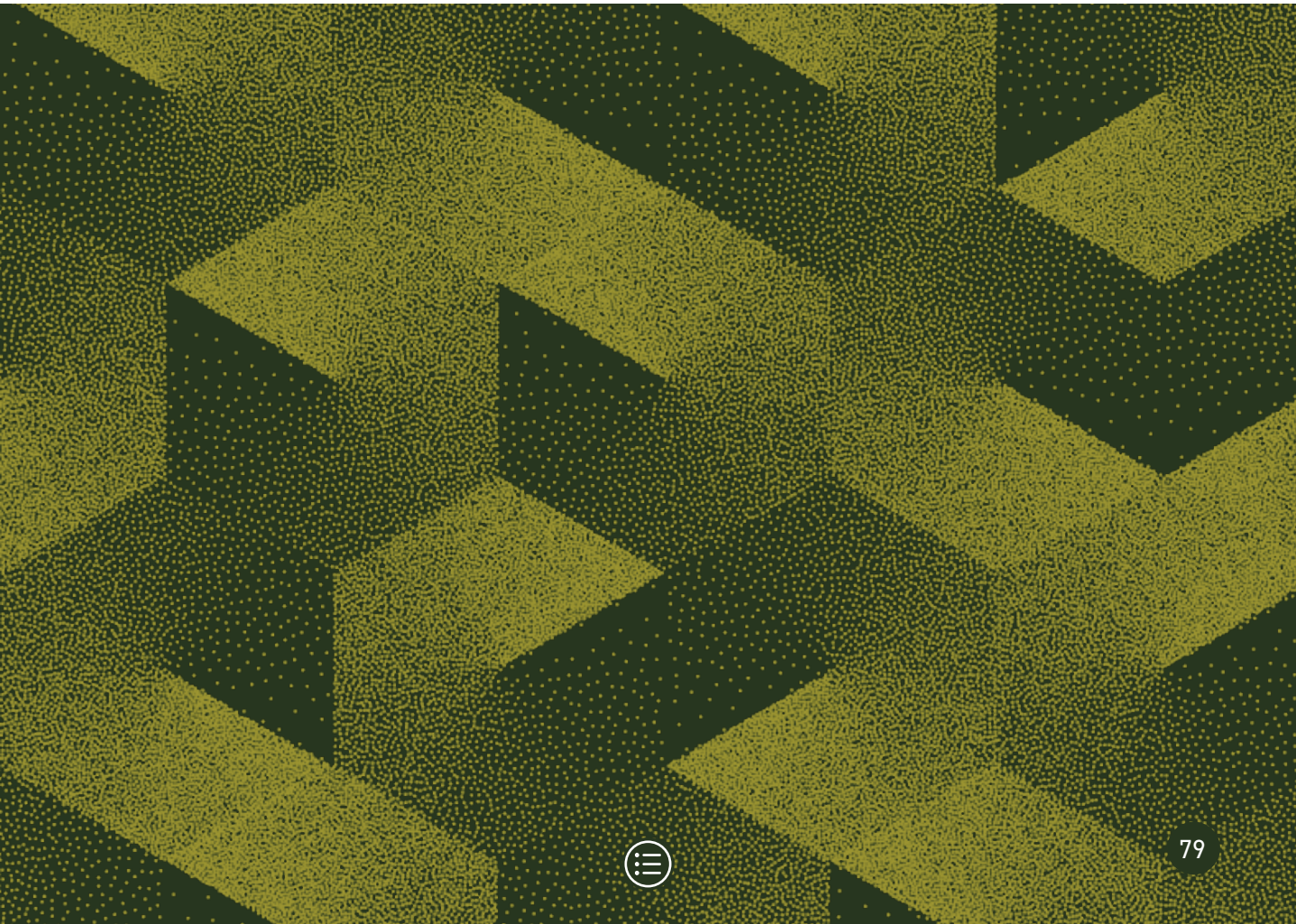

APPENDICES AND REFERENCES

GLOSSARY

- **ADEME:** French Environment and Energy Management Agency
- **ARA:** amicable settlement hearing
- **CAC:** statutory auditor
- **CESAN:** French National Gendarmerie's Environment and Health Command
- **CNRS:** French National Centre for Scientific Research
- **COLDEN:** Operational Committee to Combat Environmental Crime
- **COFRAC:** French Accreditation Committee
- **CRPC:** plea bargain
- **CJIPE:** environmental deferred prosecution agreement
- **DDPP:** Departmental Directorate for the Protection of Populations
- **DDTM:** Departmental Directorate for Territories and the Sea
- **DREAL:** Regional Directorate for the Environment, Planning and Housing
- **ESG:** environmental, social and governance
- **ESRS:** *European Sustainability Reporting Standards*
- **H2A:** High Audit Authority
- **ICPE:** installation classified for protection of the environment
- **INRAE:** French National Research Institute for Agriculture, Food and the Environment
- **IOTA:** facilities, structures, works and activities posing hazards for or impacting the aquatic environment or water resources
- **JLD:** *juge des libertés et de la détention* (judge tasked with deciding on the remand of a suspect)
- **OCLAESP:** Central Office for Combating Environmental and Public Health Crime
- **OFB:** French Office for Biodiversity
- **OTI:** independent third-party organisation
- **PRE:** regional environmental division
- **IASP:** independent assurance services provider
- **QPC:** priority preliminary ruling on the issue of constitutionality
- **RSCA:** social responsibility of law firms
- **CSR:** corporate social responsibility

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DES BARREAUX
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THE *CONSEIL NATIONAL DES BARREAUX* IS HERE TO HELP

By phone at **01 53 30 85 60**
from 08:30 to 19:00
By e-mail :
international@cnb.avocat.fr

On social media

At our head office
180 boulevard Haussmann - 75008 Paris