Other relevant rules on appeals, remedies and access to justice in environmental matters

- Appeals against the passivity of the administration are available through the mechanism of contesting an explicit or implicit refusal to adopt an act. Since the administrative judge may be seized of any decision that gives rise to a complaint, a citizen may create such a decision by requesting an administrative act and contesting the explicit or implicit refusal to take it. The powers granted to the administrative judge may lead him to enjoin the administrative authority to take the legal act necessary to comply with the law.

- In order to ensure the implementation of his judgments, the judicial judge may also use the mechanism of injunction on pain of a penalty payment. For example, in an interim order issued on 18 December 2015 (case no 15/60067), the judge of the Paris Tribunal de Grande Instance accepted the requests of a heritage protection association by suspending the permit to demolish part of the site of the "Jardin des Serres d'Auteuil". This permit benefited the French Tennis Federation for a project to enlarge the Rolland Garros tennis courts. The judge ordered the immediate suspension of the work for three months, the time needed to judge the case on its merits, with a fine of € 10,000 for each infraction observed.

- In order to prevent the non-enforcement of criminal convictions including the order for environmental restoration as a supplementary criminal sanction, the Code of Criminal Procedure provides for an interesting deferral mechanism. If the guilt of the defendant is recognised by the judge, the latter has the possibility of adjourning the sentence to a later hearing with the obligation to restore the environment within a specified period, possibly on pain of a daily penalty. For example, the Court of Cassation has ordered the restoration of 5,000 m² of landfill in a wetland area within nine months, subject to a daily penalty of 30 euros after this period has elapsed[1].

- There are no specific penalties to be imposed on the public administration for failing to provide access to justice.

The Conseil constitutionnel can annul laws that restrict access to justice on the basis of Article 16 of the Constitution. It follows from this provision that it must not be substantially prejudicial to the right of the persons concerned to exercise an effective remedy before a court[2]. However, in the field of the environment, there are only two relevant cases concerning legislative acts limiting access to justice. Those acts have been twice validated by the Conseil constitutionnel[3].

Moreover, if the reasonable time limit for judgment is exceeded, the State may be held liable before the Conseil d'Etat on the basis of Article 6, paragraph 1, of the European Convention of Human Rights[4].

[1] Cour de Cassation, chambre criminelle, 5 mai 2015, n°14-83409.

[2] See *inter alia* Conseil constitutionnel, n° 2011-208 QPC du 13 janvier 2012; n° 2014-375 QPC du 21 mars 2014; n° 2013-350 QPC du 25 octobre 2013; n° 2015-499 QPC du 20 novembre 2015; n° 2016-543 QPC du 24 mai 2016; n° 2018-712 QPC du 8 juin 2018; n° 2019-777 QPC du 19 avril 2019.

[3] See Conseil constitutionnel, 17 juin 2011, *Association Vivraviry*, n° 2011-138 QPC ; Conseil constitutionnel, 10 novembre 2017, *Association Entre Seine et Brotonne et a.*, n° 2017-672 QPC.

[4] Conseil d'Etat, Assemblée, 28 juin 2002, *Magiera*, n° 239575.

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