Access to justice in environmental matters

France

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Access to justice at Member State level

1.1. Legal order – sources of environmental law

1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order

French environmental law was born in the early nineteen-seventies[1]. Since 2000, France has had an Environmental Code which brings together the numerous legislative and regulatory texts aimed at protecting the environment[2].

The main sources of legislation, in addition to the constituent power, are the Parliament, which adopts legislative acts and the Government, which adopts regulations and individual administrative acts. At the local level, prefects represent the State and have regulatory power. Local and regional governments also have, within the scope of their competences, regulatory power. Prior authorisations are issued, depending on the case, by the Minister of the Environment, by the prefects (e.g. pollution permits) or by the local governments (e.g. building permits).

France ratified the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on 8 July 2002, and the Convention came into force on 6 October 2002[3].

The procedural rights provided for in the Aarhus Convention were already guaranteed by French law prior to the ratification of that Convention. Freedom of access to administrative documents has been guaranteed since the Law of 17 July 1978[4]. Public participation has existed in certain areas since the 19th century, but it was extended to all environmental procedures with the Law of 12 July 1983[5]. Access to justice is traditionally quite broad in France, both for individuals and legal entities, but the procedure for associative approval, reinforced by the Law of 2 February 1995[6], has made it possible to grant specific rights to approved environmental protection associations.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

Since 2005, the French Constitution of 1958 has protected environmental rights. The “Charter for the Environment”[7] has a constitutional value[8]. It is a mandatory constitutional norm. The Charter provides, *inter alia*[9]:

the right to a balanced and healthy environment (Art. 1);
the duty to preserve the environment (Art. 2);
the duty to prevent damages to the environment (Art. 3);
the duty to compensate damages to the environment (Art. 4);
the precautionary principle (Art. 5);
the principle of sustainable development (Art. 6);
the rights to have access to environmental information and to participate in environmental decision making (Art. 7)[10].

The Charter for the Environment does not provide the right of access to justice. However, based on Article 16 of the Declaration of Human and Civic Rights of 26 August 1789, the French Constitutional Court recognized the “the right of the persons concerned to seek an effective remedy before a court”[11]. This covers remedies in environmental matters.

Most of the Aarhus Convention provisions cannot be invoked before French courts. For example, Article 9, paragraph 3 and paragraph 5, of the Aarhus Convention has no direct effect and cannot be invoked[12].

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

General provisions on access to justice are disseminated in several codes, in particular the Code of Civil Procedure, the Code of Criminal Procedure and the Code of Administrative Justice. Regarding administrative litigation, the most important rules regarding access to the administrative justice result from case law [13].

Specific provisions on access to justice in environmental matters are provided by the Environmental Code, only for environmental NGOs[14].

First, every NGO whose purpose is environmental protection can appeal before administrative jurisdictions against administrative acts or omissions relating to environmental protection.

Second, every environmental NGO that has been approved under Article L. 141-1 of the Environmental Code[15] is presumed to have standing to challenge any administrative decision relating to environmental protection and which has a direct link with the purpose of the NGO[16].

Third, Article L. 142-2 of the Environmental Code provides that approved NGOs may exercise the rights granted to the civil party in respect of acts that are directly or indirectly prejudicial to the collective interests that they are intended to defend and which constitute an infringement of the legislative provisions relating to the protection the environment. As a consequence, under Article 2 of the Code of Criminal Procedure, approved NGOs may bring an action for compensation of damages caused by a criminal offence. The same right is also granted to “territorial communities”[17] under Article L. 142-4 of the Environmental Code.

Fourth, Article L. 142-3 of the Environmental Code provides that, where several natural persons have suffered individual losses which have been caused by the same person and which have a common origin, any approved environmental NGO may, if it has been mandated by at least two of the natural persons concerned, claim compensation before any court on their behalf.
Fifth, Article L. 142-3-1 of the Environmental Code provides that a class action may be brought before a civil or an administrative court where several persons placed in a similar situation suffer prejudice resulting from environmental damage, caused by the same person, having for common cause a failure of the same nature to fulfil their legal or contractual obligations[18].
Moreover, the Environmental Code and the Rural and Maritime Fishing Code provide for other provisions on access to justice, especially for hunters and professional organisations:
First, Article L. 421-6 of the Environmental Code provides that the departmental hunters' federations may exercise the rights granted to the civil party in respect of acts constituting an infringement of the provisions applicable to protected species
Second, Article L. 944-4 of Rural and Maritime Fishing Code provides that the professional organisations set up in application of Articles L. 912-1, L. 912-6 and L. 912-11 may exercise the rights granted to the civil party in respect of acts which constitute a breach of the provisions relating to water protection and fishing and which are directly or indirectly prejudicial to the collective interests which they are intended to defend.

4) Examples of national case-law, role of the Supreme Court in environmental cases

In France, access to justice is traditionally relatively broad. In particular, the ease of access to administrative justice results from the long-standing case law of the Conseil d'Etat, i.e. the administrative supreme court:
Conseil d'Etat, 29 mars 1901, *Casanova*, rec. p. 333: taxpayers have standing to appeal local government decisions affecting the finances of the local government.
Conseil d'Etat, 21 décembre 1906, *Syndicat des propriétaires et contribuables du quartier de la Croix-de-Seguey-Tivoli*, rec. p. 962: the Conseil d'Etat admitted an action of collective interest brought by an association. The latter has the right to take legal action to defend its social object, in this case the preservation of public transport services in a neighbourhood.
Conseil d'Etat, 28 décembre 1906, *Syndicat des patrons-coiffeurs de Limoges*, rec., p. 977: the Conseil d'Etat recognised the admissibility of trade unions to defend the interests for which they are responsible.
Conseil d'Etat, Ass., 17 février 1950, *Dame Lamotte*, rec. p. 110: the "recours pour excès de pouvoir", literally the "appeal for abuse of authority", which allows an individual to apply for the annulment of an administrative act, is possible against any administrative act even without a text providing a legal base to such appeal. Its function is the respect of legality.
Conseil d'Etat, 31 octobre 1969, *Syndicat de défense des eaux de la Durance*, rec. p. 462: even non-registered associations can appeal administrative acts adversely affecting the interests which they are defending.
Conseil d'Etat, Ass., 30 octobre 1998, *Sarran et Levacher*, rec. p. 368: the Conseil d'Etat recognised the right to an effective remedy, based on Article 16 of the Declaration of Human and Civic Rights of 26 August 1789[19].
Conseil d'Etat, 19 novembre 2020, commune de Grande-Synthe, n° 427301: ruling on a case regarding the fulfilment of France's commitments to reduce greenhouse gas emissions, Grande-Synthe, a city in the North of France, referred the matter to the Conseil d'Etat after it received a refusal from the Government to take additional measures in order to meet the objectives of the Paris Agreement. The French supreme administrative court found that the petition of the city, a coastal municipality particularly exposed to the effects of climate change, was admissible.
In the field of the environment, the administrative judges simply applied this case law from ordinary law and adapted it for environmental protection associations. In particular, concerning approved associations, standing is to be assessed in the light of three cumulative conditions: the statutory purpose of the association must be directly related to the appealed decision, the appealed decision must have harmful effects on the environment, and the geographical scope of the association's approval must be greater than or equal to that of the contested decision[20]. Conversely, in principle, the fact that an administrative decision has a local scope precludes an association with a national remit from proving an interest giving it standing[21]. However, it may be otherwise when the decision, because of its implications, particularly in the area of public freedoms, raises questions which, by their nature and purpose, go beyond local circumstances alone[22].
Concerning criminal and civil appeals, the Court of Cassation, i.e. the highest court in the French judiciary, decided that an association has standing where the unlawful act undermines the purpose of the association[23].
However, the French Parliament has restricted access to justice in urban planning matters and the Conseil constitutionnel, i.e. the French constitutional court, approved those restrictions:
Article L. 600-1-1 of the Urban Planning Code, which limits legal action to associations declared prior to the posting of the building permit application, has been approved by the Conseil constitutionnel[24] and the administrative judge[25].
Article L. 480-13 of the Urban Planning Code, which limits the possibility of obtaining the demolition of an illegal construction, has been approved by the Conseil constitutionnel[26].
Article 600-1-2 of the Urban Planning Code provides that: a person, other than the State, the territorial collectives or their groupings or an association, is admissible to bring an appeal against a decision relating to the occupation or use of the land only if the authorised project is likely to directly affect the conditions for occupation, use or enjoyment of the property[27].

5) Can the parties to the administrative procedure directly rely on international environmental agreements, or can only the national and EU transposing legislation be referred to?

A distinction must be made between international conventions and European directives.
Concerning international conventions, their provisions which do not produce any direct effect cannot be invoked by individuals before domestic courts[28]. To produce a direct effect, a treaty provision must provide rights to individuals and be self-executing. Therefore, very few international environmental agreement provisions produce a direct effect[29].
Concerning European directives, French case law has been brought into line with the criteria laid down by the Court of Justice of the European Union[30]. Therefore, European directives can be widely invoked[31].

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The French court system is mainly divided into two branches[32]. These two branches are likely to intervene in environmental matters.
On the one hand, the judicial branch is competent to judge disputes between two private individuals, and to punish infringements of criminal laws. It deals, *inter alia*, with civil and criminal cases and has 3 levels:
First instance tribunals: the "tribunal judiciaire" is in charge of civil cases, while criminal cases are handled by the "Cour d'assises" in the case of "crimes", i.e. very serious criminal offences, by the "tribunal correctionnel" for "délits", i.e. serious criminal offences, and by the "tribunal de police" for "contraventions", i.e. the least serious criminal offences;

Court of appeal: the civil chamber of the “Cour d’appel” is in charge of civil cases and criminal cases are handled by the criminal chamber of the “Cour d’ appel” for “délits” and “contraventions”, and by the “Cour d’assises d’appel” for very serious criminal offences (“crimes”);
Court of cassation: the “Cour de cassation”, which is the highest court of the judiciary order, is in charge of cassation appeals. Its civil chambers deal with civil cases and its criminal chamber deals with all criminal cases.
On the other hand, the administrative branch deals with all the disputes between a public body and a private entity or between two public bodies. It has 3 levels:
First instance: the “tribunal administratif” is in charge of most administrative cases, excluding those dealt with by specialised courts, such as the National Court of Asylum, or those judged in the first and last resort by the Conseil d’Etat.
Court of appeal: the “cour administrative d’appel” is the appeal judge for the administrative tribunals’ decisions.
Administrative supreme court: the “Conseil d’Etat” is the supreme administrative jurisdiction in France (litigation function), but also an advisor of the Government (advisory function). Regarding its litigation function, the Conseil d’Etat is in charge of cassation appeals. Additionally, in certain circumstances, the Conseil d’Etat is competent in the first and last resort, *inter alia* for appeals against regulatory acts of the President of the Republic, of the Prime Minister and of ministers, for appeals against independent administrative authorities’ decisions, or for appeals relating to European and regional elections.
In addition, the “Conseil constitutionnel” is the French constitutional court, in charge of the constitutionality review of legislative acts.
Lastly, the “tribunal des conflits” has the job of settling of jurisdiction between judicial and administrative courts.

2) Rules of competence and jurisdiction – how is it determined if there is jurisdiction of the court, cases of conflict between different national tribunals (in different Member States)?

In civil cases, unless provided otherwise, the “tribunal judiciaire” with territorial jurisdiction is that of the place where the defendant resides[33].
In criminal cases, a distinction must be made between the jurisdiction of the “tribunal correctionnel” and that of the “tribunal de police”. The “tribunal correctionnel” of the place of the offence, the place of residence of the accused or the place of arrest or detention of the accused shall have jurisdiction[34].
The “tribunal de police” of the place where the offence was committed or recorded or the place of residence of the defendant shall have jurisdiction[35].
Regarding administrative cases, except where specifically provided for, the “tribunal administratif” with territorial jurisdiction is the one located in the geographical area in which the authority which took the challenged decision is located[36].
In case of a conflict of jurisdiction between judicial and administrative courts, the “tribunal des conflits” may be called upon to determine jurisdiction. The division of competences between the two orders of jurisdiction is determined by legislative acts[37]. At the time of the French Revolution, the Law of 16-24 August 1790 and the Decree of 16 fructidor an III set out the areas in which the judicial order could not intervene. The “Conseil constitutionnel” held that the annulment or reform of decisions taken in the exercise of the prerogatives of public authority by the authorities exercising executive power shall ultimately fall within the competence of administrative jurisdictions[38]. As a consequence, the administrative order has jurisdiction, *inter alia*, over disputes concerning public liberties, administrative police, taxes, public contracts, public health, competition rules, environmental law, and urban and regional development.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

There are no specialities regarding court rules in the environmental sector.
However, Parliament is currently considering a bill which provides for the creation of regional centres specialized in environmental offences in each of the 36 courts of appeal and competent in matters of serious environmental damage or endangerment[39]. These new courts, made up of specialized judges, are intended to deal, for example, with pollution of water or soil by industrial activities, breaches of the regime of classified installations that degrade the environment, damage to protected species or areas, breaches of regulations on industrial waste, etc.
The simplest environmental offences would continue to be dealt with by the local courts. For industrial accidents with multiple victims (such as *Lubrizol*) or for major technological risks, the two interregional centres based in Paris and Marseille remain competent.
These criminal courts will also be able to deal with environmental civil disputes, in particular actions based on compensation for environmental damage provided for in Articles 1246 et seq. of the French Civil Code.

4) Level of control of judges in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion

France being a State governed by the rule of law, the principle is that all administrative acts are subject to judicial review. However, there are a few exceptions to that principle:
Acts of Government: these are acts adopted by administrative bodies (the President of the Republic, Prime Minister, Minister of Foreign Affairs, etc.) but are not considered as administrative acts. They are therefore not subject to judicial review. They are generally of a very political nature. This is particularly the case with acts adopted in the context of relations between constitutional public authorities, for example the refusal to table a bill before Parliament, and acts adopted in the context of relations with international organisations and foreign States
Measures of internal order: these are measures taken in respect of public service employees or users but considered to be of limited scope. The judge considers that they do not give rise to a complaint and therefore does not control their content.
Exceptional circumstances: for example, the functioning of the administration in times of war or natural disasters. The administration then benefits from an extension of its powers to take measures of extreme urgency. In this case, judicial review is not suspended but its scope is reduced.
There are two grounds for bringing an appeal before the administrative judge:
Defects in external legality: lack of jurisdiction, formal error, procedural defect
Defects in internal legality: breach of the law, illegality of the reasons, misuse of power.
Regarding defects in external legality, one of the main limits of judicial review is the theory of substantial requirements. According to Conseil d’Etat case law, a defect affecting the conduct of a prior administrative procedure is such as to render the decision taken unlawful only if that defect was capable of influencing the meaning of the decision taken or deprived the persons concerned of a guarantee[40]. Such theory is notably applied to environmental impact assessment and public participation procedures[41].
Regarding defects in internal legality, the degree of review of the grounds of the administrative act may vary according to the type of decision reviewed:
Normal control: in this case, the judge sanctions any error by the administration. This is the case when the administration is in a situation of bound jurisdiction.
Restricted control: in this case, the judge only sanctions gross errors by the administration. This is the case when the administration has a discretionary power.
Checking the balance sheet: the judge balances the advantages and disadvantages of the administrative decision. It is theoretically a maximum control in the sense that it is the appropriateness of the administrative decision that is controlled, but in practice it is rare for the judge to pronounce an annulment on this basis. This is the case for major development projects declared to be of public utility by the administration (airports, motorways, high-speed train lines).
The administrative judge does not have the power of self-referral[42]. On the other hand, when a case is brought before it, it is obliged to raise *ex officio* certain arguments which could lead to the annulment of the administrative decision, e.g. incompetence of the perpetrator, even if the applicant has not raised them. Those arguments are then referred to as “pleas raised of their own motion”.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

At the national level, the Prime Minister is competent to issue regulations of national scope (Article 21 of the Constitution). Certain ministers are competent to issue environmental permits, notably the Minister of the Environment and the Minister of the Economy. At the local level, prefects represent the State and have regulatory power. Local and regional governments also have regulatory power, within the scope of their competences. Prior authorisations are issued, depending on the case, by the prefects (e.g. pollution permits) or by the local governments (e.g. building permits).

The Code of Relations between the Public and the Administration provides the rules applicable to administrative procedure, in terms of:

Motivation of administrative acts: Article L. 211-1 et seq.

Entry into force of administrative acts: Article L. 221-1 et seq.

Implicit decisions: silence is tantamount to acceptance of the application (Article L. 231-1) but there are many exceptions to this rule, particularly in the field of the environment and urban planning. Silence kept by the administration for two months is tantamount to a rejection decision: 1) When the request does not lead to the adoption of a decision having the character of an individual decision; 2) Where the application does not form part of a procedure provided for by a legislative or regulatory text or has the character of a complaint or an administrative appeal; 3) If the request is of a financial nature, except, in matters of social security, in the cases provided for by decree; 4) In cases, specified by decree of the Council of State, where implicit acceptance would not be compatible with compliance with France's international and European commitments, the protection of national security, the protection of freedoms and principles of constitutional value and the safeguarding of public order; 5) In relations between the administration and its agents (Article L. 231-4).

Repeal and withdrawal of administrative acts: Article L. 240-1 et seq.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

One can appeal an administrative environmental decision before administrative courts for the purpose of obtaining an annulment of the decision.

Most of environmental decisions are challenged before the administrative tribunal. However, exceptionally, some decisions are challenged directly before the Conseil d'Etat, which acts as first and last resort. This is the case for regulatory acts of the President of the Republic, of the Prime Minister and of ministers, which covers all national regulatory acts adopted in environmental matters, for the decisions of the Nuclear Safety Authority[43] and for the main "declarations of public utility", which are acts that allow the realisation of major development projects. Such declarations regarding motorways, main airports, navigation channels, railways, power plants and water pipes must be directly challenged before the Conseil d'Etat[44], which acts as first and last resort[45].

Unless otherwise specified, the time limit for appeal is two months. The appeal must be sent or filed to the court or on the online application "Télérecours".

This is followed by a phase of exchange of written pleadings between the parties, in accordance with the adversarial principle. The parties are the applicant, the author of the administrative decision and, where applicable, the beneficiary of the permit. When considering the case, the judge first determines the admissibility of the application and then examines the applicant's arguments concerning external legality and internal legality.

If necessary, the court shall annul the decision. The annulment shall in principle have retroactive effect, unless the court decides to vary the effects of its decision in time[46]. In this case, the court shall determine the date from which the decision is annulled. This technique, used in the interests of legal certainty, allows the administration to adopt a new decision before its earlier decision is deprived of legal effect.

In addition to annulling the administrative decision, the judge may issue an injunction against the administration. Administrative courts have the power to impose periodic penalty payments against the administration in order to break its refusal to enforce decisions handed down by an administrative court[47]. A penalty payment is an order to pay a sum of money for each day of delay. It may be pronounced against public persons or against private bodies responsible for the management of a public service. Administrative courts are also allowed to issue injunctions to public persons or private bodies responsible for the management of a public service when the litigants so request and when these injunctions are necessary to ensure the execution of the *res judicata*. Two hypotheses are distinguished: the injunction may consist in prescribing the execution, within the time limit set by the judge, either of "an enforcement measure in a specific sense", when the judgment places the administration in a situation of bound jurisdiction[48], or of any measure after a new instruction, when it grants it a discretionary power[49].

Furthermore, the judge may, in some specific cases, reform the administrative decision. These are disputes of "full jurisdiction" (*pleine juridiction*). In these cases, the judge decides the dispute on the basis of the law applicable on the date of its judicial decision, and not on the date of the challenged administrative decision. The judge also has the power to reform the administrative decision by ordering the administration to take a new one to replace the disputed one. He may substitute his assessment for that of the authority whose action is challenged and determine what the replacement decision should be.

Several environmental litigations fall under the full jurisdiction:

the litigation of classified installations for environmental protection (i.e. industrial activities)[50].

the litigation of water-related activities**[51]**

the litigation of "environmental authorisations"[52]. This procedure is applicable to certain classified installations and certain water-related activities[53].

Article L. 181-18 of the Environmental Code specifies the powers available to the judge when an environmental authorization is challenged. On the one hand, the court may either stay the proceedings in order to allow the challenged environmental authorisation to be regularised when its defects are capable of being regularised by an amending decision, or limit the scope or effects of the annulment which it pronounces if the defects which it identifies affect only part of the decision or only one stage of its investigation procedure. On the other hand, the judge is allowed to order the suspension of the execution of parts of the environmental permit that are not vitiated.

Concerning the delay in obtaining a final ruling, in 2019, rulings were on average issued within 9 months before administrative tribunals, 11 months before administrative courts of appeal and 6 months before the Conseil d'Etat[54].

Regarding environmental matters, delays are likely to be above average, given the greater complexity of those cases.

3) Existence of special environmental courts, main role, competence

For the time being[55], no special environmental courts with general environmental jurisdiction exist in France.

However, there are six specialised coastal jurisdictions (the "juridictions du littoral spécialisées - JULIS). Those are located in Le Havre, Brest, Marseille, Fort-de-France, Saint-Denis-de-la Réunion and Saint-Pierre-et-Miquelon[56]. Created in 2001 by a legislative act on the repression of polluting discharges from ships in territorial waters, inland waters and navigable waterways[57], the JULIS have jurisdiction in particular for offences relating to polluting discharges from ships.

Under certain circumstances, environmental disputes may also be dealt with by specialised courts which have concurrent jurisdiction, which is in fact tending to become exclusive jurisdiction. It falls within the jurisdiction of specialised inter-regional courts (JIRS: there are currently 8 specialised inter-regional courts in some regions (Bordeaux, Fort-de-France, Lille, Lyon, Marseille, Nancy, Paris, Rennes) when the acts being prosecuted are part of a context of organised crime[58]. For example, this is the case of trafficking in elvers, which is regularly dealt with by the Bordeaux JIRS. It also falls under the public health authorities (PSP)[59]. Two public health units have been set up in the "tribunal judiciaire" of Paris and Marseille. The jurisdiction of these PSPs has been extended to certain environmental damage. They may therefore be competent to deal with the offences provided for in the Environmental Code in cases

relating to a health product or a product intended for human or animal nutrition or a product or substance to which humans are permanently exposed and which is regulated because of its effects or dangerousness, which may be highly complex in nature. The PSPs have thus taken on cases involving asbestos, soil pollution or the dumping of hazardous waste.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

Administrative appeals

There are two kinds of administrative appeals[60]:

Internal administrative appeal ("recours gracieux"): the application shall be addressed to the authority that took the contested decision or failed to act.

Hierarchical appeal: the hierarchical appeal shall be addressed to the hierarchical superior of the author of the decision. For example, the Minister of the Interior for a decision taken by a prefect.

Most of the time, the exercise of an administrative appeal is not mandatory. However, regarding access to environmental information, an application for access to that information must be submitted to the Committee on Access to Administrative Documents (Commission d'accès aux documents administratifs) [61] before referring the matter to a judge. In addition, in the context of the environmental impact assessment procedure, a judicial appeal against the screening decision must be preceded by an administrative appeal[62].

Once the administrative appeal is rejected, it is possible to appeal the administrative decision before the administrative tribunal.

Appeals against courts' decisions

Most of the time, rulings of administrative tribunals can be appealed before administrative courts of appeal and, finally, it is possible to lodge a cassation complaint before the Conseil d'Etat.

However, regarding "power generation facilities using the mechanical energy of the wind", i.e. wind turbines, appeals must be introduced directly before administrative courts of appeal, which act as first and last resort[63]. However, a cassation complaint before the Conseil d'Etat remains possible.

In addition, regarding building permits issued in contentious areas regarding access to housing[64], administrative tribunals rule in the first and last instance [65]. This means that it is not possible to appeal the tribunals' rulings before the administrative court of appeal, but a cassation complaint before the Conseil d' Etat remains possible.

Orders on interim measures

Several procedures can lead to orders on interim measures.

First, the "référé-liberté" procedure can be used when a fundamental liberty is at stake. In the event of a serious and manifestly unlawful violation of a fundamental freedom by a public authority and in case of urgency, the judge may order any necessary measures to safeguard that freedom[66]. In such cases, the administrative tribunal shall give its ruling within 48 hours. Its decision may be appealed directly before the Conseil d'Etat[67]. This procedure has been applied a few times regarding environmental matters, based on a violation of the right to the environment recognised in Article 1 of the constitutional Charter for the Environment[68], but this is still rare.

Second, the "référé-suspension" procedure can be used, after having filed an ordinary appeal, in order to obtain a suspension of the administrative decision, pending the judge's decision on the merits. Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at that stage of the investigation, a serious doubt as to the legality of the decision[69]. The suspension of the administrative decision shall end at the latest when the judge renders a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d'Etat within 15 days. Then the Conseil d'Etat decides within 48 hours[70].

Third, two special "référé-suspension" procedures coexist in the field of the environment:

In the absence of an environmental impact assessment or strategic environmental assessment: where an administrative decision has been adopted without an environmental impact assessment or strategic environmental assessment when it should have been preceded by such an assessment, the court finds that there was no assessment and suspends the administrative decision[71].

In the absence of public participation: where an administrative decision has been adopted without a public participation procedure when it should have been preceded by such a procedure, the court finds that there was no public participation and suspends the administrative decision[72].

Fourth, under Article L. 216-13 of the Environmental Code (resulting from the Law of 3 January 1992 on water), the liberty and detention judge may, at the request of the public prosecutor, acting ex officio or at the request of the administrative authority, the victim or an approved environmental protection association, order for a period of up to one year any appropriate measures, including the suspension or prohibition of operations carried out in breach of criminal law, to the natural and legal persons concerned. The decision is taken after hearing the person concerned, or summoning him/her to appear within 48 hours. Article L. 415-4 of the same code provides for an equivalent provision in respect of protected species.

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references

Apart from those already mentioned, there are no other extraordinary means of appeal against an administrative or judicial decision.

There are two main kinds of preliminary rulings:

Priority question of constitutionality

The priority question of constitutionality (QPC) is a new right recognized by the constitutional revision of 23 July 2008[73], which entered into force on 1 March 2010. It allows any litigant to challenge, before the judge in charge of his case, the constitutionality of a legislative provision applicable to his case on the grounds that it infringes the rights and freedoms guaranteed by the Constitution, which includes the Constitution itself (1958), the Declaration of Human and Civic Rights of 26 August 1789, the preamble to the Constitution of 1946 and the "Charter for the Environment"[74]. This procedure is regularly used in environmental matters.

The QPC may be raised in the course of any dispute before any court, whether at first instance, on appeal or in cassation.

The court to which the application is referred proceeds without delay to an initial examination and checks three criteria:

whether the disputed legislative provision is indeed applicable to the dispute it has to decide;

whether this provision has not already been declared in conformity with the Constitution by the Conseil constitutionnel;

whether the issue is of a "serious nature", to be heard by the Conseil d'Etat or the Cour de cassation (if the issue "is not devoid of serious nature", before the lower courts).

If the QPC is admissible, the court applied to passes it to the Conseil d'Etat or the Cour de cassation, depending on which kind of court examined the request. The Conseil d'Etat or the Cour de cassation then has three months to examine the QPC and decide whether or not to refer the matter to the Conseil constitutionnel[75].

If the matter is referred to the Conseil constitutionnel, the latter then has three months to decide. It may declare the provision to be in conformity with or contrary to the Constitution. In the latter case, the provision concerned is repealed. The Constitutional Council may also defer in time the effects of the declaration of unconstitutionality.

As of 1 March 2020, the Constitutional Council had issued 740 QPC decisions.

Preliminary ruling before the European Union Court of Justice

Pursuant to Article 267 of the Treaty on the Functioning of the European Union, French courts may ask the Court of Justice of the European Union to give a ruling on the interpretation of EU Law or the validity of EU acts.
The request for a preliminary ruling may be raised by the applicant in his written submissions.
In the event of serious difficulties concerning the interpretation of an act of European Union law or the assessment of its validity, it is for the Conseil d'Etat to stay proceedings and refer a question to the Court of Justice of the European Union for a preliminary ruling. However, this is not an obligation, but merely an option in the case of the lower courts.
Regarding a reference for a preliminary ruling on interpretation, the Conseil d'Etat considers that it is not obliged to refer the matter to the Court of Justice of the European Union in the event of a clear act. In other words, that obligation is incumbent on it only "where there is doubt as to the meaning or scope of one or more of the clauses of the treaty applicable to the dispute and where the outcome of the dispute depends on the solution of that difficulty"[76].
The application of this "clear act theory" was relatively restrictive until the 1990s, before the Conseil d'Etat more readily agreed to refer questions to the Court of Justice. However, this did not prevent the Court of Justice from condemning France for failure to comply with Article 267 of the Treaty, precisely because the Conseil d'Etat had not submitted a reference for a preliminary ruling[77].
With regard to the application for an assessment of validity, the Conseil d'Etat considers that it is required to refer only in cases where the validity of the act is questionable and "having regard to the serious nature of the challenge raised"[78].
In recent years, some 30 preliminary questions a year have been referred to the Court of Justice by the administrative courts.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

Mediation

In administrative matters, it is always possible for the parties to a dispute to have recourse to mediation[79]. Mediation is defined as "any structured process, however it may be called, whereby two or more parties attempt to reach an agreement with a view to resolving their differences, with the assistance of a third party, the mediator, chosen by them or appointed with their agreement by the court"[80]. It is in principle voluntary, but the judge also has the possibility to order the parties to carry out mediation. There are few examples of mediations in environmental matters[81].
In criminal matters, it is the public prosecutor who calls upon the criminal mediator to meet with the parties subject to their agreement. Here, mediation can only intervene to repair damage caused by a minor offence (insults, simple theft, night-time disturbance, etc.) but which has been the subject of a complaint. However, the victim has to agree. In the event of disagreement or non-execution of the agreement, the public prosecutor may resume proceedings.
In civil matters, mediation is used for everyday disputes, such as neighbourhood or family conflicts. An attempt at mediation or the search for an amicable solution is obligatory for any legal claim for a dispute below €5,000[82]. The judge may impose it on the parties in cases where he deems it useful[83]. He must approve or confirm the agreement reached between the parties.

Criminal transaction

Pursuant to Article L. 173-12 of the Environmental Code, the administrative authority may, as long as the public action of the public prosecutor has not been set in motion, compromise with natural and legal persons on the prosecution of the offences provided for and punished by the Environmental Code, with the exception of offences punishable by more than two years' imprisonment. The transaction proposed by the administration and accepted by the offender must be approved by the public prosecutor.
The settlement proposal is determined in the light of the circumstances and seriousness of the offence, the personality of the perpetrator and his resources and charges. It specifies the settlement fine that the offender must pay, the amount of which may not exceed one third of the fine incurred, as well as, where appropriate, the obligations that will be imposed on him to put an end to the offence, avoid its repetition, repair the damage or bring the premises into conformity.
This procedure has the disadvantage of leaving the victims on the sidelines, particularly environmental protection associations, whose chances of obtaining compensation for their moral damage are reduced.
However, it is very diversely adopted in the jurisdictions. While it is little exploited, if at all, in the majority of jurisdictions, some prosecutors have fully appropriated it and are using it up to 40% of their environmental litigation[84].

Criminal composition – Alternatives to public prosecutions

Under Article 41-1 of the Code of Criminal Procedure, the public prosecutor may, *inter alia*, either remind the perpetrator of his obligations under the law[85], ask the perpetrator to regularise his situation under the law, or ask the perpetrator to compensate the damage resulting from the offence.
Under Article 41-1-2 I. of the Code of Criminal Procedure, as long as public proceedings have not been initiated, the public prosecutor may invite a legal person accused of one or more offences to conclude a deferred prosecution agreement. The CJIP (Judicial agreement in the public interest)[86] may be proposed by the public prosecutor to a legal person charged with, in particular, corruption, tax fraud, money laundering or any other related offence. This convention includes several obligations:
The payment of a fine in the public interest to the Treasury;
Submission for a maximum period of three years to a compliance programme under the supervision of the French Anti-Corruption Agency;
The compensation of damages caused by the offence when the victim is identified.
These characteristics, i.e. a proactive approach on the part of representatives of legal persons and cooperation with the authorities, stem from a circular issued by the Ministry of Justice on 31 January 2018 to compensate for the law's silence regarding the criteria for concluding a CJIP. It emerges that the appropriateness of implementing this measure can be assessed according to the following criteria:
The track record of the legal person;
The voluntary nature of the disclosure of facts;
The degree of cooperation with the judiciary that the legal person has demonstrated.
Under 41-2 of the Code of Criminal Procedure, the public prosecutor may, as long as the public prosecution has not been initiated, propose, directly or through an authorised person, a penal composition to a natural person who acknowledges having committed one or more offences punishable as a principal penalty by a fine or a term of imprisonment of up to five years, as well as, where appropriate, one or more related contraventions consisting of one or more of the following measures:
To pay a fine of composition to the Treasury. The amount of this fine, which may not exceed the maximum amount of the fine incurred, shall be fixed according to the seriousness of the facts as well as the resources and charges of the person. The fine may be paid in instalments, according to a schedule set by the public prosecutor, within a period that may not exceed one year;
To relinquish jurisdiction in favour of the State over the thing that was used or intended to commit the offence or which is the product of the offence.

Civil conciliation

In civil matters, the Code of Civil Procedure requires the parties, before referring to courts in disputes of less than €10,000, to have attempted conciliation before a judicial conciliator, or to justify other steps to reach an amicable resolution of their dispute, on pain of inadmissibility of their request[87].

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

Rights defender

The Defender of Rights is a constitutional authority (Article 71-1 of the Constitution)[88] whose mission is to ensure that rights and freedoms are respected by State administrations, local authorities and public institutions, as well as all bodies carrying out a public service mission or by those that fall within its remit according to its Institutional Act[89].

The Defender of Rights is responsible for improving relations between citizens, the administration and public services, in particular through mediation.

He may be applied to by any person who considers himself or herself aggrieved by the operation of a public service and may take up the matter *ex officio*.

The referral is free of charge and can be done online. It is totally independent of the existing remedies available elsewhere.

The Defender of Rights is appointed by the President of the Republic in accordance with the procedure provided for in the last paragraph of Article 13 of the Constitution. The Defender of Rights is entrusted with five major missions listed in the Organic Law of 29 March 2011:

To defend rights and freedoms in the context of relations with State administrations, local authorities, public establishments and bodies with a public service mission;

to defend and promote the best interests and rights of the child as enshrined in law or in an international commitment regularly ratified or approved by France;

to fight against direct or indirect discrimination prohibited by law or by an international commitment duly ratified or approved by France, and to promote equality;

to ensure compliance with professional ethics by persons carrying out security activities on the territory of the Republic;

to refer to the competent authorities any whistleblower, as defined by the Law n° 2016-1691 of 9 December 2016, and to monitor the rights and freedoms of this person.

The Defender of Rights may not follow up on a referral: in this case, he must indicate the reasons for his decision.

He may propose to the claimant a settlement with the defendant. In the case of discrimination punishable under the Criminal Code, the settlement may consist in the payment of a transactional fine.

With the exception of the judiciary, the Defender of Rights may refer to the authority empowered to initiate disciplinary proceedings any facts of which he has knowledge, and which appear to him to justify a sanction.

The Defender of Rights may request the Vice-President of the Conseil d'Etat or the First President of the Court of Audit to have any studies carried out.

When the Defender of Rights receives a complaint, not submitted to a judicial authority, which raises a question relating to the interpretation or scope of a legislative or regulatory provision, he may consult the Conseil d'Etat and make his opinion public.

He may recommend any legislative or regulatory amendments he deems useful. He may be consulted by the Prime Minister on any bill falling within his field of competence. He may also be consulted by the Prime Minister, the President of the National Assembly or the President of the Senate on any matter falling within his area of competence.

The Defender of Rights, who is an independent constitutional authority, has the power to intervene with the administration[90]. He may make any recommendation that appears to him to guarantee respect for the rights and freedoms of the injured party and to resolve the difficulties raised before him or to prevent their recurrence. He may also recommend that the situation of the person before him be resolved in equity.

The authorities or persons concerned must inform the Defender of Rights, within a period of time to be determined by him, of the action taken on his recommendations. If no information is provided within this time limit or if he considers, on the basis of the information received, that a recommendation has not been followed up, the Defender of Rights may order the person concerned to take the necessary measures within a specified time limit. In the event of failure to comply with the injunction, the Defender of Rights prepares a special report, which is communicated to the respondent. The Defender of Rights shall make the report and, where appropriate, the respondent's response public.

In 2019, the environment and urban planning accounted for only 3.1% of the complaints addressed to the Defender of Rights[91].

Public prosecutor

The public prosecutor intervenes on the basis of information from the police and gendarmerie services, but also from State services or following a complaint from a private individual, when an offence is committed within the jurisdiction of the court of first instance in which he exercises his functions. He carries out or arranges for the carrying out of all acts necessary for the investigation and prosecution of the perpetrators of criminal offences. To this end, he will direct the activities of the judicial police. He will supervise the placement and extension of police custody, arrests, and so on.

The public prosecutor presents his arguments orally before the courts and tribunals but does not attend the deliberations.

In addition to these powers, the public prosecutor implements locally the criminal policy defined by the Minister of Justice. He also directs and coordinates the application of local security contracts implemented by local authorities.

Any person who has been the victim of an offence can file a complaint with the police or gendarmerie, which will then forward it to the public prosecutor. The complaint can also be addressed directly to the public prosecutor.

Indeed, it is possible to file a complaint with the public prosecutor. Article 17 of the Code of Criminal Procedure obliges police officers to receive complaints and denunciations. A denunciation is made by a third party whose purpose is to inform the public authorities of the commission of an offence, even though he is not himself the victim of the offence. The complaint comes from the victim of the offence.

Complaints and denunciations may be written or oral. It is possible to fill in an online draft complaint form, before going to the police department to sign it. There is no charge for filing a complaint. The filing of a complaint gives rise to a report and a receipt is issued to the victim.

Once a complaint has been lodged with the police, the police must forward it to the public prosecutor[92]. A complaint or denunciation may also be sent directly to the public prosecutor[93]. A complaint template is available online.

Given that French criminal procedure is based on an inquisitorial rather than an accusatory system, the prosecution of the offender rests essentially with the prosecutor. Thus, the prosecutor has the "opportunity to prosecute". In accordance with Article 40 of the Code of Criminal Procedure, the prosecutor "assesses the action to be taken" on complaints and denunciations. He may, if he considers it appropriate, institute proceedings once the offence has been established. Several possibilities are open to him:

he can dismiss the case without further action, which implies that the offender will not be prosecuted, especially when the offender is not identified or is irresponsible (insanity);

prior to his decision to initiate public action, he may implement alternative measures to prosecution: reminder of the law, penal composition, damage compensation measure or penal mediation between the perpetrator and the victim, referral of the perpetrator to a health, social or professional structure;

in the case of a contravention or misdemeanour, he may refer the perpetrator to a court (juvenile court, local court, police court, criminal court);

in the case of a crime or complex offence, he may initiate an investigation by referring the matter to the examining magistrate, who is then responsible for the investigation;

or he may classify the procedure as "no further action".

In all cases, it informs the victims of its decision. In the event of a dismissal, reasons must be given for the decision[94]. The reason for dismissing a complaint may be that the prosecution is inadmissible (e.g. if the offence is time-barred), that not all the elements of the offence are present, or that it is too difficult to prove the offence. The prosecutor may also dismiss the case if he considers prosecution inappropriate.
Article 2 of the Code of Criminal Procedure defines a civil action as an action for compensation, and Articles 3 and 4 provide that the same action may be brought before the civil or criminal courts. The victim of an offence may claim compensation for the damage he has suffered either before the civil court, or before the criminal court. In the second case, he brings a civil action. In order to bring a civil action, pursuant to Article 2, paragraph 1, of the Code of Criminal Procedure, it is necessary to have suffered personally from the damage directly caused by the offence. It will therefore be necessary to ensure that the harm is certain, direct and personal. Where the public action (prosecution) has already been set in motion, the injured party may be able to be a civil party. He may do so during the investigation phase both before the investigating judge (Article 85 the Code of Criminal Procedure) and before the examining magistrate's chamber (Article 87, para. 1, of the Code of Criminal Procedure). He may also do so, within certain limits, even at the time of the judgment without being required to appear (Article 418, paragraph 1, of the Code of Criminal Procedure). In this case, and in order to allow for intervention at this stage of the trial, the public prosecutor has the duty in correctional matters to notify the victim of the date of the court hearing by way of immediate appearance or of the summons by minutes (Article 393-1 of the Code of Criminal Procedure).
When the public action has not yet been initiated, the injured party may nevertheless bring his civil action before a criminal court. It then acts by way of action. It has two means of doing this at its disposal. There is in principle no instruction for a misdemeanour (optional instruction). The victim then directly summons the defendant before the court of judgment by bailiff's writ (“citation directe”; Articles 392 and 531 of the Code of Criminal Procedure). At the end of the investigation, the investigating judge may decide to refer the case to the criminal court.
Pursuant to Article L. 142-2 of the Environmental Code, approved environmental NGOs may exercise the rights granted to the civil party in respect of acts that are directly or indirectly prejudicial to the collective interests that they are intended to defend and that constitute an infringement of the legislative provisions relating to the protection the environment. This gives them the opportunity to file a complaint "with a civil claim" before the investigating judge.

1.4. How can one bring a case to court?

1) Who can challenge an environmental administrative decision (relevance of the concept of concerned public and NGOs)?

The possibility to challenge an administrative decision refers to the concept of "capacity to act". At this stage, there is no distinction between the public, the public concerned and NGOs. It is at the stage of standing (intérêt à agir) that such a distinction is relevant.

Natural persons

The ability of individuals to take legal action (“capacité à agir”) is governed by the rules of civil law. Incapacitated adults and minors are subject to special rules. The Conseil d’Etat considers that, barring exceptions, an unemancipated minor and an incapacitated adult may not take legal action[95].

Legal persons (NGOs)

A legal person, such as an association (NGO), can only take legal action if it exists legally. To do so, the association must be registered with the public authorities in accordance with Articles 2 and 5 of the Law of 1 July 1901 on the contract of association.
Nevertheless, the Conseil d’Etat has accepted legal action by an association defending a collective interest even in the absence of a declaration of the association to the public authorities[96].
Foreign NGOs that do not have an establishment in France also have the capacity to take legal action[97].
Regarding the representation of the association in court, the judge refers to the statutes of the association. For example, where the statutes specify that the representative of the association may act only with the authorisation of the board of directors of the association, this authorisation must be provided to the judge[98]. In case of silence of the statutes, the president of the association must be expressly authorised by the general assembly of the association[99].

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

There are no specific rules applicable in sectoral legislation.

3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups of representatives of the public, standing for foreign NGOs, etc.)

Standing for administrative review

There are no specific requirements regarding standing for administrative review.

Standing before the administrative judge

As the saying goes, "no one pleads by prosecutor". Therefore, the administrative judge requires the applicant to show an "intérêt à agir", literally an “interest in acting” before the judge. Case law thus precludes actions whose sole purpose is the preservation of legality[100]. Access to the administrative judge is therefore not an *actio popularis*[101].
A certain number of rules or principles that the Conseil d'Etat had laid down in matters of contentious administrative procedure, as regards the admissibility of appeals[102] have acquired constitutional value. Indeed, the guarantee of rights set out in Article 17 of the Declaration of Human Rights of 1789 has been interpreted as implying respect for the right to an effective remedy, which may not be substantially impaired[103], respect for the rights of the defence[104], the right to a fair trial and respect for the right to an effective remedy, which cannot be substantially undermined.[105]
That being said, the case law of the administrative branch on standing is rather liberal, whether for individuals or associations’ appeals. Approved environmental NGOs benefit from a very favourable regime.

- Individuals

In order to establish an interest in bringing proceedings, the applicant must show that the contested decision adversely affects his interests, which is usually understood in a liberal way. For example, the owner of a second home can appeal against the building permit for a holiday village located more than 750 metres away because of the heavy traffic in front of his house[106]. However, according to the terms of Article L. 600-1-3 of the Urban Planning Code, except where petitioner invokes particular circumstances, the interest to act against a building, demolition or development permit is assessed on the date of posting of the petitioner's request in the town hall. Interests in action were also allowed to challenge the permit of an electrical conversion station because of the nuisance it causes[107]. When authorising the construction of wind turbines, the administrative judge gives priority to the criterion of distance over that of visibility[108]. However, an association having as its object the protection of the environment does not justify an interest giving it standing to act against the decision to retain a candidate following a call for tenders organised to select the operator responsible for meeting the objectives of developing electricity production from offshore wind energy[109].
First, the applicant's interest must be legitimate. The purpose of the appeal must therefore be to safeguard a lawful situation.
Second, the applicant must have a definite interest, not a contingent interest. For example, an environmental association is ineligible to challenge a plan whose actions will have to be the subject of new decisions in the future[110]. Nor is an applicant entitled to challenge the decree creating a national park in French Guiana by relying solely on his status as a resident of the department and as a walker, even though he is domiciled 200 km from the boundaries of that park[111].

Third, the relationship between the applicant's situation and the challenged act must be sufficiently direct. For example, in the case of people living in the neighbourhood of an industrial facility, the judge takes into account the inconveniences and dangers that the facility presents for them, assessed in particular according to the situation of the persons concerned and the configuration of the premises. This is the case for applicants living on the other side of a river, approximately 375 metres away from the future facility, which presented risks to public safety and health that could affect a large area[112]. On the other hand, the owner of a house located 3.5 km from a hazardous waste landfill facility "cannot rely on his status as an immediate neighbour of the facility in dispute to establish his interest in contesting the permit of the facility"[113]. This can pose environmental challenges. In the case of a development project located in an area where there are no residents nearby, no individual will be able to challenge the project before the administrative judge. However, in this case, an environmental NGO may be admissible.

Finally, in the area of urban planning, the legislator has adopted a provision to limit the individual's standing. Thus, an individual is only admissible to act against a building permit if the authorised construction is "of such a nature as to directly affect the conditions of occupation, use or enjoyment" of his property [114].

Article L. 77-10-3 of the Code of Administrative Justice has instituted a class action in 2016[115]. It provides that where several persons in a similar situation suffer damage caused by a legal person governed by public law or a body governed by private law responsible for the operation of a public service, which has as its common cause a failure of the same nature to comply with its legal or contractual obligations, a group action may be brought in the light of the individual cases presented by the plaintiff. Such action may be brought either with a view to putting an end to the failure or to holding the person who caused the damage liable in order to obtain compensation for the damage suffered, or both.

- Environmental NGOs

Since 1906, the Conseil d'Etat has accepted the principle of collective interest action by an association[116].

Appeals by associations in defence of their statutory purpose are admitted in a flexible manner by the administrative judge. Because of the principle of specialty of legal persons, standing is assessed in the light of the corporate purpose defined by the association's statutes[117]. In order to assess standing, the judge compares the content of the contested administrative decision with the association's corporate purpose. Thus, an association is admissible only if the contested decision adversely affects the collective interest which they are intended to defend. The judge verifies the sufficiency of the associations' standing. For example, an association whose corporate purpose is focused solely on the protection of nature, and not on the urban environment, is not admissible to act against a building permit located on the edge of an urbanised area[118]. The drafting of the statutory purpose is therefore particularly important. It must be sufficiently broad, but not too wide either[119].

The judge is also attentive to the geographical scope of the association. An association whose territorial scope of action is not limited geographically shall be deemed to have a national purpose[120], and therefore has no interest in acting against a local act[121]. The same applies to all associations whose territorial jurisdiction is wider than that of the contested act[122].

Lastly, Article L. 600-1-1 of the Urban Planning Code provides that an association is only admissible to act against a building permit "if the filing of the statutes of the association at the prefecture has taken place at least one year before the posting of the petitioner's request at the town hall". This prevents the formation of an association in response to a real estate project in order to challenge the building permit. In this case, only pre-existing associations, in particular approved associations, will be admissible. The Conseil constitutionnel held that these provisions do not substantially affect the right of associations to exercise remedies[123]. However, the question of the compliance of this article with Article 9 of the Aarhus Convention has so far not been examined.

Law no 2016-1547 of 18 November 2016 on the modernisation of justice in the twenty-first century created the action for recognition of rights defined in Article L. 77-12-1 of the Code of Administrative Justice. It allows a duly registered association or a duly constituted professional union to file a petition for recognition of individual rights resulting from the application of the law or regulations in favour of an unspecified group of persons having the same interest, provided that their statutory purpose includes the defence of that interest. It may seek the benefit of a sum of money legally due or the discharge of a sum of money illegally claimed. It may not seek recognition of damage.

- Approved Environmental NGOs

Obtaining an environmental protection approval[124] greatly facilitates the admissibility of the association's action. Article L. 142-1, paragraph 2, of the Environmental Code establishes a kind of presumption of standing for approved environmental associations: approved associations "have standing in bringing proceedings against any administrative decision which is directly related to their statutory purpose and activities and which has harmful effects on the environment in all or part of the territory for which they are approved, provided that the decision was taken after the date of their approval"[125]. Thus, standing of an approved association is assessed in the light of three cumulative conditions[126]: the statutory purpose of the association must be directly related to the challenged decision, the challenged decision has harmful effects on the environment, and the geographical scope of the association's approval is greater than or equal to that of the challenged decision.

In addition, a federation of associations such as *France Nature Environnement*, "even though it brings together local associations, at least one of which would have been admissible to personally challenge an administrative decision, justifies the interest conferred on it by Article L. 142-1 of the Environmental Code, once it has been approved at the national level"[127].

Standing before the criminal judge

The prosecution is not alone in its decision to prosecute. To a certain extent, alleged victims or plaintiffs can also initiate criminal proceedings. By becoming a civil party ("se constituer partie civile"), i.e. by bringing a civil action before the criminal courts, alleged victims or plaintiffs can initiate criminal proceedings, including cases where the public prosecutor has not prosecuted.

However, in order to limit abuses, under Article 85 of the Code of Criminal Procedure, a complaint with a claim for damages is admissible only if the person has already lodged a complaint with the prosecutor or the police and can prove either that the public prosecutor has informed him that he will not himself institute proceedings, or that a period of three months has elapsed since the complaint.

A general standing condition is also provided under Article 2 of the Code of Criminal Procedure: "civil action aimed at the reparation of the damage suffered because of a felony, a misdemeanour or a petty offence is open to all those who have personally suffered damage directly caused by the offence". Therefore, a civil claim is admissible for compensation for personal, actual, direct and consequential damage arising from the facts falling within the very definition of the offence.

- Individuals

The institution of civil proceedings before the criminal court shall be available only to persons who have been personally and directly injured by the offence [128]. The personal nature of the damage implies that the applicant has personally suffered personal injury to his physical integrity, property, honour or affection. The direct nature of the damage implies that it is linked to the infringement by a causal link. The damage must also be current, i.e. already realised, not potential.

- Environmental NGOs

The condition relating to the personal and direct nature of the damage also applies to associations. This condition is met when the offence has been committed to its detriment, for example in the case of theft[129] or defamation[130].

However, the issue is more delicate when the association seeks compensation for the harm resulting from infringement of the collective interest it is intended to defend. In this case, the judge may raise two arguments against it, either the lack of personal and direct damage[131] or the fact that the damage invoked is not distinct from the social damage, for which it is up to the public prosecutor's office alone to pursue compensation.
Therefore, special legislative provision is now conferring on certain associations the exercise of the rights granted to civil parties. These associations are thus recognised as potential victims of the criminal offence.

- Approved Environmental NGOs

When an association is approved under Article L. 141-1 of the Environmental Code, it is granted the possibility of exercising the rights granted to civil parties. This possibility is widely used by French associations.
Under Article L. 142-2 of the Environmental Code, the approved associations:
“may exercise the rights recognised as those of the civil party with regard to acts which directly or indirectly damage the collective interests that they defend and which constitute an infringement of the legislative provisions relating to the protection of nature and the environment, to the improvement of the living environment, the protection of water, air and soil, of sites and landscapes, town planning, sea fishing or those aimed at combating pollution and nuisance, nuclear safety and radiation protection, commercial practices and advertising which are misleading or likely to mislead when such practices and advertising include environmental information, as well as the texts adopted for their application”.
The same right is also recognised, under the same conditions, for associations that have been duly registered for at least five years on the date of the events and which propose, by their statutes, is to safeguard water, or to combat industrial pollution[132].
Therefore, those associations are presumed to have standing before criminal courts, even if, standing is limited to offences relating to environmental issues listed under Article L. 142-2 of the Environmental Code. Approved associations may also exercise the rights granted to the civil party in respect of offences under the Urban Planning Code[133].
Consequently, approved associations have three ways to undertake private prosecution. They may:
either bring a civil action by direct summons,
file a civil suit with the investigating judge,
or intervene in proceedings already initiated by the public prosecutor or another victim.
In all cases, the representative of the association must justify a mandate given by the competent body of the association[134].

Standing before the civil judge

Under Article 31 of the Code of Civil Procedure, civil action “is available to all those who have a legitimate interest in the success or dismissal of a claim, without prejudice to those cases where the law confers the right of action solely upon persons whom it authorises to raise or oppose a claim, or to defend a particular interest.”
Therefore, two elements determine the admissibility of the action: an interest and a quality. While the interest to act lies in proving one's personal character, the attribute that provides the title of the action results from the proof of direct and personal interest.
However, exceptionally, certain persons do not have to demonstrate an interest to act when the legislator confers a right to act on them.

- Conventional civil action

Conventional civil action is relevant for individuals and NGOs regarding their material, bodily and moral injuries.
The justification of a personal interest is an essential condition for the admissibility of an environmental civil action. To satisfy this condition, persons must show that the civil action is likely to result in personal benefit, profit, patrimonial or extra-patrimonial gain. This is the case when the environmental damage implies a devaluation of the property or health consequences[135].

- Dedicated civil action

Dedicated civil action is relevant for certain environmental NGOs, notably approved NGOs, regarding the damage to the collective interest that they are intended to defend.
In principle, it is not possible to bring a civil action in the absence of a personal and direct interest. However, as an exception to this principle, Article 31 of the Code of Civil Procedure provides that certain persons, expressly empowered by law, may bring a civil action. In most cases, the objective is that civil action can serve a collective interest.
This is the case of associations which, under Article L. 142-2 of the Environmental Code, are recognised as having the possibility of exercising the rights accorded to civil parties, i.e. approved associations and associations that have been duly registered for at least five years on the date of the events and which propose, by their statutes, is to safeguard water, or to combat industrial pollution.
This allows these associations to claim compensation for damage resulting from the infringement of collective interests before the criminal courts despite the absence of personal damage resulting from the offence.
The Cour de cassation has specified that this action may be brought before the civil court, even in the absence of criminal proceedings[136] and that a civil action may be brought even in the absence of criminal fault, as long as there’s an infringement of any legislative provisions relating to the protection of nature and the environment[137].
Article 809 of the Code of Civil Procedure provides that the court may, in summary proceedings, prescribe precautionary or restoration measures to prevent imminent damage.

- Dedicated civil action for compensation for ecological damage

Articles 1246 et seq. of the Civil Code[138] provide for a specific civil action dedicated to compensation for ecological damages. This is about repairing the “pure” ecological damage. The latter is different from the damage mentioned above. It is not only a question of repairing the consequences of environmental damage for humans, but also of repairing the damage to the environment *per se*. It is defined as “significant damage to the elements or functions of ecosystems or to the collective benefits derived by man from the environment”[139].
The right to take legal action for compensation for ecological damage, defined in Article 1248, is very broadly open, according to the will of the legislator, who chooses to mention some of the holders of the action. Thus, the action is open to "any person with standing and interest in the action, such as the State, the French Agency for Biodiversity, local authorities and their groupings whose territory is concerned, as well as public establishments and associations approved or created for at least five years on the date of the institution of proceedings which have as their object the protection of nature and the defence of the environment”. The principle of reparation by priority in kind is laid down in Article 1249. In the event of the impossibility or inadequacy of remedial measures, "the court shall order the person responsible to pay damages, earmarked for the repair of the environment, to the plaintiff or, if the plaintiff is unable to take appropriate measures to that end, to the State”. Damages must be the exception to reparation. When damages are awarded, they should be channelled to environmental remediation, in the hands of the applicant or the State, if the applicant cannot afford to take the remediation measures (which may be too large or complex for a single actor). The judge may impose a penalty payment. In addition, independently of the reparation of the ecological damage, the judge may prescribe reasonable measures to prevent or stop the damage.

Under Article 1248 of the Civil Code, individuals may claim compensation for this type of damage under the same conditions as in a conventional civil action. For their part, approved associations are expressly empowered by law to take this action. For the time being, there is no significant case law on this point, but Article 1248 should logically lead to exempt approved associations from demonstrating the existence of an interest.
In a decision dated 6 March 2020, the Marseille criminal court, jointly and severally sentenced four poachers to pay the Parc National des Calanques the sums of 350,060 euros in compensation for the ecological damage, this sum being allocated to repairing the environment, 20,000 euros in compensation for damage to its mission of environmental protection, 15,000 euros in compensation for damage to its brand image and reputation, and 8,000 euros for legal costs. The court also ordered the five restorers and scale fishermen, beneficiaries of the illegally caught fish, to each pay the Parc National des Calanques the sums of 3,000 euros in compensation for damage to its mission to protect the environment and damage to its brand image and reputation, and 1,000 euros for legal costs.

4) What are the rules for translation and interpretation if foreign parties are involved?

Article 2 of the French Constitution provides that "the language of the Republic is French". Consequently, the French language is essential in the exercise of public services, in particular that of the judiciary[140]. Nevertheless, some legal provisions provide for translation and/or interpretation.
Regarding criminal law, several provisions provide for interpretation or translation. The main ones are as follows:
Preliminary article to the Code of Criminal Procedure: “if the suspected or accused person does not understand French, he has the right, in a language he understands and until the end of the proceedings, to the assistance of an interpreter, including for interviews with his lawyer directly related to any questioning or hearing, and, unless he expressly and knowingly waives this right, to the translation of documents essential to the exercise of his defence and to the guarantee of a fair trial, which must, for this reason, be handed over or notified to him pursuant to this code” (§ III).
Article 10-2 of the Code of Criminal Procedure: victims who do not understand the French language can "benefit from an interpreter and a translation of the information indispensable to the exercise of their rights”.
Article 10-3 of the Code of Criminal Procedure: "if the civil party does not understand the French language, he is entitled, at his request, to the assistance of an interpreter and to a translation, into a language he understands, of information that is indispensable to the exercise of his rights and that is, in this respect, provided or notified to him pursuant to this code”.
Article 391: the notice of hearing sent to the victim may be translated.
Regarding civil law, the primacy and exclusivity of the French language before the national courts is laid down by the Cour de cassation as regards procedural acts[141]. However, several exceptions result from case law[142].
Regarding administrative law, appeals addressed to administrative courts must be written in French[143]. Failure to comply with that obligation leads to inadmissibility of the appeal, but that can be rectified. The court shall invite the appellant to produce a sworn translation of his application before dismissing it [144]. In addition, the presence of an interpreter is provided for only in aliens law[145].

1.5. Evidence and experts in the procedures

Overview on specific rules in administrative environmental matters, control of judge, calling for an expert in the procedure

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

The freedom of evidence is a strong principle before administrative courts. The parties can therefore support their case with any type of evidence (administrative documents, written testimony, bailiffs' reports, etc.).
The judge therefore forms his opinion on the points at issue in the light of the information provided by the parties[146]. The origin of the evidence is rather irrelevant to the judge; the only thing that matters to him is the fact that the parties have been able to debate it, in accordance with the principle of adversarial proceedings[147].
In some cases, the evidence rests primarily with the administration. This is the case in law enforcement matters and when the arguments developed by the applicant are supported by negative evidence, such as the administration's failure to comply with its procedural obligations (consultation prior to its decision, in particular).
The judge may request evidence on his own initiative, carry out investigative measures such as asking the administration to produce documents[148], or ask the administration to provide explanations[149].
Finally, under Article R. 612-6 of the Code of Administrative Justice, “if, despite formal notice, the defendant has not produced any pleadings, it shall be deemed to have acquiesced in the facts set out in the applicant's pleadings”.

2) Can one introduce new evidence?

The introduction of new evidence is possible as long as the judge has not ordered the closure of the investigation, i.e. at each exchange of briefs, bearing in mind that the proceedings are in writing. Under Article R. 613-1 of the Code of Administrative Justice, the judge's order is not reasoned and is not subject to appeal. Evidence and requests produced after the conclusion of the investigation are not communicated to the opposing party and are not examined by the judge.
In the absence of an order closing the investigation, the investigation shall be closed three clear days before the date of the hearing.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts

Expertise is part of the "means of investigation" given to the judge by the Code of Administrative Justice[150]: expertise, site visit, investigation, verification of records, technical opinions.
The expert is defined as a collaborator of the public service of justice, called upon to enlighten the court on controversial or delicate questions of fact.
The decision to order an expert opinion, before stating the law, rests with the judge, *ex officio* or at the request of the parties (or one of them). It is most often ordered by the judge in charge of summary proceedings.
The expert's mission is limited to providing the court with factual information that will enable it to decide questions of law. This mission must be considered useful by the judge. Thus, the judge will consider unnecessary a request that can be satisfied by other means or that is superfluous, for example, a request for expertise that has the same purpose as an environmental impact assessment already produced in the proceedings[151].
In summary proceedings, which is the most frequent case of recourse to an expert in environmental matters, the usefulness of expertise is always assessed in the light of the powers of investigation available to the court hearing the case[152].
The expert's report is filed with the judge and notified to the parties, who have one month to provide their comments. The court may decide to hear the expert, particularly in order for him to respond to the observations filed by the parties.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

In any event, the expert opinion is only one piece of evidence among others, left to the court's free discretion.

3.2) Rules for experts being called upon by the court

The expert may be appointed from among those listed on a roster drawn up in the jurisdiction of the courts of appeal for this purpose. He may also be freely appointed by the judge from outside the lists established in these tables. The judge may appoint "any other person of his choice".

In environmental matters, the use of the roster of experts is not the rule. This panel, established in the jurisdiction of each administrative court of appeal, must indeed respect the nomenclature of Article R. 221-9 of the Code of Administrative Justice. However, the headings concerning the environment are not always filled in for lack of experts who have taken the necessary steps. Technical questions being so specific to each field of the environment, the judges must often call upon experts who are not registered on the roll (recognised naturalists in particular).
The expert shall be appointed by an order of the court, which shall determine the subject matter and the time limit for his assignment. Experts undertake to "carry out their mission with conscience, objectivity, impartiality and diligence"[153]. A challenge procedure is open to the parties.
The appointed expert may be entrusted with a mediation mission. With the agreement of the parties, he may even take the initiative.
Where a technical matter does not require complex investigations, the judge may also appoint a person to give a technical opinion. In this case, the judge may appoint a person from the list of experts or any other person of his or her choice[154].

3.3) Rules for experts called upon by the parties

Only the judge in summary proceedings and the court of substance may decide to resort to the expertise procedure as part of the means of investigation provided for by the Code of Administrative Justice.
However, the parties may always, freely and outside this procedure, call upon experts. Experts mandated by the parties participate in the constitution of evidence freely provided by the parties. The parties may provide any expert documents in support of their submissions that they consider important to clarify the facts and the jurisdiction.
They shall be communicated to the opposing party, who shall choose to oppose any other evidence or expert evidence.
A party who fails to respond to facts reported by an expert report shall be deemed to have acquiesced in those facts.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

The expertise ordered by the judge shall entitle the expert to fees and reimbursement of expenses. These costs will generally be charged to the losing party, or shared between the parties, at the discretion of the court.
In practice, the judge makes greater use of the "technical opinion" procedure[155]. The procedure is simpler, more flexible and does not generate costs for the parties.
The recourse to the expert decided by a party is paid for by this party, who can ask for reimbursement of all or part of these costs generated by the procedure, in the event of victory and if the court considers that this proof was necessary for the resolution of the dispute.

1.6. Legal professions and possible actors, participants to the procedures

1) Role of lawyers, compulsory or not, how to contact, publicly accessible internet link to registry or website of the bar, perhaps of specialised lawyers in the environmental field

The reference text is the Law of 31 December 1971[156]. This text distinguishes between three categories of lawyers who can intervene in litigation before the courts. The term "lawyer" thus covers several realities in France:
- “Avocats”: they are lawyers holding the “Certificate of Qualification as an avocat” (Certificat d'aptitude à la profession d'avocat - CAPA) and registered at the bar. They are the main interface between the public and the courts.
Certain procedures make it compulsory to use an avocat to appear before a judge (actions before the administrative courts of appeal, the Conseil d’Etat, the Cour de cassation or the Conseil constitutionnel in particular). Avocats must specify their specialisation. But although the "environment" specialisation exists, few avocats actually show this specialisation.
A table of avocats is published by each bar association in its geographical area and in the jurisdictions[157]. This table specifies their official specialty. Secondary skills and specialities can be found for on the lawyers’ websites.
- In-house lawyers employed by administrations, companies or NGOs: they provide legal advice and legal representation for their organisation. Their action is legally limited to the advice of the organisation that employs them and of the member organisations (and for NGOs, to their individual members).
These lawyers advise their organisation and can call upon avocats to represent them at hearings or to provide them with additional legal assistance in litigation. For example, the legal service of the Ministry in charge of ecology drafts the briefs presented by the State before the administrative judge, without the assistance of an avocat.
- Salaried and non-salaried in-house lawyers from trade unions and NGOs that are approved by the Ministry of Justice[158]: some environmental NGOs are approved by the Ministry of Justice, allowing voluntary or salaried lawyers involved in the NGO to provide paid legal advice and to defend the environment before courts that do not require the use of a lawyer. Around ten environmental NGOs benefit from this approval in France.
These legal services can provide *pro bono* or paid assistance to environmental associations. The volunteers in these services are lawyers, avocats or academics.

1.1 Existence or not of pro bono assistance

The French traditions of the legal profession, as well as the directives of the French bars, require that a fee agreement be established between an “avocat” and his client. This tradition has been made mandatory by law since 2015.
Some lawyers may choose, within the framework of this fee agreement, a favourable fixed remuneration for the benefit of a natural or legal person who would not have access to legal aid but who defends the public interest.
Such a practice could fall within the scope of *pro bono* assistance. However, it is neither organised nor collectively displayed as such by the French bars.
France has a system of legal aid allowing persons without sufficient resources, including nationals of Member States of the European Union and persons of foreign nationality habitually and regularly residing in France, to benefit from total or partial coverage by the State of legal fees and costs. This coverage includes the costs of expert opinions for which the applicant bears neither the final cost nor even the advance payment. To be eligible for legal aid, resources must not exceed a certain ceiling. This ceiling for a single person is € 1,044 per month for total legal aid, between € 1,044 and € 1,233 for 55% coverage and between € 1,234 and € 1,564 for 25% coverage.
The *France Nature Environnement* federation is a public interest association that links 3,500 environmental associations in France and has a network of 80 lawyers (a quarter of whom are salaried lawyers working for environmental associations, a quarter are unsalaried lawyers, and half are volunteer lawyers, mainly academics). The lawyers in this network, particularly avocats, can provide *pro bono* assistance by offering their expertise free of charge for cases of public interest.

1.2 If pro bono assistance does exist, what are the main elements of the procedure to receive it (perhaps links to forms, court or agency in charge, address, telephone, email, ways to contact, etc.)?

No French court or bar association advertises the existence of this kind of assistance. However, it is known in the national network of associations whose main purpose is the protection of the environment.
The international NGO Client Earth has more recently published a database of lawyers and public interest lawyers.
The form of *pro bono* assistance provided by the lawyers of *France Nature Environnement*'s (FNE) legal network is delivered to the main benefit of legal entities, associations whose main purpose is the defence of the collective environmental interest (and not to individuals defending a private interest).

An application form for legal assistance is to be filled in and given to the legal department, which will be able to direct the association to the nearest lawyer or attorney likely to respond in a *pro bono* context.

1.3 Who should be addressed by the applicant for pro bono assistance?

- Legal Network of *France Nature Environnement*:

Address : Réseau Juridique de France Nature Environnement
10, rue Barbier –72000 Le Mans
Phone: 02 43 87 81 77
Email: juridique@fne.asso.fr
Website: https://fne.asso.fr
Head office: 57, rue Cuvier, 75231 Paris Cedex 05

- Client Earth's lawyers database

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

The tables of experts at the administrative courts are available on the websites of the administrative courts of appeal.
Example: Table of experts at the Administrative Court of Appeal of Paris
The lists of judicial experts are published by the Court of Cassation, which lists on its website the lists of experts within the jurisdiction of each court of appeal.
These tables and lists are only optional references, as the courts always have the option of appointing non-registered experts. This is most often the case in environmental matters, as this subject requires more detailed specialisation.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

In France, environmental NGOs are called APNE (Associations de Protection de la Nature et de l'Environnement).
At the national level, the main APNEs are those that have received national approval for environmental protection. They are often also recognised as being of public utility.

France Nature Environnement (FNE), its regional federations and member associations
Ligue de protection des oiseaux (LPO)
Humanité et Biodiversité (H&B)
Association pour la protection des animaux sauvages (ASPAS)
FERUS
Agir pour l'environnement (APE)
Commission de Recherche et d'information indépendantes sur la radioactivité (CRIIRAD)
Comité français de l'union internationale pour la conservation de la nature
Générations futures
Réseau action climat
Réseau sortir du nucléaire
Société française pour le droit de l'environnement
Société nationale de protection de la nature et d'acclimatation de France
Société de Protection des paysages et de l'esthétique de France
Surfrider Foundation Europe

A list of nationally approved associations is available online.

4) List of international NGOs, who are active in the Member State

Greenpeace France
Friends of the Earth France
World Wide Fund for Nature France
European Environmental Bureau, through France Nature Environnement
Birdlife, through the Ligue de protection des oiseaux
Surfrider Foundation Europe
International Union for Conservation of Nature, through the Comité français de l'union internationale pour la conservation de la nature
CAN International, through the Réseau action climat

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

1) Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level)

Under Article L. 411-2 of the Code of Relations between the Public and the Administration, "any administrative decision may be the subject, within the time limit set for lodging a judicial appeal, of an informal or hierarchical appeal that interrupts the course of this time limit".
Consequently, the time limit for filing an informal or hierarchical administrative appeal is the same as the time limit for filing a judicial appeal, i.e. in most cases two months[159].
Nevertheless, under the terms of Article R. 181-50 of the Environmental Code, the environmental authorisation decision may be referred to the administrative court by the petitioners within two months and by third parties within four months of the publication of the authorisation.
The exercise of an administrative appeal has the effect of extending the time limit for lodging a judicial appeal. For example, in the case of a decision taken on 1 February, the deadline for lodging a judicial appeal is two months, i.e. until 1 April. If an individual files an administrative appeal on 15 February, the time limit for filing a judicial appeal is interrupted. If the administration responds on 15 March, there will still be two month to file a judicial appeal, i.e. until 16 May. [160]
If the administration does not respond to the administrative appeal, it will give rise to an implicit decision of rejection on 16 April, the time limit for appeal will then be extended until 17 June.
Note: Article R412-5 of the Administrative Justice Code provides that "the time limits for appealing against an administrative decision are only enforceable if they are mentioned, together with the means of appeal, in the notification of the decision".

2) Time limit to deliver decision by an administrative organ

The administration is not obliged to respond to an administrative appeal within a specified period of time. However, in the absence of a response within 2 months, the administrative appeal is implicitly rejected[161].

3) Is it possible to challenge the first level administrative decision directly before court?

It is possible to challenge the first level administrative decision directly before court. In general, in environmental matters, the prior exercise of an administrative appeal is not mandatory. However, regarding access to environmental information, an appeal must be submitted to the Committee on Access to Administrative Documents[162] before referring the matter to a judge. In addition, in the context of the environmental impact assessment procedure, a judicial appeal against the screening decision must be preceded by an administrative appeal[163].

4) Is there a deadline set for the national court to deliver its judgment?

In principle, no time limit is set for the administrative courts to deliver their decisions. However, in the case of certain summary proceedings, i.e. the “référé liberté”, the judge decides within 48 hours.

Regarding QPC, the Conseil d'Etat or the Cour de cassation must rule within three months.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

Before administrative courts, the principle of adversarial proceedings requires that the parties be given time to exchange their arguments in their pleadings in support of their submissions. Pursuant to Article R. 611-8-1 of the Code of Administrative Justice, the President of the bench or the President of the Chamber in charge of the investigation may request one of the parties to restate, in a summary statement, the submissions and pleas in law previously presented in the current proceedings, informing it that, if it complies with such a request, the submissions and pleas in law not restated shall be deemed abandoned. In the case of an appeal, the party may be requested to repeat also the form of order and pleas in law submitted at first instance which it intends to uphold.

These exchanges are possible as long as the judge has not ordered the closure of the investigation. Under Article R. 613-1 of the Code of Administrative Justice, this order is not reasoned and is not subject to appeal. The judge may give formal notice to the defendant to produce a statement of case within a time limit which he shall determine. Pursuant to Article R. 612-6, if, despite formal notice, the defendant has not produced any statement of its case, it shall be deemed to have acquiesced in the facts set out in the applicant's pleadings. The judge nevertheless checks that this version of the facts (presented in the motion) is not contradicted by the documents in the file and compares the facts with the rules of law. Acquiescence to the facts of one party does not necessarily imply that the judge agrees with the other party. Pursuant to Article R611-11-1, when the case is ready for trial, the parties may be informed of the date or period at which it is intended to call him/her to the hearing. This information shall then specify the date from which the investigation may be closed.

Only the (optional) order to close the investigation may set a time limit for production before the judge. Under Article R. 613-2 of the Code of Administrative Justice, in the absence of an order to close the investigation, the investigation shall be closed three clear days before the date of the hearing. It is therefore the summons to the hearing that will set the time limit conditions to produce new writings. No communication shall be made of pleadings produced after the conclusion of the investigation, unless the investigation is reopened. Where a party called upon to produce a statement of case has not complied for more than one month with the time limit assigned to it by a formal notice indicating the date or period within which it is intended to call the case to the hearing and reproducing the provisions of this paragraph, the hearing may be closed on the date of issue of the notice of hearing.

Before the judicial courts, no time limit is applied in principle. In cases handled by the judicial judge (in civil or criminal matters), the parties are summoned to a "readiness" hearing during which the parties negotiate a postponement to a later hearing so that the case can be ready for trial.

The time limits are therefore exclusively determined by the judge's hearing dates. The hearing service plays an important role in the prioritisation of cases, in a French context of lack of significant resources and therefore overloading of judicial officers.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

In environmental law, administrative appeals are never suspensive. Appeals can sometimes be suspensive in other types of disputes. Judicial appeals against the administrative decision are not suspensive, except when the judge pronounces the suspension in summary proceedings.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

There is no possibility of injunctive relief during an administrative appeal. However, this is possible in the context of a judicial appeal (see section 1.7.2 6)).

3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?

During the administrative procedure, e.g. a procedure for examination of a project subject to an environmental impact assessment, there is no possibility of suspending the progress of the procedure.

Nevertheless, under L. 123-14 of the Environmental Code, there is a possibility of suspending the conduct of a public inquiry when the project developer wishes to modify the project.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

Administrative acts are in principle enforceable. This French "fundamental rule of public law"[164] implies that administrative decisions can in principle be enforced as soon as they come into force. An administrative act immediately modifies the legal order and immediately imposes the obligation it formulates. Thus, the effects of the administrative act are not conditional on prior referral to the court. The act is enforceable even before the judge has ruled on its legality.

The effects of an administrative act can only be suspended by means of an application for interim relief (see section 1.7.2 6)).

5) Is the administrative decision suspended once challenged before court at the judicial phase?

In principle, a judicial appeal whose aim is the annulment of an administrative act has no suspensive effect. However, in parallel to this main appeal, the petitioner can ask the judge to rule urgently on the suspension of the act, through the special procedure of "référé suspension".

6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?

A distinction must be made between two types of injunctions:

On the one hand, the goal of a preliminary injunction is preventive: it is an interim injunction preventing either the violation of a fundamental right or the negative effects of an unlawful legal act[165].

On the other hand, the goal of an enforcement injunction is to ensure that *res judicata* is respected by the administration: in this context, the judge may order enforcement measures.

First, regarding preliminary injunctions, the main possibility to obtain the suspension of an administrative act is the “référé suspension” procedure[166], in parallel with the main action which seeks the cancellation of the act. Two conditions must be met to obtain the suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision[167]. There is no financial deposit. The suspension of the administrative decision shall end at the latest when the judge makes a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d’Etat within 15 days. Then the Conseil d'Etat decides within 48 hours.

Moreover, two special “référé-suspension” procedures exist in the field of the environment:

In the absence of an environmental impact assessment or strategic environmental assessment: where an administrative decision has been adopted without an environmental impact assessment or strategic environmental assessment when it should have been preceded by such an assessment, the court finds that there was no environmental impact assessment and suspends the administrative decision[168].

In the absence of public participation: where an administrative decision has been adopted without a public participation procedure when it should have been preceded by such a procedure, the court finds that there was no public participation and suspends the administrative decision[169].
Second, regarding enforcement injunctions, the administrative judge has the possibility to issue an injunction *ex officio*. Article L. 911-1 of the Code of Administrative Justice provides that “when its decision necessarily implies that a legal person of public law or a private law body responsible for the management of a public service takes an enforcement measure for a specific purpose, the court, having been seized of conclusions to this effect, shall prescribe, by the same decision, this measure accompanied, where appropriate, by a time limit for enforcement”. The court may also prescribe such a measure of its own motion. In addition, Article L. 911-2 of this code provides that “where its decision necessarily implies that a legal person governed by public law or a body governed by private law responsible for the management of a public service must take a new decision after a new investigation, the court, having received submissions to this effect, shall prescribe, by the same court decision, that this new decision must be taken within a specified period. The court may also prescribe *ex officio* the intervention of this new decision”. Finally, under Article L. 911-3 of the Code of Administrative Justice, the judge may attach a penalty payment to the injunction he pronounces.

1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms

1) How can one calculate what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filing a case, experts' fees, lawyers' fees, cost of appeal, etc.

Proceedings before the courts are free of charge. A compulsory contribution of € 35 to finance legal aid was in force in civil and administrative matters before the year 2000. It was reintroduced in 2011 and abolished in 2014. There is therefore no longer any fee for lodging appeals.
In civil matters, the appeal to the court is made by a bailiff and therefore generates a cost of several hundred euros.
The website service-public.fr provides general but incomplete information on the cost of a lawsuit, depending on the court and the documents required.
The conditions for obtaining legal aid are specified.
The costs to be incurred depend on the nature of the case, the court seized, the procedure initiated and the legal strategy implemented.
For persons with limited resources, costs can be covered by legal aid. A budget of 500 million euros is available each year for 900,000 natural persons.
The use of an avocat is only rarely compulsory[170]. However, it is strongly advised for an applicant who does not have legal expertise. The tariff for lawyers is not regulated, it is on average € 300/hour. It must be the subject of a prior fee agreement.
Bailiff or expert fees, necessary for the constitution of evidence, may be added to the cost of the proceedings.
If the appeal fails, the losing party may be ordered to reimburse the opposing party for the costs it has incurred (lawyer's fees, bailiff's or expert's fees, etc.).
In criminal matters, the condemned party must pay a fixed procedural fee ranging from € 30 to € 530 depending on the court.

2) Cost of injunctive relief/interim measure, is a deposit necessary?

Some proceedings before the judicial judge require sums of money to be deposited with the public accountant.
The procedure of direct summons of the offender before a criminal court imposes on the civil party the deposit of a sum of money[171].
The same applies to a civil party who has decided to submit a complaint to an investigating magistrate through the civil party procedure. This procedure opens a "judicial information" and requires the deposit of a sum of money[172]. The civil party wishing to initiate this type of procedure may thus be forced to deposit several thousand euros, which it will only recover in whole or in part at the end of the trial. The amount of the deposit is fixed by the judge according to the income of the complainant (budget for an NGO), without exceeding € 15,000. This sum is required as a guarantee for the payment of a possible fine pronounced in the event that the complaint proves to be abusive. If the appeal is not considered to be abusive, the full amount is refunded. The amount pronounced is generally around several thousand euros (€ 1,500 to 5,000).

3) Is there legal aid available for natural persons?

Legal aid exists in France to enable low-income individuals to take legal action in the context of litigation or pre-litigation proceedings.
A scale calculated on the basis of household income determines the share of the costs of the proceedings that will be borne by the State in this context.
A budget of 500 million euros benefits 900,000 individuals each year.
The website service-public.fr specifies the conditions for obtaining this aid, and makes available to individuals the administrative forms for accessing this aid.

4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?

Legal aid (total or partial) is theoretically open to legal persons, and therefore in particular to associations.
In order to benefit from it, the legal person must not have a legal protection insurance contract or any other system of protection covering the remuneration of legal auxiliaries and the costs relating to the dispute for which the aid is requested.
Like any non-profit legal person, the associations have to fill an administrative form which is available online.
In practice, legal aid is very exceptionally granted to associations, which have to justify "exceptional circumstances" justifying their request. This type of aid currently represents 0.1% of the total aid granted.
Pro bono assistance does not exist in an institutionalised form.
The activities of *France Nature Environnement*'s legal network for the 3,500 environmental protection associations that are members of the national federation represents a non-institutionalised form of *pro bono* assistance.

5) Are there other financial mechanisms available to provide financial assistance?

Within the framework of patronage, a few rare companies explicitly support legal or even litigation actions of environmental associations defending public interest. For example, the Patagonia Foundation is explicitly committed to this approach.
As patronage is a legal mechanism that commits public funds by deducting corporate tax, associations can find here an indirect form of financial mechanism to provide financial support for litigation.

6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?

"Losing party pays" is not a general principle. This principle is nevertheless enshrined in law[173]. In any case, it prohibits the conviction of a party who is not a loser. In practice, it is for the administrative judge and the judicial judge to determine in equity the amount that the losing party will be ordered to pay to the other party. The judge may consider that there is no reason for such an order.
The practice of administrative courts in environmental and urban planning matters is very diverse. Some courts never condemn a losing environmental association, considering that the legal action to challenge the legality of an administrative act falls within its statutory mission and that the costs of defending administrative acts are a normal expense of the State. Others condemn approved environmental associations to pay sums of several thousand euros.
The civil courts systematically order the losing party to pay the costs. Reimbursement of lawyers' fees again depends on the decision of the judge in equity.
The criminal courts rarely order an association to pay a sum to a defendant who has been acquitted. On the contrary, the convicted defendant will be ordered fairly systematically and according to his income to reimburse the costs incurred by the civil party.

7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

Trial costs are called "dépens" in civil matters. These are the costs incurred by the trial, not including lawyers' fees. They are defined in Article 695 of Code of Civil Procedure. It includes, in particular, bailiff's fees for the service of summonses and decisions, the costs of any expert opinions or investigations, but also the compensation received by the lawyer of the winning party if he was receiving legal aid. It is in civil lawsuits that these costs can be the most significant.
The costs of a criminal trial are made up of the "fixed costs of proceedings", ranging from € 31 to € 527 depending on the jurisdiction. In the event of payment by the losing party of the fixed costs of proceedings within the month following the conviction, he automatically benefits from a reduction of 20% of the sums to be paid[174].
Administrative litigation does not systematically generate litigation costs. Only the expertise procedure can generate such costs. They will be borne in equity by the losing party or shared between the parties.

1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC

1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?

There is no specific information portal for access to information on access to environmental justice. Since environmental law does not have specialised courts, information is provided by the courts and the Ministry of Justice without distinction of environmental matters[175].
The international NGO Client Earth published in 2019 a European legal guide to facilitate access to justice in Europe, under a program funded by the European Commission. Practical fact sheets for France "Protecting the environment before the courts" are also available from the same NGO since May 2019.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

Time limits and means of appeal should be mentioned in the administrative decision. If this is not the case, the time limit for appeal is not enforceable against the appellant[176].
In matters of administrative and judicial justice, the judge generally mentions time limits and means of appeal in his decisions. Court clerks also provide advice to the parties.
Some victims' associations have offices in the courts, but they rarely specialise in environmental litigation.
Lastly, the bar associations may organise free legal advice sessions on access to the law, although environmental issues are rarely raised there due to a lack of specialists.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

There are no specific means or rules for the dissemination of information in these matters, just as there is no specificity of environmental litigation within general administrative and judicial litigation.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

Mentioning the channels and time limits for appeal in the administrative decision is an indirect obligation. Article R. 421-5 of the Code of Administrative Justice provides that "the time limits for appealing against an administrative decision can only be invoked if they have been mentioned, as well as the means of appeal, in the notification of the decision". This rule is a guarantee offered to users to be informed of the conditions under which they can challenge the administration's decisions.
This rule has been clarified by the case law of the Conseil d'Etat. In an important ruling[177] of 2016, the Conseil d'Etat ruled that in the absence of any mention of deadlines and means of appeal in the notification act, individual administrative decisions may in principle be appealed within a "reasonable time limit" of one year. It nevertheless specified that this reasonable period of one year could not be invoked against an appellant who cited "special circumstances" or a longer time-limit for lodging an appeal defined by a text. The Conseil d'Etat then transposed this time limit to implicit rejection decisions [178]. Furthermore, the Conseil d'État reviewed its case law, ruling that the publication of the administrative acts of the prefecture in the compendium of administrative acts, even though the decree in dispute had not been posted at the town hall, caused the two-month period for lodging an appeal to the court, as provided for in Article R. 421-1 of the Code of Administrative Justice, to run out with regard to the petitioner. Thus, from now on, the time-limit runs from the date of the first publicity measure[179].
With regard to judicial decisions, in order to produce legal effects, procedural acts (i.e. judgments and court decisions) must be brought to the attention of the interested parties by means of notification. These notifications specify the time limits and means of appeal.
More specifically, the Code of Civil Procedure requires the act of notification of a judgment to indicate "in a very apparent manner" the time limit for opposition, appeal, or appeal in cassation, as well as "the manner in which the appeal may be exercised" (e.g. the obligation to have recourse to an avocat) [180]. Under Article 678 of the Code of Civil Procedure, "where representation (by an avocat) is mandatory, the judgment must also be notified in advance to the representatives in the form of lawyer-to-lawyer notifications, failing which the notification to the party is null and void". Failure to comply with these notification rules constitutes a formal defect and has the effect that the time limits for appeal do not run.
The Code of Administrative Justice contains similar provisions regarding the content of notifications of judgments of administrative courts[181]. Non-compliance with these notification rules has the same effects[182].

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

Article 2 of the French Constitution provides that "the language of the Republic is French". Consequently, the French language is essential in the exercise of public services, in particular that of the judiciary[183]. Nevertheless, some legal provisions provide for translation and/or interpretation.
Regarding criminal law, several provisions provide for interpretation or translation. The main ones are as follows:
Preliminary article to the Code of Criminal Procedure: "if the suspected or accused person does not understand French, he has the right, in a language he understands and until the end of the proceedings, to the assistance of an interpreter, including for interviews with his lawyer directly related to any questioning or hearing, and, unless he expressly and knowingly waives this right, to the translation of documents essential to the exercise of his defence and to the guarantee of a fair trial, which must, for this reason, be handed over or notified to him pursuant to this code" (§III).
Article 10-2 of the Code of Criminal Procedure: victims who do not understand the French language can "benefit from an interpreter and a translation of the information indispensable to the exercise of their rights".
Article 10-3 of the Code of Criminal Procedure: "if the civil party does not understand the French language, he is entitled, at his request, to the assistance of an interpreter and to a translation, into a language he understands, of information that is indispensable to the exercise of his rights and that is, in this respect, provided or notified to him pursuant to this code".
Article 391: the notice of hearing sent to the victim may be translated.
Regarding civil law, the primacy and exclusivity of the French language before the national courts is laid down by the Cour de cassation as regards procedural acts and evidence[184]. However, several exceptions result from case law[185].
Regarding administrative law, appeals addressed to administrative courts must be written in French[186]. Failure to comply with that obligation leads to inadmissibility of the appeal, but that can be rectified. The court shall invite the appellant to produce a sworn translation of his application before dismissing it [187]. In addition, the presence of an interpreter is provided for only in aliens law[188].

1.8. Special procedural rules

1.8.1. Environmental Impact Assessment (EIA) - provisions related to Directive 2003/35/EC

Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

The screening decision can be challenged before the judge by the project owner. However, under Article R. 122-3 VI of the Environmental Code, this judicial appeal against the screening decision must obligatorily be preceded by an administrative appeal (RAPO: “recours administrative préalable obligatoire”).

It cannot be challenged by the public or by an NGO before the judge. As a first step, administrative tribunals accepted that NGOs could challenge before the judge the screening decision that exempts a project from environmental impact assessment[189]. However, with regard to plans and programmes, the Conseil d’Etat decided that such an exemption decision is not directly challengeable[190]. The screening decision can only be challenged on the occasion of a judicial appeal against the permit. It seems obvious that this opinion of the Council of State with regard to plans and programs is transferrable to projects [191].

Anyway, the decision to exempt a project from EIA can be contested while challenging the final permit.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Scoping is determined by the Environmental Code. It does not give rise to an administrative decision determining the scope of the elements to be included in the impact study. However, the impact study does give rise to an opinion of the “environmental authority”. This is not an administrative decision that can be challenged in court.

However, in the event of an appeal against the permit, it will be possible to criticise the quality of the content of the impact study.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

The public can challenge the permit issued to the project.

The time limit for challenging the permit is usually 2 months. However, in certain areas, specific time limits are provided for. In the case of industrial installations and installations influencing water resources, the time limit for the public to appeal is four months[192].

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

The final authorisation can be challenged before the administrative courts. The conditions of access vary depending on whether it is an individual, an NGO, an approved NGO or a foreign NGO.

Individuals

In order to establish an interest in bringing proceedings, the applicant must show that the contested decision adversely affects his interests.

First, the applicant's interest must be legitimate. The purpose of the appeal must therefore be to safeguard a lawful situation.

Second, the applicant must have a definite interest, not a contingent interest. For example, an environmental association is ineligible to challenge a plan whose actions will have to be the subject of new decisions in the future[193]. In addition, an applicant is not entitled to challenge the decree creating a national park in French Guiana by relying solely on his status as a resident of the department and as a walker, even though he is domiciled 200 km from the boundaries of that park[194].

Third, the relationship between the applicant's situation and the challenged act must be sufficiently direct. For example, in the case of people living in the neighbourhood of an industrial facility, the judge takes into account the inconveniences and dangers that the facility presents for them, assessed in particular according to the situation of the persons concerned and the configuration of the premises. This is the case for applicants living on the other side of a river, approximately 375 metres away from the future facility, which presented risks to public safety and health that could affect a large area[195]. On the other hand, the owner of a house located 3.5 km from a hazardous waste landfill facility "cannot rely on his status as an immediate neighbour of the facility in dispute to establish his interest in contesting the permit of the facility"[196]. In the case of a development project located in an area where there are no residents nearby, no individual will be able to challenge the project before the administrative judge. Nevertheless, in this case, an environmental NGO may be admissible.

Finally, in the area of urban planning, the legislator has adopted a provision to limit the individual’s standing. Thus, an individual is only admissible to act against a building permit if the authorised construction is "of such a nature as to directly affect the conditions of occupation, use or enjoyment" of his property [197]. In addition, under Article L. 600-1-3 of the Urban Planning Code, except for the petitioner to justify particular circumstances, the interest to act against a building, demolition or development permit is assessed on the date of posting of the petitioner's request in the town hall. Individuals were also allowed to challenge the permit of an electrical conversion station because of the nuisance it causes[198]. When authorising the construction of wind turbines, the administrative judge gives priority to the criterion of distance over that of visibility[199].

Environmental NGOs

Since 1906, the Conseil d'Etat has accepted the principle of collective interest action by an association[200].

Appeals by associations in defence of their statutory purpose are admitted in a flexible manner by the administrative judge. Because of the principle of specialty of legal persons, standing is assessed in the light of the corporate purpose defined by the association's statutes[201]. In order to assess standing, the judge compares the content of the contested administrative decision with the association's corporate purpose. Thus, an association is admissible only if the contested decision adversely affects the collective interest which they are intended to defend. The judge verifies the sufficiency of the associations' standing. For example, an association whose corporate purpose is focused solely on the protection of nature, and not on the urban environment, is not admissible in acting against a building permit located on the edge of an urbanised area[202]. The drafting of the statutory purpose is therefore particularly important. It must be sufficiently broad, but not too wide either[203].

The judge is also attentive to the geographical scope of the association. An association whose territorial scope of action is not limited geographically shall be deemed to have a national purpose[204], and therefore has no interest in acting against a local act[205]. The same applies to all associations whose territorial jurisdiction is wider than that of the contested act[206].

In addition, Article L. 600-1-1 of the Urban Planning Code provides that an association is only admissible to act against a building permit “if the filing of the statutes of the association at the prefecture has taken place at least one year before the posting of the petitioner's request at the town hall”. This prevents the formation of an association in reaction to a real estate project in order to challenge the building permit. In this case, only pre-existing associations, in particular approved associations, will be admissible[207].

Lastly, an association having as its object the protection of the environment does not justify an interest giving it standing to act against the decision to retain a candidate following a call for tenders organised to select the operator responsible for meeting the objectives of developing electricity production from offshore wind energy[208].

Approved Environmental NGOs

Obtaining an environmental protection approval[209] greatly facilitates the admissibility of the association's action. Article L. 142-1, paragraph 2, of the Environmental Code establishes a kind of presumption of standing for approved environmental associations: approved associations “have standing in bringing proceedings against any administrative decision which is directly related to their statutory purpose and activities and which has harmful effects on the environment in all or part of the territory for which they are approved, provided that the decision was taken after the date of their approval”.[210] Thus,

standing of an approved association is assessed in the light of three cumulative conditions[211]: the statutory purpose of the association must be directly related to the challenged decision, the challenged decision has harmful effects on the environment, and the geographical scope of the association's approval is greater than or equal to that of the challenged decision.
In addition, a federation of associations such as *France Nature Environnement*, "even though it brings together local associations, at least one of which would have been admissible to personally challenge an administrative decision, justifies the interest conferred on it by Article L. 142-1 of the Environmental Code, once it has been approved at the national level"[212].

Foreign NGO

Foreign NGOs that do not have an establishment in France also have the capacity to take legal action[213]. They can take legal action under the same conditions as French NGOs.
However, only "regularly declared" associations can benefit from approval (Article L. 141-1 of the Environment Code). Implicitly, this provision presupposes that the foreign association is declared in France, but this has not yet been interpreted in case law[214]. Consequently, only foreign NGOs with an establishment in France could benefit from approval, not those with no establishment in France.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

The judge examines both the procedural aspects and the substantive legality of the permit issued on the basis of an environmental impact assessment. However, a defect affecting the environmental impact assessment is considered as a procedural defect. A defect affecting the conduct of a prior administrative procedure is such as to render the decision taken unlawful only if that defect was capable of influencing the meaning of the decision taken or deprived the persons concerned of a guarantee[215].
The judge, however, carries out a fairly thorough examination of the environmental impact assessment. Generally speaking, the judge checks the proportionality of the content of the environmental impact assessment in relation to the importance of the project[216]. It also checks the seriousness of the assessment, the absence of errors, gaps or contradictions[217]. In particular, case law requires timely and accurate information. It frequently sanctions impact studies presenting old or even obsolete data[218]. In addition, methodological requirements apply to the study of the natural species present on the site. Thus, in the case of a fragile natural environment, the author of the study must carry out *in situ* measurements and cannot be satisfied with a simple bibliographical survey of the state of the natural environment[219]. These *in situ* measurements should be carried out at the most favourable times for identifying the species[220]. As regards the description of the initial state of the environment, the judge requires the impact study to mention the protection status of the animal species listed[221].
The analysis of the effects of the project on the environment covers a wide range of effects. In particular, these include the effects of the project on the water table[222], on water and soil[223], on archaeological remains[224], on the landscape[225], on noise and heavy goods vehicle traffic[226] and on risks[227]. The impact assessment must include an analysis of the methods used to assess the effects of the project on the environment[228].
Recourse to an expert is possible (see above) but this remains rare in practice. On the other hand, associations often have the option to submit to the judge nature data collected in the field, which have been forgotten in the assessment. The judge regularly relies on this type of data to conclude that the environmental impact assessment is not sufficient[229]. The adverse party is of course free to challenge the veracity of the data provided by associations and to submit other data.
The administrative judge does not have the power of self-referral[230]. On the other hand, when a case is brought before him, he is obliged to raise ex officio certain arguments which could lead to the annulment of the administrative decision, e.g. incompetence of the perpetrator, even if the applicant has not raised them. Those arguments are then referred to as “pleas raised of their own motion”.

6) At what stage are decisions, acts or omissions challengeable?

The permit issued on the basis of an environmental impact assessment may be challenged after it has been issued.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

With respect to challenging permits, there are no requirement for exhaustion of administrative review procedures prior to recourse to judicial review procedures.
Under Article R. 122-3 VI of the Environmental Code, a judicial appeal brought by the petitioner against the screening decision must be preceded by an administrative appeal.

8) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

It is not necessary to participate in the public consultation phase of the administrative procedure in order to have standing.
In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no specific provisions on equality of arms. Equality of arms is essentially ensured by the application of the principle of adversarial proceedings before the courts.

10) How is the notion of “timely” implemented by the national legislation?

There are no specific provisions on the speed of procedures.

11) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

Several procedures can lead to orders on interim measures (see also section 1.7.2 6)).
In particular, the “référé-suspension” procedure can be used, after having filed an appeal, in order to obtain a suspension of the administrative decision, pending the judge's decision on the merits. Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision[231]. The suspension of the administrative decision shall end at the latest when the judge makes a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d’Etat within 15 days. Then the Conseil d'Etat decides within 48 hours.[232]
There is a special kind of “référé-suspension” procedure for environmental impact assessments. In fact, where an administrative decision has been adopted without an environmental impact assessment when it should have been preceded by such an assessment, the court will find that there was no environmental impact assessment and suspend the administrative decision[233].

1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC

1) Country-specific IPPC/IED rules related to access to justice

Litigation relating to industrial installations is a “full jurisdiction” litigation. The main effect of this is to increase the powers available to the judge. He can not only annul the administrative decision but also substitute his decision for that of the administration. In terms of access to justice as such, this does not imply any real difference.

2) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?

There are no specific provisions regarding specifically IED permit processes (see section 1.8.1).

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

There are no specific provisions regarding specifically IED permit processes (see section 1.8.1).

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

There are no specific provisions regarding specifically IED permit processes (see section 1.8.1).

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

The public can challenge the permit once it has been issued. Administrative appeal is not mandatory. In the case of industrial installations, the time limit for the public to appeal is four months[234].

6) Can the public challenge the final authorisation?

The final authorisation (permit) can be challenged by the public as described above (see sections 1.4 1) and 3)).

7) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? Is it possible to challenge decisions, acts or omissions?

Judicial review of industrial installations permits covers both procedural and substantive legality.

Regarding procedural defects, the judge examines the content of the environmental impact assessment as described above. Furthermore, the inadequacy of the hazard study may result in the cancellation of the permit[235]. Defects affecting the participation procedures are also checked by the judge[236].

Regarding substantive defects, the judge checks the compatibility of the permit with local town planning[237]. Moreover, the authorisation of the installation may be issued only if the dangers or inconveniences to people, the environment or nature can be prevented by measures specified in the permit[238]. The operator must also demonstrate its technical and financial capacity[239].

The administrative judge does not have the power of self-referral[240]. On the other hand, when a case is brought before him, he is obliged to raise ex officio certain arguments which could lead to the annulment of the administrative decision, e.g. incompetence of the perpetrator, even if the applicant has not raised them. Those arguments are then referred to as “pleas raised of their own motion”.

Regarding the use of expert opinion, there is no difference between a stand-alone IED permitting process and a combined/integrated IED/EIA process in terms of access to justice (see section 1.5 3)).

8) At what stage are these challengeable?

The permit can be challenged once it has been issued.

It is also possible to ask the prefect to issue an additional order to the operator, for example, in order to reinforce the requirements applicable to the installation. If the prefect refuses, this decision can be challenged before the administrative judge.

The liability of the State may also be raised before the administrative judge. There are two grounds for establishing fault. On the one hand, the illegality of an administrative act constitutes a fault of such a nature as to involve the liability of the State, for example the illegal issuance of a permit to operate an industrial installation[241]. On the other hand, failure by the State to control industrial installations may be considered as a fault likely to involve its liability[242].

Furthermore, acts or omissions by the operator may also result in civil and criminal legal action (see sections 1.3 7) and 1.4 3)).

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

10) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

There are no specific provisions regarding specifically IED permit processes (see section 1.8.1).

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no specific provisions regarding specifically IED permit processes (see section 1.8.1).

12) How is the notion of “timely” implemented by the national legislation?

There are no specific provisions regarding specifically IED permit processes (see section 1.8.1).

13) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

Several procedures can lead to orders on interim measures (see also section 1.7.2 6)).

The “référé-suspension” procedure can be used, after having filed an appeal, in order to obtain a suspension of the administrative decision, pending the judge's decision on the merits. Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision[243]. The suspension of the administrative decision shall end at the latest when the judge makes a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d’Etat within 15 days. Then the Conseil d'Etat decides within 48 hours.

In addition, there are two special “référé-suspension” procedures:

In the absence of an environmental impact assessment: where an administrative decision has been adopted without an environmental impact assessment when it should have been preceded by such an assessment, the court finds that there was no environmental impact assessment and suspends the administrative decision[244].

In the absence of public participation: where an administrative decision has been adopted without a public participation procedure when it should have been preceded by such a procedure, the court finds that there was no public participation and suspends the administrative decision[245].

14) Is information on access to justice provided to the public in a structured and accessible manner?

There are no specific provisions regarding specifically IED permitting process (see section 1.7.4 1) to 4)).

1.8.3. Environmental liability [246]

Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13

1) Which requirements need to be fulfilled for natural or legal persons (including environmental NGOs) to have the decision taken on environmental remediation by the competent authority reviewed by a court or another independent and impartial body in accordance with Article 13(1) ELD?

Articles L. 162-1 et seq. of the Environmental Code, which transpose Directive 2004/35/EC, provide for the possibility for the prefect to require the operator to repair ecological damage.

Two types of persons have the ability of asking the prefect to intervene. These are, on the one hand, environmental associations approved under Article L. 142-1 of the Environmental Code and, on the other hand, persons directly affected or at risk of being affected by damage or an imminent threat of damage [247]. Regardless of the prefect's decision, the Prefect must inform the applicant, giving the reasons for his decision[248].
For the time being, and despite the fact that this reform was adopted in 2008, cases of application of these provisions are extremely rare. As a result, case law has not yet pronounced itself on the modalities of implementation of these provisions.
However, theoretically, an association or individual could ask the judge to overturn the prefect's refusal to intervene and ask the judge to order the prefect to act. This presupposes that the administrative judge considers that the prefect's refusal is indeed an act that can be challenged before a court.
Furthermore, under Article L. 162-2 of the Environmental Code, a person who has suffered environmental damage cannot claim compensation based on Articles L. 162-1 et seq. of the Environmental Code, even if the State fails to act[249]. Therefore, NGOs must bring an action before the civil judge.

2) In what deadline does one need to introduce appeals?

No text determines a time limit. In this case, the time limit for appeal is two months.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

Under Article R. 162-3 of the Environmental Code, persons requesting the prefect to intervene must have serious evidence establishing the existence of damage. Their request must be accompanied by the relevant information and data.

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?

There are no specific requirements regarding "plausibility", apart from the fact that the elements submitted must be "serious".

5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?

The prefect must inform the applicant, giving the reasons for his decision[250].

6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?

There are no specific provisions for this situation. The provisions described above explicitly covers the case of imminent threat.

7) Which are the competent authorities designated by the MS?

The competent authority is the prefect, i.e. the representative of the State at the local level.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

There is no requirement of exhaustion of administrative review procedure.

1.8.4. Cross-border rules of procedures in environmental cases

1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?

There are no specific provisions regarding access to justice in a transboundary context.

2) Notion of public concerned?

There is no definition of the notion of public concerned.

3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

There are no specific provisions concerning foreign NGOs. They can take legal action under the same conditions as French NGOs.

4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

There are no specific provisions concerning foreign individuals. They can take legal action under the same conditions as French individuals.

5) At what stage is the information provided to the public concerned (including the above parties)?

Information about the project is mainly given to the public at the public inquiry stage. This participation procedure takes place after the completion of the environmental impact assessment and before the permit decision is taken. The time limits for this procedure are extended to take into account the time required for consultation with foreign authorities[251].

6) What are the timeframes for public involvement including access to justice?

There are no specific provisions regarding access to justice of the public concerned of another country.

7) How is information on access to justice provided to the parties?

There are no specific provisions regarding information on access to justice provided to the public concerned of another country.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

There are no specific provisions regarding translation, interpretation provided to foreign participants to public participation procedures.
The rules described above applies regarding access to justice of foreign individuals or NGOs.

9) Any other relevant rules?

There are no other relevant rules.

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[1] See *inter alia*: loi n° 76-629 du 10 juillet 1976 relative à la protection de la nature; loi n°76-663 du 19 juillet 1976 relative aux installations classées pour la protection de l'environnement.

[2] Ordonnance n° 2000-914 du 18 septembre 2000 relative à la partie législative du code de l'environnement

[3] Loi n° 2002-285 du 28 février 2002 autorisant l'approbation de la convention sur l'accès à l'information, la participation du public au processus décisionnel et l'accès à la justice en matière d'environnement; Décret n° 2002-1187 du 12 septembre 2002 portant publication de la Convention d'Aarhus. The Convention is not applicable in New Caledonia, French Polynesia and Wallis and Futuna.

[4] Loi n° 78-753 du 17 juillet 1978 portant diverses mesures d'amélioration des relations entre l'administration et le public.

[5] Loi n° 83-630 du 12 juillet 1983 relative à la démocratisation des enquêtes publiques et à la protection de l'environnement.

[6] Loi n° 95-101 du 2 février 1995 relative au renforcement de la protection de l'environnement.

[7] Loi constitutionnelle n° 2005-205 du 1er mars 2005 relative à la Charte de l'environnement.

[8] Conseil constitutionnel, 19 juin 2008, n° 2008-564 DC, *Loi relative aux organismes génétiquement modifiés*; Conseil d'Etat, Ass., 3 octobre 2008, *Commune d'Annecy*, n° 297931.

[9] The full text of the Charter is available in English here.

[10] Conseil constitutionnel, n° 2011-116 QPC, 8 avril 2011 (Art. 1, 2, 3 et 4 of the Charter for the Environment); n° 2013-346, QPC 11 octobre 2013 (Art. 5 of the Charter for the Environment); n° 2011-183/184 QPC, 14 octobre 2011, n° 2012-262 QPC, 13 juillet 2012; n° 2012-269 QPC, 27 juillet 2012; n° 2012-270 QPC, 27 juillet 2012; n° 2012-282 QPC, 23 novembre 2012; n° 2012-283 QPC, 23 novembre 2012; n° 2013-308 QPC, 26 avril 2013; n° 2013-317 QPC, 24

mai 2013; n° 2014-395 QPC, 7 mai 2014; n° 2014-396, 23 mai 2014; n° 2016-595 QPC, 18 novembre 2016; n° 2020-843 QPC, 28 mai 2020 (Art. 7 of Charter for the Environment).

[11] Constitutional Council, 9 April 1996, No 96-373 DC: 'right of interested persons to seek an effective remedy before a court'.

[12] Conseil d'Etat, 5 avril 2006, *Mme Dupont et al*, n° 275742, rec. p. 1042. The Conseil d'Etat ruled that Article 9, paragraph 3 of the Aarhus Convention "is binding only between state Parties to the Convention and cannot be usefully invoked by the applicants". Indeed, under the Conseil d'Etat case law, if the object of the treaty is only to regulate relations between state parties to the treaty, no direct effect is recognized. In contrast, if individuals are the recipients of the norm, the direct effect of this stipulation is possible.

[13] See for example: Conseil d'État, 17 février 1950, *Dame Lamotte*, rec. p. 110.

[14] Article L. 142-1 paragraph 1 of the Environmental Code.

[15] Article L. 141-1 paragraph 1 of the Environmental Code provides that "when they have been in operation for at least three years, associations that have been duly registered and carry out their statutory activities in the field of nature protection and wildlife management, the improvement of the living environment, the protection of water, air, soil, sites and landscapes, town planning, or whose purpose is to combat pollution and nuisances and, in general, work mainly for the protection of the environment, may be the subject of a reasoned approval by the administrative authority".

[16] Article L. 142-1 paragraph 2 of the Environmental Code.

[17] The territorial communities (collectivités territoriales) are legal entities under public law that are distinct from the State and, as such, enjoy legal and patrimonial autonomy. They are freely administered by elected officials.

[18] The provisions of Article L. 142-3-1 are only applicable to actions relating to an event giving rise to liability or to a breach of duty after the entry into force of Act No. 2016-1547.

[19] Conseil d'Etat, 21 décembre 2001, *Hofmann*, rec. p. 652.

[20] Conseil d'Etat, 8 février 1999, *Fédération des associations de protection de l'environnement et de la nature des côtes d'Armor*, rec. p. 20.

[21] Conseil d'Etat, 23 février 2004, *Communauté de communes du Pays Loudunais*, n° 250482.

[22] Conseil d'Etat, 4 novembre 2015, *Ligue française pour la défense des droits de l'homme et du citoyen*, n° 375178.

[23] Cour de cassation, Crim., 12 septembre 2006, n° 05-86.958; Cour de cassation, 3e civ., 26 septembre 2006 : Bull. civ. 2006, III, n° 155; Cass. 3e civ., 1 er juillet 2009: Bull. civ. 2009, III, n° 166.

[24] Conseil constitutionnel, 17 juin 2011, *Association Vivraviry*, n° 2011-138 QPC: Article L. 600-1-1 of the Urban Planning Code is not contrary to the equality principle, to the freedom of association and to the right to seek an effective remedy.

[25] Cour administrative d'appel de Bordeaux, 3 février 2009, *Association de défense de l'environnement Vent de la Gartempe*, n° 08BX00890: Article L. 600-1-1 of the Urban Planning Code is not contrary to Article 6 and 11 of the European convention of Human Rights.

[26] Conseil constitutionnel, 10 novembre 2017, *Association Entre Seine et Brotonne et a.*, n° 2017-672 QPC: Article L. 480-13 of the Urban Planning Code is not contrary to the right to seek an effective remedy, to the right of victims to obtain compensation for damages and to Articles 1 and 4 of the Charter for the Environment.

[27] The Conseil d'Etat held that the criticism, alleging those provisions were contrary to the principle of equality and to the right to seek an effective remedy is not "serious" enough to be referred to the Conseil constitutionnel (Conseil d'Etat, 26 juillet 2018, *Ordre des architectes de Bretagne*, n° 418298).

[28] Conseil d'Etat, Ass., 11 avril 2012, *GISTI et FAPIL*, n° 322326.

[29] For example, the Berne Convention cannot be invoked: Conseil d'Etat, 30 décembre 1998, *Chambre d'agriculture des Alpes-Maritimes et a.*, n° 188159, rec. p. 516; Conseil d'Etat, 8 décembre 2000, *Commune de Breil-sur-Roya*, n° 204756; Conseil d'Etat, 20 avril 2005, *ASPAS*, n° 271216, rec. p. 975; CE, 26 avril 2006, *FERUS*, n° 271670.

[30] Conseil d'Etat, 28 septembre 1984, *Confédération nationale des sociétés de protection des animaux*, rec. p. 512; Conseil d'Etat, 7 décembre 1984, *Fédération française des sociétés de protection de la nature*, rec. p. 410; Conseil d'Etat, 3 février 1989, *Cie Alitalia*, rec. p. 44; Conseil d'Etat, Ass., 22 décembre 1978, *Cohn-Bendit* rec. p. 524; Conseil d'Etat, 30 octobre 2009, *Mme Perreux*, n° 298348.

[31] For example, art. 2 and 16 of the Habitats Directive can be invoked: CE, 20 avril 2005, *ASPAS*, n° 271216, rec. p. 975.

[32] A global organization chart of the French court system can be found here.

[33] Article 42 of Code of Civil Procedure.

[34] Article 382 of the Code of Criminal Procedure.

[35] Article 522 of the Code of Criminal Procedure.

[36] Article R. 312-1 of the Code of Administrative Justice.

[37] Conseil d'Etat, Ass., 30 mai 1962, *Association nationale de la meunerie*, rec. p. 233.

[38] Conseil constitutionnel, 23 janvier 1987, Loi transférant à la juridiction judiciaire le contentieux des décisions du Conseil de la concurrence, n° 86-224 DC.

[39] The bill (projet de loi nº 2731) has been adopted by the Senate (March 3, 2020) and is now before the National Assembly: see Article 8 of the "projet de loi relative au Parquet européen et à la justice pénale spécialisée".

[40] Conseil d'Etat, 23 décembre 2011, *Danthony*, n° 335033, rec. p. 649.

[41] Conseil d'Etat, 14 octobre 2011, *Société OCREAL*, n° 323257, rec. p. 734.

[42] Conseil d'Etat, avis, 19 avril 1991, EDCE, n° 43, p. 63; Conseil constitutionnel, 7 décembre 2012, *Société Pyrénées services*, n° 2012-286 QPC.

[43] Article R. 311-1 of the Code of Administrative Justice.

[44] See Article R. 121-2 of the Expropriation Code.

[45] However, this jurisdiction is now residual and is destined to disappear by virtue of Decree no 2017-424 of 28 March 2017, according to which only "disputes relating to declarations of public utility for projects that were the subject of an initial declaration of public utility prior to the publication of Decree no 2010-164 of 22 February 2010 relating to the jurisdiction and functioning of administrative courts and whose scope of application extends beyond the jurisdiction of a single administrative court fall within the jurisdiction of the Conseil d'Etat in the first and last instance" (Article 1 of the Decree of 28 March 2017).

[46] See Conseil d'Etat, Ass. 11 mai 2004, *Association AC !*, n° 255886. In principle, the annulment of an administrative act implies that the act is deemed never to have taken place. However, if it appears that the retroactive effect of the annulment is likely to have manifestly excessive consequences because of the effects that this act has produced and the situations that may have arisen when it was in force, as well as the general interest that may attach to a temporary maintenance of its effects, it is for the administrative court - after having collected the observations of the parties on this point and examined all the pleas in law - to decide whether to annul the act, to take into consideration, first, the consequences of the retroactivity of the annulment for the various public or private interests involved and, second, the disadvantages which, in the light of the principle of legality and the right of individuals to an effective remedy, a limitation in time of the effects of the annulment would entail. It is for the Court to assess, by comparing those factors, whether they can justify derogating

exceptionally from the principle of the retroactive effect of contentious annulments and, if so, to provide in its annulment decision that, subject to the contentious actions brought at the date of the decision against the measures adopted on the basis of the measure in question, all or some of the effects of that measure prior to its annulment must be regarded as definitive or even, where appropriate, that the annulment will not take effect until a later date to be determined by the Court.

[47] Article L. 911-4 of the Code of Administrative Justice (see Conseil d'Etat, 10 juillet 2020, n° 428409: the Conseil d'Etat has ordered the Government to take measures to reduce air pollution, subject to a penalty payment of €10 million for every six months of delay).

[48] Article L. 911-1 of the Code of Administrative Justice.

[49] Article L. 911-2 of the Code of Administrative Justice.

[50] CE, 26 avril 1901, *Rousier*, rec. p. 388; 24 février 1932, *Jupiter Oil Company*, rec. p. 222; 14 mai 1948*, Min. Production industrielle c/ Courtial*, rec. p. 210; Article L. 514-6 of the Environmental Code.

[51] Article L. 214-10 of the Environmental Code.

[52] Pursuant to Article L. 181-17 of the Environmental Code, the environmental authorisation is subject to litigation of full jurisdiction (CE, Avis, 22 mars 2018, *Association Novissen et a.*, n° 415852).

[53] See Articles L. 181-1 et seq. of the Environmental Code.

[54] See *Bilan d'activité du Conseil d'Etat et de la juridiction administrative en 2019*, p. 8.

[55] The Parliament is currently considering a bill which provides for the creation of regional centres specialized in environmental offences in each of the 36 courts of appeal and competent in matters of serious environmental damage or endangerment (see Article 8 of the "projet de loi relative au Parquet européen et à la justice pénale spécialisée"). The bill also provides that within the jurisdiction of each court of appeal, a specially designated judicial court shall hear actions relating to ecological damage based on Articles 1246 to 1252 of the Civil Code and civil liability actions provided for in the Environmental Code (Article 8 bis A).

[56] Article 706-107 of the Code of Criminal Procedure.

[57] Loi n° 2001-380 du 3 mai 2001 relative à la répression des rejets polluants des navires.

[58] Articles 706-73-9 and 706-74 of the Code of Criminal Procedure.

[59] Art. 706-2 et seq. of the Code of Criminal Procedure.

[60] See Article L. 411-1 et seq. of the Code of the Relations between the Public and the Administration.

[61] Article R. 311-15 of the Code of the Relations between the Public and the Administration.

[62] Article R. 122-3 VI of the Environmental Code.

[63] Articles R. 311-4 and R. 311-5 of the Code of Administrative Justice.

[64] Those areas are defined as the "municipalities belonging to an area of continuous urbanisation with more than 50,000 inhabitants where there is a marked imbalance between housing supply and demand, leading to serious difficulties of access to housing throughout the existing residential stock, characterized in particular by the high level of rents, the high level of acquisition prices of old dwellings or the high number of applications for housing in relation to the number of annual moves into the social rental stock" (Article 232 of the General Tax Code).

[65] Article R. 811-1-1 of the Code of Administrative Justice.

[66] Article L. 521-2 of the Code of Administrative Justice.

[67] The latter ruled that it is for the administrative court for summary proceedings, seised on the basis of Article L. 521-2 of the Code of Administrative Justice, to enjoin the administration to put an end to a serious and manifestly unlawful infringement of the right to property, which has the character of a fundamental freedom, even if that infringement is in the nature of an assault (CE, 25 janvier 2013, *Commune de Chirongui*, n° 365262).

[68] Tribunal administratif de Châlons-en-Champagne, ord., 29 avril 2005, *Conservatoire du patrimoine naturel et a. c. Préfet de la Marne*, n° 0500828, 0500829, 0500830.

[69] Article L. 521-1 of the Code of Administrative Justice.

[70] The interim relief judge of the Conseil d'Etat considers that there is no urgency to suspend the decree and the interministerial decree establishing minimum safety distances of 5, 10 and 20 metres for the protection of local residents with regard to the spreading of pesticides: CE, 14 février 2020, n° 437814.

[71] Articles L. 122-2 and L. 122-11 of the Environmental Code. This applies to projects as well as to plans and programs.

[72] Article L. 123-16 of the Environmental Code. This applies to projects as well as to plans and programs, whether public participation is carried out through a public inquiry or electronically.

[73] Article 61-1 of the Constitution (loi constitutionnelle n° 2008-724 du 23 juillet 2008 de modernisation des institutions de la Ve République).

[74] After recognizing following the Conseil constitutionnel (19 juin 2008, n°2008-564 DC, *Loi sur les OGM*) that the Charter had constitutional value (Conseil d'Etat, 3 octobre 2008, n° 297931, *Commune d'Annecy*, rec. 322), the administrative judge admitted a broad invocability of its provisions (Conseil d'Etat, ass., 12 juillet 2013, n° 344522, *Fédération nationale de la pêche en France*, Lebon 192; on Article 3 of the Charter) with regard to acts not covered by the Environmental Code (Conseil d'Etat, 19 juillet 2010, n° 328687, *Association du quartier "Les hauts de Choiseul"*, Lebon 333) concerning town planning permits.

[75] See the practical guide.

[76] Conseil d'Etat, 19 juin 1964, *Shell-Berre*, rec. p. 344; Conseil d'Etat, sect., 10 févr. 1967, *Société Établissements Petitjean et a.*, rec. p. 63. The Conseil d'État only makes a reference for a preliminary ruling on interpretation when it considers that there is a serious difficulty of interpretation (Conseil d'Etat, 26 octobre 1990, *Fédération nationale du commerce extérieur des produits alimentaires et Synd. national des négociants et transformateurs de saumon*, rec. p. 290).

[77] *Commission c. France*, 4 octobre 2018 (C- 416/17, ECLI:EU:C:2018:811).

[78] Conseil d'Etat, 22 avril 1988, *Association générale des producteurs de blé*, rec. p. 151.

[79] Articles L. 421-1 of the Code of the Relations between the Public and the Administration.

[80] Articles L. 213-1 et seq and R. 213-1 et seq. of the Code of Administrative Justice.

[81] See Didier Artus, «L'An II de la médiation administrative - État des lieux au tribunal administratif de Poitiers», *La Semaine Juridique Administrations et Collectivités territoriales* n° 9, 4 Mars 2019, 2061.

[82] Article 750-1 of the Code of Civil Procedure. It refers not only to an attempt at mediation but also to an attempt at conciliation or an attempt at a participatory procedure.

[83] Article 131-1 of the Code of Civil Procedure.

[84] CGEDD/IGJ, Mission conjointe «Une Justice pour l'environnement», octobre 2019.

[85] A reminder of the law consists, in a solemn interview with the prosecutor, in serving the rule of law and the penalty incurred on the perpetrator of acts that may be subject to criminal punishment but are not serious or can be regularized. It should promote awareness among the perpetrator of the consequences of his or her act, for society, the victim and for himself or herself.
[86] The “projet de loi relative au Parquet européen et à la justice pénale spécialisée” (art. 8) creates a new Article 41-1-3 allowing such an agreement to be concluded with a legal person charged with one or more of the offenses provided for in the Environmental Code as well as related offences, with the exception of crimes and offences against persons in Book II of the Criminal Code. While the CJIP in environmental matters reproduces the mechanism designed to fight corruption, it does have certain specific features:
in addition to the fine, the agreement may allow the legal entity in question to regularize its situation within the framework of a compliance program lasting a maximum of three years, under the supervision of the competent services of the Ministry of the Environment, which may also monitor the effective reparation of the ecological damage resulting from the offences committed;
the costs caused by the recourse, by the competent services of the ministry in charge of the environment, to experts or to qualified persons or authorities to assist them in the realization of technical expertise necessary for their mission of control will be supported by the legal entity in question, within the limit of a ceiling fixed by the convention which could not be restored in the event of interruption of its execution;
the validation order, the amount of the public interest fine and the agreement will be published on the websites of the Ministry of Justice, of the Ministry in charge of the environment and of the municipality on whose territory the offence was committed, or, failing this, of the public establishment for inter-municipal cooperation to which the municipality belongs.
[87] Article 128 et seq. of the Code of Civil Procedure; Décret n° 2015-282 du 11 mars 2015 relatif à la simplification de la procédure civile, à la communication électronique et à la résolution amiable des différends.
[88] The legislation called “*Loi organique n° 2011-333 relative au Défenseur des droits”*, was adopted on the March 29, 2011, to implements the art. 71-1 of the Constitutional and specifies in details his responsibilities and his competences.
[89] Public hospitals, family allowance funds (CAF), primary health insurance funds (CPAM), the social security scheme for the self-employed (RSI), Pôle emploi, energy suppliers (EDF, GDF), public transport managers (SNCF), ministries, consulates, prefectures, communes, general and regional councils.
[90] Article 25 of the loi organique n° 2011-333 du 29 mars 2011 relative au Défenseur des droits.
[91] Défenseur des droits, *Rapport annuel d’activité 2019*, p. 16.
[92] Article 19 of the Code of Criminal Procedure.
[93] Article 40 of the Code of Criminal Procedure.
[94] Article 40-2 of the Code of Criminal Procedure.
[95] Conseil d’Etat, 24 juin 1971, *Gachassin-Plana*, n° 81528, rec. p. 251.
[96] Conseil d’Etat, Ass., 31 octobre 1969, *Syndicat de défense des eaux de la Durance*, rec. p. 462.
[97] Conseil constitutionnel, 7 novembre 2014, *Association Mouvement raëlien international*, n° 2014-424 QPC. Concerning foreign local governments, see Conseil d’Etat, sect., 18 avril 1986, *Mines de potasse d’Alsace*, n° 53934.
[98] Conseil d’Etat, 17 juillet 1953, *Broet*, rec. p. 378.
[99] Conseil d’Etat, 8 février 1989, *Comité de défense du chemin de ronde de Dangan*, rec. p. 494.
[100] Conseil d’Etat, 6 octobre 1965, *Marcy*, rec., p. 493.
[101] However, Article 2 of the Charter fir the Environment, according to which "every person has the duty to take part in the preservation and improvement of the environment" does not have the effect of removing the conditions of admissibility (Conseil d’Etat, 3 août 2011, *Association Vivre à Meudon*, n° 330566).
[102] Conseil d’Etat, Ass. 7 février 1947, *D'aillères*, rec. p. 50 (right to appeal in cassation, even without text, against a decision of an administrative court); Conseil d’Etat, Ass. 17 février 1950, *Dame Lamotte*, rec. p. 110 (opening of an appeal for excess of power, even without text, against any administrative act in order to ensure, in accordance with the general principles of law, respect for legality); Conseil d’Etat, Ass, 12 octobre 1979, *Rassemblement des nouveaux avocats de France*, rec. p. 370 (respect for the adversarial nature of the procedure).
[103] Conseil constitutionnel, 9 avril 1996, n° 96-373 DC; 14 juin 2013, n° 2013-314 QPC; 26 septembre 2014, n° 2014-416 QPC and 8 juin 2018, n° 2018-712 QPC.
[104] Conseil constitutionnel, 30 mars 2006, n° 2006-535 DC.
[105] Conseil constitutionnel, 27 juillet 2006, 2006-540 DC; 17 décembre 2010, n° 2010-62 QPC.
[106] Conseil d’Etat, 15 avril 1983, *Commune de Menet*, rec. p. 154.
[107] Conseil d’Etat, 13 avril 2016, *Bartolomei*, n° 389798, rec. p. 135.
[108] Conseil d’Etat, 16 mai 2018, *Société P. et T. Technologie*, n° 408950, rec. p. 703.
[109] Conseil d’Etat, 24 juillet 2019, *Association Gardez les caps et autres*, n° 418846.
[110] Conseil d’Etat, 25 octobre 1996, *Association Estuaire-Ecologie*, rec. p. 415.
[111] Conseil d’Etat, 3 juin 2009, *M. Canavy*, rec. p. 842.
[112] Conseil d’Etat, 13 juillet 2012, *Société Moulins Soufflet*, n° 339592.
[113] Cour administrative d’appel de Marseille, 8 novembre 2010, *Communauté de communes des Baronnies*, n° 09MA00033.
[114] Article L. 600-1-2 of the Urban Planning Code.
[115] See loi n° 2016-1547 du 18 novembre 2016 de modernisation de la justice du XXIe siècle.
[116] Conseil d’Etat, 21 décembre 1906, *Syndicat des propriétaires et contribuables du quartier de la Croix-de-Seguey-Tivoli*, rec., p. 962.
[117] Conseil d’Etat, sect., 26 avril 1985, *Ville de Tarbes*, rec., p. 119.
[118] Conseil d’Etat, 25 mai 1990, *Bauret*, n° 104519, rec. p. 913.
[119] Conseil d’Etat, 9 décembre 1996, *Assoc. pour la sauvegarde du patrimoine martiniquais*, rec., p. 479.
[120] Conseil d’Etat, 23 février 2004, *Communauté de commune du pays loudunais*, rec., p. 803.
[121] Nevertheless, the administrative judge seems to be relaxing his position. The Conseil d'Etat thus ruled, with regard to an association that had not delimited its geographical jurisdiction, that "in spite of the absence of delimitation, in its statutes, of the geographical jurisdiction of its field of action, this association must be regarded as having a local field of intervention in view of the indications provided on this point, in particular by its name, the location of its registered office and the existence, in several other departments, of local associations with a similar object and a similar name"(Conseil d’Etat, 25 juin 2012, *Collectif Antinucléaire 13 et a*. n° 346395).
[122] State Council, 26 july 1985, *Union régionale pour la défense de l’environnement*, AJDA, 1985, p. 741.
[123] Constitutional Council, 17 june 2011, n° 2011-138 QPC.
[124] Article L. 141-1 et seq. of the Environmental Code. The Conseil d'Etat ruled that it follows from those provisions of the Environmental Code that it is incumbent on the administrative authority, when receiving an application for approval, to determine whether it can be issued in a departmental, regional or

national framework; if these provisions prevent it from requiring the association to carry out its activity in the whole of the territorial framework for which the approval is likely to be issued, it may lawfully reject the application when the association's activities are not carried out in a significant part of that territorial framework and only concern purely local issues (CE, 20 juin 2016, n° 389590).

[125] Those provisions do not make the admissibility of legal actions by environmental protection associations conditional on the issue of an authorisation by the administrative authority, but merely recognise a presumption of an interest in bringing proceedings to challenge certain administrative decisions for the benefit of the environmental protection associations which hold them; that provision does not preclude non-accredited associations from bringing proceedings before the same courts if, like any applicant, they can show a sufficiently direct interest giving them standing to act (Conseil d'Etat, 25 juillet 2013, *Association de défense du patrimoine naturel à Plourin*, n° 355745).

[126] Conseil d'Etat, 8 février 1999, *Fédération des associations de protection de l'environnement et de la nature des côtes d'Armor*, rec., p. 20.

[127] Cour administrative d'appel de Nancy, 22 décembre 1999, *France Nature Environnement*, n° 99NC00045.

[128] Cour de cassation, Crim., 22 février 1996, Bull. n° 88; Cour de cassation, Crim., 12 février 1997, Bull. n° 57; Cour de cassation, Crim., 25 septembre 2007, Bull. n° 220.

[129] Cour de cassation, Crim., 24 janvier 1984, Bull. n° 28.

[130] Cour de cassation, Crim., 4 octobre 1995, Bull. n° 293 (this decision does not relate to defamation suits but to murder and criminal association. However, the principle of direct prejudice is well explained: the association whose president is murdered has suffered personal and direct prejudice).

[131] Cour de cassation, Crim., 23 juin 1986, Bull. n° 218; Cour de cassation, Crim., 12 avril 1988, Bull. n° 146.

[132] The provisions of Article L 142-3-1 of the Environmental Code apply only where the event giving rise to liability or the failure to fulfil obligations occurred after the entry into force of Law No 2016-1547 of 18 November 2016 on modernising the justice system for the 21st century.

[133] Article L. 480-1 of the Urban Planning Code.

[134] Cour de cassation, Crim., 28 octobre 2014, Bull. n° 220.

[135] Cour de cassation, Civ. 2e, 21 mai 1997, n° 95-19.688, Bull. civ. II, n° 151; Cour de cassation, Civ. 2e, 28 juin 1995, n° 93-12.681, Bull. civ. II, n° 222; Cour de cassation, Civ. 2e, 17 mars 2005, n° 04-11.279.

[136] Cour de cassation, Civ. 2e, 7 décembre 2006, n° 05-20.297 (prosecutions took place but resulted in acquittal).

[137] Such as the hunt without holding a valid hunting permit: Cour de cassation, Civ. 2e, 16 novembre 2006, n° 05-19.062; Cour de cassation, Civ. 3e, 26 septembre 2007, n° 04-20.636.

[138] Law No 2016-1087 of 8 August 2016 on the recovery of biodiversity, nature and landscapes.

[139] Article 1247 of the Civil Code. The definition adopted is different from that in the case law of the Cour de cassation (Cass., Crim. 25 septembre 2012, n° 10-82.938, marine pollution from the ship Erika) and aims to distinguish between ecological and personal harm. On 17 November 2020, the Conseil constitutionnel received an application for a priority preliminary ruling (QPC) on the issue of constitutionality raised by the Cour de Cassation (aff. n° 2020-881 QPC). It relates to the conformity with rights and freedoms that the Constitution guarantees of Article 1247 of the Civil Code.

[140] Conseil constitutionnel, 6 décembre 2001, n° 2001-452 DC, § 16.

[141] Cour de cassation, 2e Civ., 23 juin 2016, pourvoi no 15-12.410.

[142] For further details, see Cour de cassation, Le juge et la mondialisation dans la jurisprudence de la Cour de cassation, Etude annuelle 2017.

[143] Conseil d'Etat, Sect., 22 novembre 1985, *Quillevère*, n° 65105, rec. p. 333.

[144] Conseil d'Etat, 18 octobre 2000, *Sté Max-Planck-Gesellschaft*, n° 206341, rec. p. 432

[145] Article R. 776-23 of the Code of Administrative Justice.

[146] Conseil d'Etat, 26 novembre 2012, *Mme Brigitte B*, n° 354108.

[147] Conseil d'Etat, 8 novembre 1999, *Election cantonale de Bruz*, n° 201966.

[148] Conseil d'Etat, 1er mai 1936, *Couespel du Menil*, rec. p. 485.

[149] Conseil d'Etat, sect., 26 janvier 1968, *Société Maison Genestal*, n° 69765.

[150] Article R. 621-1 et seq. of the Code of Administrative Justice: the court or tribunal may, either of its own motion or at the request of the parties or of one of them, order, before giving judgment, that an expert opinion be carried out on the points determined by its decision. Article R. 532-1 of the Code of Administrative Justice: the interim relief judge may, on simple request and even in the absence of a prior administrative decision, prescribe any useful measure of expertise or investigation.

[151] Conseil d'Etat, 10 décembre 1982, *Ville d'Aix-en-Provence*, n° 38655.

[152] Conseil d'Etat, 12 décembre 2007, *Commune de Gargenville*, n° 298155.

[153] Article R. 621-3 of the Code of Administrative Justice.

[154] Article R. 625-2 of the Code of Administrative Justice.

[155] Article R. 625-1 et seq. of the Code of Administrative Justice.

[156] Loi n° 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques.

[157] In Paris: https://www.avocatparis.org/annuaire

[158] Article 54 of **loi n° 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques.**

[159] Article R. 421-1 of the Code of Administrative Justice.

[160] Conseil d'Etat Section, 18 nov. 2005, *Houlbreque*, Rec. 513

[161] Under Article L. 231-1 of the Code of Relations between the Public and the Administration, silence kept for two months by the administration on an application is deemed to be an acceptance decision. The list of procedures for which silence on an application is deemed to be an acceptance decision is published on the legifrance website. It shall indicate the authority to which the application must be addressed and the period after which acceptance shall be deemed to have been granted. Under the terms of Article L. 231-4 of the same Code, by way of derogation from Article L. 231-1, silence on the part of the administration for a period of two months shall be deemed to constitute a rejection decision, in particular where the application does not seek the adoption of a decision having the character of an individual decision, where the application does not form part of a procedure provided for by a law or regulation or has the character of a complaint or an administrative appeal, in relations between the administration and its servants.

[162] Article R. 311-15 of the Code of the Relations between the Public and the Administration.

[163] Article R. 122-3 VI of the Environmental Code.

[164] Conseil d'Etat, Ass., 2 juillet 1982, *Huglo*, rec., p. 257.

[165] As part of the "référé-liberté" procedure, the interim relief judge may order any measures necessary to safeguard a fundamental freedom which a legal person governed by public law or a private law body entrusted with the management of a public service has, in the exercise of one of its powers, seriously and manifestly unlawfully infringed. The judge hearing the application for interim measures shall give a ruling within 48 hours (Article L. 521-2 of the Code of Administrative Justice).

[166] It exists other preliminary injunctions, but those are less used in environmental matters (see 1.3. 4)).
[167] Article L. 521-1 of the Code of Administrative Justice.
[168] Articles L. 122-2 and L. 122-11 of the Environmental Code. This applies to projects as well as to plans and programs.
[169] Article L. 123-16 of the Environmental Code. This applies to projects as well as to plans and programmes, whether public participation is carried out through a public inquiry or electronically.
[170] See Article 751 and 761 of the Code of Civil Procedure, as well as Article L. 211-9-3 of the Code of Judicial Organisation.
[171] Article 392-1 of the Code of Criminal Procedure.
[172] Article 88 of the Code of Criminal Procedure.
[173] See Article L. 761-1 of the Code of Administrative Justice.
[174] Décret n°2005-1099 du 2 septembre 2005.
[175] See Présentation de l'ordre administratif; Portail des cours d'appel
[176] Article R. 421-5 of the Code of Administrative Justice.
[177] Conseil d'Etat, Assemblée, 13 juillet 2016, *Czabaj*, n° 387763, rec. p. 340.
[178] Conseil d'Etat, 18 mars 2019, *M. A.*, n° 417270.
[179] Conseil d'Etat, 27 mars 2020, *Syndicat agricole des petits planteurs de Cadet Sainte-Rose*, n° 435277.
[180] Article 680 of the Code of Civil Procedure.
[181] Articles R. 751-1 et seq. of the Code of Administrative Justice.
[182] Conseil d'Etat, 22 février 2017, *M. A.*, n° 395184.
[183] Conseil constitutionnel, 6 décembre 2001, n° 2001-452 DC, § 16.
[184] Cour de cassation, 2e Civ., 23 juin 2016, pourvoi no 15-12.410. The contribution of this decision is to make the need for translation weigh on the evidence beyond the procedural documents.
[185] For further details, see Cour de cassation, *Le juge et la mondialisation dans la jurisprudence de la Cour de cassation*, Chapitre 2, Etude annuelle 2017.
[186] Conseil d'Etat, Sect., 22 novembre 1985, *Quillevère*, n° 65105, rec. p. 333.
[187] Conseil d'Etat, 18 octobre 2000, *Sté Max-Planck-Gessellschaft*, n° 206341, rec. p. 432
[188] Article R. 776-23 of the Code of Administrative Justice.
[189] Tribunal administratif de Pau, 28 mai 2014, *Sepanso Landes*, n° 1300359; Tribunal administratif de Bordeaux, 5 mars 2015, *Assoc. Le Betey, plage boisée à sauvegarder*, n° 1301603.
[190] Conseil d'Etat, Avis, 6 avril 2016, n° 395916: «si la décision imposant la réalisation d'une évaluation environnementale est, en vertu du IV de l'article R. 122-18 du code de l'environnement précité, un acte faisant grief susceptible d'être déféré au juge de l'excès de pouvoir après exercice d'un recours administratif préalable, tel n'est pas le cas de l'acte par lequel l'autorité de l'Etat compétente en matière d'environnement décide de dispenser d'évaluation environnementale un plan, schéma, programme ou autre document de planification mentionné à l'article L. 122-4 du code de l'environnement. Un tel acte a le caractère d'une mesure préparatoire à l'élaboration de ce plan, schéma, programme ou document, insusceptible d'être déférée au juge de l'excès de pouvoir, eu égard tant à son objet qu'aux règles particulières prévues au IV de l'article R. 122-18 du code de l'environnement pour contester la décision imposant la réalisation d'une évaluation environnementale. La décision de dispense d'évaluation environnementale pourra, en revanche, être contestée à l'occasion de l'exercice d'un recours contre la décision approuvant le plan, schéma, programme ou document».
[191] Several administrative courts of appeal applied it to projects: CAA Bordeaux, 22 juin 2017, n°16BX01833; CAA Versailles, 28 février 2020, n° 18VE02428.
[192] Concerning environmental permits: Article R. 181-50 of the Environmental Code.
[193] Conseil d'Etat, 25 octobre 1996, *Association Estuaire-Ecologie*, rec. p. 415.
[194] Conseil d'Etat, 3 juin 2009, *M. Canavy*, rec. p. 842.
[195] Conseil d'Etat, 13 juillet 2012, *Société Moulins Soufflet*, n° 339592.
[196] Cour administrative d'appel de Marseille, 8 novembre 2010, *Communauté de communes des Baronnies*, n° 09MA00033.
[197] Article L. 600-1-2 of the Urban Planning Code.
[198] CE, 13 april 2016, *Bartolomei*, n° 389798, rec. p. 135.
[199] CE, 16 mai 2018, *Société P. et T. Technologie*, n° 408950, rec. p. 703.
[200] Conseil d'Etat, 21 décembre 1906, *Syndicat des propriétaires et contribuables du quartier de la Croix-de-Seguey-Tivoli*, rec., p. 962.
[201] Conseil d'Etat, sect., 26 avril 1985, *Ville de Tarbes*, rec., p. 119.
[202] Conseil d'Etat, 25 mai 1990, *Bauret*, n° 104519, rec. p. 913.
[203] Conseil d'Etat, 9 décembre 1996, *Assoc. pour la sauvegarde du patrimoine martiniquais*, rec., p. 479.
[204] Conseil d'Etat, 23 février 2004, *Communauté de commune du pays loudunais*, rec., p. 803.
[205] Nevertheless, the administrative judge seems to be relaxing his position. The Conseil d'Etat thus ruled, with regard to an association that had not delimited its geographical jurisdiction, that "in spite of the absence of delimitation, in its statutes, of the geographical jurisdiction of its field of action, this association must be regarded as having a local field of intervention in view of the indications provided on this point, in particular by its name, the location of its registered office and the existence, in several other departments, of local associations with a similar object and a similar name"(Conseil d'Etat, 25 juin 2012, *Collectif Antinucléaire 13 et a*. n° 346395).
[206] Conseil d'Etat, 26 juillet 1985, *Union régionale pour la défense de l'environnement*, AJDA, 1985, p. 741.
[207] Those provisions have been approved by the Conseil constitutionnel (Conseil constitutionnel, 17 juin 2011, *Association Vivraviry*, n° 2011-138 QPC).
[208] Conseil d'Etat, 24 juillet 2019, *Association Gardez les caps et autres*, n° 418846.
[209] Article L. 141-1 et seq. of the Environmental Code. The Conseil d'Etat ruled that it follows from those provisions of the Environmental Code that it is incumbent on the administrative authority, when receiving an application for approval, to determine whether it can be issued in a departmental, regional or national framework; if these provisions prevent it from requiring the association to carry out its activity in the whole of the territorial framework for which the approval is likely to be issued, it may lawfully reject the application when the association's activities are not carried out in a significant part of that territorial framework and only concern purely local issues (CE, 20 juin 2016, n° 389590).
[210] This provision 'does not make the admissibility of legal proceedings brought by environmental protection associations conditional upon accreditation by the administrative authority, but merely recognises a presumption of an interest in bringing proceedings to challenge certain administrative decisions in

favour of environmental protection associations which are holders of such accreditation; that this provision does not prevent non-accredited associations from being able to bring proceedings before the same courts if, like any applicant, they can prove a sufficiently direct interest giving them standing to bring proceedings' (Council of State, 25 July 2013 Association de défense du patrimoine naturel à Plourin, No 355745).

[211] Conseil d'Etat, 8 février 1999, Fédération des associations de protection de l'environnement et de la nature des côtes d'Armor, rec., p. 20.

[212] Cour administrative d'appel de Nancy, 22 décembre 1999, France Nature Environnement, n° 99NC00045.

[213] Conseil constitutionnel, 7 novembre 2014, Association Mouvement raëlien international, n° 2014-424 QPC.

[214] This solution could be challenged on the basis of the decision of the Conseil constitutionnel of 7 November 2014 (Association Mouvement raëlien international, n° 2014-424 QPC).

[215] Conseil d'Etat, 14 octobre 2011, Société OCREAL, n° 323257.

[216] Conseil d'Etat, 9 juillet 1982, Ministre de l'industrie c. Comité départemental de défense des lignes à très haute tension, rec., p. 277. Under Article R122-5 of the Environmental Code, the content of the environmental impact assessment is proportionate to the environmental sensitivity of the area likely to be affected by the project, to the size and nature of the works, installations, structures or other interventions in the natural environment or landscape proposed and to their foreseeable impact on the environment or human health

[217] Conseil d'Etat, Avis, 28 mars 1997, M. de Malafosse et a., rec., p. 123; Conseil d'Etat, 29 juillet 1994, Dumont, n° 097327.

[218] Conseil d'Etat, 28 juillet 1993, Société Franceterre, rec., p. 1092.

[219] Conseil d'Etat, 9 décembre 1988, *Entreprise de dragage et de travaux publics*, n° 76493; Cour administrative d'appel de Nantes, 7 avril 2010, SNC Parc éolien Guern, n° 09NT00829.

[220] Cour administrative d'appel de Bordeaux, 6 mai 2014, *SAS Sablières et travaux du Lot*, n° 13BX02649.

[221] Conseil d'Etat, 12 novembre 2007, Société Vicat SA, n° 295347.

[222] Tribunal administratif de Nice, 20 avril 1995, Chabas et a., n° 94183.

[223] Cour administrative d'appel de Paris, 16 avril 1998, Sté Sovetra, n° 96PA01543.

[224] Cour administrative d'appel de Paris, 1er octobre 2003, Semmaris, n° 02PA03005.

[225] Cour administrative d'appel de Douai, 22 janvier 2009, SNC MSE Le Haut des Epinetttes, n° 08DA00372.

[226] Conseil d'Etat, 7 mars 1986, COGEMA, n° 49664.

[227] Cour administrative d'appel de Bordeaux, 6 mai 2014, SAS Sablières et travaux du Lot, n° 13BX02649.

[228] Conseil d'Etat, 28 juin 1999, Commune de Saint-Martin-Bellevue et a., no 186921.

[229] See for example Cour administrative d'appel de Bordeaux, 5ème chambre, 6 mai 2014, SAS Sablières et travaux du Lot (STL), n° 13BX02649.

[230] Conseil d'Etat, avis, 19 avril 1991, EDCE, n° 43, p. 63; Conseil constitutionnel, 7 décembre 2012, *Société Pyrénées services*, n° 2012-286 QPC.

[231] Article L. 521-1 of the Code of Administrative Justice.

[232] The Council of State judge hearing applications for interim measures considers that there is no urgent need to suspend the decree and the inter-ministerial order establishing minimum distances of 5, 10 and 20 metres to protect people when phytopharmaceuticals are being used: Council of State, 14 February 2020, No 437814.

[233] Articles L. 122-2 and L. 122-11 of the Environmental Code. This applies to projects as well as to plans and programs.

[234] Article R. 181-50 of the Environmental Code.

[235] Cour administrative d'appel de Marseille, 4 mai 2006, *Société Duclos Environnement*, n° 01MA01773.

[236] Cour administrative d'appel de Marseille, 7 juillet 2015, *Syndicat Viticole AOC Languedoc*, n° 12MA04547; Cour administrative d'appel de Douai, 9 avril 2014, *SNC MSE Le moulin de Séhen*, n° 12DA01458.

[237] Cour administrative d'appel de Lyon, 18 octobre 2011, *Société Descombes*, n° 09LY01538; Conseil d'Etat, 4 décembre 1985, *Syndicat intercommunal de voirie du canton de Plancoet*, n° 45237.

[238] Conseil d'Etat, 6 février 1981, *Dugenest*, n° 03539; Cour administrative d'appel de Nantes, 12 novembre 1997, *SARL Carrières Michaud*, n° 95NT01657.

[239] Conseil d'Etat, 22 février 2016, *Commune de Sarralbe*, n° 384821.

[240] Conseil d'Etat, avis, 19 avril 1991, EDCE, n° 43, p. 63; Conseil constitutionnel, 7 décembre 2012, *Société Pyrénées services*, n° 2012-286 QPC.

[241] Cour administrative d'appel de Douai, 7 juillet 2005, *Ministre de l'écologie*, n° 03DA00720; Cour administrative d'appel de Nantes, 29 juillet 2003, *Houedry*, n° 99NT01459; Cour administrative d'appel de Marseille, 25 juin 2009, *EURL Fuss Rénovation*, n° 07MA03217; Cour administrative d'appel de Nantes, 26 octobre 2012, *Société Le Bodan*, n° 11NT00126.

[242] Cour administrative d'appel de Nantes, 1er décembre 2009, *Ministre de l'écologie*, n° 07NT03775; Conseil d'Etat, 5 juillet 2004, *Lescure*, n° 243801.

[243] Article L. 521-1 of the Code of Administrative Justice.

[244] Articles L. 122-2 and L. 122-11 of the Environmental Code. This applies to projects as well as to plans and programs.

[245] Article L. 123-16 of the Environmental Code. This applies to projects as well as to plans and programs, whether public participation is carried out through a public inquiry or electronically.

[246] See also case C-529/15

[247] Article R. 162-3 of the Environmental Code.

[248] Article R. 162-4 of the Environmental Code.

[249] Cour administrative d'appel de Nancy, 13 février 2014, *Ligue de protection pour les oiseaux de Champagne-Ardenne*, n° 13NC00141.

[250] Article R. 162-4 of the Environmental Code.

[251] Article L. 123-7 and R. 122-10 of the Environmental Code.

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Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives[1]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

It should first be noted that the distinction made by the model questionnaire has little reality in French law, which was constructed prior to the adoption of the Environmental Impact Assessment Directive. The environmental impact assessment initially constituted a procedural document complementary to the administrative police mechanism of prior authorisation, the primary mechanism for implementing the prevention principle.

In environmental matters, French legislation that is not covered by European EIA and IED legislation is therefore still covered by the same substantive and litigation rules. They result from the same instruments developed before the implementation of these two European directives, whether in the field of water, nature protection or risks.

The applicable rules are therefore the same as those described above (see section 1.4).

The level of effectiveness of access to national courts is rather satisfactory with regard to the requirements of the case law of the CJEU.

However, some difficulties remain in practice:

As mentioned above, one of the main limits of judicial review regarding procedural defects is the theory of substantial requirements. According to Conseil d' Etat case law, a defect affecting the conduct of a prior administrative procedure is liable to render the decision taken unlawful only if that defect was capable of influencing the meaning of the decision taken or deprived the persons concerned of a guarantee[2]. This theory is notably applied to environmental impact assessment and public participation procedures[3]. Such case law may be considered to be contrary to the CJEU decision *Commission vs Germany* of 15 October 2015[4] (paragraphs 55-57). However, the judge makes an *in concreto* assessment as to whether the defect may have had the effect of prejudicing the information to the population concerned by the operation or whether it was such as to influence the results of the investigation and, consequently, the decision of the administrative authority[5]. With regard to public inquiries, the Conseil d'Etat ruled that the absence of mention, in the order opening the public inquiry and in the notice of inquiry, of the presence of an impact study in the file was not likely, in the absence of other circumstances, to hinder effective public participation in the inquiry and thus to deprive the public of a guarantee or to influence the results of the inquiry[6]. The Conseil d'Etat also ruled that by signing a ministerial order that was challenged the day after the public consultation closed, without respecting the minimum four-day period set by Article L. 123-19-1 of Environmental Code and without a summary of the observations and proposals gathered during the consultation having been drawn up, the author of the order could not be regarded as having taken into consideration all the comments expressed by the public. Consequently, the contested order was issued after an irregular procedure. This procedural irregularity, which deprived the persons who participated in the consultation of the guarantee that their opinion would be duly taken into account with regard to a decision having a direct and significant impact on the environment, renders the decision unlawful[7].

Injunctive relief procedures are often ineffective in practice. It is very rare to obtain the suspension of an administrative act in the environmental field. A systematic review of case law would be necessary to understand why the “référé suspension” procedures are not working as it should, whereas it exists specific provisions in environmental matters.

It is rare for the administrative judge to agree to refer a question to the Court of Justice of the European Union for a preliminary ruling on environmental matters.

CJEU case law is very often produced in support of NGO appeals. While the case law of the CJEU prevails before the judge, it often struggles to be properly implemented in regulatory administrative acts until it has been "translated" into a national court decision.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The applicable rules are the same as those described above. They cover both procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

All applicable environmental rules have been described above. There is however a specificity regarding appeals challenging decisions to oppose a prior declaration in the field of water. When the petitioner wishes to contest the opposition to a prior declaration, he must obligatorily refer the matter to the prefect, before any referral to the administrative judge[8].

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

Legally, it is never necessary to participate in the public consultation phase of the administrative procedure in order to have standing.

In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.

5) Are there some grounds/arguments precluded from the judicial review phase?

The applicable rules are the same as those described above (section 1.2.4)).

Certain pleas which have not been raised by the applicants may be raised *ex officio* by the judge.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no specific provisions on equality of arms. Equality of arms is essentially ensured by the application of the principle of adversarial proceedings before the courts.

7) How is the notion of “timely” implemented by the national legislation?

There are no specific provisions on the speed of procedures.

8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

All applicable environmental procedures have been described above (section 1.7.2. 6)). There are no more specificities.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

The applicable rules are the same as those described above (section 1.7.3). There is no statutory reference to a requirement that costs should not be prohibitive.

In addition, if one loses a case, there is a fairly low risk of being fined. In fact, under Article R. 741-12 of the Code of Administrative Justice, “the judge may impose a fine of up to 10,000 euros on the author of an application which he considers to be abusive”. However, the application of this provision is quite rare in environmental matters.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[9]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Rules on standing for both individuals and NGOs are the same as those described above (section 1.4. 3)).

The screening decision regarding plans and programmes can be challenged by the petitioner. However, under Article R. 122-18 of the Environmental Code, such judicial appeal against the screening decision must obligatorily be preceded by an administrative appeal ("RAPO" i.e. "recours administratif préalable obligatoire").

It cannot be challenged by the public or by an NGO. The Conseil d'Etat decided that a decision to exempt a plan from SEA is not directly challengeable[10]. Anyway, the decision to exempt a project from SEA can be contested when challenging the final plan.

Remarks regarding the effectiveness of the level of access to national courts in light of the CJEU case law are the same than previously provided.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of the administrative review and the judicial review is the same as for EIA. This covers both procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is no requirement for exhaustion of administrative review procedures prior to recourse to judicial review procedures. The only exception is under Article R. 122-18 of the Environmental Code, which requires the petitioner to seek an administrative remedy before challenging the decision to submit its plan or program to SEA.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

It is not necessary to participate in the public consultation phase of the administrative procedure in order to have standing.

In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

As mentioned previously, several procedures can lead to orders on interim measures (section 1.7.2. 6)).

Inparticular, the "référé-suspension" procedure can be used, after having filed an appeal, in order to obtain a suspension of the administrative decision, pending the judge's decision on the merits. Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision[11]. The suspension of the administrative decision shall end at the latest when the judge renders a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d'Etat within 15 days. Then the Conseil d'Etat decides within 48 hours.

Under Article L. 122-11 of the Environmental Code, there is a special kind of "référé-suspension" procedure for strategic environmental assessments. In fact, where an administrative decision has been adopted without a strategic environmental assessment when it should have been preceded by such an assessment, the court will find that there was no environmental impact assessment and suspend the administrative decision without requiring the condition of emergency [12].

Article L. 414-4 IX of the Environmental Code brings Natura 2000 impact assessments within the scope of Article L. 122-11 and allows the suspension of an administrative decision relating to a project that may significantly affect the conservation objectives of a Natura 2000 site without an assessment of these impacts. The same provisions apply in the event of a decision taken without a public inquiry when such an inquiry was required, or in the event of an unfavourable opinion from the investigating commissioner[13].

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Those rules are the same as described above (see section 1.7.3). There is no statutory reference to a requirement that costs should not be prohibitive.

In addition, if one loses a case, there is a fairly low risk of being fined. In fact, under Article R. 741-12 of the Code of Administrative Justice, "the judge may impose a fine of up to 10,000 euros on the author of an application which he considers to be abusive". However, the application of this provision is quite rare in environmental matters.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[14]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Rules on standing for both individuals and NGOs are the same as those described above (see section 1.4 1) and 3)).

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of the administrative review and the judicial review is the same as described above (sections 1.2 4) and 1.8.1 5)). This invocation of pleas includes pleas of external legality (incompetence or defect in form and procedure) and pleas of internal legality (violation of the law or misuse of power or procedure).

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is no requirement for exhaustion of administrative review procedures.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

It is not necessary to participate in the public consultation phase in order to have standing.

In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed

his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

The “référé-suspension” procedure can be used, after having filed an appeal, in order to obtain a suspension of the administrative decision, pending the judge's decision on the merits (see also section 1.7.2. 6)). Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision[15]. The suspension of the administrative decision shall end at the latest when the judge renders a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d’Etat within 15 days. Then the Conseil d'Etat decides within 48 hours.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Those rules are the same as described above (section 1.7.3). There is no statutory reference to a requirement that costs should not be prohibitive.
In addition, if one loses a case, there is a fairly low risk of being fined. In fact, under Article R. 741-12 of the Code of Administrative Justice, “the judge may impose a fine of up to 10,000 euros on the author of an application which he considers to be abusive”. However, the application of this provision is quite rare in environmental matters.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[16]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Rules on standing for both individuals and NGOs are the same as those described above (sections 1.4 1) and 3)).
Remarks concerning the effectiveness in the light of the CJEU case law are the same as those described above (section 2.1 1)).

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

The plans are usually adopted by means of a regulatory administrative act. In this case, rules are the same as described above (section 1.4 3)) and legal standing is assessed in a flexible way.
In this section, we therefore focus on regulatory administrative acts.

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of the administrative review and the judicial review is the same as described above (sections 1.2 4)). This covers both procedural and substantive defects.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is no requirement for exhaustion of administrative review procedures.

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

It is not necessary to participate in the public consultation phase in order to have standing.
In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.

6) Are there some grounds/arguments precluded from the judicial review phase?

There are no specific grounds precluded from judicial review, compared to other areas (see section 1.2.4)).

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no specific provisions on equality of arms. Equality of arms is essentially ensured by the application of the principle of adversarial proceedings before the courts.

8) How is the notion of “timely” implemented by the national legislation?

There are no specific provisions on the speed of procedures.

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

In particular, the “référé-suspension” procedure can be used, after having filed an appeal, in order to obtain a suspension of the administrative decision, pending the judge's decision on the merits (see also section 1.7.2. 6)). Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision[17]. The suspension of the administrative decision shall end at the latest when the judge renders a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d’ Etat within 15 days. Then the Conseil d'Etat decides within 48 hours.
In the event that the plan was submitted to SEA, there is a special kind of “référé-suspension” procedure. In fact, where an administrative decision has been adopted without a strategic environmental assessment when it should have been preceded by such an assessment, the court will find that there was no environmental impact assessment and suspend the administrative decision[18].

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Those rules are the same as described above (section 1.7.3). There is no statutory reference to a requirement that costs should not be prohibitive.
In addition, if one loses a case, there is a fairly low risk of being fined. In fact, under Article R. 741-12 of the Code of Administrative Justice, “the judge may impose a fine of up to 10,000 euros on the author of an application which he considers to be abusive”. However, the application of this provision is quite rare in environmental matters.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[19]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

In this section, it is important to distinguish parliamentary legislative acts from government decrees:
Regarding parliamentary legislative acts transposing European Union law: it is not possible to directly challenge the legal validity of a legislative act before a judge. However, this is possible in a trial. If the outcome of the dispute depends on it, it is then possible either to challenge the validity of a legislative act in relation to European Union law (“exception d’inconventionnalité”) or to submit a priority question of constitutionality (QPC). The conditions of admissibility are those of the main appeal (section 1.4 3)). Concerning the QPCs, there are specific conditions for obtaining the transmission of this question to the Conseil constitutionnel (section 1.3 5)).
Regarding government decrees, they are challenged directly before the Conseil d’Etat. Access to the judge is widely accepted. All those who have an interest in maintaining or annulling the contested decision may intervene[20]. Associative approval under the Environmental Code will make admissibility easier but is not an indispensable prerequisite. This type of appeal is not subject to the obligation to have recourse to an “avocat”.
Regarding actions for failure to act, i.e. in the absence of a government decree, the rules on admissibility of access to the courts require the existence of a prior administrative decision. If there is no administrative decision, it is up to the applicant to submit a prior request to the Government. The reply or the absence of a reply will constitute the prior decision that can be challenged before the Conseil d’Etat. This decision may be challenged under the same conditions as a decree.
The legality of a decree may also be raised by way of exception before the judges of first instance in the context of litigation against individual or regulatory decisions taken by local administrative authorities on their basis. The classic rules of admissibility set out above apply.
2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
Regarding parliamentary legislative acts transposing European Union law, the control exercised through the exception of unconventionality (“exception d’ inconventionnalité”) does not relate to the procedure of adoption of the law by the Parliament. It relates only to the substance. The judge examines the compatibility of the law with European Union law (Article 267 of the Treaty on the Functioning of the European Union).
The grounds raised directly or by way of exception against a government decree cover both procedural and substantive legality (see also section1.2.4)).
Grounds of “public order” may be raised *ex officio* by the judge. The administrative lawsuit conforms to the idea that the litigation debate must be "without traps and without surprise" for the parties. The grounds of public order, i.e. pleas raised of their own motion, are obligatorily communicated to the parties if they are raised by the judge.
The judge's role can be relatively varied and can become very technical in environmental matters. For example, the Conseil d'Etat was led to rule on the implementation of the Habitats Directive by examining the legality and conformity of the Decree establishing the list of protected animal species. Here it checks the proportionality of the rules for the protection of species enacted, which cannot legally consist of a general and absolute prohibition on modifying a natural habitat and must on the contrary be adapted to the needs that the protection of these species imposes in certain places[21].
3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
There is no requirement for exhaustion of administrative review procedures.
4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
It is not necessary to participate in the public consultation phase in order to have standing.
In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.
5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
Regarding parliamentary legislative acts transposing European Union law, there is no procedure for obtaining a suspension of the application of a parliamentary legislative act. In the context of an exception of unconventionality, the legislative provision contrary to European Union law is not annulled. Its application is simply set aside in the course of the proceedings. Finally, the judge does not have a power of injunction vis-à-vis the legislature. He cannot order the legislature to amend a legislative act. In the context of a priority constitutionality question, the constitutional judge may annul a legislative provision or postpones the effects in time of a declaration of unconstitutionality in order to give the legislator the option to remedy the unconstitutionality found[22].
Regarding government decrees, the “référé suspension” procedure described above can be used to obtain a suspension of this act.
Other types of injunction may result from the action for annulment brought against the decree. In the context of an appeal against a government decree, the judge has the possibility to modulate in time the effects of his annulment decision[23]. The effects of the jurisdictional decision may lead either to the immediate annulment of the disputed decree, or to the modulation in time of the effects of the recognition of its illegality, or to an injunction to supplement the regulatory provisions recognised as illegal. However, the modulation decision does not apply to contentious actions initiated on the date of the reading of the decision which deeply respects vested rights as much as the exercise of the right of remedy[24] and the Conseil d'Etat may not modulate in time the effects of a contentious annulment if the Court of Justice of the European Union has refused to vary the effects of its reply to a preliminary question from the Conseil d'Etat[25].
French environmental NGOs are increasingly using the method called "en tant que ne pas" to challenge the provisions of a ministerial order or a decree in order to ask the judge to enjoin the government to restore the legality of the challenged regulatory provisions.
For example, in a case of litigation against the conditions of placing on the market and use of pesticides, the NGOs requested and obtained, on the basis of Articles L. 911-1 et seq. of the Code of Administrative Justice, that the judge issue an injunction to supplement the provisions of the disputed order within a period of 6 months[26].
The most emblematic example is the "list of estuarine municipalities" needed for the application of the law on the protection of the coastline[27]. The national federation *France Nature Environnement* challenged before the Conseil d’Etat the Prime Minister's implicit refusal to implement a provision of the coastal legislative act protecting certain sectors located in estuarine municipalities. As these provisions were conditional on the publication by decree of the list of *communes* located in the estuary zones, they were inoperative as long as the decree was not issued. Noting the illegality of the lack of intervention of this decree more than ten years after the intervention of the coastal legislative act, the Conseil d’Etat enjoined the State to publish the decree specifying the list of estuarine municipalities within 6 months on penalty of € 15 per day of delay.
More recently, the Conseil d'Etat enjoined the Minister of Ecology to complete the regulatory provisions for combating light pollution within nine months and subject to a fine of € 500 for each day of delay[28].
6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?
Those rules are the same as described above (section 1.7.3). There is no statutory reference to a requirement that costs should not be prohibitive.

In addition, if one loses a case, there is a fairly low risk of being fined. In fact, under Article R. 741-12 of the Code of Administrative Justice, “the judge may impose a fine of up to 10,000 euros on the author of an application which he considers to be abusive”. However, the application of this provision is quite rare in environmental matters.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[29]?

Pursuant to Article 267 of the Treaty on the Functioning of the European Union, French courts may request the Court of Justice of the European Union to give a ruling on the validity of EU acts.

The request for a preliminary ruling may be raised by the applicant in his written submissions.

In the event of serious difficulties concerning the assessment of the validity of an act of European Union law, it is for the Conseil d'Etat to stay proceedings and refer a question to the Court of Justice of the European Union for a preliminary ruling. However, this is not an obligation, but merely an option in the case of the lower courts.

With regard to the application for an assessment of validity, the Conseil d’Etat considers that it is required to refer only in cases where the validity of the act is questionable and "having regard to the serious nature of the challenge raised"[30].

To our knowledge, in the field of the environment, the Conseil d’Etat has on only three occasions referred a preliminary ruling for an assessment of validity[31].

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[1] This category of case reflects recent case-law of the CJEU such as Protect C-664/15, the Slovak brown bear case C-240/09, see as described under the Commission Notice C/2017/2616 on access to justice in environmental matters.

[2] Conseil d’Etat, 23 décembre 2011, *Danthony*, n° 335033: “if administrative acts must be taken in accordance with the forms and procedures laid down by legislative acts and regulations, a defect affecting the conduct of a prior administrative procedure, whether mandatory or optional, is such as to render the decision taken unlawful only if it appears from the documents in the file that it was likely to influence the meaning of the decision taken in the case in question or that it deprived the persons concerned of a guarantee; that the application of this principle is not excluded in the event of an omission of a mandatory procedure, provided that such omission does not affect the competence of the author of the act”.

[3] Conseil d’Etat, 14 octobre 2011, *Société OCREAL*, n° 323257: “inaccuracies, omissions or inadequacies in an environmental impact assessment are only likely to vitiate the procedure and thus lead to the illegality of the decision taken on the basis of that study if they could have had the effect of prejudicing the complete information of the population or if they were such as to influence the decision of the administrative authority”.

[4] *Commission vs. Germany*, 15 October 2015 (C-137/14, ECLI:EU:C:2015:683).

[5] Cour administrative d’appel de Marseille, 18 mars 2016, n°14MA03823; Conseil d'Etat, 3 juin 2013, *Commune de Noisy-le-Grand*, n° 345174.

[6] Conseil d'Etat, 27 février 2015, *Ministre de l’intérieur*, n°382502

[7] Conseil d'Etat, 12 juillet 2019, *Fédération nationale des chasseurs*, n° 424600; see also CE, 29 janvier 2018, *Société Marineland, société Safari Africain de Port St Père et a.*, n° 412210, 412256, rec. p. 14; CE, 17 avril 2013, *Commune de Ramatuelle*, n° 348311.

[8] Article R. 214-36 of the Environmental Code.

[9] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[10] Council of State, Opinion, 6 April 2016, No 395916: ‘While a decision requiring an environmental impact assessment to be carried out is, under Article R. 122-18(IV) of the aforementioned Environmental Code, an act with an adverse effect that can be referred to the court reviewing the validity of an administrative decision after a prior administrative appeal has been lodged, this is not the case for an act by which the State environmental authority decides to waive the environmental impact assessment requirement for a plan, programme or other planning document referred to in Article L. 122-4 of the Environmental Code. Such an act constitutes a measure preparatory to drawing up this plan, programme or document, and cannot be referred to the court reviewing the validity of an administrative decision, either as regards its purpose or the specific rules laid down in Article R. 122-18(IV) of the Environmental Code for challenging decisions requiring an environmental impact assessment to be carried out. However, a decision to waive the obligation to carry out an environmental impact assessment may be challenged when lodging an appeal against the decision approving the plan, programme or document.’

[11] Article L. 521-1 of the Code of Administrative Justice.

[12] Article L. 122-11 of the Environmental Code.

[13] Article L. 123-16 of the Environmental Code.

[14] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[15] Article L. 521-1 of the Code of Administrative Justice.

[16] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.

[17] Article L. 521-1 of the Code of Administrative Justice.

[18] Article L. 122-11 of the Environmental Code.

[19] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774

[20] Conseil d’Etat, 29 février 1952, *Chambre syndicale des détaillants en articles de sports et camping de France*, rec. p. 143; Conseil d’Etat, 11 décembre 1988, *Association Greenpeace France*, n° 194348; Conseil d’Etat, 29 septembre 2010, n° 319481; CE, 25 juillet 2013, *OFPRA*, n° 350661.

[21] Conseil d’Etat, 13 juillet 2006, *Fédération nationale des syndicats de propriétaires forestiers sylviculteurs,* n° 281812.

[22] Conseil constitutionnel, 7 mai 2014, n° 2014-395 QPC.

[23] Conseil d’Etat, 11 mai 2004, *Association AC !*, n° **380091.**

[24] Conseil d'Etat, 16 mai 2008, *Département du Val-de-Marne*, n° 290416.

[25] Conseil d'Etat, 28 mai 2014, *Association Vent de colère !*, n° 324852.

[26] Conseil d’Etat, 26 juin 2019, *Associations Générations Futures et Eaux et Rivières de Bretagne*, n° 415426.

[27] Conseil d’Etat, 28 juillet 2000, *Association France Nature Environnement*, n**° 204024.**

[28] Conseil d’Etat, 28 mars 2018, *France Nature Environnement*, n° 408974.

[29] For an example of such a preliminary reference see Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774

[30] Conseil d’Etat, 22 avril 1988, *Association générale des producteurs de blé*, rec. p. 151.

[31] *Arcelor*, 16 December 2008 C127/07, ECLI:EU:C:2008:728; *Eco-Emballages SA*, 10 November 2016, C313/15 and C530/15, ECLI:EU:C:2016:859; *Confédération paysanne*, 25 July 2018 C-528/16, ECLI:EU:C:2018:583.

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].

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[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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