

CHILDREN'S ACCESS TO JUSTICE FOR ENVIRONMENTAL RIGHTS | FRANCE



Acknowledgements

This report was published by Child Rights International Network (CRIN) in April 2022. It is part of a series of reports as part of CRIN's project on children's access to climate and environmental justice. For full information about the project visit: <https://home.crin.org/resources/reports/environmental-rights-access-to-justice>

CRIN would like to express our profound gratitude to our external reviewers for their comments on a draft of this report. CRIN also sent a draft version to the State for feedback and comments received were taken into account in finalising the report. Any errors or inaccuracies remaining in the report are CRIN's.

This report is provided for educational and informational purposes only and should not be construed as legal advice. CRIN does not accept liability for any loss, damage, cost or expense incurred or arising by reason of any person using or relying on information in this report. CRIN encourages personal and educational use of this publication and grants permission for its reproduction in this capacity where proper credit is given in good faith.

All CRIN content is licensed under a Content on this website is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International license](#). No material produced by CRIN may be modified unless consent is given in writing. No material produced by CRIN may be re-used for commercial gain unless consent is given in writing.

Introduction

This report is one of 43 country reports which look at whether the laws and policies in countries around the world make it possible for children to access their environmental rights.

We are looking at:

- How the law protects - or fails to protect - children's environmental rights.
- How children can currently access the courts in environmental cases.
- What courts can do when children's rights are violated
- How these countries protect - or fail to protect - children's civil and political rights so that they are able to protest and campaign on environmental issues.

These research reports are just the start to CRIN's work on this issue. We think it's important to start with a solid foundation and understanding of what the law says, but we want to build on this in collaboration with others. We want to turn the research into practical tools and resources that organisers and activists (both young and old) from around the world can use.

For more information about the project and what's to come, please visit: <https://home.crin.org/access-to-environmental-justice>

Methodology

Identifying 43 countries

The country reports look at 43 countries which we chose in consultation with our partners. We aimed to achieve a broadly representative sample that reflected a regional balance as well as the different types of legal systems and legal traditions. We included countries that are established regional or global leaders on children's rights and environmental law. We also chose some countries that are often excluded from comparative studies in this area.

Developing the questions

The first draft of the research questionnaire was developed based on gaps in our knowledge that we had identified during our previous work on this issue. We then consulted a number of individual experts and organisations working in the field of children's rights and the environment. Based on their feedback, we amended the questions.

The questions were then passed on to a team of pro-bono lawyers who used these to guide their research and write the reports.

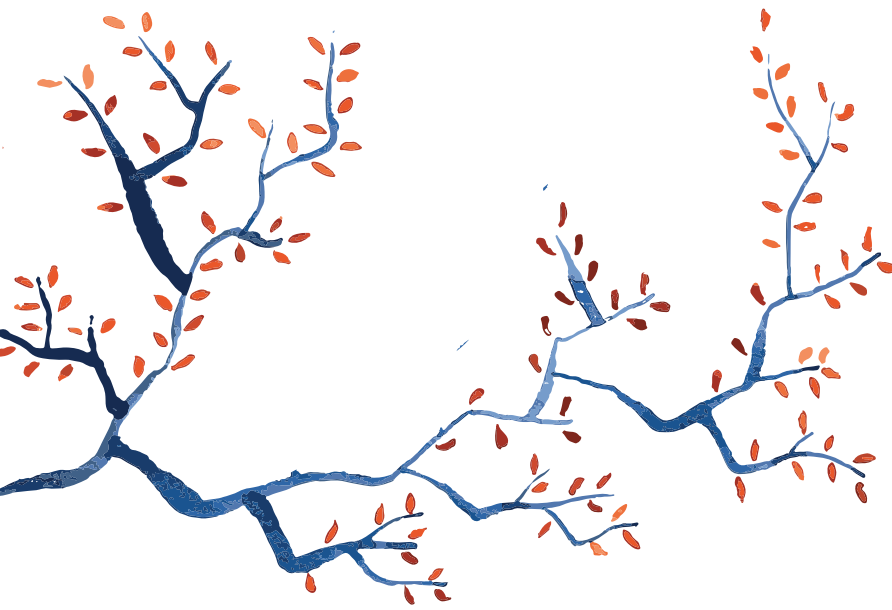
The review process

The country reports were then reviewed and edited by CRIN. The reports were then sent to at least one official state representative and one national expert for the opportunity to provide feedback and comments. The experts included relevant government ministries, State permanent missions to the United Nations, non-governmental organisations, children's rights lawyers and advocates, environmental rights lawyers and advocates and individual lawyers specialising in the issues covered by the reports. The contributors to the country reports have been credited in the individual country reports, except where the reviewer asked to remain anonymous. To note, for some countries CRIN was unable to find an official state representative or national expert able to give feedback.

Contents Page

1.	National Legal Protections	6
2.	Accessing Courts	18
3.	Remedies	30
4.	Civil and Political Rights	41

I. NATIONAL LEGAL PROTECTIONS



A. Are environmental rights protected within the national constitution?

The Charter for the Environment¹ (hereafter the Charter) was adopted by the Parliament by way of constitutional legislation on 28 February 2005 in the aftermath of the 2003 Coppins Report.² The Preamble of the 1958 French Constitution now includes the attachment to the rights and duties as defined in the Charter for the Environment. The Charter recognizes that “everyone” has the right to live in a balanced environment which shows due respect for health and is under a duty to participate in preserving and enhancing the environment.³ It has constitutional value and introduces three main principles into the Constitution: the principle of prevention, the precautionary principle and the polluter-pays principle.⁴

The Constitutional Council⁵ confirmed in 2008 that the Charter had automatically acquired constitutional status and that the “rights and duties set out in the Charter (...) are thus binding upon the Government and administrative authorities within the limits of the areas under their jurisdiction.”⁶ The Council of State⁷ granted the Charter the same recognition by way of its Decision Commune d’Annecy.⁸ Recently, the Constitutional Council declared for the first time on the basis of the Preamble of the Charter, “that the protection of the environment, the common heritage of human beings, constitutes an objective of constitutional value.”⁹

1 Loi constitutionnelle No 2005-205, 1 mars 2005 relative à la Charte de l’environnement; Charte de l’environnement, 2004, available in English at: https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/anglais/charter_environnement.pdf.

2 C. Dadomo, “The ‘constitutionalisation’ of French Environmental Law under the 2004 Environmental Charter”, in E. Daly et al (eds.), *New frontiers in environmental constitutionalism*, UNEP (2017), pp. 146-159.

3 Art. 1 and 2 of the Charter.

4 M. Prieur, “Fasc 360 : Droit à l’environnement”, 10 January 2013, §40.

5 Conseil constitutionnel in French.

6 Conseil constitutionnel, 19 June 2008, No 2008-564 DC, Loi relative aux organismes génétiquement modifiés, para. 18; available at:

<https://www.legifrance.gouv.fr/cons/id/CONSTEXT000019080408>

7 Conseil d’Etat in French, the supreme French administrative jurisdiction.

8 Conseil d’Etat, Assemblée, 3 October 2008, No 297931, Commune d’Annecy, available at: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000019590157>.

9 Conseil constitutionnel, 31 January 2020, No 2019-823 QPC, Union des industries de la protection des plantes, available in English at: <https://www.conseil-constitutionnel.fr/en/decision/2020/2019823QPC.htm>. At first, despite their constitutional status, the Constitutional Council considered that the recitals preceding the ten articles remained of aspirational value and did not equate to separate rights or freedoms guaranteed by the Constitution. Consequently, it could not be invoked by litigants to remedy infringement of the rights and freedoms guaranteed under the Constitution. See Conseil constitutionnel, 7 May 2014, No 2014-394 QPC, Société Casuca, available at: <https://www.legifrance.gouv.fr/cons/id/CONSTEXT000028931677> and Conseil constitutionnel, La Charte de l’environnement, available at: <https://www.conseil-constitutionnel.fr/la-constitution/la-charte-de-l-environnement>.

In practice, while the constitutional value of the articles of the Environmental Charter is not to be called into question, their normative force is not uniform. A distinction must thus be drawn between Art. 3 (duty to prevent), 4 (contribution to remedial action) and 7 (right to information and participation), which are to be implemented by way of legislation, and the other articles of the Charter, which are directly binding on the public authorities and the competent administrative authorities.¹⁰ Most particularly with regard to obligations of public authorities, as of date, the Constitutional Council has refused to declare that Art. 5 on the precautionary principle institutes an independent right or freedom for individuals.¹¹ It also expressly clarified that Art. 6 on the promotion of sustainable development confers no independent right or freedom for individuals.¹²

A proposal was made to add a new section to promote the preservation of the environment, biological diversity and action against climate change in Art. 1 of the Constitution.¹³ This constitutional revision was to be submitted to a referendum but this has been abandoned given that deputies and senators failed to vote on the text in identical terms after two readings.¹⁴

There is no direct reference to children or youth under constitutional law in the context of environmental rights and duties. However, the Preamble of the Constitution states that the Nation shall provide the individual and the family with the conditions necessary to their development. Furthermore, all people, including children, shall have the right to receive suitable means of existence from society.

The Convention on the Rights of the Child (CRC) was ratified by France in 1990. Duly ratified or approved treaties automatically have the force of law in France. The Court of Cassation and the Council of State agreed that several articles of the CRC are directly applicable in French law.¹⁵

10 C. Huglo, 'La QPC : quelle utilisation en droit de l'environnement ?', April 2014, available at: <https://www.cairn.info/revue-les-nouveaux-cahiers-du-conseil-constitutionnel-2014-2-page-57.htm>.

11 Conseil constitutionnel, 11 October 2013, No 2013-346 QPC, Société Schuepbach Energy LLC, available at: <https://www.conseil-constitutionnel.fr/decision/2013/2013346QPC.htm>.

12 Conseil constitutionnel, 23 November 2012, No 2012-283 QPC, M. Antoine de M, available at: <https://www.conseil-constitutionnel.fr/decision/2012/2012283qpc.htm>.

13 The project of constitutional reform is available at: <https://www.vie-publique.fr/loi/273301-reforme-constitutionnelle-2019-pour-un-renouveau-de-la-vie-democratique>.

14 Projet de loi constitutionnelle complétant l'article 1er de la Constitution et relatif à la préservation de l'environnement; see: <https://www.vie-publique.fr/loi/278185-loi-environnement-article-1-constitution-referendum-climat>

15 CRIN, France: Access to justice for children, February 2014. Available at: https://archive.crin.org/sites/default/files/france_access_to_justice.pdf

B. Have constitutional rights protections been applied by national courts with regards to environmental issues?

Several key decisions invoke the Environmental Charter:

Council of State, 30 January 2012:

The Council of State invalidated the decision of a mayor who, relying on the precautionary principle (Art. 5 of the Charter), opposed Orange's efforts to install a mobile phone relay antenna on the grounds of the harmful effects of electromagnetic waves emitted by electronic communications networks. It found that whereas Art. 5 allows an administrative authority to take into account the precautionary principle when issuing a permit, it does not, however, grant this authority the right to refuse issuing a permit in the absence of detailed elements showing risks, even when uncertain, that would justify its refusal.¹⁶

Council of State, 7 February 2020:

The Council of State found that a decision which had authorised the use of the pesticide Roundup Pro 360, a weed killer, committed an error with its assessment with regard to the precautionary principle and, as such, breached Art. 5 of the Charter, in view of studies performed on animals and showing that this product has probable carcinogenic on humans.¹⁷

Administrative tribunal of Montreuil, 25 Juin 2019:

While not expressly grounded upon the Charter but the French Environmental code and the European Directive 2008/50/CE on air quality, this is a "historical decision"¹⁸ in the context of State responsibility for air pollution. In this case, the claimant, a mother acting in her own name and on behalf of her minor daughter, requested to be compensated for their damage (respiratory distress resulting from the air pollution in the Ile-de-France region) by way of an action against the State based on "culpable failure to act". She contended, inter alia, that the State had failed to comply with Article L. 220-1 of the Environmental Code, which requires the State to take action in the public interest "to implement the right of everyone to breathe air that is not harmful to his or her health."

16 Conseil d'Etat, 30 January 2012, No 344992, Société Orange France, available at: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000025284561>.

17 Conseil d'Etat, 7 February 2020, No 388649; available at: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000041569364>.

18 Le Monde, 'La justice reconnaît une « faute » de l'Etat pour « insuffisance » dans la lutte contre la pollution de l'air', 25 June 2019; available at: https://www.lemonde.fr/planete/article/2019/06/25/la-justice-reconnait-une-faute-de-l-etat-pour-son-inaction-contre-la-pollution-de-l-air_5481252_3244.html

The Montreuil tribunal ruled that the State committed a fault for inadequacy of the measures undertaken in the context of air quality to remedy the fact that, between 2012 and 2016, in the Ile-de-France region, the threshold for concentration of certain polluting gases were exceeded. It considered that “while exceeding the threshold cannot in itself constitute a culpable failure by the State to combat air pollution [...], the inadequacy of the measures taken to remedy it constitutes such a failure.” However, the tribunal rejected the request for compensation on the basis that the causality between the medical complications of the claimants and the air pollution in the region was not sufficiently established. As reported in June 2019, thirty-nine cases with a similar factual background were filed before French courts. As of date, other administrative tribunals applied a reasoning similar to that of the Montreuil tribunal.¹⁹

Administrative tribunal of Paris, 4 July 2019:

The tribunal heard the claim of three claimants residing in Paris for more than twenty years and suffering from various respiratory pathologies, which they alleged are due to air pollution in Ile-de-France. Although the tribunal ruled that the State was liable for the inadequacy of plans relating to air quality in Ile-de-France, as it failed to limit the periods in which the thresholds of the relevant pollutants were exceeded, it refused to award any compensation to the claimants on the grounds of lack of causality. Indeed, the tribunal found that investigations failed to demonstrate that the claimant’s pathologies were directly caused or aggravated by the insufficiency of the measures taken by the State.²⁰

Administrative tribunal of Lyon, 26 September 2019:

The tribunal ruled that the State had wrongfully failed to set forth a protection plan to enhance the air quality in the agglomeration of Lyon but rejected the request for compensation for lack of causality.²¹ In this case, the claimant was a mother also acting on behalf of her minor son.

19 Tribunal administratif de Montreuil, 25 Juin 2019, No 1802202, available at : <http://montreuil.tribunal-administratif.fr/content/download/163605/1653338/version/2/file/1802202.pdf>

20 Tribunal administratif de Paris, 4 July 2019, No 1709333, available at: <http://paris.tribunal-administratif.fr/content/download/163957/1656524/version/3/file/1709333.pdf>

21 Tribunal administratif de Lyon, 26 September 2019, No 1800362, available at: <http://lyon.tribunal-administratif.fr/content/download/165357/1666033/version/1/file/1800362.pdf>

Administrative tribunal of Paris, 3 February 2021:

Several associations (including Notre Affaire à Tous, Fondation Nicolas Hulot pour la Nature et l'Homme, Greenpeace France and Oxfam France) filed a claim against the State for wrongful failure to fight against global warming and the loss of biodiversity.²² Commonly referred to as "L'affaire du siècle", this dispute touches on State responsibility in the context of international law and the Paris Agreement, European law, and the European Convention on Human Rights.²³ In its decision, the tribunal recognised the existence of ecological damage linked to climate change. It ruled that the French State's partial failure to respect the objectives it has set for itself in terms of reducing greenhouse gas emissions engaged its responsibility.

Council of State, 1 July 2021:

The Council of State ordered the State to take "all useful measures" to curb the curve of greenhouse gas emissions produced on the national territory in order to respect the obligations agreed by France.²⁴ The Council ordered the State to act before the 31st of March 2022, and in particular in order to take all the implementing decrees to implement the climate policies that are essential to face the climate challenges.

22 Available at: <http://paris.tribunal-administratif.fr/Actualites-du-Tribunal/Communiqués-de-presse/L-affaire-du-siècle>; See also the Official website of Affaire du siècle: <https://laffairedusiecle.net/laffaire/>.

23 In particular Directive 2009/28/EC on the promotion of the use of renewable energy sources and the "Energy-Climate Package", a set of binding legislative acts for the European Union to achieve its energy and climate change objectives by 2020. Based on the Legal brief submitted to the Paris administrative court on 14 March 2019.

24 Conseil d'Etat, 1 July 2021, No 427301; available at: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000043754044>

C. Has the concept of intergenerational equity been applied within national courts? If yes, in what circumstances?

The concept of intergenerational equity is addressed by Recital 7 of the Charter: “In order to ensure sustainable development, choices designed to meet the needs of the present generation should not jeopardise the ability of future generations and other peoples to meet their own needs [...]”.

According to our review, French courts have never resorted to this concept in the context of environmental disputes.

D. What legislation is in place to regulate environmental protection? Are there any proposals for legal reforms currently under review in the national legislature?

In France, most of environmental laws have been codified under the Environmental Code in 2000.²⁵ The Code addresses the following topics: common provisions (i.e., general principles, institutions, organisations, prevention, control and sanctions); physical environments (i.e., water and aquatic and marine environments, air and atmosphere); natural spaces (i.e., coastline, parks and reserves, landscapes, etc.); fauna and flora; prevention of pollution, risks and nuisance; provisions applicable in overseas communities; and environmental protection in the Antarctic.

Other environmental legislations include:

- Grenelle I – a piece of legislation setting forth the objectives and results of the Grenelle Environnement, an open multi-party debate and political forum organised in France between September and December 2007 between various public and private actors of sustainable development.²⁶ Grenelle II is complementary and aims at enforcing Grenelle I.²⁷

25 Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074220.

26 Loi No. 2009-967 de programmation relative à la mise en œuvre du Grenelle de l’environnement, 3 August 2009, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000020949548>.

27 Loi No. 2010-788 portant engagement national pour l’environnement 12 July 2010; available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000022470434>.

- Other Codes address environmental concerns in a cross-sectoral manner: the Energy Code,²⁸ the Town Planning code,²⁹ the Building and Housing Code,³⁰ the Rural Code,³¹ the Forest Code.³²
- On 8 November 2019, a new environmental legislation was adopted as part of France's commitment to the 2015 Paris Agreement to address climate change and reduce France's carbon emissions. Amending the French Energy Code to include the goal of attaining carbon neutrality by 2050, the law aims at reducing French consumption of fossil fuels to 60% of 2012 levels by 2030. Beyond these aspirational provisions, the law also contains several concrete measures to lower greenhouse emissions in France, including measures to improve the energy efficiency of buildings and reduce emissions related to electricity generation.³³
- A new piece of legislation was adopted in August 2021, "to combat climate change and strengthen resilience to its effects".³⁴ That is the result of the 149 proposals submitted to the Minister for Ecological Transition by the Citizen Convention for the climate.^{35 36}

28 Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000023983208.

29 Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074075.

30 Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074096.

31 Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071367.

32 Available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000025244092.

33 Loi No. 2019-1147 relative à l'énergie et au climat, 8 November 2019, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000039355955>.

34 LOI n° 2021-1104 du 22 août 2021 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000043956924>

35 See: <https://propositions.conventioncitoyennepourleclimat.fr/pdf/ccr-rapport-final.pdf>. See also A. Garric and R. Barroux, "La Convention citoyenne pour le climat dévoile 150 propositions pour changer en profondeur la société", *Le Monde*, 18 June 2020.

36 See "Convention citoyenne pour le Climat : 146 propositions retenues par Emmanuel Macron", available at: <https://www.ecologie.gouv.fr/convention-citoyenne-climat-146-propositions-retenues-emmanuel-macron#> and <https://www.gouvernement.fr/la-convention-citoyenne-pour-le-climat-un-exercice-democratique>.

E. Is there any specific national policy addressing childhood exposure to toxic substances? If so, what is considered level of exposure and what is the process for determining safe levels of exposure?

Since 2014, exposure to toxic substances characterised as endocrine disruptors, labelled by the French Ministry of Health as “a major health, environmental and scientific challenge”, is under the French Government’s review, in tandem with the European Union.³⁷ In June 2014, several Ministries presented a combined report on public health to the Parliament. This report addresses the multiple concerns raised by the omnipresence of endocrine disruptors in the environment, food consumption, etc., and offers avenues for a national strategic plan to reduce/eliminate such exposure. The report provides for various analysis taking into account risks of exposure for pregnant women, newborns, young children and adolescents.³⁸

In February 2017, the Senate also enacted a resolution addressing the risk of exposure to toxic substances containing endocrine disruptors. This resolution expressly mentions childhood exposure and refers to the fact that the toxicity of these substances is not determined by the dose absorbed by the body, but that the period of exposure over the course of a lifetime is critical and that even low levels of exposure have irreversible consequences on the state of health of individuals, in particular whether it has occurred during pregnancy, breastfeeding, very young age or adolescence.³⁹

A compensation fund for victims of pesticides was also set up in 2021 and provides for the compensation of children who are victims of prenatal exposure to pesticides due to the professional activity of one of their parents.⁴⁰

Apart from these few provisions, as of date, there is no clear specific national policy addressing childhood exposure to toxic substances setting forth standards for environmental harms.

³⁷ The European Commission has been condemned by the Court of Justice of the European Union for failing to fulfil its obligations by adopting delegated acts to specify scientific criteria for the determination of endocrine-disrupting properties, under the first subparagraph of Article 5(3) of Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products: CJEU, case T-521/14, 16 December 2015, Sweden v Commission; Available at: https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=uriserv%3AOJ.C_.2016.048.01.0048.01.ENG

³⁸ See the Website of the Ministère de la transition écologique: <https://www.ecologie.gouv.fr/politiques/perturbateurs-endocriniens>.

³⁹ Resolution No. 99 by the French Senate aiming at strengthening the fight against exposition to endocrine disruptors; available at: <http://www.senat.fr/leg/tas16-099.html>.

⁴⁰ Code rural et de la pêche maritime art. L. 723-13-3; Arrêté 7 janv. 2022, NOR : SSAS2200820A: JO, 16 janv. 2022 available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044993676>

F. Is the country equipped with pollutant release and transfer registers? If yes, do these registers take into account child specific factors regarding the substances for which data is gathered and the type of data generated?

France is equipped with a national pollutant release and transfer register.⁴¹ This register does not take into account child specific factors. In addition, the European Union, by way of a regulation 'E-PRTR n° 166/2006' dated 18 January 2006, also created a European register for its member states.⁴² Similarly, this register does not take into account child specific factors.

G. Does the State assert extra-territorial jurisdiction for any environmental issues?

A distinction must be made between criminal and civil offences.

Criminal offences: Acts harming the environment may constitute criminal offences under the relevant applicable provisions. To the extent that they do, it has been recognized that the extraterritoriality of French criminal law, as provided for in the Criminal code would apply:

- A criminal offence is deemed to have been committed in France if one of its constituent elements, i.e., the act or its effects, took place in France. For instance, the Court of cassation recognized that a Belgian national, residing in Belgium, was in breach of the Rural code. The Court confirmed the reasoning of the court of appeal who had found that the effects of the water pollution, characterized by the killing of fish, harming of its nutrition, reproduction and food value, constituting one of the material acts of the criminal offence, were located in France. As such, the court had subject-matter jurisdiction over the relevant criminal offence.⁴³
- Criminal law is also applicable to those who act as accomplices on the French territory to crimes or offences (délits) committed abroad, but only where the relevant crime and offence is punishable under both French law and foreign law and has been established by a final decision of the foreign court.

41 Registre des rejets et des transferts de polluants (RRTP) available at: <https://www.data.gouv.fr/en/datasets/registre-francais-des-emissions-polluantes-etablissements/>.

42 See the [Official website of the European PRTE](#).

43 Court of cassation, Chambre criminelle, 15 November 1977, n° 77-90.089; available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007062121>

- The extraterritorial application of French criminal law extends to acts committed outside the French territory, where the author or the victim is French. However, in both these instances, the criminal proceedings may only be initiated by the public prosecutor, and must be preceded by a complaint from the victim or his/her beneficiaries or an official denunciation by the authority of the country where the act was committed.
- French criminal law is also applicable to offences committed beyond the territorial sea, provided that international conventions and the law so provide.⁴⁴

The Erika case is a landmark decision in which the Court of cassation has extended further the applicability of French criminal law. The case concerns the sinking of a Maltese ship carrying 30,000 tons of heavy fuel oil, in the French Exclusive Economic Zone, polluting several hundred kilometres of the coast and oiling some 150.000 birds. Although the Attorney General issued a report arguing the lack of jurisdiction of the French courts due to the occurrence of the act in the EEZ, the Court upheld both criminal and civil jurisdiction over this incident by relying on Article 8 of Law 1983 sanctioning pollution by ships. The Court thus dismissed arguments raised by the defendants pertaining to the inconsistency of such a reading of the law with international treaties.⁴⁵

Civil offences:

Where the act causing harm to the environment is merely a civil tort, French civil law may still apply, pursuant to the default rules of jurisdiction and conflict of law applicable in France. Pursuant to Article 7.2 of Regulation Brussels I bis, French courts have jurisdiction to hear claims arising in tort out of acts committed abroad if the damage occurred in France. Similarly, pursuant to Article 4(1) of Regulation Rome II, French law would apply to all acts committed abroad if the damage occurred in France. In this respect, we observe that in 2016, Art. 1246 to 1252 of the French Civil Code codified the notion of “ecological damage” entitling every individual to the relief provided therein, in the event of significant damage to the elements or functions of ecosystems or to the collective benefits derived by humans from the environment. As such, these provisions would apply even in the event of tortious acts committed abroad, if damages occur in France.⁴⁶

⁴⁴ Art. 113-2 to 113-14 of the Criminal Code. See also H. Ascencio, “Etude: l’extraterritorialité comme instrument”, 10 December 2010.

⁴⁵ Cour de cassation, Chambre criminelle, 25 Septembre 2012, No 13-82.938; available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000026430035>.

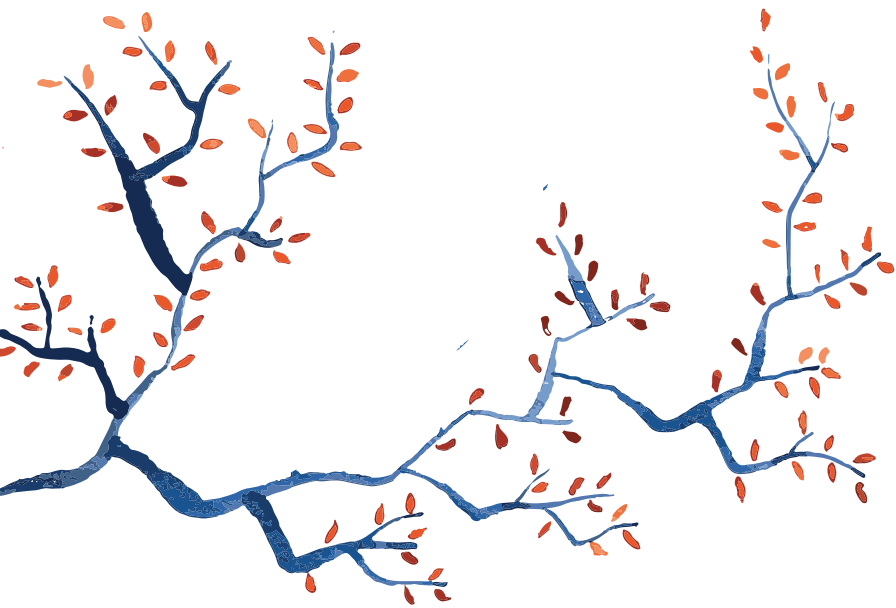
⁴⁶ See H. Ascencio, “Etude: l’extraterritorialité comme instrument”, op. cit.

In addition, the legislator introduced new provisions in 2017 imposing on French parent companies a duty of care with respect, among others, to the environmental practices of their foreign subsidiaries or other entities under their control.⁴⁷ As such, Article L. 225-102-4-I of the Code of commerce provides that a French company, which at the end of two consecutive financial years, employs more than 10,000 employee in its midst and in its direct or indirect subsidiaries in France and abroad, must establish and implement a due diligence plan to identify risks and prevent serious harm to human rights and fundamental freedoms, public health and safety and the environment resulting from the activities of the company itself and those companies which it controls [...], directly or indirectly, as well as the activities of subcontractors or suppliers with which an established commercial relationship is maintained, when these activities are linked to this relationship.⁴⁸ Thus, a French company may be held liable for practices harming the environment committed by its subsidiaries or entities under its control, even where the latter are incorporated, and have committed the relevant acts abroad.

47 Loi No. 2017-399 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, 27 March 2017.

48 Article L. 225-102-5 further provides that failure to comply with the aforementioned obligation may result in the liability of the company entitling any interested party to damages, in accordance with the provisions pertaining to tort liability under the Civil code, i.e. Articles 1240 and 1241 thereof.

II. ACCESSING COURTS



A. How can environmental cases be brought before national courts?

To the extent that the Environmental Charter concerns guarantees owed by the State to its nationals in addition to individual duties and rights, disputes falling within the scope of the Charter can be filed before both administrative (State-related disputes) and judicial courts (private disputes). A litigant cannot rely upon the Charter to support a claim for monetary or non-monetary remedy. The Charter can only serve as a basis for questioning the conformity of a piece of legislation to the Constitution.

All French courts deal with environmental matters that fall within their jurisdiction and environmental litigations follow the rules of the Code of Civil Procedure, the Code of Criminal Procedure and the Code of Administrative Justice. The specific provisions of environmental law, codified in the Environmental Code, supplement these general rules.⁴⁹

Before civil courts:

Since January 2020, the judicial tribunal is the ordinary judge in civil environmental litigation in the first instance regardless of the amount claimed.⁵⁰ The Court of Appeal hears the appeal of the decision of the tribunal and the Court of Cassation is the judge of cassation for decisions handed down by the Court of Appeal. Compensation for environmental damages may be sought before civil courts on the basis of contractual or tort liability.⁵¹ Art. L. 514-20 of the Environmental Code also provides for specific rules, such as the seller's obligation to inform the buyer of a site that the latter has supported a classified installation. Compensation for ecological damage may also be sought before civil courts, pursuant to Art. 1246 to 1252 of the Civil Code.⁵²

49 G. Paul, "Synthèse - Contentieux administratif de l'environnement", 16 June 2019.

50 Before the Law No 2019-222, the High Court ("tribunal de grande instance") had jurisdiction for cases with a value of more than 10,000 euros and the tribunal d'instance had jurisdiction for cases with a value of less than 10,000 euros.

51 See Art. 1231-1 of the Civil Code. For instance, obligation to perform contractual obligations in good faith, obligation to deliver in conformity, to guarantee the latent defects. However, the plaintiff cannot seek damages based on contractual liability and tort liability at the same time. Tort liability in environmental law is divided into two branches: on the one hand, fault-based liability (Art. 1240 of the Civil Code) and on the other hand, strict liability, which includes liability for abnormal neighbourhood disturbance (Art. 544 of the Civil Code) and liability for things in one's care (Art. 1242 of the Civil Code).

52 The ecological damage is defined as a non-negligible damage to the elements or functions of ecosystems or to the collective benefits derived by mankind from the environment. See also G. Paul, "Synthèse - Responsabilité environnementale", *op. cit.*

The tribunal with territorial jurisdiction shall, unless otherwise provided, be that of the place where the plaintiff lives.⁵³ In matters relating to tort liability, the plaintiff may also bring an action before the tribunal of the place where the harmful event occurred or the tribunal in whose jurisdiction the damage was sustained. In matters related to a contract, the plaintiff may also bring an action before the tribunal for the place of actual delivery of the goods or the place of performance of the service.⁵⁴

Before administrative courts:

The administrative tribunal is the first instance jurisdiction to hear environmental cases. The administrative court of appeal has jurisdiction to hear appeals against decisions of the administrative judge. The Council of State rules in the first and last instance for a number of acts which may be related to environmental litigation and acts as a Cassation court for decisions of the administrative court of appeal. The environment affects the decisions taken by the Administration in a certain number of fields, such as the fight against pollution caused by industrial activities, the protection of wildlife and natural environments, or land use planning in all its forms (transport, electricity networks, major works, etc.).⁵⁵ The power of administrative judges are broad, including for first instance judges. They receive two types of administrative complaints: recourse for misuse of authority which allows the judge to partially or totally annul an administrative decision, for instance in town planning or waste litigation, and full remedy action which allows the judge to grant damages to the claimant or maintain in force a contract that has been terminated by the administration, for instance in litigations related to classified installation or water litigation.

The general rules of procedure apply to disputes related to environmental law, with the exception of two proceedings before administrative judges, in order to obtain the suspension of an authorization or approval decision related to the implementation of developments or works or the suspension of a decision authorising the carrying out of developments or works subject to a prior public inquiry.⁵⁶

53 Code de procédure civile, article 42

54 Code de procédure civile, Art. 46.

55 G. Paul, "Synthèse – Responsabilité environnementale", op. cit.

56 Code de l'environnement, article L. 122-2 and art. L. 123-12; Code de justice administrative, art. L. 554-11 and art. L. 554-12.

Before criminal courts:

Jurisdiction will depend on the classification of the offence: police tribunal for minor offences, correctional tribunal for offences and assize court for crimes.⁵⁷ There are specific environmental offences, mainly set out in the Environmental Code or the Criminal Code.⁵⁸ They cover the classified installations for the protection of the environment,⁵⁹ water,⁶⁰ hunting, national parks, chemical products, advertising and signs, waste,⁶¹ etc.

Regarding the territorial jurisdiction of the courts, the police tribunal of the place where the minor offence was committed or where the defendant resides has jurisdiction.⁶² The correctional tribunal of the place of the offence, the tribunal of the defendant's residence or the tribunal of the place of arrest of detention has jurisdiction.⁶³ The general rules of criminal litigation apply in environmental matters. The investigation is entrusted to the examining magistrate, seized either by an indictment for the purpose of informing the public prosecutor, or by a complaint with a civil claim by the victim.⁶⁴

Before constitutional court:

Thanks to the preliminary rulings on constitutionality, any plaintiff or defendant may challenge, before the judge hearing his case, the constitutionality of a legislative provision applicable to his case when it infringes the rights and freedoms guaranteed by the Constitution and in particular those protected by the Environmental Charter. If the complaint meets the eligibility requirements, the seized court shall transfer it to the Council of State or the Court of Cassation, depending on the court order that examined the request. These high courts then have three months to examine the complaint and decide whether or not to refer the matter to the Constitutional Council. In environmental cases, the number of complaint submitted to the constitutional council pursuant to the 2005 Environment Charter remains low, in particular because of the importance of filters and the cost of the procedure.⁶⁵

57 Code de procédure pénale, art. 531, art. 381 and art. 231.

58 G. Paul, "Synthèse – Responsabilité environnementale", op. cit.

59 Code de l'environnement, art. L. 173-1 to L. 173-12, L. 514-9 to L. 514-17, R. 514-4 and R. 514-5.

60 Code de l'environnement, art. L. 173-1 to L. 173-12, L. 216-6 to L. 216-13, R. 216-7 to R. 216-14, L. 432-2 and L. 432-3. New provisions are yet to be adopted on water and air pollution (art. 68 de la Loi Climat et résilience en cours d'adoption).

61 Code de l'environnement, art L. 541-44 to L. 541-48 and R. 541-76 to R. 541-85, R. 543-41, R. 543-122, R. 543-123, R. 543-133, R. 543-134, R. 543-152, R. 543-171, R. 543-171-12, R. 543-205 and R. 543-206.

62 Code de procédure pénale, art. 522.

63 Code de procédure pénale, art. 382.

64 Code de procédure pénale, art. 49 et seq. and 80 et seq.

65 C. Huglo, "La QPC : quelle utilisation en droit de l'environnement ?", Nouveaux cahiers du Conseil Constitutionnel, April 2014; available at: <https://www.cairn.info/revue-les-nouveaux-cahiers-du-conseil-constitutionnel-2014-2-page-57.htm>.

B. What rules of standing apply in environmental cases?

An individual, an association or an organisation can bring an environmental action if they have a personal and legitimate interest. The interest must also be effective, relevant, direct and certain.

Action brought by natural persons:

In order to bring an action, a natural person shall demonstrate an actual, existing and personal legal interest. The victim shall suffer personally from the damage and cannot represent the interests of others in order to obtain compensation for the environmental damage caused to a third party. The legal interest is qualified if the damage to the environment affects the property or the body of the natural person.⁶⁶

Action brought by an association:

Two types of associations can take action to protect the environment, before the civil, administrative and criminal courts: 1/ authorised associations that demonstrate an “effective and lasting commitment” to environmental protection, i.e. regularly registered associations that have been active for at least three years in the field of nature protection and wildlife management, improvement of the living environment, protection of water, air, soil, sites and landscapes, town planning or whose purpose is to combat pollution and nuisances 2/ associations registered under Law of 1901, working in the field of nature and environment protection may also bring an action to protect the environment.⁶⁷ Authorised associations may initiate a class action if several persons in a similar situation suffer a damage, in order to compensate them for material and personal injury.⁶⁸ The class action can also be brought before administrative courts. It is also possible to bring a legal action before the criminal in order to obtain compensation for direct or indirect damage based on collective interests.⁶⁹

⁶⁶ Code de procédure civile, art. 31. See also M. Boutonnet, “Fasc. 4960 : CONTENTIEUX CIVIL. – Responsabilité délictuelle”, 30 June 2017.

⁶⁷ Code de l’environnement, art. L. 141-1, L. 141-2 and L. 142-1 à L. 142-4.

⁶⁸ Since the adoption of Decree No. 2019-1333 of 11 December 2019. See also Code de l’environnement, art. L. 142-2 and articles 848 et seq. of the Code of Civil Procedure.

⁶⁹ See also P. Planchet, “Droit de l’environnement”, Mémento Dalloz and C. Cans, “Fasc. 2700 : Associations agréées de protection de l’environnement – Associations habilitées à prendre part au débat sur l’environnement”, 29 October 2015.

C. Do these rules of standing differ when children are the complainants and if so in what way?

Legal capacity is required and children should be represented, by their parents, legal guardians or an ad hoc administrator.⁷⁰ Art. 414 of the Civil Code stipulates that only adults, i.e. persons above 18 years old, have the capacity to exercise their rights.⁷¹ Nevertheless, Art. 413-6 of the Civil Code provides that an emancipated minor has capacity to take legal action in the same way as an adult. His or her legal representative then loses all power to represent him or her.⁷²

The representative's action remains an action taken in the personal interest of the represented minor and thus in compensation for the personal harm suffered by the child.⁷³ The minor's legal representatives may not, at least without the authorization of the judge, compromise on behalf of the minor.⁷⁴

In addition, the Third Optional Protocol to the Convention on the Rights of the Child (CRC), ratified by France in 2011 and entered into force in April 2014, offers the possibility for children, or their representatives, to file a complaint before an international committee of experts in children's rights, if they have not obtained redress for the violation of their rights in their own country. The first complaint before the CRC Committee on the rights of the child and the environment was brought by a group of 15 young petitioners, including a French girl.⁷⁵

70 Civil Code, art. 382 and 408.

71 Pursuant to article 117 of the Civil Procedure Code, lack of capacity to bring legal action constitutes a substantive irregularity affecting the validity of the procedural act; in criminal matters, in the absence of representation, a minor is not admissible as a civil plaintiff.

72 Emancipation may be legal (such as emancipation by marriage) or judicial, if the judge considers that there are reasonable grounds for pronouncing such emancipation. See S. Guinchard, "Droit et Pratique de la procédure civile", Dalloz Action 2017/2018, §103.22 and F. Dekeuwer-Défossez, Droit des personnes et de la famille, Lamy, §475-17.

73 Marie-Pierre Camproux Duffrène, « L'accès au juge civil français en cas d'atteintes à l'environnement : une diversité d'actions pour répondre à la diversité des préjudices », Le droit d'accès à la justice en matière d'environnement de J. Bétaille, 2016, p. 203-224, §8.

74 Code civil, article 387-1, 4°

75 See: <https://childrenvsclimatecrisis.org>.

D. What is the burden and standard of proof for allegations of personal injury as a result of toxic exposure?

With the exception of a compensation fund for pesticide victims which was set up in 2021 to compensate children who are victims of prenatal exposure to pesticides as a result of the professional activity of one of their parents,⁷⁶ there is no specific regime in French law to obtain compensation for damages resulting from exposure to a toxic product. The victim may rely on administrative, civil or criminal liability.

Administrative liability:

The applicant needs to prove the existence of a causal link between the damage and the harmful event. The judge considers the one that was decisive but also uncertain causal link to be established.⁷⁷ Judges admit that lack of scientific certainty as to the causal link between the harmful event and the damage does not prevent the recognition of legal causality.⁷⁸ Nevertheless, administrative judges have rejected claims for compensation brought by victims against the State regarding air pollution. For instance, the Administrative Tribunal of Paris has rejected the claims of victims suffering from respiratory pathologies since “it does not appear from the investigation that their pathologies were directly caused or aggravated by the inadequacy of the measures” taken by the State to limit pollution.⁷⁹ Judges considered that the medical certificate stating that the claimant had an asthmatic disease and that he should avoid exposure to any form of air pollution did not establish a causal link.⁸⁰ The production of a medical certificate mentioning a “possible link between his condition and air pollution” and another confirming the existence of the pathology while making several hypotheses as to its origin (including a viral cause or air toxicity) is also not sufficient to establish causation.⁸¹

76 Code rural et de la pêche maritime art. L. 723-13-3; Arrêté 7 janv. 2022, NOR : SSAS2200820A: JO, 16 janv. 2022, available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044993676>

77 C. Broyelle, “Synthèse – Responsabilité”, *JurisClasseur Administratif*, No 18, October 2019, §46. See also G. Paul, “Synthèse – Responsabilité environnementale”, *op. cit.*, §8.

78 E. Royer, “Répertoire de la responsabilité de la puissance publique”, 2020. See also Council of State, No 267635, Schwartz, March 2007. Judges have justified the causal link between a vaccine and a disease on the basis of “expert reports which, while they did not state it, did not rule out the existence of such a causal link,” the short delay between the injection and the onset of symptoms, and the victim’s good health and lack of medical history.

79 Administrative Tribunal of Paris, No 1709333, 4 July 2019; available at: <http://paris.tribunal-administratif.fr/content/download/163957/1656524/version/3/file/1709333.pdf>.

80 Administrative Tribunal of Paris, No 1810251, 4 July 2019; available at: <http://paris.tribunal-administratif.fr/content/download/163956/1656521/version/3/file/1810251.pdf>.

81 Administrative Tribunal of Paris, No 1814405, 4 July 2019; available at: <http://paris.tribunal-administratif.fr/content/download/163955/1656518/version/3/file/1814405.pdf>.

Civil liability:

The burden of proof relies on the claimant. Generally, in order to justify the existence of a causal link, judges apply the “equivalence of conditions” for fault-based liability and “adequate causation” for no-fault liability. Art. 1382 of the Civil Code also makes it possible to prove the existence of a causal link on the basis of serious, precise and consistent presumptions, despite the absence of certainty or even the existence of scientific doubts as to the attribution of the event giving rise to the damage.⁸² For example, in the Monsanto case, the tribunal relied on a “serious, precise and consistent body of evidence” to establish the causal link between the use of the product and the injury, even though such a link was not scientifically proven. The tribunal relied on a non-adversarial medical expertise in which the doctor confirmed that the symptoms were consistent with the use of Monsanto’s product.⁸³

However, in a case where a young girl living near a lead battery recycling plant had contracted kidney cancer, judges refused to accept the causal link between the disease and the pollution generated by the plant’s activities. They relied on the forensic report, which noted that although the victim had lived in a village heavily polluted by the plant, i) her blood lead level was never high, ii) the experts explained that her lead poisoning, although probable, had not been proven even after having carried out a careful examination of the medical scientific literature on the subject, and iii) that the expert doctors specified that “it was difficult to admit that the victim had been poisoned by lead and that her cancer was due to her environment being too rich in lead”.⁸⁴

Judges sometimes admit negative proof: they attribute a causal event in case of a probable damage. For instance, in a case of pesticide spraying causing personal injury, trial judges held the defendant liable since the victim produced medical evidence that he had gone to hospital the day after the spraying and complained of eye and respiratory issues, which had been confirmed by the doctor who stated that the cause invoked by the victim seemed to be compatible with those pathologies.

82 See “Responsabilité civile (Lien de causalité)”, Fiches d’orientation Dalloz, May 2020 and P. Marcantoni, “La protection de la santé face aux pollutions”, RDSS, 2019. In the decision of the Metz appeal Court, No 15/00304, 21 April 2016, the judge affirmed that: “The existence of a causal link between the use of products containing benzene and Mr Y’s illness can be established, even in the absence of scientific certainty, on the basis of serious, precise and consistent presumptions. The burden of proof which lies on the victim is a legal fact which can be proved by any legally admissible means.” However, this is a simple presumption that the defendant may prove the contrary. See Court de Cassation, 2ème Chambre civile, No 08-13.591, 7 May 2009, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000020595092>.

83 Tribunal de Grande instance de Lyon, No 07/07363, M. F. v. Sté Monsanto agriculture France SAS, February 2012. In this case, a farmer was seeking compensation for the poisoning he suffered as a result of inhaling a herbicide marketed by Monsanto.

84 Cour de Cassation, No 13-25.690, December 2014, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000029906633>.

Judges also took into account the absence of other possible known causes as noted by the legal expert, as well as medical literature.⁸⁵

In matters of liability for defective products, a specific branch of civil liability, the victim must also prove the damage, the defectiveness of the product as well as the causal link between the product's defect and the damage.⁸⁶ Proof of the causal link may also result from presumptions if they are serious, precise and consistent.⁸⁷ The Court of Cassation also ruled that the absence of scientific certainty as to the causal link does not prevent the courts from finding a legal causal link, as long as such presumptions exist.⁸⁸

Criminal liability:

In the context of a civil action brought by the victims in order to obtain compensation for their damage, criminal case law is similar to civil rulings regarding the causal link.⁸⁹ Indeed, judges dismiss the claim for compensation if the victim does not prove that the damage would not have occurred without this harmful event:

- In a case where emissions from a plant had exceeded a certain legionella concentration threshold, judges held that the causal link between the violation of the Environmental Code and the legionellosis epidemic that caused 14 deaths was certain since it was massively present in the two cooling towers located in the heart of the city and the strains isolated during the last sampling showed the epidemic profile found in patients.⁹⁰
- In another case, a group of people living in a town located near a car battery recycling plant filed a civil suit in a criminal trial to obtain compensation for their personal injury caused by pollution. Judges refused to accept a causal link since "the scientific data did not make it possible to establish a toxicity value for lead that characterised an immediate risk of death or injury, and the investigation had not established that the medically

85 J. Huet, "Le développement de la responsabilité civile pour atteinte à l'environnement", Les Petites Affiches No 3, January 1994. See Cour d'appel de Bordeaux, No 16/030321, 20 July 2017, available at: <https://www.doctrine.fr/d/CA/Bordeaux/2017/C5D2D5505C2DB2D08753A>.

86 Civil Code, art. 1245-8.

87 Cour de cassation, No 06-10.967, "Lien de causalité entre la sclérose en plaques et le vaccin contre l'hépatite B", May 2008, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000018868823/>.

88 See J. Julien, "Droit de la responsabilité et des contrats-Généralités sur le lien de causalité", Dalloz action, Chap. 2131, 2018-2019, §2131.52. The Court ruled that "the impossibility of scientifically proving the causal link or the absence of link between the disease and a vaccine leaves room for a case-by-case assessment, by presumptions, of this causal link. In view of the victim's previous condition, family history, ethnic origin, the time elapsed between the injections and the onset of the disease, and the abnormally large number of practical injections, there were serious, precise and concordant presumptions making it possible to establish the legal causality between the vaccine and the disease" (Cour de Cassation, No 12-21.314, July 2013, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000027701708>).

89 P. Jourdain, "Droit à réparation. Lien de causalité, Détermination des causes du dommage", Jurisclasseur civil, Fasc. 160, February 2020, §38.

90 Cour de Cassation, No 11-83864, 11-83870 and 14-86985, 11 July 2017, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000035194012>.

certified pathologies suffered by the victims were caused by the alleged pollution". The Court of Cassation overturned the judgement, considering that art. 223-1 of the Criminal Code does not require that faults alleged against the defendant be the sole cause of the danger and that "the plant was located in the immediate vicinity of the town centre, opposite a playground that had to be closed because of soil contamination, and that lead, arsenic and cadmium were known to be conducive to kidney cancer".⁹¹

E. What limitation periods apply in environmental cases?

Limitation periods in environmental cases vary according to the nature of the action: administrative, civil or criminal.

Administrative actions:

For full remedy actions, the limitation period is 4 years from the day the victim is in a position to know the origin of the damage or at least to have sufficient indications that the damage could be attributable to the administration. If the damage is likely to be attributable to several possible causes, the limitation period may therefore run only from the beginning of the financial year following that in which the origin of the damage was revealed to the victim in a sufficiently clear manner.⁹²

Art. R. 514- 3-1 of the Environmental Code has introduced a specific limitation period regarding the environmental procedures and decisions required for projects subject to water legislation or authorization under classified installations. The petitioners or operators can act within two months from the day when the decision has been notified to them. Third parties have four months to act after the posting at the town hall or the publication of the decision on the prefecture's website.⁹³

91 Court de Cassation, No 06-89.365, 30 October 2007, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000017926012>. This section of the Criminal Code punishes the direct exposure of another person to an immediate risk of death or injury by the manifestly deliberate breach of a particular duty of care or safety imposed by law.

92 JP. Demouveau, "Responsabilité en matière d'environnement", Fasc. 5000, 9 October 2017, §79 ; C. Huglo and G. Paul, "Contentieux administratif de l'environnement", Fasc. 4980 22 November 2019, §28.

93 Environmental Code, art. R. 181-50 et R. 514-3-1. G. Paul, « Synthèse – Contentieux administratif de l'environnement », 16 June 2019.

Civil actions:

Since 2008, the limitation period for contractual and extra-contractual liability in general law is 5 years pursuant to art. 2224 of the Civil code.⁹⁴ For an action arising from an event that resulted in bodily injury, the limitation period is 10 years from the date of the initial or of the aggravated injury.⁹⁵ In addition, the legislator has provided for specific limitation periods for tort actions in environmental cases, which vary between five and ten years, depending on the damages.⁹⁶ For an action arising from damages caused to the environment by installations, works and activities governed by the Environmental Code (art. L. 152-1), the limitation period is 10 years from the day the holder of the action knew or should have known the manifestation of the damage. For compensation for ecological damage, the limitation period is 10 years from the day the holder of the action knew or should have known of the manifestation of the ecological damage. For civil proceedings, the statute of limitations does not run, or is suspended, as to non-emancipated children and adults under guardianship. This suspension generally does not apply to actions for payment of all that is payable within a period of a year or less, such as rent, interest on money lent and alimony.⁹⁷

Criminal actions:

For criminal acts punishable by fines, the limitation period is one year from the day the damage occurred. For criminal acts punishable by crimes, the limitation period has been extended from 3 to 6 years by Law No 2017-242 of 27 February 2017. The starting point for the limitation period is set on the day the offence is committed. When the offence is hidden or concealed, the limitation period does not run until the day on which the offence appeared and could be ascertained. The limitation period may not however exceed 12 years from the day the offence was committed.⁹⁸ Ecological terrorism is the only environmental crime. The limitation period has been extended from 10 to 20 years by Law of 27 February 2017 and begins on the day the offence is committed.⁹⁹

94 Before Law No 2008-561 of 17 June 2008, the limitation period was 10 years.

95 Civil Code, art. 2226.

96 M-A. Cohendet, M. Prieur, J. Makowiak, J. Bétaille, H. Delzangles and P. Steichen, "La réparation civile du dommage écologique", in *Droit de l'environnement*, Précis Dalloz, §1548.

97 Civil Code, art. 2235.

98 Art. 9 of the Code of Criminal Procedure. See R. de Laâge de Meux, "Quelle effectivité de l'accès à la justice environnementale en 2018?", *Bulletin du Droit de l'Environnement Industriel*, No 74, 2008.

99 Criminal Code, art. 421-2.

F. Is legal aid available in environmental cases? If so, under what circumstances?

The current French legal aid scheme is governed by the Legal Aid Act¹⁰⁰ and Decree No 91-1266 of 18 December 1991.¹⁰¹ Legal aid is designed to support people who want to assert their rights in court but have limited financial resources. People eligible for legal aid get their fees and costs (lawyer's fees, bailiff's fees, expert's fees...) partially or totally covered by the State. Legal aid may also be granted to non-profit organisations whose registered office is located in France. Legal aid is available for any legal issue and is therefore available in environmental matters without any specific rules. To access legal aid, the applicant shall meet the following requirements:

- Nationality requirement: any French citizen, citizen of a Member State of the European Union and foreign citizen having his usual address in France is eligible for legal aid. Legal aid may be exceptionally granted to people who do not meet this requirement if their situation appears particularly worthy of interest with regard to the subject of the dispute or the foreseeable costs of the proceedings. The residence requirement is not required if the applicant is a minor.
- Financial eligibility threshold: France performs a financial test and provides legal aid on a sliding scale based on need, which is re-evaluated on an annual basis. Wages, rents, annuities, pensions and alimony of the applicant as well as those of his marriage partner and people usually living at home are taken into consideration. As of 2020, the maximum net income to obtain 100% legal assistance is €1.043 per month. People earning between €1.233 and €1.564 a month can receive between 25% and 45% of the cost of legal assistance through legal aid.
- Admissibility condition: if the action appears manifestly inadmissible or unfounded, legal aid is not granted.¹⁰²

The request for legal aid shall be made before, during or after the legal action, by filling out a form.¹⁰³ The legal aid committee within each French court receives applications and determines eligibility for legal aid. Each committee shall consist of a magistrate, a member of the general public, a member of the local bar and additional representatives. Once an eligible person is approved for legal aid, the president of the local bar association appoints an attorney. One may also request a specific lawyer, and the bar association will attempt to procure the lawyer if he or she is available.¹⁰⁴

100 Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000537611/>.

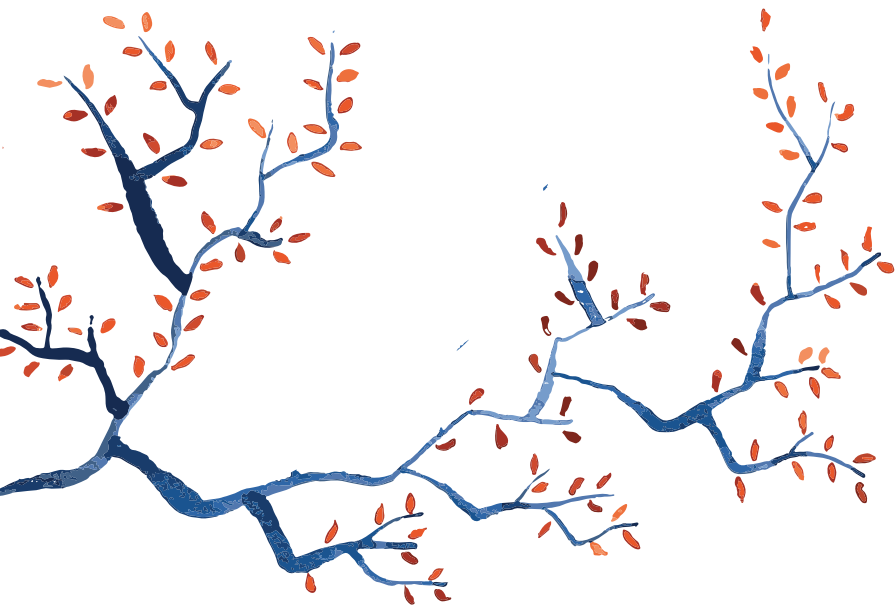
101 Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000721124>.

102 Scale available at: <https://www.justice.fr/simulateurs/aide-juridictionnelle/bareme>. See also: [Paris Bar sheet on legal aid](#).

103 Cerfa No 15626 available at: <https://www.service-public.fr/particuliers/vosdroits/F18074>.

104 See "Legal Aid in France", Open Society Justice Initiative and Justicia.

III. REMEDIES



A. What remedies are courts empowered to impose in environmental cases?

Civil Liability

Regarding contractual liability: If one party does not perform or performs improperly his/her obligation, judges may:

- Declare the contract null and void; or
- Order the contract's enforcement; and/or
- Order the defendant to pay damages so as to repair the harm.

For instance, a purchaser who discovered, after the sale, that the land was polluted obtained compensation for the fact that he would have acquired the land at a lower price had he been aware of the defect. Judges ordered the seller to return part of the purchase price with interest at the legal rate and capitalization from the present judgment and to compensate the purchaser for the costs incurred in the search for pollution.¹⁰⁵

Regarding tort liability: Courts are empowered to impose different remedies according to the loss incurred. For derived ecological damages, i.e. collective and individual harm caused to people and/or property resulting from an environmental damage or the imminent threat of such damage, the defendant must compensate for both patrimonial and non-patrimonial damages. In case of patrimonial damages, the victim may obtain compensation for personal injuries, material losses¹⁰⁶ or economic losses¹⁰⁷. Claimants may also request compensation for non-patrimonial (i.e.) moral damages. As for natural persons, judges have for instance ordered a defendant to compensate the victim for the harm resulting from the spectacle of dead fish floating on the watercourse, for the inability to enjoy or use the fruits of nature resulting from the pollution of a pond, for fishermen's loss of enjoyment regarding fish and crayfish as a result of a watercourse pollution offence.¹⁰⁸ Associations and local authorities may also obtain compensation for their moral damage resulting from the infringement of

105 Cour d'appel de Versailles, No 1997-180713, January 2000, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000006935635>.

106 For instance, environmental associations or local authorities may obtain compensation for the costs incurred to avoid aggravating or to reduce the consequences of an environmental damage. See Dalloz Action Droit de la Responsabilité et des Contrats 2018/2019, §6811.12.

107 Cour d'appel de Paris, No 08/02278, Erika, 30 March 2010, available at: https://actu.dalloz-etudiant.fr/fileadmin/actualites/pdfs/MARS_2014/Erika_CA_Paris_30_mars_2010.pdf. Judges ruled that "all losses of income and profit, such as losses of market shares, shortfalls or losses of turnover" resulting from damages to the environment must be repaired.

108 Court of Cassation, No 96-84.230, 10 April 1997; available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007572936>. See M. Mekki, "Responsabilité civile et droit de l'environnement : Vers un droit spécial de la responsabilité civile environnementale?", Responsabilité civile et assurances, No 5, 2017, §30.

their mission to protect the environment.¹⁰⁹ To assess their personal harm, they may rely on the impact of the defendant's activities on the environment: any damage to the environment causes them harm, even if only moral, as soon as it infringes their mission.¹¹⁰ In addition, judges ruled that it is not necessary for them to prove actual harm to the environment; a simple risk of damage is sufficient to obtain compensation for non-material damage.¹¹¹ The assessment of their moral prejudice is sovereign so that judges cannot be reproached for having allocated a symbolic one Euro for their moral prejudice.¹¹² To determine the amount of moral damage granted to associations in environmental cases, judges may take into account several criteria such as the importance of the image harmed (for reputational harm) or the importance of both the pollution and the efforts made by associations to protect the environment (for collective harm).¹¹³

Regarding the nature of the remedies, judges can choose to order either compensation in kind or financial measures. The Cassation Court ruled that "the principle of full reparation of damages does not require judges to order the demolition that the plaintiff is seeking".¹¹⁴ Compensation in kind (i.e. reinstatement) is considered as ideal, and some judges ruled that sites' restoration must be favoured, such as the construction of a water treatment plant in case of water pollution or the demolition of a construction carried out in violation of the land-use plan.¹¹⁵ In practice however, financial compensation remains the preferred method and compensation in kind often involves the provision of a sum of money to the applicant.

116

109 Cour d'appel de Nouméa, No 11/0018725, February 2014. See C. Duvernois, "La reconnaissance du préjudice écologique pur par la Cour d'appel de Nouméa", *La lettre des juristes de l'environnement*, 2014, available at: http://www.juristes-environnement.com/article_detail.php?id=1761.

110 Dalloz Action Droit de la Responsabilité et des Contrats 2018/2019, §6811.12 ; Court of Cassation, No 81-15.550, 16 November 1982, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007010525>. Judges ordered a hunters' association that killed a legally protected bird to pay damages to a bird protection association since it has suffered direct and personal moral damage as a result of the death of the bird, in connection with the aim and purpose of its activities. See also Court of Cassation, No 00-82.655, 20 February 2001, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007585044>. Judges ordered a farmer whose number of pigs greatly exceeded the authorised number, resulting in a significant discharge of nitrogen, to compensate the damage suffered by the associations whose task is to prevent water pollution.

111 See B. Busson, "La réparation des atteintes à l'environnement - Le rôle des acteurs dans le nouveau dispositif : les ONG", 2007, p. 6.

112 Court of Cassation, No 96-86.001, 1st October 1997, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007070750>.

113 For instance, in the Erika case, Greenpeace was awarded €50,000 for moral damage, in view of the extent of the oil spill, the importance of the activity carried out or performed by the association, the size of the membership, the number of members and employees, its obstinacy, active nature, notoriety, its efforts to achieve its object, the impossibility of pursuing the activity etc.

114 Cour de Cassation, No 18-81.874, 12 June 2019, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000038674606>.

115 Cour de Cassation, No 72-14.671, 12 February 1974, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000006991808> and Cour de Cassation, No 04-20.636, 26 September 2007, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000017911539>.

116 M. Hautereau-Boutonnet, "Responsabilité civile environnementale – Résultat de la responsabilité civile environnementale", *Répertoire de droit civil*, November 2019, §242.

Pure ecological harm: since 2016, judges accept to compensate harm to the environment itself, regardless of its impact on people and/or property.¹¹⁷ If the damage is significant enough, the claimant may obtain: a compensation in kind (i.e. rehabilitation of the damaged environment) or damages earmarked for environmental remediation. The applicant may also require reasonable measures to prevent the damage from occurring or obtain compensation for costs incurred to prevent further damage or reduce its consequences.¹¹⁸

Companies' duty of care: claimants may bring a legal action on the basis of French law relating to the duty of vigilance of parent and ordering companies. They may request judges to order a company to comply with its duty of care if it has not done so within three months from the date of its formal notice as well as to condemn the defendant to compensate for the damage resulting from the non-performance of its duty.

Administrative Liability

On the basis of « traditional » administrative liability (i.e. in case of an environmental damage caused by the State): Victims cannot obtain compensation for « pure » ecological harm: judges may order compensation only insofar as damage has been caused to people and/or property. For instance, the ecological damage resulting from a forest fire caused by a public work must be repaired by the municipality responsible for that facility merely because the forest's owner suffered harm. In principle, the damage is compensated "by equivalent" (i.e. allocation of damages) rather than "in kind" (i.e. reinstatement). However, if claimant requires so in his/her legal submission, judges may allow the State to choose between financial remedies and compensation in kind.¹¹⁹

On the basis of the Environmental liability Act: This Act establishes a no-fault "liability" on operators responsible for industrial or agricultural activities with a high pollution potential;¹²⁰ they are required to prevent and repair environmental damages that:

- Create a risk of serious harm to human health as a result of soil contamination; or
- Severely affect the waters or species and their natural habitat; or
- Affect ecological services (i.e. the functions provided by soils, waters and species).

Some damages are excluded from compensation, such as those caused by armed conflict. "Pure" ecological damage is also excluded from compensation. Compensation is necessarily

117 Since the Biodiversity Act n° 2016-1087, 8 August 2016. See art. 1246 and 1247 of the Civil Code.

118 Civil Code, art. 1249, 1251 and 1252. See C. Anno, "Le préjudice écologique, une action en responsabilité reconnue explicitement dans le Code civil", 24 October 2016.

119 Conseil d'Etat, Commune de Barjols v. Commune de Correns, 20 December 1974 and Conseil d'Etat, Ville de Royan, 20 January 1956. See G. Paul, « Synthèse – Responsabilité environnementale », 16 June 2019, § 10.

120 Obligations of prevention and reparation are imposed on "operators" by a police authority (the Prefect).

in kind, i.e. restoring natural resources and their services; a “complementary compensation” to provide a level of natural resources or services comparable to that which would have been provided if the site had been restored, possibly on a different site; compensatory remedial measures to repair intermediate losses of natural resources or services occurring between the damage and the date on which the primary or complementary remediation took effect. The applicant may also require the Prefect to order the reimbursement by the faulty operator of the costs incurred for the implementation of remedial or preventive measures.¹²¹

Criminal Liability

The criminal judge may first impose a main sentence consisting in :

- A police fine to punish contraventions: for instance, the operation of a classified installation without complying with the technical specifications imposed shall be punished by a fine of between 750€ and 1500€;
- A correctional fine or imprisonment for misdemeanours: judges may impose two years’ imprisonment and 75,000€ for discharging into water one or more substances harmful to health or to flora or fauna;
- A criminal fine and/or imprisonment to punish crimes: the only environmental crime is ecological terrorism, punishable by 20 years of imprisonment and a 350,000€ fine.¹²²

Criminal judges often pronounce complementary penalties in environmental cases, such as:

- The termination of the infringement: as the judge may disqualify the defendant from exercising the activity that caused the offence for a period of five years maximum;
- The restoration of the site in case of an offence under the Environmental Code, accompanied by a penalty payment of up to €3000 per day, for a period of up to one year;
- The publishing of the decision, in case of infringements of the Environmental Code.¹²³

For penalties incurred by legal entities, the maximum rate of the fine incurred by legal persons is equal to five times the rate for natural persons. In the case of a crime for which there is no fine for natural persons, legal persons face a 1,000,000€ fine. Judges may also prohibit the defendant, either definitively or for a maximum of five years, on engaging in the activity that

121 Environmental Code, Art. L. 161 and 162. See G. Paul, « Synthèse – Contentieux civil », 16 June 2019, §50.

122 Environmental Code, Art. R. 514-4 and L. 216-6. Criminal Code, art. 421-4. G. Paul, « Synthèse - Contentieux pénal de l’environnement », 16 June 2019

123 Environmental Code, Art. L. 173.

caused the offence or order the decision's posting.¹²⁴

Finally, the victim may also bring a civil action to obtain compensation for the harm resulting from the defendant's criminal offence.¹²⁵

European Courts

Victims may also bring a legal action against France before the European Court of Human Rights to obtain compensation, on the basis of their "right to a healthy and protected environment".¹²⁶ For instance, an action was brought against France by the owners of a property located near an airport whose main runway had to be extended. The Court found that France had interfered with the applicants' right to a healthy environment. Nevertheless, the Court considered that this interference was (i) justified by a legitimate aim, namely the economic well-being of the region, and (ii) proportionate, in view of the measures taken by the State to reduce noise pollution. France may also be condemned by the Court of Justice of the European Union for its delay in transposing an environmental protection directive or for failing to fulfil its obligations under such a directive.¹²⁷

B. What remedies have courts ordered in environmental cases to date?

Civil Law

Courts have ordered compensation for indirect damages:

- As a civil party to a criminal action against the perpetrator of watercourses' pollution, a federation for fishing and protecting the aquatic environment obtained compensation for the loss of fish and the "cost of restocking", as well as the reduction in licences issued and fees (20,000 French francs).¹²⁸

124 Criminal Code, art. 131-38 and 131-39. See E. Daoud et C. Le Corre, "La responsabilité pénale des personnes morales en droit de l'environnement", *Bulletin du Droit de l'Environnement Industriel*, No 44, 2013. See Cour de Cassation, No 15-82.40, 16 February 2016, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000032082928>. Judges ordered the defendant, having carried out work altering the flow of a river, to publish the decision in several newspapers at his own expense, as an additional penalty.

125 Art. L. 142-4 of the Environmental Code provides for the possibility for local authorities to exercise the rights recognised for civil plaintiffs in respect of acts causing direct or indirect damage to the territory in which they exercise their powers.

126 The applicant before the ECHR may be an individual (a natural person), a group of individuals (e.g. an association), or a non-governmental organisation. This right was enshrined in the Tatar case (ECHR, No 67021/01, Tatar v. Romania, 27 January 2009, available at: <http://hudoc.echr.coe.int/fre?i=003-2615810-2848789>).

127 ECHR, No 3675/04 and 23264/04, Flamenbaum and others v. France, 13 December 2012, available at: <http://hudoc.echr.coe.int/fre?i=001-115143>.

128 Cour de Cassation, No 96-84.230, 10 April 1997, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007572936>.

- In another case of water pollution, a municipality with a park featuring several polluted ponds, in which all forms of plant and animal life had disappeared, obtained 695,406€ for clean-up costs, 10,000€ for the loss of use of its lake and a symbolic one Euro for pure ecological damage.
- ¹²⁹In the Montedison case, the owners of properties located around the polluted area obtained compensation for the value reduction of their assets¹³⁰.
- In the Erika case, the Court confirmed that the defendants are liable to pay compensation to civil victims for material, ecological and moral damage, thus establishing the concept of ecological damage. Thus, several remedies were allocated to multiple claimants: material damages including restoration costs (site clean-up, wildlife rescue or infrastructure restoration costs) as well as the costs of preventing or terminating the pollution reasonably undertaken by municipalities or associations, based on an ex ante approach to the damage; economic damages resulting from pollution, such as operating losses; moral damages resulting from pollution including, loss of enjoyment resulting from the degradation of the environment in which leisure and professional activities are carried out; loss of affection in the face of this disaster which disrupted people's living environment and relationship with Nature; damage to reputation and brand image of associations involved in the protection of nature, municipalities known for tourism and companies which activities were based on the good quality of the environment; associations' moral prejudice resulting from the infringement of the collective interest defended by their object.¹³¹

Courts have also ordered compensation for pure ecological damages:

- In a case where thousands of litres of acid had escaped from a factory and been discharged into a lagoon, judges held that the pollution caused massive damage to aquatic environments and their functions, even if it was temporary and aquatic life had recovered since. Five environmental protection associations obtained 80,000€ in total in compensation for pure ecological damage and 50,000€ each for their moral damage to their environmental protection mission.¹³²
- Judges ordered four poachers to pay 350,000€ for the "undeniable ecological damage caused to the ecosystem" for the benefit of the Calanques National Park, allocated in

129 Cour d'appel de Versailles, No 09/04888, 25 November 2010.

130 District Court of Bastia, *La Prud'homme des pêcheurs de Bastia*, 8 December 1976. In the early 1970s, the Italian company Montedison, based near Livorno, organized the disposal of two to three thousand tonnes of daily waste some 20 miles from Cap Corse from a titanium dioxide production plant.

131 For instance, the Vendée department obtained financial compensation (99,299€) for staff costs for clean-up as well as financial and legal management of the pollution by its agents; a travel agency obtained 6,768€ for its loss of tourism revenue; walking fishermen obtained 1.500€ each; the region of Britain obtained the sum of 3.000.000 € for damage to its reputation and brand image and a bird protection association obtained €100,000 to compensate for its moral damage. See "Le préjudice environnemental dans tous ses états", *Revue Lamy droit des affaires*, No 78, 2013.

132 Court of Appeal of Nouméa, No 11/00187, 25 February 2014.

full to repairing the impacted environment. This amount represents twice the market price of the species destroyed. In addition, judges also compensated for the indirect damages suffered by the Park: 20,000€ to compensate for moral damages (i.e. harm to its environmental mission) and 15,000€ for the harm done to its image and reputation.¹³³

- In the Erika case, a bird protection association obtained 300,000€ for pure ecological damage taking into account the number of members, the notoriety and specificity of their action and a municipality obtained 150.000€ based on the size of the area affected, the amount of oil spill and the population.¹³⁴

Criminal law

Several cases can be mentioned, such as:

- The director of a plant and the operating company were condemned for manslaughter and involuntary injuries based on the abnormal management of the special industrial waste that caused the explosion of the building, killing 31 people and injuring more than 2500. The director was convicted to three years of imprisonment and a fine of 45,000€ while the operating company had to pay a fine amounting to 225,000€ (i.e. the maximum provided for in the criminal code).¹³⁵
- In a case of a storm that killed 29 persons, a mayor was sentenced to two years of suspended prison sentence for being well aware of the risks of flooding but having “deliberately concealed” them so as not to hinder the manna that urbanisation represented.¹³⁶
- Judges also condemned a defendant for having created three successive bodies of water that diverted the course of the creek to a suspended fine as well as an obligation to restore the site (i.e. demolish the dams to return to a natural flow of water) within four months subject to a penalty of 20 Euros per day of delay.¹³⁷

133 District Court of Marseille, No 16253000274, 6 March 2020. See J. Reynaud, “Condamnation exemplaire”, La lettre Lamy de l’Environnement, No 620, 3 April 2020.

134 Cour d’appel de Paris, No 08/02278, Erika, 30 March 2010.

135 Cour d’appel de Toulouse, No 2012/642, 24 September 2012, available at: <https://www.vigo-avocats.com/wp-content/uploads/article/s5/id412/612a71313e2a44e3c7378e42975623f4.pdf>.

136 Cour d’appel de Poitiers, No 15/00561, 4 April 2016. Judgment confirmed by the Court of Cassation (Decision No 16-83.432, 2 May 2018, available at: <http://www.lafautesurmer.net/wp-content/uploads/2018/05/AVIF-ARRET.pdf>).

137 Cour d’appel de Rennes, No 07/0073210, January 2008. Judgment confirmed by the Court of Cassation (Decision No 08-81.176, 2008, available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000019714450>).

In the Erika case, the Court also found the charterer (the oil group Total), the certification company, the owner and the ship's manager liable of the criminal offences of pollution and harm to others, and ordered them to pay various fines. Total paid a fine of 375,000€ and 200,000,000€ in civil damages.¹³⁸ In the case of repeated poaching in the Calanques National Park, the four men were convicted to imprisonment (ranging from 15 to 18 months), banned from entering the Park and their diving equipment was confiscated. In addition, they had to compensate damages suffered by environmental protection associations that filed civil suits (from 2,000 to 10,000€ each). The five restaurant owners who bought the poaching proceeds were also fined 3,000€ each and ordered to carry out an environmental awareness training course.¹³⁹

Administrative Law

There are several cases, such as:

- A fish farmer applied for compensation for the damage caused by a municipality's water source capturing work. Judges ordered the defendant to indemnify the victim for the costs incurred in setting up his fish farm, the operation of which he had ceased since it had become loss-making, the costs of restoring the premises up to the market value of the land on which the farm was established, and the loss of profit resulting from the cessation of activity.¹⁴⁰
- In the case of a river polluted by the discharge of water from the municipality's sewage treatment plant, a fishing federation obtained compensation for both "the costs of restocking the polluted river and the damage suffered as holder of fishing rights on the said river, with the exception, however, of damage consisting in the loss of biological richness of the watercourse which cannot in itself give rise to any right to compensation"¹⁴¹.

138 Cour d'appel de Paris, Fourth Division, First Chamber, 30 March 2010, n° 08/02278, Erika; the Court of Cassation confirmed the Court of Appeal's ruling (Court of Cassation, Criminal Chamber, 25 September 2012, n° 10-82938; available at: <https://www.legifrance.gouv.fr/juri/id/JURITEXT000026430035>).

139 Correctional Court of Marseille, 11 July 2018. See "Marseille : prison avec sursis pour les braconniers marins", *Le Parisien*, 11 July 2018.

140 Conseil d'Etat, No 88811, Colboc v. Commune de Saint-Bonnet Elvert, 26 March 1976, available at: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007656836>.

141 Cour administrative d'appel de Bordeaux, No 06BX00747, Fédération de pêche et de protection du milieu aquatique des Deux-Sèvres, 10 June 2008, available at: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000019081061>.

European law

The European Court of Human Rights has already condemned some States in environmental litigations.¹⁴² This case law could be entirely transposable to France if proceedings were brought by a private individual against France.

The Court of Justice of the European Union has ordered France to pay the Commission of the European Communities a lump sum of 10,000,000€ for delays in transposing the directive on the release of genetically modified organisms into the environment. It also condemned France for failing to fulfil its obligations under the “air quality” directive of 21 May 2008 on the ground that France “systematically and persistently” exceeded the annual limit value for nitrogen dioxide since 2010.¹⁴³

C. Are there any administrative authorities empowered to act on environmental complaints and if so, how are they empowered to respond to complaints?

State, regional government, and public institutions can bring actions before civil, administrative and criminal courts. For instance, they can bring an action before criminal courts if they suffer from a direct or indirect prejudice and is related to protection of nature and environment, improvement of the living environment, protection of water, air, soil, sites and landscapes, town planning or control of pollution and nuisances¹⁴⁴. Pursuant to article L. 132-1 of the Environmental Code, several public institutions may bring an action including the Environment and Energy Management Agency, the National Forestry Office, the coastal and lake shore conservation Authority, the French Agency for Biodiversity, the water agencies, the National Office for Hunting and Wildlife, the Centre for National Monuments and the National Agency for Radioactive Waste Management, the Chambers of agriculture, regional nature parks, the National Forest Property Centre, legal entities designated by the decree in Council of State provided for in the first paragraph of article L. 412-10 to obtain the prior informed consent of communities of inhabitants and duly registered associations carrying out activities in the field of the conservation of traditional knowledge that have been registered in their statutes for at least three years.

142 See for instance, European Court of Human Rights, No 59909/00, *Giacomelli v. Italy*, 2 November 2006, available at: <https://www.ecolex.org/details/court-decision/giacomelli-v-italy-a1362da3-5f8c-47ef-a40a-a542c6f6ed8b/>.

143 Court of Justice of the European Union, Case C-121/07, 9 December 2008, available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-121/07> and Court of Justice of the European Union, Case C-636/18, *Commission v. France*, 24 October 2019, available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=219452&pageIndex=0&doclang=FR&mode=req&dir=&occ=first&part=1&cid=17633069>.

144 See G. Paul, “Synthèse – Responsabilité environnementale”, *op. cit.* Article L. 142-4 of the Environmental Code also allows the local and regional authorities to exercise the rights granted to the plaintiff.

The Biodiversity Office also has an administrative and judicial police mission relating to water, natural areas, species, hunting and fishing. Its 1800 environmental inspectors investigate and detect infringements. It may exercise the rights accorded to the civil party in criminal actions in respect of acts that harm the interests that it intends to defend and can act on the basis of civil liability to request compensation for pure ecological damage or the adoption of measures to prevent or halt environmental damages¹⁴⁵.

Concerning classified installations, if the inspector finds that operators are not complying with conditions imposed, the Prefect can notify the operator to comply within a given time limit. At the end of this period, if the non-compliance persists, the operator is required to remit to a public accountant a sum corresponding to the work to be carried out or to suspend the operation of the installation until the measures imposed are implemented. The Prefect may also pronounce administrative sanctions such as a fine (up to 15,000€) accompanied by a daily penalty of up to 1,500€ per day, the definitive closure or provisional suspension of the classified installation. The Prefect is also responsible for ensuring that operators of activities with a high pollution risk comply with their obligations to prevent and repair environmental damage, and take appropriate measures including in the event of an imminent threat of damage. Authorised environmental protection associations and victims of individual damage resulting from environmental damage may also inform the Prefect of damage or imminent threat of damage and request it to implement necessary measures.¹⁴⁶ There is also a specific judicial service attached to the National Gendarmerie in charge of environmental issues, competent for all offences relating to environment and public health.¹⁴⁷

The Ombudsman can receive complaints by a child's family members, medical and social services, and by associations which defend children's rights and may also intervene in situations in which the rights of a child are being challenged.¹⁴⁸

Lastly, a compensation fund for victims of pesticides was set up in 2021 and provides for the compensation of children who are victims of prenatal exposure to pesticides due to the professional activity of one of their parents.¹⁴⁹

145 Environmental Code, art. L. 132-1. See also "Daloz Environnement et Nuisances Protection de la nature", §63.

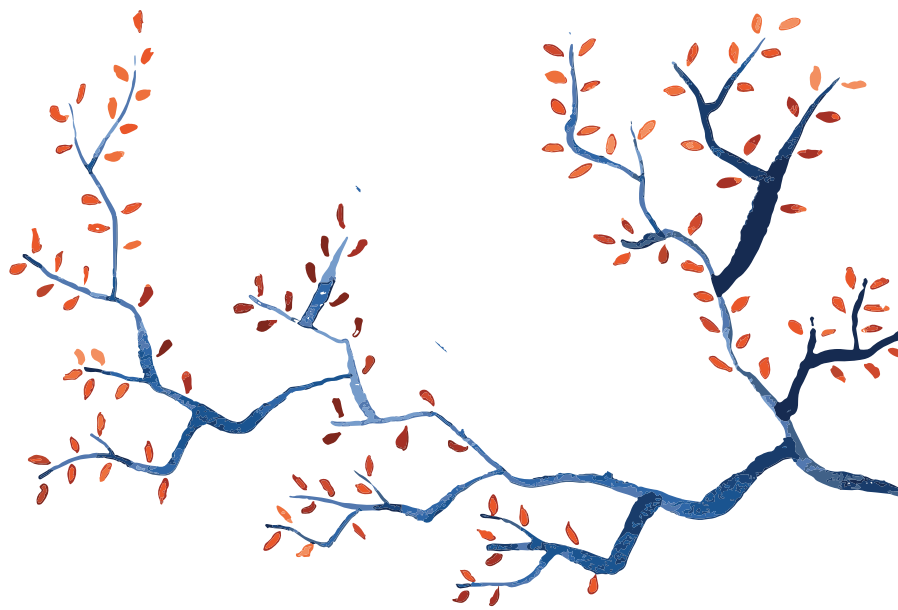
146 Environmental Code, art. L. 161-1 et s. and art. R. 162-3.

147 Central Office for Combating Environmental and Public Health Offences.

148 CRIN's Report on Access to justice for children – France, op. cit.

149 Code rural et de la pêche maritime art. L. 723-13-3; Arrêté 7 janv. 2022, NOR : SSAS2200820A: JO, 16 janv. 2022 available at: <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044993676>

IV. CIVIL AND POLITICAL RIGHTS



Freedom of Peaceful Assembly

A. How is children's right to engage in peaceful assembly, including protests, protected in national law?

The Preamble of the Constitution protects the right to strike but does not explicitly protect the right of peaceful assembly. The right to peaceful assembly is mentioned in Art. 10 of the 1789 Declaration of Human Rights and Citizens, which is incorporated into the current French Constitution. It provides that "no one should be bothered for his opinions, even religious ones, so long as their manifestation does not disturb the public order established by Law." Any person that obstructs the exercise of such rights (including use of threats or violence) may be subject to one to three years of imprisonment or a fine (between €15,000 and a €45,000 fine).¹⁵⁰

The right to peaceful assembly is also guaranteed under Art. 11 of the ECHR and Art. 12 of the Charter of Fundamental Rights of the European Union, to which France is a party. France is also a party to the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child (CRC), which recognize the right of peaceful assembly, including for children.¹⁵¹

B. Are there any legal limitations on the right of children to engage in peaceful assemblies?

Since 1935, the right to assembly and/or protest in public spaces is recognised and codified in the French Interior Security Code. It applies to everyone. The local prefecture or the town hall should be notified at least three days, and no more than fifteen days, before the date of the assembly. It can be prohibited in case of public order.¹⁵² Any event organiser that fails to comply with such requirements may be subject to six months of imprisonment and a €7,500 fine.¹⁵³ In 2016, the Ministry of Justice confirmed that such penalties only apply to organisers of, and not participants.¹⁵⁴ Since 2019, the police may inspect the personal property of passers by as well as vehicles near or on the site of a protest. In addition, any person that, knowingly and without a legitimate reason, conceals all or part of his or her face during a protest may be subject to one year of imprisonment and a €15,000 fine.¹⁵⁵

150 Penal Code. Art. 431-1.

151 Art. 21 of the International Covenant on Civil and Political Rights and Art. 15 of the CRC.

152 Code de sécurité intérieure, art. L. 211-1 et s and Décret loi du 23 Octobre 1935, portant réglementation des mesures relatives au renforcement du maintien de l'ordre public; available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000294755/2012-04-30/>.

153 Article 431-9 of the Penal Code.

154 Circulaire du 20 September 2016 relative à la lutte contre les infractions commises à l'occasion des manifestations et autres mouvements collectifs, available at: <https://www.legifrance.gouv.fr/circulaire/id/41346>

155 Loi n° 2019-290, 10 avril 2019, art. 2 and 6, visant à renforcer et garantir le maintien de l'ordre public lors des manifestations, available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000038358582/>

Public meetings that do not take place in public space are free and do not require prior authorisation pursuant to the 1881 Act on Freedom of Assembly.¹⁵⁶

C. What penalties can be imposed on children for engaging in school strikes?

Pursuant to the 1989 UN Convention on the Rights of the Child (CRC), children have the right to freedom of expression, freedom to peaceful assembly, freedom of thought and association, and freedom to form their own views and express such views freely.¹⁵⁷ Article 9 of the European Convention on Human Rights also guarantees the freedom of thought of everyone, including children.¹⁵⁸ Accordingly, children are freely able to engage in peaceful school strikes outside of the building. The Union Nationale Lycéenne and the Syndicat National Des Lycées et Collèges, for instance, are two influential French school student unions and representative bodies, which organise demonstrations, school strikes and campaigns.

The right to engage in school strikes is not absolute. For instance, a student may not block entry into the school, as such an act would obstruct the free movement of people. The French Traffic Code specifically prohibits any person from obstructing traffic in public spaces or roads. Failure to comply may result in two years of imprisonment and a €4,500 fine.¹⁵⁹ In addition, a student may not prevent professors or members of the school's administration from entering the school building, as such an act would obstruct an individual's freedom of work. Article 431-1 of the Penal Code prohibits any person, through the use of threats or violence, from restraining another's freedom of work. Failure to comply may result in imprisonment and fines.

Freedom of Expression

A. How is children's right to freedom of expression protected in national law? Are there any protections within the national constitution, legislation or developed through case law?

In France, freedom of expression is constitutionally protected and is considered an "essential freedom." This guarantee is enshrined in Articles 10 and 11 of the 1789 Declaration of human rights and of the Citizen, which is incorporated by reference into the Constitution. Art. 11 states that "the free communication of thoughts and opinions is one of the most precious rights of man. [A]ny citizen must thus, speak, write and publish freely, except what is tantamount to abuse of this liberty as determined by Law." Freedom of the press is guaranteed separately by the Press Freedom Act of July 29, 1881.

156 Loi du 30 Juin 1881 sur la liberté de réunion; available at: <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006070164/2009-05-15/>

157 Article 12-15 of the 1989 UN Convention on the Rights of the Child.

158 Article 9 of the European Convention on Human Rights.

159 Code de la route, art. L. 412-1

In France, freedom of expression is constitutionally protected and is considered an “essential freedom.” This guarantee is enshrined in Articles 10 and 11 of the 1789 Declaration of human rights and of the Citizen, which is incorporated by reference into the Constitution. Art. 11 states that “the free communication of thoughts and opinions is one of the most precious rights of man. [A]ny citizen must thus, speak, write and publish freely, except what is tantamount to abuse of this liberty as determined by Law.” Freedom of the press is guaranteed separately by the Press Freedom Act of July 29, 1881.

In addition, France is a party to the main international treaties that guarantee the freedom of expression. These include, among others, the International Covenant on Civil and Political Rights,¹⁶⁰ the ECHR,¹⁶¹ the Charter of Fundamental Rights of the European Union,¹⁶² and the Convention on the Rights of the Child (CRC), which specifically applies to children. Art. 13 of the CRC states, in relevant part, that children “shall have the right to freedom of expression; [which includes the] freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of [] choice.”

The reform taken over by the Citizens’ Climate Convention created in October 2019 (see Section I.A.). Its mission was to identify measures that are likely to reduce greenhouse gas emissions by 40% by 2030 (compared to 1990 levels) in a spirit of social justice. Supervised by experts on climate, on representative democracy and from the economic and social field, as well as two personalities appointed by the Minister for Ecological and Inclusive Transition, it also brought together 150 people, aged between 16 and 80, selected at random from a representative sample of the French population. Thus, children were also involved.¹⁶³

B. Are there any legal limits or restrictions on the right to freedom of expression that specifically apply to children?

Courts have repeatedly recognized the freedom of expression as a fundamental right that applies broadly.¹⁶⁴ Freedom of expression, however, is not absolute and may be subject to certain restrictions to the extent necessary for the protection of national security or of public order. Such restrictions are not specific to children.

160 Art. 19 and 20

161 Art. 10.

162 Art. 11.

163 See the Website of the Citizen’s Climate Convention: <https://www.conventioncitoyennepourleclimat.fr/>. See also A. Garric and R. Barroux, “La Convention citoyenne pour le climat dévoile 150 propositions pour changer en profondeur la société”, *op. cit.* and R. Radiguet, “Aléa climat est ?”, *AJDA*, 2019.

164 See, e.g., Conseil Constitutionnel, No 2009-580, 2009, available at: <https://www.legifrance.gouv.fr/cons/id/CONSTEXT000020786688>.

Thus, speech that incites the commission of a criminal offence, including theft, extortion, destruction of property, and other intentional degradations, is punishable by up to five years in prison and a fine of €45,000.¹⁶⁵ Public defamation, public slander, invasion of privacy, racial hatred, racism and anti-Semitism are also all punishable by law. Similarly, the Penal Code prohibits any person from defaming government officials in their official capacity, the French flag or the national anthem.¹⁶⁶ Art. 30 of the Press Freedom Act also prohibits defamation against French institutions, including courts, State bodies and public administration. Failure to comply with such provisions may result in imprisonment and fines.

The French legislator and courts, however, generally seek to balance freedom of expression with other imperatives, such as other freedoms and rights, and must interpret any restriction narrowly.¹⁶⁷ For instance, on June 18, 2020, the Constitutional Council struck down part of a new law, known as the Avia Law, holding that certain of the law's new obligations against operators of internet platforms were infringing on the freedom of expression and communication. Passed by the French Parliament in May 2020, the Avia Law was specifically intended to fight the spread of hate speech and related content on the internet, and required social media platforms and other search engines to take down hateful content within a short time frame, subject to criminal penalties.¹⁶⁸ The Constitutional Council considered that the French legislator's infringement on the freedom of expression and communication was "not adapted, necessary and proportionate to the aim pursued."¹⁶⁹

Finally, the French Civil Code provides that parents have a duty to protect the health, security and morality of their minor children.¹⁷⁰ As part of this duty, parents are permitted to scrutinize their children's correspondence, which courts have construed to include electronic communications, text messages and e-mails. The exercise of such parental authority, however, must remain considerate and respectful of the freedoms of the child, including the freedom of expression.¹⁷¹

165 Art. 24 of the Press Freedom Act.

166 Penal Code, art. 433-5 and 433-5-1.

167 See, e.g., TGI Paris, ord. ref. du 3 mars 2008, n° 08/51650 (holding that, within the context of a website allowing students to rate their professors and schools, students' freedom of information and expression may be limited in so far as it adversely impacts teaching and other educational activities). Available at: <https://www.lexbase.fr/revue-juridique/3209940-edition-n-298-du-27-03-2008#article-314725>.

168 Assemblée Nationale, proposition de loi visant à lutter contre les contenus haineux sur internet; available at: <https://www.assemblee-nationale.fr/dyn/15/dossiers/DLR5L15N37327>

169 Conseil Constitutionnel, No 2020-801, 18 June 2020, available at: <https://www.legifrance.gouv.fr/cons/id/CONSTEXT000042053930>.

170 Civil Code, art. 371 et suiv.

171 A. Gouttenoire, Dalloz Droit de la Famille 2020-2021, Chapitre 23, Autorité Parentale.

Freedom of Association

A. How is children’s right to freedom of association protected in national law? Are there any protections within the national constitution, legislation or developed through case law?

In France, freedom of association is enshrined in the Act of July 1, 1901. This Act defines “association” as “an agreement by which two or more people, in a permanent manner, join their knowledge or their activities for an objective other than sharing profits,” and specifies that an “association of persons may be freely formed without prior authorisation or notification.”¹⁷² Article 2 bis of this law specifically applies to children allowing any minor to freely become a member of an association. However only minors who have reached the age of 16 may freely participate in the formation of an association and be responsible for its administration, without prior parental consent. In 1971, the Constitutional Council identified the freedom of association as a fundamental principle recognised by the laws of the French Republic, thereby giving it constitutional value.¹⁷³

In addition, France is a party to the main international treaties that guarantee the freedom of association. These include, among others, the International Covenant on Civil and Political Rights¹⁷⁴, the ECHR,¹⁷⁵ the Charter of Fundamental Rights of the European Union,¹⁷⁶ and the Convention on the Rights of the Child (CRC), which specifically applies to children. Article 15 states, in relevant part, that State parties shall “recognize the rights of the child to freedom of association” such that “no restrictions may be placed on the exercise of [this] right[] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

172 An association may only enjoy legal capacity if it complies with certain notification requirements specified in Art. 5 of the 1901 Law. Founders must file a prior declaration with the prefecture of the department or sub-prefecture of the district where the association has its headquarters, which mentions the title and objectives of the association, the seat of its establishment and the names, occupations and addresses and nationalities of those who, in any capacity, are responsible for its administration. A copy of the association’s by-laws must be attached to the declaration, available at: <https://www.legifrance.gouv.fr/loda/id/LEGIARTI000006294210/2021-01-04/>.

173 Conseil Constitutionnel, No 71-44, 16 July 1971, available at: <https://www.legifrance.gouv.fr/cons/id/CONTEXT000017665605>.

174 Article 22.

175 Article 11.

176 Article 12.

B. Are there any legal limits or restrictions on the right to association that specifically apply to children?

As mentioned above, Art. 2 bis of the 1901 Law grants minors the right to freely become a member of an association. The right to participate in the creation and/or administration of an association is restricted, based on the age:

- Any minor under the age of 16 may participate in the creation of an association and be responsible for its administration only if prior written consent of the minor's legal or parental representative is provided. A minor must also obtain prior written consent of such a representative to perform all acts useful to the administration of the association.
- Any minor above the age of 16 need not obtain prior written consent of a legal or parental representative to participate in the creation and/or administration of an association. The parental or legal representative(s) must be informed by the association of the minor's involvement. In addition, a minor over the age of sixteen may perform all acts useful to the administration of the association unless expressly opposed by the parental or legal representative.
- Any minor, regardless of age, may not perform any act of disposition (e.g., encumbrances).

While the purpose of an association is left to the free choice of its founding members, Art. 3 of the 1901 Law, provides that any association created for an illicit purpose, contrary to the law or accepted principles of morality, or that is created to undermine the integrity of the French territory or to the republican form of government, is null and without effect.

Access to Information

A. How is children's right to access information protected in national law? Are there any protections within the national constitution, legislation or developed through case law?

Law No. 78-753 of July 17, 1978, as amended, provides the historical framework for the right to access information under national law ("FOIA").¹⁷⁷ In 2015, the provisions of the French FOIA were codified in the French Code on Relations between the Public and the Administration ("CRPA").¹⁷⁸ Of note, the FOIA grants a right to access by all persons to administrative documents, regardless of their location, form or medium, held by public bodies or private bodies performing a public service. It is not specific to children and broadly states that every person, including a legal or a natural person, has the right to request the disclosure

¹⁷⁷ Loi no. 78-753, 17 juillet 1978 portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses dispositions d'ordre administratif, social et fiscal.

¹⁷⁸ Code des relations entre le public et l'administration (CRPA), Livre III.

of administrative documents under the conditions set out by the CRPA. In 2002, the Council of State, ruled that the right of access to administrative documents is a fundamental right under Art. 34 of the Constitution.¹⁷⁹ As a result, the right to access information is constitutionally guaranteed.

Documents covered under the French FOIA include files, reports, studies, records, minutes, statistics, orders, instructions, ministerial circulars, memoranda or replies containing an interpretation of positive law or a description of administrative procedures, recommendations, forecasts and decisions originating from the government, territorial authorities, public institutions or from public or private entities in charge of a public service mission. There are several exemptions, including access to documents that would, among others, harm national defence secrecy, the conduct of France's foreign policy, national security, public safety and security of individuals, currency secrecy and public credit, as well as documents pertaining to parliamentary and judicial proceedings of the government. In addition, "personal" documents can only be accessed by the person concerned to protect individual privacy, medical secrecy, and industrial and commercial secrecy. Public bodies are also not required to respond to requests that are abusive given their numbers or in light of the repetitive or systematic character of such requests.¹⁸⁰

The French FOIA also sets up an independent authority, the 'Commission d'Accès aux Documents Administratifs' ("CADA"), to ensure and monitor its proper application, and to receive complaints from the public regarding requests to access administrative documents. If the urgency of the situation warrants it, interested parties may also file a request to access administrative documents directly with the administrative court through summary proceedings, rather than with the CADA. In addition, Law No. 79-587 of July 11, 1979, as amended and codified in the CRPA, imposes a general duty on public bodies to justify in writing the legal and factual basis for any "unfavourable" administrative decision (i.e., any denial) rendered under the French FOIA.

In addition, Art. 7 of the 2004 Charter for the Environment, which was incorporated into the Constitution, consecrates the right to access environmental information. Similar to the FOIA, the Charter for the Environment is not specific to children. Art. 7 states that "[e]veryone has the right ... to have access to information pertaining to the environment in the possession of public bodies and to participate in the public decision-taking process likely to affect the environment." The applicable framework for accessing environmental information is codified in the Environmental Code.¹⁸¹ Such framework is generally more favourable to applicants than the FOIA:

179 Conseil d'Etat, No 228830, 29 April 2002, available at: <https://www.legifrance.gouv.fr/ceta/id/CETATEXT000008112306>.

180 See CRPA, article L. 300-2 and 311-2, 311-5 and 311-6.

181 Environmental Code, art. L. 124-1 et suiv.

- Art. 7 relates to access to “information” and not only to documents. As a result, there is no requirement that the information be formalised or be included in an existing document for it to be communicated. Information, however, must be available.
- Furthermore, it mentions the notion of “environmental information,” which includes environmental components (i.e. air, atmosphere, water, soil, grounds, landscapes, natural sites, coastal or maritime zones, biological diversity) and the interactions between the different components of this state, activities and factors likely to impact on these components, human health, security, the life conditions of individuals, buildings and natural heritage in so far as they can be affected by these components, activities and factors. Cost-benefit analyses and economic hypotheses that are used in the decision-making and activities mentioned above, and reports drafted by public bodies or to their benefit in application of the statutory or regulatory measures related to environment, are also included in the definition of “environmental information.”¹⁸²

The right to access environmental information under Art. 7 can be exercised against any public authority and private body in charge of a public service mission in connection with the environment.¹⁸³ However, it does not apply to bodies exercising judicial or legislative functions. In addition, it may be limited in some circumstances, e.g. if the communication or consultation would endanger the environment or harm an individual who has voluntarily provided some information without agreeing to it being communicated.¹⁸⁴

Art. 13 of the CRC guarantees the right of children to “seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice.” Article 17 further requires state parties to ensure that children have “access to information and material from a diversity of national and international sources.”

182 Environmental Code, art. L. 124-1 et suiv.

183 Environmental Code, art. L. 124-3.

184 Exceptions to the right of access listed in Article L. 311-5 of the CRPA also apply to environmental information with the exception of currency secrecy, public credit and secrets protected by law. See Article L. 124-4 of the Environmental Code.

B. Are there any legal limits or restrictions on the right to access information that apply specifically to children?

The European Union has explained that children merit specific protection with regard to their personal data, as they may be less aware of applicable risks, consequences and safeguards and their rights in relation to the processing of personal data.¹⁸⁵ As a result, Art. 8 of the GDPR sets the age of “digital consent,” i.e., when a child is required or able to give consent for the processing of his or her own personal data, at 16.¹⁸⁶ The GDPR also indicates that any information addressed online specifically to a child must be adapted to be easily accessible, using clear and plain language.¹⁸⁷

While the general rule requires parental consent for the processing of children’s personal data for minors up to 16, EU Member States may choose to deviate and decide to lower this age threshold to 15, 14, or 13 years. In practice, children up to 16 years may have to obtain parental consent to gain access to social media networks, as well as to gain access to platforms for downloading music and buying online games.¹⁸⁸ The GDPR further requires data controllers (i.e., social media networks) to make reasonable efforts for obtaining and verifying consent, taking into consideration available technology.

In 2018, the French Government adopted Law No. 2018-493 on the Protection of Personal Data (“French GDPR”).¹⁸⁹ Art. 20 states that a minor may consent to the processing of his or her personal data alone in respect of the direct offering of information society services (e.g., social media networks) at age 15 and older. Notably, Art. 20 introduces a dual consent framework pursuant to which the processing of a minor’s data is lawful only if consent is jointly given by both (1) the minor and (2) the minor’s parent(s) (or holder(s) of parental right, as the case may be).

France is also a member of several awareness and other programs to empower and protect children online, including the Safer Internet Program supported by the European Commission, Net Ecoute Famille, a telephone assistance program, and Point de contact, an online service to notify the authorities of illegal websites.

185 European General Data Protection Regulation (“GDPR”), Recital 38

186 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of such Data, and Repealing Directive 95/46/EC.

187 European General Data Protection Regulation (“GDPR”), Recital 58.

188 European Commission, FAQ: Can Personal Data about Children be Collected?.

189 Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000037085952>.

C. Does the national curriculum for schools include environmental education?

Curriculum for both elementary and secondary education within the French public school system are set at the national level and do not specifically include standalone environmental education classes as part of the course catalogue. Public school curriculum, however, include moral and civic education, which is designed, in part, to develop students' civil, social and environmental awareness and sense of individual responsibility.¹⁹⁰ In addition, and since 1977, the Ministry of Education has spearheaded an initiative to educate students about the environment and sustainable development, which has led to the gradual implementation of interdisciplinary projects on societal and environmental issues in primary, secondary and high school.¹⁹¹ In 2004, this initiative was further strengthened with Circular No. 2004-110 providing for the integration of sustainable development into all school subjects.¹⁹² In 2013, education about the environment and sustainable development was also included in the French Education Code.¹⁹³ Although not a standalone subject, educational issues and principles of environmental and sustainable development have now been integrated in primary and secondary school curricula for all students through partnerships with environmental non-profits, awareness campaigns and debates, and a continuity of teaching throughout students' school careers. The vast majority of private schools in France are under contract with the Government (i.e., they receive subsidies from the French Government), and, as such, curriculum are those of the French public school system.¹⁹⁴ Other private schools are free to deviate from the curriculum of the public school system, and generally include religious education, but do not otherwise specifically provide for environmental education.

190 See, e.g., Bulletin Officiel de l'Éducation Nationale No. 30, 26 July 2018.

191 Circulaire No. 77-300, 29 August 1977 sur l'éducation des élèves en matière d'environnement; available at: https://media.eduscol.education.fr/file/EEDD/21/8/circulaire1977_115218.pdf

192 Circulaire No. 2004-110 of 8 July 2004 sur la généralisation d'une éducation à l'environnement pour un développement durable (EEDD), available at: <https://www.education.gouv.fr/bo/2004/28/MENE0400752C.htm>.

193 Code de l'éducation, art. L. 312-19.

194 See Ministère de l'Éducation Nationale et de la Jeunesse [French Ministry of Education].



CRIN CHILD
RIGHTS
INTERNATIONAL
NETWORK

Child Rights International Network
Unit 4, Old Paradise Yard,
20 Carlisle Lane, London
SE1 7LG

This report is designed by Ricebox Studio.