

Anonymised version

Translation

C-61/21 – 1

Case C-61/21

Request for a preliminary ruling

Date lodged:

2 February 2021

Referring court:

Cour administrative d'appel de Versailles (France)

Date of the decision to refer:

29 January 2021

Appellant:

JP

Respondents:

Ministre de la Transition écologique

Premier ministre

[...]

[...]

The Cour administrative d'appel de Versailles

(Administrative Court of Appeal, Versailles, France)

[...]

Sitting in plenary session

[...]

Hearing of 20 January 2021

Decision of 29 January 2021

[...]

Having regard to the following proceedings:

Previous proceedings:

JP claimed that the tribunal administratif de Cergy-Pontoise (Administrative Court, Cergy-Pontoise, France) should:

1. annul the implied decision by which the préfet du Val-d'Oise (Prefect of Val-d'Oise) refused to take measures to resolve JP's health problems linked to environmental pollution;
2. order the Prefect, within two weeks and subject to a penalty payment of EUR 3 000 per day of delay, to take all measures within his competence to resolve JP's health problems connected with airborne environmental allergies, in particular by amending authorisations for classified installations by including a systematic obligation for businesses covered by that legislation to suspend their harmful emissions as soon as a weather alert predicts a serious risk of limit values being exceeded;
3. order the Prefect of Val-d'Oise and the State to implement in full the recommendations of the European Commission, in particular those resulting from its warning of 15 February 2017, and the twelve recommendations issued by the Court of Auditors in its report of January 2016;
4. before making any further ruling, appoint two experts to measure the air pollution and its effect on the pathologies observed; **[Or. 2]**
5. failing the appointment of those experts, order the State to pay to JP the sum of EUR 6 million as compensation for damage to his health and EUR 15 million as compensation for emotional distress, anxiety, bodily injury, disfigurement, physical harm and psychological damage.

By judgment No 1510469 of 12 December 2017, the Administrative Court, Cergy-Pontoise, rejected those claims.

Proceedings before the Cour administrative d'appel:

By a statement of appeal and four statements, registered on 25 April 2018, 16 January 2019, 28 May 2019, 15 January 2020 and 23 September 2020, JP, represented by Maître Gimalac, *avocat*, claims that the court should:

1. set aside that judgment;
2. allow his claims made at first instance;
3. hold the State liable for the payment of EUR 3 500 pursuant to Article L. 761-1 of the code de justice administrative (Code of Administrative Justice).

JP submits that:

- the State is responsible for air quality, pursuant to Article L. 220-1 of the code de l'environnement (Environmental Code);
- the Administrative Court erred in finding that the Prefect of Val-d'Oise had no discretion in applying the regulations on air pollution, whereas he has special police powers and he failed to provide evidence that he took all measures necessitated by the exceedance of pollution limit values in Île-de-France or with regard to the policing of classified installations;
- exceedance of pollution limit values may render the State liable towards him with regard to the obligations under the European Directive of 21 May 2008;
- the State incurs liability by reason of its obligation to take all measures necessary to protect the lives of individuals;
- the State may also incur strict liability;
- the Administrative Court erred in refusing JP's request that experts be appointed;
- the link between air pollution and the state of his health, the existence of damage caused by anxiety and damage caused by lack of information have been proven.

By a statement of defence, registered on 21 March 2019, the ministre de la transition écologique et solidaire (Minister for Ecological and Inclusive Transition) contends that the application should be dismissed.

He submits that the pleas in law raised are unfounded.

JP was granted full legal aid by decision of 25 May 2018.

Having regard to the other documents in the file **[Or. 3]**

Having regard to:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- the Treaty on the Functioning of the European Union;
- [...] Directive 2008/50/EC [of the European Parliament and of the Council] of 21 May 2008 on ambient air quality and cleaner air for Europe [(OJ 2008 L 152, p. 1)];
- the Environmental Code;
- the judgments of the Court of Justice of the European Union [...] of 19 November 2014 [*ClientEarth* (C-404/13, EU:C:2014:2382)] and [...] of 24 October 2019 [*Commission v France (Exceedance of limit values for nitrogen dioxide)*, (C-636/18, EU:C:2019:900)];

- Decisions No 394254 of 12 July 2017 and No 428409 of 10 July 2020 of the Conseil d'État (Council of State, France) sitting in its judicial capacity;

- the Code of Administrative Justice.

[...]

Whereas:

1. JP appeals against judgment No 1510469 of 12 December 2017 by which the Administrative Court, Cergy-Pontoise, rejected his claims for, inter alia, the annulment of the implied decision of the Prefect of Val-d'Oise refusing to take appropriate measures to resolve JP's health problems linked to air pollution and for compensation from the State for the various heads of damage which he attributes to that pollution, assessed at EUR 21 million.

Legal context of the dispute:

2. First, Article 1 of Directive [...] [2008/50] provides as follows: '*This Directive lays down measures aimed at the following: (1) defining and establishing objectives for ambient air quality designed to avoid, prevent or reduce harmful effects on human health and the environment as a whole; ...*'. Under Article 4 of that directive: '*Member States shall establish zones and agglomerations throughout their territory. Air quality assessment and air quality management shall be carried out in all zones and agglomerations*'. Under Article 13(1) of Directive 2008/50: '*Member States shall ensure that, throughout their zones and agglomerations, levels of sulphur dioxide, PM₁₀, lead, and carbon monoxide in ambient air do not exceed the limit values laid down in Annex XI. / In respect of nitrogen dioxide and benzene, the limit values specified in Annex XI may not be exceeded from the dates specified therein. ...*'. **[Or. 4]**

3. Secondly, [...] Article 23[1] of Directive [...] [2008/50] provides as follows: '*Where, in given zones or agglomerations, the levels of pollutants in ambient air exceed any limit value or target value, plus any relevant margin of tolerance in each case, Member States shall ensure that air quality plans are established for those zones and agglomerations in order to achieve the related limit value or target value specified in Annexes XI and XIV. / In the event of exceedances of those limit values for which the attainment deadline is already expired, the air quality plans shall set out appropriate measures, so that the exceedance period can be kept as short as possible. The air quality plans may additionally include specific measures aiming at the protection of sensitive population groups, including children. / Those air quality plans shall incorporate at least the information listed in Section A of Annex XV and may include measures pursuant to Article 24. Those plans shall be communicated to the Commission without delay, but no later than two years after the end of the year the first exceedance was observed. ...*'.

4. In support of the claims for compensation contained in his application, JP submits, in particular, that he has suffered damage to his health as a result of the deterioration of the ambient air in the geographical area of the Île-de-France region where he lives. JP considers that this deterioration is itself the result of a breach by the French authorities of their obligations arising from the provisions of Directive 2008/50 [...] cited in paragraphs 2 [...] and 3 [...] above and, on this basis, puts the State's liability in issue in order to obtain compensation for the alleged damage to his health.

The serious difficulty of interpretation of EU law raised by JP's application:

5. The response to JP's claims for compensation requires clarification of the scope of the provisions of Article 13(1) [...] and of Article 23(1) [...] of Directive 2008/50 [...], with regard to the entitlement of individuals to compensation for damage to their health in the event of a sufficiently serious breach by an EU Member State of the obligations arising from those provisions.

6. That question, which is crucial for the resolution of the dispute, presents a serious difficulty of interpretation of EU law. It is for that reason necessary to refer the matter to the Court of Justice of the European Union pursuant to Article 267 TFEU and, until the Court has ruled on the matter, to stay the proceedings brought by JP.

THE COUR ADMINISTRATIVE D'APPEL DE VERSAILLES

DECIDES AS FOLLOWS:

Article 1: The proceedings brought [by] JP shall be stayed until the Court of Justice of the European Union has ruled on the following questions:

(1) Must the applicable rules of EU law resulting from the provisions of Article 13(1) [...] and of Article 23(1) [...] of Directive 2008/50/EC of 21 May 2008 on ambient air quality and cleaner air for Europe [(OJ 2008 L 152 p. 1)] be interpreted as entitling individuals, in the event of a sufficiently serious breach by an EU Member State of the obligations resulting from those rules, to claim compensation from the Member State concerned for damage to their health in cases where there is a direct and certain causal link with the deterioration in air quality? [Or. 5]

(2) On the assumption that the provisions referred to above may indeed give rise to such an entitlement to compensation for damage to health, to what conditions is that entitlement subject, in particular with regard to the date on which the existence of the failure attributable to the Member State concerned must be assessed?

[...]