Association des Conseils d'Etat et des Juridictions administratives suprêmes de l'Union européenne a.i.s.b.l.

Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union i.n.p.a.

Le juge administratif
et
le droit communautaire
de l'environnement

National administrative courts
And
Community
Environmental law

France

Réponse au questionnaire
Answer to The questionnaire

CONSEILS D'ETAT AND ADMINISTRATIVE SUPREME COURTS WORK SEMINAR

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FRENCH RESPONSE TO THE QUESTIONNAIRE

I. INFORMATION AND PUBLIC PARTICIPATION IN ENVIRONMENTAL MATTERS

Enforcing regulations
Has the enforcement of these texts, and in particular European directives, given rise to litigations? How has national case law been called upon to clarify the concepts found in these texts, given, in particular the case law of the European Court of Justice?

The judge's verification techniques
What degree of control does the administrative judge hold over administrations' complying with their obligations with regards to citizen information and public participation? In other words, how much discretionary power is left to administrations in such matters? Also, when the judge establishes a breach, what is the penalty?

We will respond by examining two successive issues:

- **access to** environmental **information**, which is addressed by Directive 2003/4 of 28 January 2003,
- and **public participation** in environmental matters, which is the subject of Directive 85/337 of 27 June 1985, amended by Directive 2000/35 of 26 May 2003.

In French law, these two questions are addressed from Book I of the Environmental Code, in Title II entitled "Information and participation of citizens".

A – Access to information in environmental matters

1°) The texts

Access to information in environmental matters is largely regulated in accordance with common law rules on the access to administrative documents, regulated by **Act of 17 July 1978**.

Nevertheless, special provisions strengthen the public's right to information in environmental matters. They originate from, for the most part in the **Act of 26 October 2005** which guaranteed the complete transposition of the Directive of 28 January 2003 concerning the public's access to information in environmental matters into French law.

The Act of 26 October 2005 has included Chapter IV in Title II of the Environmental Code, entitled "**Right to access to information about the environment",** spanning Articles L. 124-1 to L. 124-8. Article L. 124-1 specifies that the right to access information about the

environment is exercised under the conditions defined by the Act of 17 July 1978, subject to the special provision in the Environmental Code. Thus, access to environmental information is carried out according to the procedure laid down by the Act of 17 July 1978. The applicant benefits from an **intervention of the Commission on the access to administrative documents (CADA in French),** an independent administrative authority responsible for ensuring the freedom of access to administrative documents.

The expression "information relating to the environment" is defined in Article L. 124-2, according to terms which widely reflect the definition set by the Directive (Article 2). **The scope and limits of the right to access** are determined in conformity with the Directive:

- the **applicant**: "any person" may request a communication on environmental information, without having to justify their interest;
- the **destinee**: all public authorities are concerned: not only the State, local authorities and public institutions, but also those responsible for public service missions relating to the environment (Article L. 124-3);
- possible **exemptions**: article L. 124-4 includes the exceptions specified in the Directive, such as documents "in the course of completion"
- **The procedure** to reject a request for information: such a decision must be written and state the reasons for refusal.

In addition, in Title II of Book I of the Environmental Code, the following chapter, entitled « Other modes of information », and spanning articles L. 125-1 to L. 125-5, includes special provisions for additional safeguards for certain types of environmental information. For instance in the field of waste (Article L. 125-1) or major technological risks (Article L. 125-2), commissions are set up specifically to deal with informing the public on a permanent basis (the "local commission for information and monitoring" for waste; the "local committee to provide and exchange information" on risks in industrial areas).

2°) Case law

With regards to case law, two of the Conseil d'Etat's decisions should be mentioned.

A decision of 7 August 2007 overturned a refusal to supply environmental information based on the sole fact that the **document had a preparatory character** (CE, 7 August 2007, *Association des habitants du littoral du Morbihan*, req. n° 266 668).

This Conseil d'Etat decision ruled **that national law, in its applicable form, was contrary to the objectives of Directive** 2003/4/CE on the freedom of access to environmental information. Indeed, at the time of the events (previous to the Act of 26 October 2005), the Act allowed the refusal to supply "preparatory" documents. In this case, the administration had refused to provide the Agreed Minute of an administrative commission ("commission départementale des sites") on the sole ground that this document was preparatory of an administrative decision to come. The Conseil d'Etat noted that the Directive 90/313/CEE of 7 June 1990, then in effect, limited the possibility of refusing a request on the sole condition of the document being incomplete. The judge overturned the refusal on the grounds that the national disposition was contrary to European law.

A decision of 21 November 2007, concerning **genetically modified organisms (GMO),** lead the Conseil d'Etat to proceed to a **reference for a preliminary ruling** before the CJEC (CE, 21 November 2007, *Commune de Sausheim*, req. n° 280 969).

In this case, the request concerned a document relating to the implementation of deliberate release of GMO. In this specific field, French law (Article L. 535-3 of the Environmental Code) expressly provides that the ***place*** the release is carried out cannot be considered as confidential information. This disposition transposes Article 19 of the Council Directive of 23 April 1990 relating to the deliberate release of genetically modified organisms in the environment, which provides specific rules concerning administrative documents in this domain.

The Conseil d'Etat first noted that this special provision takes precedence over common law in the Act of 17 July 1978, and therefore dismisses the grounds for refusal based on this latter Act.

However, the Conseil d'Etat believes that the interpretation of the concept "where the release is carried out" may be open to discussion: **by "where" should one understand a precise plot, or a larger geographical area,** such as the district where the release took place? In addition, in the event where the place is understood to be the plot, the judge wonders if a **derogation, relating to public safety,** to reject the communication of the reference of the plot. Case Commune de Sausheim refers these two questions to the CJEC.

B – Public participation in environmental matters

1°) The texts

This is the subject of Directive 85/337 of 27 June 1985 on the assessment of certain the effects of certain public and private projects on the, amended in particular by the Directive 2000/35 of 26 May 2003.

The transposition of these directives at the national level does not appear to have posed problem. Indeed, French law already had an equivalent system by inserting provisions relating to the **impact assessment** in the **Act of 10 July 1976** on the protection of nature. The objective of this legal instrument was to make technical and scientific impact assessments of projects on the environment compulsory before the completion of certain public or private facilities. The scope and the impact assessments' system on the environment were specified by the Decree 77-1141 of 12 October 1977 in pursuance of Article 2 of the Act of 10 July 1976. These provisions are codified in Title II of Book I of the Environmental Code, in a chapter II, entitled "**Environmental Evaluation"** (Articles L. 122-1 to L. 122-11).

In addition, the outdated system of **public enquiries** allows the public to be involved in large-scale decisions relating to significant works and conversion projects. This system, modernised and unified by an Act of 12 July1983 (Law on the Protection of the environment and democratisation of public inquiries, called the law "Bouchardeau"), has been amended several times. It is now included in the Environmental Code, in Chapter III entitled "**Public enquiries relating to operations likely to affect the environment"** (Articles L. 123-1 to L. 123-16).

Finally, mention must be made of an original mechanism, that of the **National Public Debate Commission** (Chapter I of Title II of Book II of the Environmental Code, spanning Articles L. 121-1 to L.121-15). This commission is an independent administrative authority,

responsible for organising public participation in the development of large-scale conversion projects or facilities of national interest.

2°) Case law

The application of provisions relating to public participation resulted in many Conseil d'Etat decisions.

Article 9 of the Directive 85-337 of 27 June 1985 has been commented in several decisions: this article makes it obligatory to inform the public of the reasons and considerations on which the administrative decision is based. The Conseil d'Etat considers that these provisions do not impose a **motivation** as such that would be a condition of legality of that decision (CE, 2 June 2003, *UFC Que Choisir de la Côte d'Or*, req. n° 243 215; or, echoing the same solution: 25 February 2005, *Association préservons l'avenir à Ours Mons Taulhac*, req. n° 248 060; 4 August 2006, *Comité de réflexion d'information et de lutte anti-nucléaire*, req. n° 254 948).

A decision of 6 June 2007 cancelled a **permit for the decommissioning of a nuclear power station** for the infringement of objectives of the Directive of 27 June 1985 (6 June 1987, *Association Le réseau sortir du nucléaire*, request n° 292 386). This decision deserves to be more accurately commented.

The Directive of 27 June 1985 was applicable in this case, seeing as the nuclear power stations and other nuclear reactors, including the decommissioning and shutting down of power stations or reactors, are expressly subject to the provisions, pursuant to the provisions in both Article 4 and Annex I of the Directive. The Conseil d'Etat points out that paragraph 2 of **Article 6** of the Directive states that: "The Member States shall ensure that any request of authorisation and the information collected under Article 5 are available to the public within a reasonable delay in order to give the public an opportunity to express its opinion before the authorisation is granted".

The information referenced in these provisions is, under **Article 5** of the Directive, supplied by the client, such as, in particular, the description of the environmental factors likely to be affected by the project, or the description of the measures envisaged to offset the negative effects of the project on the environment. An impact assessment is typically the type of document which is made available to the public.

In this case, the decommissioning of the power station had been the subject of the impact assessment, but the decree authorising the decommissioning provided for this to be available to the public only **after the authorisation** had been granted. This advertising, after the decision had been made, was in accordance with national law, in particular with Article R. 122-12 of the Environmental Code. However, the Conseil d'Etat believes that these regulatory provisions, due to its weaknesses, are not in accordance with the objectives of the Directive of 27 June 1985. The judge in fact sanctions infringements of directive objectives by national law, even if it does not result from an express provision, but the silence of national law (CE, Assemblée, 6 February 1998, *Tête*, collection p.30).

In addition, the Conseil d'Etat believes that the consultation of a "monitory body on decommissioning power stations", composed of elected officials, and association representatives, trade unions and the State, did not further the Directive's goals. This in fact implies **that consulting the "public"** and information disclosed by such a body should not replace public information. For all these reasons, the Conseil d'Etat rescinded the decree authorising the decommissioning of the nuclear power station.

II – LAW ON POLLUTION (THE EXAMPLE OF WASTE AND POLLUTANT INSTALLATIONS)

Secondary Community legislation relating to waste and polluting installations represents an attempt to reconcile economic growth with protecting the environment.

The two main laws in force are, respectively, the Framework Directive 2006/12/CE of the European Parliament and the Council of 5 April 2006 on waste (which replaces the Directive 75/442/CEE) and the Directive 96/61/CE of the Council of 24 September 1996 on the prevention and reduction of pollution.

A – ENFORCING REGULATIONS

A- 1- HOW ARE RESPONSIBILITIES DISTRIBUTED IN YOUR LAW IN RELATION TO RESTORING POLLUTED SITES? DOES THE RESPONSIBLE PERSON'S (SITE OPERATORS OR HOLDERS OF WASTE) CHOICE RAISE PROBLEMS?

In France, the possibility of ordering the restoration of polluted sites is based primarily on two major laws:

- on the one hand, Act n° 76-663 of 19 July 1976 on classified installations for the protection of the environment ("classified installations"), now codified in Articles L. 511-1 to L. 514-20 of the Environmental Code, and
- on the other hand, Act n° 75-633 of 15 July 1975 on waste disposal and recovery of materials, now codified in Articles L. 541-1 to L. 542-14 of the same Code.

After considering the conditions under which the operator (1) and the holder (2) of industrial installations can be found responsible for restoring a site, we will present the link between these two liability schemes (3).

1- The operator: person liable under the law relating to classified installations:

The texts relating to classified installations are intended to regulate the operation of highly pollutant industrial installations by submitting them, according to how dangerous they are, either by a declaration or by prior authorisation, as well as compliance with administrative requirements with a view of an "integrated" environmental protection in the widest sense.
These texts therefore ensure the **transposition of the Directive IPPC 96/61 of 24 September 1996**.

1-1°) The texts

Two sets of obligations have been provided for in these texts concerning the restoration of sites.

→ Firstly, during the use of the installation, the prefect[1] can impose on the operator (under the law or otherwise the actual operator) **requirements made necessary in order to protect the environment, and in particular concerning restoration** in the case of proved alterations concerning the state of the ground or the underground (Articles L. 512-7 and L. 512-12 of the Environmental Code).

→ Secondly, when an installation has been stopped definitively, Articles L. 512-17 and R.512-74 to R. 512-80 of the Environmental Code provide that the operator (under the law or in practise) has, a **genuine requirement to restore the industrial ground** on which the classified installations[2] were located.

⇒ **The operator** is therefore liable for the restoration of sites.

1-2°) Case law

The Conseil d'Etat has been confronted with four sets of problems.

• A first problem concerns identifying the operator, in particular in cases where the legal person changes.

- The **shareholders' liability** cannot be sought by the administration, in place of that of the operator's, under the **principle of autonomy of legal persons** (with the exception of three very specific cases: shareholders' interference in the operating company's activities – shareholders' special ties and control over the activities carried out on the site; shareholders' misconduct; and in the case of a fictitious operating company).

- However, the Conseil d'Etat considers that a **merger** has the effect of **transferring** the title operator to the acquiring company, providing that there is a full absorption and is carried out without liquidation or division of the acquired operating company (*CE 10 January 2005, Sté Sofiservice, req. n°252307* and the government commissioner's conclusions).

• A **second problem** concerning the designation of the person liable for restoring the grounds arises **in cases of several successive installation operators on one industrial site**. A distinction should be made depending on whether or not the operators carry out the same activity.

- In the case of successive operators carrying out the same activity on a given site, the obligation to restore the site weighs in principle on the **last regular** installation **operator**, regardless of whether the pollution results from his own activity or that of his predecessors[3] *(CE 11 April 1986, Ministre de l'environnement c/ Sté des produits chimiques Ugine-Kuhlman, req. N° 6223; CE 20 March 1991, SARL Rodanet, req. N° 83776).*

- However, in the case of successive operators carrying out different activities on a same site, **each operator** is required to carry out the necessary restoration **which are** directly **linked** to his activity, in accordance with the polluter pays principle.

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[1] The prefect is the State's representative in a *département* responsible for ensuring compliance with the legal system.

[2] In relation to the obligation to restore, Article L. 512-17 of the Environmental Code states: "*When the facility is stopped definitively, its operator places the site in such a condition that it cannot harm the interests mentioned in Article L. 511-1 and that it enables a future use of the site comparable to that of the last period of operation of the facility that has been stopped*."

[3] "Sites et sols pollués", J.P. BOIVIN and J. RICOURS, 2005 (Le Moniteur).

• A **third problem** comes from **the termination of contracts confiding the restoration of sites to a third party**.

Case law considers that **the operator** remains liable, given that private agreements concluded by the latter cannot be used against the administration *(CE 24 March 1978, Sté le Quinoléïne et ses dérivés, req. N° 01291).*

• A **fourth problem** arises **when it is impossible to guarantee the restoration by the operator**

Several cases are referred to here: the operator's insolvency or disappearance, or the non-liability of the operator due to the expiry of the 30 year period, which has recently been recognised by the Conseil d'Etat (*CE 8 July 2005, Sté Alusuisse-Lonza-France, req. N° 247976*) (in line with Community case law which excludes situations where the liability is not subject to a lapse of time – *CJCE 24 September 2002, aff. C-74/00 P. Falck SPA and a. c/ Commission*- and with article 17 of the Directive of 21 April 2004 on environmental responsibility).

In such a case, it is up to the **State** to carry out at its expense the necessary restoration in order to protect the environment (including public health and safety).

It remains that the holder's responsibility for a classified installation or industrial grounds defined as waste can also be sought on the basis of legislation relating to waste.

2 - The holder: person liable under waste legislation:

• At the outset, it should be clarified that the question has arisen as to whether the prefect could, **on the basis of the law on classified installations**, seek the liability not of the operator but of the **holder** of a classified installation, in cases where that of the operator could not be called into question.

- Indeed, Article L. 511-1 of the Environmental Code, which defines the scope of the legislation on classified installations, aims installations operated "or owned" by any person.

The term holder is understood to be a much wider notion than that of operator, encompassing in particular the owner of the land on which the classified installations are seated.

- Nevertheless, the Conseil d'Etat's case of 8 July 2005 *Sté Alusuisse-Lonza-France* previously cited, ruled that **the responsibility for restoration under the law on classified installations lies solely with the operator** (or to his beneficiaries or those who succeed him), regardless of whether this latter can fulfil his obligations or benefits from the 30 years liability period.

On the basis of the regulation affecting classified sites, the prefect cannot lay the financial burden of restoration on the site owner, in his capacity as the holder[4].

• However, for its part, **legislation on waste**, that **transposes the Framework Directive 2006/12/CE of the European Parliament and the Council of 5 April 2006 relating to waste**, allows to impose such financial burden on the "holder" of a classified installation or industrial grounds defined as waste.

[4] It should be noted that certain administrative courts of appeal have continued to maintain a contrary position (*e.g., CAA Bordeaux, 2 May 2006, n° 2BX01828*).

- Indeed, Article L. 541-3 of the Environmental Code gives the administrative authority (the **mayor**) special police powers allowing him **to place the financial burden of restoration on the producer or the holder of waste, when such waste is the cause of pollution** and they have not been disposed of in accordance with regulations [5].

→ However **a classified installation** may have waste. In addition, the European Court of Justice, in its rulings of 7 September 2004 (*Ministère public c/ Paul Van de Wall,aff. n° C-1/03)* and of 10 May 2007 *(Thames Water Utilities Ltd, aff. n° C-252/05*), judged **that polluted soil and sewage can be classified as waste**. Therefore, as part of the ECJ's case law, the mayor could carry out, of its own motion, de-pollution of soils and contaminated waters on industrial sites, **at the holder's expense**, that is to say the classified installation operator or the installation owner of the installation or the polluted soils.

Conclusion: As a result of the two laws on classified installations and on waste, there is a **double legal system of restoration which, due to different objectives, leads to the creation of competing liability schemes**. The question of the interaction between the two regimes therefore arises.

3- The interaction between liability schemes provided for under the law on classified installations and the law relating to waste:

The question that arose was whether, on the one hand, the mayor has jurisdiction to order the owner of an installation or a site to de-pollute, while the prefect may direct the operator of the installation on the site to fulfil his commitment to restoring it, on the other hand, if his competencies are interchangeable.

- Case law considers that the two systems (classified installations and waste) with differing scopes and objectives, are intended **to be applied cumulatively** (*CE 18 November 1998, M. Jaeger, req. n° 161612; CE 11 January 2007, Ministère de l'écologie et du développement durable c/ Sté Barbazanges Tr Ouest, req. n° 287674; CE 13 July 2007, Cne de Taverny, req. n° 293210*).

Nonetheless, the case law provides for a clear division of responsibilities between the prefect and the mayor:

- **the prefect could in principal impose measures prescribed by the law on classified installations;**
- **and, conversely,** the mayor is competent only for prescribing measures relating to the law on waste *(CE 17 November 2004, Sté générale d'archives, req. n° 252514*).

Only in the case of the mayor failing to fulfil his obligations can the prefect replace the latter in order to take measure relating to the waste disposal (*CE 11 January 2007, Ministère de l'écologie et du développement durable c/ Sté Barbazanges Tr Ouest, req. n° 287674).*

A-2- IN ADDITION, IS IT POSSIBLE TO QUESTION THE LIABILITY OF PUBLIC AUTHORITIES RESPONSIBLE FOR ENFORCING REGULATIONS, IN CASES WHERE THEY HAVE NOT SUFFICIENTLY CARRIED OUT THEIR DUTIES OF MONITORING AND CONTROLLING INDUSTRIALS?

French law does not provide for special liability schemes for the administration for the failure of exercising its powers held in the field of environmental law.
The judge applies the **normal rules relating to administrative responsibility**.

[5] Article L. 541-3 of the Environmental Code provides that in case of soil pollution, risk of soil pollution or in cases where waste is abandoned, deposited, or treated contrary to the regulation, the authority with policing powers (the mayor) may, after a summons has been issued, carry out the necessary works at the expense of the person responsible.

This law, originating from case law, seeks **reparation by equivalent** (attribution of damages and interest) for prejudices caused by an administrative act.
It is therefore not "sanctionary" but reparatory.

In order for a public person's responsibility to be question, three conditions must be met.

- Firstly, the **administration's act** must, in principle, be **constitutive of a fault**.
- Secondly, the applicant must prove that he has suffered **a** certain **prejudice**, of either a physical or moral nature, and can also consist in the loss of a significant opportunity.
- Lastly, the prejudice must be linked to the administration's fault by a direct **causal link**.

- To which one needs to add that **exonerations** of responsibility exist, such as the existence of foreign causes which can result from a third party, the victim's behaviour or an element of force majeure.

1- Thus, **the State's responsibility may be incurred as a result of the lack of exercise of its powers derived from the law on classified installations.**

The administrative judge retains the total or partial responsibility of the State, in the case of the prefect's failure to exercise his powers derived from this legislation.

• Indeed, Article L. 514-1 of the Environmental Code burdens the prefect with the **obligation to issue the operator with a summons** in order to regularise the situation, when the operator does not respect his legal or regulatory obligations, or the individual requirements imposed on him.

- It follows that the **prefect's refusal to issue a summons constitutes a fault** likely to engage the administration's responsibility.
→ This is particularly true when the prefect fails to respect the operating requirements imposed on installations *(e.g., CE 11 July 1986, Secrétaire d'Etat chargé de l'environnement c/ Michallon, req. n° 61719; CE 5 July 2004, Lescure, req. 243801*), or has left an installation operational without required authorisation or declaration (*CE 10 October 1969, Min. aménag. Territoire c/ Arnaud).*

- The same applies **when the prefect has not done enough** *(CE 13 July 2007, Cne de Taverny, req. n° 293210).*

2- Similarly, it is possible to engage **the district's responsibility for failure regarding waste disposal**, when this failure is constitutive of a fault.

Case law provides few examples of this possibility. A Conseil d'Etat decision illustrates the case where the district's failure is seen as a fault lessening the State's responsibility. Indeed, the **victim's fault** may wholly or partially exonerate the administrative authority's responsibility.

Thus, the Conseil d'Etat judged that the mayor's failure in not notifying the prefect of serious and repeated breaches of legislation on classified installations of which he was aware, constitutes a fault likely to partially exonerate the prefect's responsibility, due to his own failure in exercising his powers derived from the law on classified installations *(CE 13 July 2007, Cne de Taverny, req. n° 293210, previously cited).* This case takes account of the decision of 11 January 2007 (*Ministère de l'écologie et du développement durable c/ Sté Barbazanges Tr Ouest)* previously cited, in which the Conseil confirms the mayor's special policing powers in order to dispose of waste polluting sites and the soils despite the prefect's intervention. It indirectly points out the share of responsibility assumed by the district in the event of inaction on the mayor's part.

B – THE JUDGE'S VERIFICATION TECHNIQUES

B-1- WHAT IS THE SCOPE OF THE JUDGE'S POWERS TO WHOM A DISPUTE HAS BEEN SUBMITTED ON THE ENFORCEMENT OF ONE OR THE OTHER REGULATION?

Disputes relating to individual decisions concerning the restoring taken pursuant to the law on classified installations is a **special dispute called " of full jurisdiction"** (Article L. 514-6 of the Environmental Code).

This category of disputes is particular in that it confers **a very wide range of powers** to the administrative judge.
Indeed, the latter can, in addition to the **annulment** of the contested decision, **replace the administration** and exercise all the powers of the latter.

• As such, the administrative judge has jurisdiction to decide a number of measures aimed directly at the operator.

→ He can **reform an order for a permit or a receipt acknowledging a declaration**, for example by reducing the requirements that seem excessive or unjustified.

→ He can i**mpose additional requirements** necessary to protect the environment on the operator (*CE, 11 December 1987, SARL Sodérapor, req. n°73.570*).

• However, the judge for classified installations can limit himself to issuing injunctions to the administration, in particular when the choice of applicable requirements raises practical difficulties[6],

→ He can address **injunctions to do** to the latter in a specified time and manner as prescribed.
For example, he can order the prefect to **fulfil the** operating **requirements** provided for in the authorisation order (*CE 27 January 1978, Cadoux, req. n° 90137*), or to **issue, in a specified delay, the** requested **authorisation** to exploit (*TA Grenoble, 16 February 2000, Sté Mermier, req. n° 982042*).

In addition, it should be noted that with regards to **full jurisdiction proceedings**, the judge decides in the light of the facts and substantive rules in force **on the day he statutes** (although he takes into account the rules of procedure in force at the time when the administrative decision was made).

B-2- ARE THERE ANY RULES OF PROCEDURE AND EVIDENCE OR METHODS ESTABLISHING SPECIFIC FACTS IN THESE MATTERS BEFORE A JUDGE,TAKING ACCOUNT OF THE SPECIFIC TECHNICALITY?

There is no procedure or form of evidence specific to disputes relating to restoring polluted industrial sites. The administrative judge therefore applies, in this field, **normal rules**.

• In principle, it is up to each party to provide, by any means, proof of the facts it invokes.

• Nonetheless, the administrative judge can take **inquiry measures, some of which are especially used in the environment field**:
- He can order the parties to provide explanations or documents in a specified delay.
- He can also carry out checks on administrative documents, and undertake **on-site visits** (Article R. 622-1 and following of the Administrative Justice Code) (to assess the discomfort caused by the boilerworks in a technical college: *CE 20 February 1969, Warembourg,rec. CE 1969, p. 72*).

[6] In particular, the administrative judge is faced with a highly complex set of technical norms he needs to grasp, and studies (detailed studies on risks concerning restoration measures, impact assessments on orders for permits).

- He can in addition seek expert advice, of his motion or at the request of a third party, before the trial (Article R. 621-1 of the Administrative Justice Code). The use of expertise is frequent, for example to determine the causes of damage and the correct measures to avoid worsening, ensure reparation and assess the cost of these measures (*CE, 24 mars 1989, Hours, Rec. 1989, p. 862*).

• All the measures may be requested by the parties through a **special procedure** called the "relief measures instruction" (Article R. 532-1 *Paragraph* 1 of the Administrative Justice Code), as long as they are useful in settling the main dispute in course.

C – OPEN QUESTION

BESIDES THE TWO PREVIOUS QUESTIONS, HAVE YOUR COURTS RENDERED ANY OTHER DECISIONS, RELATING TO LAWS ON WASTE OR POLLUTANT INSTALLATIONS, WHICH SHOULD BE MENTIONED? CAN YOU SUMMARISE THESE DECISIONS IN A FEW LINES?

The Conseil d'Etat case concerning the disposal of the French aircraft carrier the Clémenceau, delivered on 15 February 2006[7], is a **recent illustration of the application of Community law and its case law relating to the nature and shipment of waste by a French administrative judge**.

In this procedure, the suspension of the authorisation to export an old aircraft carrier to India, in view of removing the asbestos, was requested before the Conseil d'Etat (ruling on appeal) by interim injunction proceedings.

The main question which arose was **whether the Clémenceau should be defined as waste, and consequently, if its export to India could be authorised** under the regulation n°259/93 CEE amended on 1st February 1993 on the supervision and control of shipments of waste within, into and out of the European Community.

• On the first point, the French administration refused to consider the Clémenceau as **waste**.

However, the Conseil d'Etat **applied Community case law,** according to which the act of disposing of is not restrained solely to the abandonment of materials or substances involved (*CJCE, 28 March 1990, aff. Jointes C-206-207/88, Vessoso et Zaneth, CJCE 28 mars 1990, aff. C-389/88, Zanetti*) and must be considered as waste material susceptible of being used for economic purposes, as long as they had not been regenerated or recycled and even if the holders had the intention of selling them (*CE ass., 13 May 1983, SA Moline, Rec 1983, p. 191*)[8].

In this case, the State was disposing of the aircraft carrier, the latter thus qualifying as waste, even if it was partially intended for economic purposes.

• In addition, the Conseil d'Etat followed the ECJ's case law, according to which in the case of a joint recovery and disposal operation, the more stringent scheme should apply, in this case, that of disposal (*CJCE 27 February 2003, aff. C-307/00 à C-311/00*). Exporting waste to dispose of it is strictly forbidden by the regulation of 1st February 1993, the export of the Clemenceau, which was of a mixed nature, was forbidden.

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[7] CE, Association Ban Asbestos France et autres, req. n°288801,288811.

[8] "Le Clémenceau: jusqu'où l'Etat français aura tenté d'éluder la législation sur les déchets, F. BRAUD et A. MOUSTARDIER, Environnement n°3, March 2006, Etude 5.

Thus, by relying on the infringement of Community law, the Conseil d'Etat suspended the decision to export the aircraft carrier.