

COURT OF
APPEAL
OF
VERSAILLES

FRENCH REPUBLIC IN THE
NAME OF THE FRENCH
PEOPLE

Code nac : 00A

14th Chamber

STOP NO. BY

DEFAULT

FROM 18 NOVEMBER 2021

N° RG 21/01661 - N°

P o r t a l i s
DBV3-V-B7F-UL6E

CASE :

S.A. TOTAL SE

C/

C O M M U N E D
BIZE-MINERVOIS

...

Decision referred to the
court: Order made on 11
February 2021 by the Pre-
Trial Judge of
NANTERRE
RG NUMBER: 20/00915

Enforceable Expeditions
Expeditions
Copies
issued on: 18.11.2021 to
:

M e r t r a n d
LISSARRAGUE, lawyer
at a r r e a u e
VERSAILLES

M t é p h a n i e
TERITEHAU lawyer at
the bar of VERSAILLES,

To the parties by
registered letter

THE EIGHTEENTH OF NOVEMBER TWO THOUSAND AND TWENTY-
ONE,
The Versailles Court of Appeal handed down the following judgment in the
case between :

S.A. TOTAL ENERGIES SE

*société anonyme européenne, represented by its President and
Chief Executive Officer*

2 Place Jean Millier La Défense
6 92400 COURBEVOIE

Representing : Me Bertrand LISSARRAGUE of the SELARL LEXAVOUE
PARIS-VERSAILLES, Postulant, lawyer at the bar of VERSAILLES,
clerk's office: 625 - File number 2165355

Assisted by Denis Chemla and Romaric Lazerges, pleaders, lawyers at the
Paris Bar

APPELLANT

COMMUNE OF BIZE-MINERVOIS

*local authority registered under the SIREN number 211 100 417 represented
by its Mayor in office*

Hôtel de Ville 4 Avenue de l'Hôtel de Ville
11120 BIZE-MINERVOIS

COMMUNE OF CORRENS

*local authority registered under SIREN number 218 300 457 represented by
its Mayor in office*

SIREN NUMBER 218 300 457
Hôtel de Ville 5, Place Général de Gaulle
83570 CORRENS

EAST TOGETHER

*Multi-purpose public trade union organisation, represented by its President in
office*

SIREN NUMBER: 200 05 7 8 75
100 Avenue Gaston Roussel
92232 ROMAINVILLE

COMMUNE OF GRENOBLE

the local authority represented by its Mayor in office

SIREN NUMBER: 213 80 1 8 55
Hôtel de Ville 11 Boulevard Jean Pain
38021 GRENOBLE

COMMUNE OF POSSESSION

the local authority represented by its Mayor in office

SIREN NUMBER: 219 74 0 0 81
Town Hall 10 Rue Waldeck Rochet 97419
LA POSSESSION

COMMUNE OF MOUANS-SARTOUX

local authority represented by its Mayor in office, residing in this capacity at the said headquarters

SIREN NUMBER: 210 60 0 8 47
Hôtel de Ville Place du Général de Gaulle
06370 MOUANS-SARTOUX

COMMUNE DE NANTERRE *local authority represented by its Mayor in office*

SIREN NUMBER: 219 200 508
Hôtel de Ville 88, Rue du 8 Mai 1945
92000 NANTERRE

COMMUNE DE SEVRAN

the local authority represented by its Mayor in office

SIRET NUMBER: 219 30 0 7 12
Hôtel de Ville 28 Avenue du Général Leclerc
93270 SEVRAN

COMMUNE OF VITRY-LE-FRANCOIS

the local authority represented by its Mayor in office

SIREN NUMBER: 215 10 6 0 22
Hôtel de Ville Place de l'Hôtel de Ville
51300 VITRY-LE-FRANCOIS

Association NOTRE AFFAIRE A TOUS

represented by its President, residing in this capacity at the said headquarters

SIREN NUMBER: 842 79 0 7 35
31 Rue Bichat
75010 PARIS

CENTRE VAL DE LOIRE REGION

local authority represented by the President of the Regional Council

SIREN NUMBER: 234 50 0 0 23
Hôtel de Région 9 rue Saint-Pierre Lentin
45000 ORLÉANS

SHERPA Association

represented by its President acting by virtue of Article 12 of the Articles of Association, residing in that capacity at the said headquarters

SIRET NUMBER: 443 23 2 8 97
80 quai de Jemmapes

75010 PARIS

ZEA Association

represented by one of its Co-Chairmen acting by virtue of a decision of the Board of Directors

SIRET NUMBER: 832 62 9 4 48
31 Rue Chevalier Paul
83000 TOULON

Association ECO-MAIRES - NATIONAL ASSOCIATION OF MAYORS AND LOCAL ELECTORS FOR THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

represented by its President acting by virtue of Article 12 of the Articles of Association, residing in that capacity at the said headquarters

SIREN NUMBER: 378 59 8 1 22
215 Bis Boulevard Saint Germain
75007 PARIS

Association FRANCE NATURE ENVIRONNEMENT

association for the protection of the environment represented by its President residing in this capacity at the said headquarters

SIREN NUMBER: 840 62 9 8 28
2 Rue du Dessous
75013 PARIS

COMMUNE D'ARCUEIL

represented by its Mayor in office, residing in this capacity at the said Town Hall

SIRET NUMBER: 219 40 0 0 33
Hôtel de Ville 10 Avenue Paul Doumer
94110 ARCUEIL

COMMUNE OF BAYONNE

represented by its Mayor in office, residing in this capacity at the said Town Hall

SIREN NUMBER: 216 40 1 0 26
Hôtel de Ville 1 Avenue du Maréchal Leclerc
64100 BAYONNE

COMMUNE OF BEGLES

local authority represented by its Mayor in office, residing in this capacity at the said Town Hall

SIRET NUMBER: 213 30 0 3 95
Hôtel de Ville 77 Rue Calixte Carmelle
33130 BEGLES

Represented by : Stéphanie TERIITEHAU of SELEURL MINAULT TERIITEHAU, Postulant, lawyer at the bar of VERSAILLES, clerk's office: 732 File number 20210195
Assisted by Me Sébastien MAIBLE and François CAMBIAIRE, pleaders, members of the Paris Bar

INTIMATE

COMMUNE OF CHAMPNEUVILLE

local authority represented by its current Mayor,

SIRET NUMBER: 215 50 0 9 92

9, rue de l'Église

55100 CHAMPNEUVILLE

DEFICIENT PRIVACY

Composition of the court :

The case was debated at the public hearing of 29 September 2021, Mrs Nicolette GUILLAUME, president having been heard in her report, before the court composed of :

Mrs Nicolette GUILLAUME, President, Mrs
Marie LE BRAS, Counsellor, Mrs Marina
IGELMAN, Counsellor,

who have deliberated on this matter,

Clerk, during the debates: Ms Elisabeth TODINI

STATEMENT OF THE CASE

Law n°2017-399 of 27 March 2017 on the duty of care of parent companies and ordering companies, created Article L. 225-102-4 of the Commercial Code introducing the obligation to draw up, publish and implement a due diligence plan designed to prevent the risks of serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment, which may result from its activities and those of the companies it controls and its usual subcontractors or suppliers.

Total, now TotalEnergies SE (the TotalEnergies company), the leading French company in terms of cumulative profits over ten years, with a turnover of almost 210 billion dollars in 2018 and more than 104,000 employees, is the leading company, listed on the Euronext Paris market, of a group of 1,191 companies, as of 31 December 2018. It is a major player in the energy sector, present on five continents and in over 130 countries.

The group's activities cover oil and gas exploration and production, refining, petrochemicals, power generation and the distribution of energy in various forms, including petroleum products and electricity, to the end customer.

As TotalEnergies published its first "vigilance plan" integrated in its 2017 registration document on 15 March 2018, fourteen local authorities and five French associations denounced its shortcomings on 22 October 2018 by letter from their counsel. In return, by letter dated 14 January 2019, TotalEnergies SE affirmed that its first "vigilance plan" complies with the objectives of the law of 27 March 2017.

Then on 20 March 2019, the company published a second 2018 Compliance Plan which is included in the 2018 Reference Document.

Subsequently, after several exchanges of letters or meetings, by registered letter with acknowledgement of receipt from their council dated 19 June 2019, the territorial authorities of Arcueil, Bayonne, Bègles, Bize-Minervois, Correns, Champneuville, Grande-Synthe, Grenoble, la Possession, Mouans-Sartoux, Nanterre, Sevran and Vitry-Le-François, the Est Ensemble territorial public establishment and the associations Notre Affaire à tous, Sherpa, Zéa and Eco-Maires gave formal notice to the company TotalEnergies to comply with the obligations set out in Article L.

225-102-4 I of the French Commercial Code by publishing a new due diligence plan that complies with legal requirements within three months.

It is in these circumstances that, by bailiff's deed delivered on 28 January 2020, the associations Notre Affaire à tous, Sherpa, Zéa, Eco-Maires and France Nature Environnement, the municipalities of Arcueil, Bayonne, Bègles, Bize-Minervois, Correns, Champneuville, Grenoble, La Possession, Mouans-Sartoux, Nanterre, Sevrans and Vitry-Le-François, the Est Ensemble territorial public establishment and the Centre-Val de Loire region summoned SE Total to appear before the Nanterre judicial court on the basis of Articles L. 225-102-4 of the Commercial Code and 1252 of the Civil Code.

The case was referred to the court *in limine litis* on 19 October 2020 by TotalEnergies and by its last submissions filed on 13 January 2021, by order of 11 February 2021, the pre-trial judge of the Nanterre judicial court has :

- dismissed the objection of lack of competence of SE TotalEnergies,
- rejected SE TotalEnergies' claim under Article 700 of the Code of Civil Procedure,
- ordered SE TotalEnergies to pay to the association Notre Affaire à tous, the association Sherpa, the association Zéa, the association Eco-Maires, the association France Nature Environnement, the municipality of Arcueil, the municipality of Bayonne, the municipality of Bègles, the municipality of Bize-Minervois, the municipality of Correns, the municipality of Champneuville, the territorial public establishment Est Ensemble the municipality of Grenoble, the municipality of La Possession, the municipality of Mouans-Sartoux, the municipality of Nanterre, the municipality of Sevrans, the municipality of Vitry-Le-François and the Centre - Val de Loire region the total sum of 6,000 euros pursuant to Article 700 of the Code of Civil Procedure, it being their responsibility to share this amount equally,
- reserved for the court's consideration of the merits of the case, the parties' claims for costs,
- declares that, in accordance with Articles 780 and 781 of the Code of Civil Procedure, the case and the parties are referred to the pre-trial hearing of 11 March 2021 at 10 a.m. for the submissions on the merits by TotalEnergies and the setting of a foreseeable date for closure and oral argument.

In a statement received at the court registry on 11 March 2021, TotalEnergies appealed against this order in all its parts, except for the fact that it reserved the parties' claims for costs for the court's consideration of the merits of the case.

Authorised by an order made on 30 March 2021, at its request on the date and without comment to the contrary on the respondents' AVR, TotalEnergies caused the claimants to be summoned to the original proceedings for the hearing set for 29 September 2021 at 2pm.

A copy of the summons was filed with the Registry on 14 May 2021.

In its final pleadings filed on 29 September 2021, to which reference should be made for a detailed presentation of its claims and pleas, **TotalEnergies SE** asks the court, in accordance with Articles L. 225-102-4 and L. 721-3 of the French Commercial Code, 1252 of the French Civil Code, 83 to 89, 696, 699 and 700 of the French Code of Civil Procedure, to :

- overturn the order made by the Pre-Trial Judge of the Nanterre Court on 11 February 2021 insofar as it :
 - rejected the objection of lack of competence in respect of subject-matter which it put forward;
 - rejected his claim under Article 700 of the Code of Civil Procedure;
 - ordered it to pay to the association Notre Affaire à tous, the association Sherpa, the association Zéa, the association Eco-Maires, the association France Nature Environnement, the municipality of Arcueil, the municipality of Bayonne, the municipality of Bègles, the municipality of Bize-Minervois, the municipality of Correns, the municipality of Champneuville, the public territorial establishment Est Ensemble the municipality of Grenoble, the municipality of La Possession, the municipality of Mouans-Sartoux, the municipality of Nanterre, the municipality of Sevrans, the municipality of Vitry-Le-François and the Centre - Val de Loire region the total sum of 6,000 euros pursuant to Article 700 of the Code of Civil Procedure, it being incumbent on them to share this amount equally;

ruling again,

- declare the judicial court of Nanterre materially incompetent;
- consequently,
- refer the case to the Commercial Court of Nanterre;

- order the respondents (with the exception of the commune of Champneuville) to pay to it jointly and severally the sum of 30,000 euros under Article 700 of the Code of Civil Procedure and to pay all the costs of the proceedings, with direct recovery in favour of Selarl Lexavoué Paris- Versailles.

In their final submissions filed on 28 September 2021, to which reference should be made for a detailed presentation of their claims and pleas, **the associations Notre Affaire à tous, Sherpa, Zéa, Eco-maires (Association Nationale des Maires et des Elus Locaux pour l'Environnement et le Développement durable) and France Nature Environnement les communes d'Arcueil, Bayonne, Bègles, Bize-Minervois, Correns, Grenoble, la Possession, Mouans-Sartoux, Nanterre, Sevrans et Vitry-Le-François, l'établissement EST Ensemble, et la région Centre Val-de-Loire** demandent à la cour, au visa des articles 1^{er} et 2 de la Charte de l'environnement, L. 225-102-4, L. 225-102-5 and L. 721-3 of the Commercial Code, 1240, 1246 and 1252 of the Civil Code, L. 211-3 et seq. and L. 211-20 of the Code of Judicial Organisation, 696, 699, 700 and 789 of the Code of Civil Procedure, to :

- declare them admissible and well-founded in their claims;
- uphold them,
- confirm the order made by the Pre-Trial Judge of the Nanterre Court on 11 February 2021; accordingly,
- reject the objection of lack of jurisdiction of the court raised by TotalEnergies SE;
- declare the judicial court of Nanterre competent to rule on the entire dispute;
- Dismiss all of TotalEnergies' claims and submissions;
- order TotalEnergies to pay them the principal sum of 20,000 euros under Article 700 of the Code of Civil Procedure and all the costs of the proceedings, with direct recovery in favour of Maîtres Sébastien Mabile and François de Cambiaire, in accordance with the provisions of Article 699 of the Code of Civil Procedure

The commune of Champneuville, which was served with the statement of appeal and the conclusions on 14 April 2021, did not constitute a lawyer.

On October 4, 2021, the parties were asked to produce a copy of the letter of formal notice sent to Total on June 19, 2019 during the deliberations. This letter was sent by the respondents to the court registry via AVR on the same day.

REASONS FOR THE DECISION :

1 - On competence

The contentious provisions of Article L. 225-102-4 of the Commercial Code resulting from Law No. 2017-399 of 27 March 2017 on the duty of care of parent companies and ordering companies, are as follows:

"I - Any company which employs, at the end of two consecutive financial years, at least five thousand employees within its own company and in its direct or indirect subsidiaries whose registered office is located on French territory, or at least ten thousand employees within its own company and in its direct or indirect subsidiaries whose registered office is located on French territory or abroad, shall draw up and effectively implement a vigilance plan.

Subsidiaries or controlled companies that exceed the thresholds mentioned in the first paragraph shall be deemed to comply with the obligations laid down in this article if the company that controls them, within the meaning of Article L. 233-3, draws up and implements a due diligence plan relating to the activity of the company and of all the subsidiaries or companies that it controls.

The plan shall include reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of individuals and the environment, resulting from the company's activities and those of the companies it controls within the meaning of II of Article L. 233-16, directly or indirectly, as well as from the activities of subcontractors or suppliers with which it has an established business relationship, when these activities are linked to this relationship. The plan is intended to be drawn up in association with the company's stakeholders, if necessary within the framework of multi-stakeholder initiatives within sectors or on a territorial scale.

It includes the following measures:

1° A risk map to identify, analyse and prioritise risks;

2° Procedures for regular assessment of the situation of subsidiaries, subcontractors or

suppliers with whom there is an established business relationship, with regard to risk mapping;

3° Appropriate actions to mitigate risks or prevent serious harm;

4° A mechanism for alerting and collecting reports on the existence or occurrence of risks, established in consultation with the representative trade unions in the company;

5° A system for monitoring the measures implemented and evaluating their effectiveness.

The due diligence plan and the report on its effective implementation shall be made public and included in the management report mentioned in the second paragraph of Article L. 225-100. A decree in the Council of State may supplement the vigilance measures provided for in 1° to 5° of this article. It may specify the procedures for drawing up and implementing the monitoring plan, where applicable within the framework of multi-stakeholder initiatives within sectors or on a territorial scale.

II - Where a company given formal notice to comply with the obligations provided for in I fails to do so within a period of three months from the date of the formal notice, the competent court may, at the request of any person having an interest in the matter, enjoin the company to comply with the obligations, where appropriate under a penalty payment.
(...)"

It should be noted, as a preliminary point, that the action aimed at correcting any breaches of the Compliance Plan is distinct from the action aimed at obtaining compensation for the resulting damage provided for in Article L. 225-102-5 of the same code. The question of jurisdiction arises in a different way for each of these two texts.

It is then noted that TotalEnergies is right to consider that a bill, not yet voted by Parliament, is not enforceable against it; the questions raised will therefore be decided on the basis of the current state of positive law.

It should also be noted that the respondents, on the basis of Articles 1240, 1246 and 1252 of the Civil Code, also request the court, in their document initiating proceedings, to :

"order TotalEnergies to publish and implement, as part of its obligation to prevent environmental damage resulting from its activities, appropriate actions to reduce its direct and indirect emissions in line with the Paris Agreement, in order to limit global warming "significantly below 2°C", in particular :

As a principal,

- Align with a direct and indirect GHG emissions reduction trajectory (scope 1, 2 and 3) compatible with limiting global warming to 1.5°C without overshoot to achieve carbon neutrality by 2050, which implies :

- Align its activities with the "PI" GHG emission reduction pathway as defined in 2018 by the IPCC, in that this is the only pathway that, given current scientific and technological knowledge, makes it possible with an acceptable degree of probability to limit global warming to 1.5°C without overshoot;

- Set interim targets for reducing the carbon intensity of its products in line with this trajectory.

- Reduce its gas production by -25% in 2030 and -74% in 2050 (compared to 2010);

- Reduce its oil production by -37% in 2030 and -87% in 2050 (compared to 2010);

- Implement an immediate halt to the exploration and exploitation of new hydrocarbon deposits;

In the alternative :

- Set targets to limit the rise in global average temperature to 1.5°C in order to achieve carbon neutrality by 2050.

- Cover all greenhouse gas (GHG) emissions, both from its operations and from its products (Scopes 1, 2 and 3) over the medium and long term.

- Rely on quantitative indicators such as GHG intensity indicators (GHG emissions per unit of energy) or other appropriate quantitative indicators, to align its targets with a trajectory compatible with a global warming of 1.5°C.

In any case :

- Align a direct and indirect emissions reduction pathway consistent with the Paris Agreement target;

- Reduce its net emissions by at least 40% in 2040 (compared to 2019) with an annual reduction of 1.8%;

- Reduce its hydrocarbon production by 35% in 2040 (compared to 2019) with an annual reduction of 1.7%.

- Reduce its net emissions by at least 40% in 2040 (compared to 2019) with a

annual reduction of 1.8%;

- *Halt exploration and application for new hydrocarbon exploration permits;*
- *Implement a gradual cessation, by 2040, of the exploration and exploitation of hydrocarbon deposits by committing to leave 80% of known reserves in the subsoil in accordance with the objective defined by Law No. 2017-1839 of 30 December 2017, known as the "Hulot" law, and that these requests are already included in the operative part of this assignment, but articulated on the basis of Article L. 225-102-4 of the French Commercial Code.*

It will be held that if the court of first instance is seized of these claims, qualified as complementary by the plaintiffs, based on Articles 1240, 1246 and 1252 of the Civil Code, they are not, however, even in the light of this designation, subsidiary to those based on the provisions of the Commercial Code.

Since this is an independent legal basis that may give rise to the jurisdiction of the court, the impact of these 'additional' claims on jurisdiction will be examined as a matter of priority, logically since the court is already seized and is the court of general jurisdiction and the jurisdiction of the commercial court based on Article L. 721-3 2° and 3° of the Commercial Code is, on the contrary, only a derogatory jurisdiction

On this issue, the pleas developed by the parties will be presented first:

- According to TotalEnergies, the court does not have jurisdiction to examine the claims made on the basis of Articles 1240, 1246 and 1252 of the Civil Code. It seeks the reversal of the order made by the pre-trial judge of the Nanterre court on 11 February 2021 insofar as it rejected the objection of lack of jurisdiction that it raised, considering that only the commercial court has jurisdiction.

First, it argues that these requests, which have already been made on the basis of Article L. 225-102-4 of the Commercial Code (except for the request to identify risks), are not independent of the latter.

According to the appellant, the respondents only intend to allege ecological damage after having voluntarily entered into the pre-litigation procedure provided for in the text of the Commercial Code recalled above and in an "opportunistic" manner with regard to the choice of jurisdiction.

It claims that the basis of these requests is itself the same, namely the shortcomings of the Vigilance Plan, and that they are therefore unnecessary.

TotalEnergie states that Article R. 211-4 of the Code of Judicial Organisation, now Article R. 211-3-26 of the same Code, does not lay down any rule of substantive jurisdiction and that it only provides for the possibility of concentrating territorial jurisdiction in order to rationalise the management of these disputes. It considers that Article L. 211-20 of the same Code is not relevant either, since it also concerns a territorial (and not material) concentration of jurisdiction, stressing that no exclusivity in this respect is expressly provided for.

It intends to argue that the commercial court is competent to hear the ecological damage since it is competent to put an end to this manifestly unlawful disturbance resulting from the imperfections of the Compliance Plan, which it points out has a direct link with the management of the commercial company, since it is a question of modifying its economic model for the next 30 years by taking into account environmental issues, and more generally of modifying the way in which it pursues its corporate purpose.

It claims that the commercial court has exclusive jurisdiction over the main claims based on the duty of care, mentioning at the very end of its conclusions the possibility of separating the proceedings between the commercial court and the judicial court.

- On the contrary, the associations and the local authorities request the confirmation of the contested order. In particular, they claim that the additional claims they make on the basis of Articles 1240, 1246 and 1252 of the Civil Code justify the jurisdiction of the court.

They argue that this is an autonomous and separate basis from the claims based on the provisions of the Commercial Code.

They specify that their requests, formulated in particular under Article 1252 of the Civil Code, are aimed at implementing measures to prevent or halt damage, i.e. in this case the risks of serious environmental damage resulting from uncontrolled global warming, and that they are different from those relating to the Compliance Plan recommended by Article L. 225-102-4 of the French Commercial Code, which also aim to publish a plan that complies with the law and to order TotalEnergies to identify the risks arising from its activities.

They claim that these demands are identical to the main demands for action to reduce greenhouse gas emissions, as these are the only ones that can prevent the risks of serious environmental damage from warming beyond the 1.5°C threshold.

According to the respondents, the court has jurisdiction in principle to hear civil actions for prevention or cessation of wrongful acts against commercial companies, which necessarily fall within the scope of civil liability, which naturally applies to environmental liability.

They recall the existence of Articles L. 211-4 and R. 211-4 of the Code of Judicial Organisation. They claim that these provisions, taken up by Article L. 211-20 of the same Code, give exclusive jurisdiction to certain judicial courts in matters of ecological damage. They indicate that although decree no. 2021-867 of 29 June 2021 repealed paragraph 5 of this text, however, article 4 of decree no. 2021-286 of 16 March 2021 limits the effects of this repeal to disputes filed after 1^{er} April 2021.

In response to the appellant, they maintain that this is indeed a rule of substantive jurisdiction which confers 'exclusive jurisdiction' (Article L. 211-4 of the Code of Judicial Organisation) on judicial courts alone. They add that in a second stage, the legislator confirmed the material and not only geographical jurisdiction of the judicial courts specially designated to hear the action provided for in Article 1252 of the Civil Code with the new Article L. 211-20 of the Code of Judicial Organisation placed in Section 1 relating to the
This is the case in Section 1 on "subject matter jurisdiction" of Title 1^{er} on the "Judicial Tribunal" and not in Section 2 on "territorial jurisdiction".

They oppose any splitting of the case because of the risk of conflicting decisions.

Finally, they claim that the existence of a connection between the main claims and the additional claims and the indivisibility of these claims give rise to the jurisdiction of the court.

With that,

It is shown that the respondents argue that they have suffered ecological damage in order to justify their request for an injunction to be given to TotalEnergies. On page 43 of their writ of summons, there is a point 2.4 entitled: "*as a supplementary point on the obligation to prevent ecological damage*". On page 45, they state "*in order to prevent the occurrence of serious ecological damage resulting from a warming beyond the threshold of 1.5°C, the court will order Total SA to take measures to reduce its emissions in line with the Paris Agreement*".

Article L. 211-4 of the Code of Judicial Organisation provides that :

"The judicial court has exclusive jurisdiction in matters determined by the laws and regulations.

Article R. 211-4 of the Code of Judicial Organisation provided that :

" I. - In civil matters, the judicial courts specially designated on the basis of Article L. 211-9-3 shall have exclusive jurisdiction, in the whole of the département or, under the conditions provided for in Article L. 211-9-3, in two départements, over one or more of the following matters: (...)

5° Actions relating to ecological damage based on Articles 1246 to 1252 of the Code

civil; (...)".

Article L. 211-20 of the Code of Judicial Organisation now provides that :

"Within the jurisdiction of each court of appeal, a specially designated judicial tribunal shall hear :
"1° Actions relating to ecological damage based on Articles 1246 to 1252 of the Civil Code ;
"2° Civil liability actions provided for by the Environmental Code;
"3° Civil liability actions based on the special liability regimes applicable in environmental matters resulting from European regulations, international conventions and laws adopted for the application of these conventions.

Indeed, this provision is contained in sub-section 2 (special jurisdiction for certain courts) of section 1 on "subject matter jurisdiction" of Title 1^{er} on the "Judicial Tribunal".

The result of this text is a desire on the part of the legislator to entrust actions relating to ecological damage only to specially designated judicial courts.

As it is a procedural law, it is applicable to ongoing cases.

There is no reason to make its application conditional on an analysis of the facts giving rise to the alleged environmental damage, since the latter is the only one that determines jurisdiction, regardless of the link that could be established between the Compliance Plan and the management of the commercial company.

Nor is there any reason to pronounce a severance that would give rise to a risk of conflicting decisions.

In the present case, under the terms of Decree No. 2021-286 of 16 March 2021 designating the regional centres specialising in environmental offences pursuant to Articles 706-2-3 of the Code of Criminal Procedure and L. 211-20 of the Code of Judicial Organisation (...), the judicial court of Nanterre has jurisdiction over the area of jurisdiction of this court, so that the order appealed against, which retained its jurisdiction, will simply be upheld.

2 - On ancillary claims

The order will also be confirmed in its provisions relating to the irreducible costs and costs of the first instance.

As the losing party, TotalEnergies will also have to pay the costs of the appeal with distraction to the benefit of the lawyers who have requested it, and will not be able to claim the allocation of irreducible costs.

It is unfair to leave the respondents to bear the unrecoverable costs incurred on appeal. The appellant will therefore be ordered to pay them together the sum of 12,000 euros on the basis of Article 700 of the Code of Civil Procedure.

THEREFORE

The Court, ruling by default and as a last resort, CONFIRMS the order made on 11 February 2021,

Adding,

ORDERS TotalEnergies to pay to the associations Notre Affaire à tous, Sherpa, Zéa, Eco-maires (Association Nationale des Maires et des Elus Locaux pour l'Environnement et le Développement durable) and France Nature Environnement, to the municipalities of Arcueil, Bayonne, Bègles, Bize-Minervois, Correns, Grenoble, la Possession, Mouans-Sartoux, Nanterre, Sevran and Vitry-Le-François, the EST Ensemble establishment and the Centre Val-de-Loire region the sum of 12,000 euros in application of the provisions of Article 700 of the Code of Civil Procedure in appeal cases, with the responsibility for sharing this amount equally,

REJECTS all other applications,

DECLARES that TotalEnergies shall bear the costs of the appeal, which may be recovered in accordance with the provisions of Article 699 of the Code of Civil Procedure by the lawyers who have requested it.

Judgment pronounced publicly by placing at disposal at the court registry, the parties having been previously notified in accordance with the conditions provided for in the second paragraph of article 450 of the code of civil procedure, signed by Mrs. Nicolette GUILLAUME, President and by Mrs. Elisabeth TODINI, Clerk, to whom the minute of the decision was handed over by the signatory magistrate

The Registrar,

The President,