

CLIMATE HOMICIDE:

ARE FOSSIL FUEL COMPANIES GETTING AWAY WITH **MURDER?**

Compilation of legal analysis by Greenpeace Netherlands

The corkboard features several elements:

- A map of Europe with yellow flags marking the United Kingdom, Netherlands, France, Czechia, and Italy.
- A blue sticky note with the text "Fossil fuel companies" pinned to the map.
- A red string connecting the sticky note to another blue sticky note at the bottom that says "climate disasters".
- A second blue sticky note at the bottom right says "lost lives".
- A newspaper clipping at the bottom left from *The Guardian* with the headline: "Fossil fuel firms owe climate reparations of \$209bn a year, says study".
- Other photos include a blackened hand, a destroyed building, and fingerprints.



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Asbestos kills. Tobacco kills. These are classic examples of the ways in which human lives are endangered by products which are now regulated. For decades, the Fossil Fuel Industry has known¹ that its greenhouse gas (GHG) emissions would cause harmful environmental consequences, which in turn would endanger human and environmental health². The scientific proof is clear. Yet the industry continues to spread disinformation and to resist regulation. Academic lawyers in the United States³ are already beginning to use the term “Climate Homicide” to describe this.

¹ <https://www.theguardian.com/business/2016/apr/13/climate-change-oil-industry-environment-warning-1968>

² <https://www.unep.org/news-and-stories/story/how-do-greenhouse-gases-actually-warm-planet>

³ Arkush, David and Braman, Donald, *Climate Homicide: Prosecuting Big Oil For Climate Deaths* (January 23, 2023). *Harvard Environmental Law Review*, Vol. 48, No. 1, 2024, <https://dx.doi.org/10.2139/ssrn.4335779>

INTRODUCTION

Due to the global scale of direct and indirect damage to people's lives and health, the World Health Organization (WHO) has identified climate change as the greatest human health challenge and a risk that seriously threatens all aspects of society.⁴

There is strong evidence that combustion of fossil fuels, led by Fossil Fuel Companies (FFCs), is the dominant cause of climate change.⁵ In the global context, around 79% of emissions of greenhouse gases are produced by the combustion of fossil fuels.⁶

The Lancet, arguably the world's leading scientific and medical journal, has gone so far as to state that health risks are becoming unacceptably high and that the lack of emission reductions threatens human life and health⁷. The 2023 report states that "with extreme weather records breached in all continents through 2022, risks to human health and survival are increasing across all the dimensions monitored. Around the world, people face increased heat-related illness and extreme weather-related risks, infectious disease spread, and worsened food insecurity."⁸



During 1980-2017, more than 90,000 deaths across Europe were caused by climate - and weather related - events, according to the European Environmental Agency. Furthermore, 630,000 deaths per year in Europe are attributed to environmental stressors, such as pollution.⁹ According to the European Environment Agency, environmental pollution resulting from various stressors, leads to diseases, like cancer, heart disease, stroke, respiratory disease and neurological disorders.¹⁰

According to a report by the Joint Research Center at the European Commission, in a scenario with 3°C global average warming by the end of this century, and in case of no adaptation, 96,000 fatalities/year could result from extreme heat, compared to 2,750 annual deaths at present. Curbing global warming to 1.5°C would limit mortality from extreme heat to around 30,000 fatalities/year.¹¹

4 UNFCCC World Health Organisation 2018, COP 24 Special Report Health & Climate Change p.10.

5 Intergovernmental Panel on Climate Change (2023). *Climate change 2023, synthesis report, summary for policy makers*, p.4. 6 Ibid.

7 Watts 2018, *The Lancet*, *The 2018 Report of the Lancet countdown on health and climate change* p.2479.

8 *The 2023 report of the Lancet Countdown on health and climate change: the imperative for a health-centred response in a world facing irreversible harms*, p. 39, [https://doi.org/10.1016/S0140-6736\(23\)01859-7](https://doi.org/10.1016/S0140-6736(23)01859-7)

9 European Environment Agency (2020). *Healthy environment, healthy lives: how the environment influences health and well-being in Europe*.

10 Ibid.

11 https://joint-research-centre.ec.europa.eu/system/files/2020-05/pesetaiv_task_11_heat-cold_extremes_final_report.pdf

METHODOLOGY

In March 2023, David Arkush¹² and Donald Braman¹³ published “Climate Homicide: Prosecuting Big Oil For Climate Deaths” in the [Harvard Environmental Law Review](#), examining activists’ claims that executives of large oil companies are “mass murderers”. They note: “no prosecutor in any jurisdiction is bringing homicide charges of any kind against fossil fuel companies (FFCs) for even a single death related to climate change.” They conclude: “They should. The case for homicide prosecutions is increasingly compelling.”



Inspired by this work, Greenpeace Netherlands has asked leading lawyers in Europe: can fossil fuel companies be criminally prosecuted for homicide in your country?

Countries covered include: Czechia, France, Italy, the Netherlands and the United Kingdom.

The applicability of crimes related to homicide was analysed. Other possible alternatives under national criminal laws were also suggested, where appropriate.

Over the past decade, litigation has become a powerful tool to speed up the fight against climate change. Landmark decisions have been made by administrative and civil courts which significantly impact the future of climate justice. Criminal courts, on the other hand, are a less well-trodden path to hold fossil fuel companies accountable. According to Reinhold Gallmetzer, prosecutor at the International Criminal Court¹⁴, climate crimes are under-prosecuted, for several reasons, including: a misconception that their prosecution has an uncertain legal basis; the low priority given to them; their under-reporting to law enforcement agencies; and the issue that information made available by non-government organisations is often insufficient to trigger criminal investigations.¹⁵

¹² Fellow, Roosevelt Institute; Director [Public Citizen's Climate Program](#).

¹³ Associate Professor of Law, George Washington Law School, Washington DC.

¹⁴ Prosecution Appeals Counsel at the International Criminal Court; and Founder & Chairperson Center for Climate Crime Analysis.

¹⁵ Reinhold Gallmetzer, <https://www.ecosystemmarketplace.com/articles/its-tim/>

A 2021 communication from the European Commission to the European Parliament and the council stated that “environmental crime is a growing concern causing significant damage to the environment and to human health within and beyond the EU and to the economy. According to Interpol and the United Nations Environment Programme, environmental crime is the fourth largest criminal activity in the world after drugs trafficking, human trafficking, and counterfeiting, growing at a rate between 5%-7% per year.”¹⁶



¹⁶ Communication from the commission to the European parliament and the council - on stepping up the fight against environmental crime - <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0814> . Also, read the Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC - https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/environmental-crime_en#revision-of-the-directive

COMPILATION OF ANALYSIS

CZECHIA

Below is the relevant analysis of the national Czech criminal law that was conducted by Frank Bold Advocáti, a prominent law firm based in Prague, Czechia.

Under Czech criminal law, fossil fuel companies (FFCs) could theoretically be prosecuted for the reckless endangerment of human life (called negligent public menace in the context of the Czech criminal law) (A), and negligent homicide (B).



A) RECKLESS ENDANGERMENT OF HUMAN LIFE

The reckless endangerment of human life is covered in the Section 273 of the Criminal Code, dealing with the negligent public menace.

As for the culpable mental state (*mens rea*) negligence is sufficient. It has to be proven that the offender was either aware that he may violate or endanger an interest protected by the Criminal Code, but without adequate reasons he believed that he would not cause such violation or endangerment, or was unaware that his conduct may cause such violation or endangering although he could and should have been aware of it considering the circumstances.

As for the physical elements of crime (*actus reus*), Section 273 of the Criminal Code defines it as “causing public menace by exposing people to a hazard of death, a grievous bodily harm or property of another to a hazard of extensive damage by causing fire or flood or detrimental effect of explosives, gas, electricity or another similarly dangerous substances or powers or commits other similar dangerous conduct, or elevates such public menace or aggravates its averting or mitigation.”

To apply the above-mentioned norms on the conduct of FFCs, it is clear that the FFCs are aware of the negative effects and risks that production, sale and combustion of fossil fuels cause to our climate, lives and health,¹⁷ but without adequate reason they might believe this negative effect will not occur, for instance thanks to some future invention that will remove all of GHG emissions from the atmosphere. However, as such hopes remain unrealistic, the FFCs conduct fulfils the elements of negligence and potentially even of indirect intention.

All of the physical elements of negligent public menace could be met as well. The combustion of fossil fuels by FFCs exposes people to the hazard of death, as well as grievous bodily and proprietary harm by causing detrimental greenhouse effect in the atmosphere. The large-scale greenhouse effect and related climate change is similarly dangerous as fire, flood or an explosion.



¹⁷ On the history of FFCs knowing and keeping secret their detrimental effect on climate see for instance Rich, N. (2019). *Losing Earth: The Decade We Could Have Stopped Climate Change*. Pan Macmillan.

The punishment imposed on FFCs for committing negligent public menace might entail dissolution of the FFC, prohibition of its activity (for maximum of 20 years), as well as financial penalties. Lastly, the court may impose the penalty of publication of the judgement in the media if the public needs to be informed of the conviction, especially given the nature and seriousness of the crime, or if the interest in protecting the safety of people and society requires it. The above-mentioned penalties might be combined.

The statute of limitations amounts to 3 years after the offence was completed. However, as the above-mentioned conduct of FFCs is still ongoing, the case could be framed in such a way to fall within the statute of limitation in order to show that it didn't start to run at all. Therefore, there is no limitation to prosecute the FFCs for negligent public menace.

B) NEGLIGENT HOMICIDE

Criminal Code addresses negligent homicide in Section 143. The offender of this crime is defined as any person that “causes the death of another person out of negligence”.

It is evident from the letter of law that as for the *subjective aspect of the criminal offence (mens rea or culpability)* negligence is deemed sufficient. As opposed to homicide the perpetrator does not act with intent, on the contrary, intent must be always excluded (even the intent to cause bodily harm). Therefore, the offender is criminally liable even if he did not know that his actions could kill another person, but considering the circumstances he should and could have known. In this way he should have and could have at least imagined that the course of events that occurred could lead to the death of the victim.¹⁸ Given the current state of knowledge, the FFCs must have a clear understanding of the detrimental impacts and hazards associated with their activities regarding our climate, well-being, and overall health. For these reasons, FFCs should be clearly able to imagine that their actions can also lead to the death of human beings. Thus, it can be concluded that the condition of negligence could be fulfilled.

Actus reus as the *objective aspect* of a reckless homicide is quite similar to the *actus reus* of homicide. The act consists of killing, i.e. causing the death of another person and is completed when the victim dies as a result of the offender's conduct. The same conditions as for homicide will apply - prosecution would have to prove that the actions of FFCs (combustion of fossil fuels) were the cause of death of another person. As already mentioned above in the chapter regarding causation, if there are several causes of the consequence, the perpetrator's actions must represent a substantive or fundamental cause, without which the consequence would not have occurred.¹⁹ In connection with this study, it would be required to gather opinions of the relevant experts in order to prove that the activities of FFCs are a substantive or fundamental cause of the death of the relevant victims. The question of causation relies heavily on evidence.

The types of penalties mentioned above apply to both criminal offences (A and B).

The basic statute of limitations for reckless homicide is 5 years but in some cases it can be 10 or 15 years (e.g. death of two or more persons). This period starts from the moment of the completion of the offence, but as already established the activities of FFCs are still happening, therefore there is possibility that the conduct of FFCs could be interpreted as still ongoing which would suggest that the statute of limitations did not start to run at all.

¹⁸ See Ščerba, Filip et al. (2022). *Criminal Code - Commentary. 1st edition (2nd update)*. C. H. Beck Publishing, s.r.o.
¹⁹ Resolution of the Supreme Court, Nr. 15 Tdo 944/2015, issued on February 17, 2016.

THE NETHERLANDS

Below is the relevant analysis conducted by **Jebbink Soeteman Advocaten**, a prominent law firm based in Amsterdam, the Netherlands. The analysis explores the endangerment of public health (or the life of another) (A), and provides alternatives under Dutch criminal law (B).

In recent years, pressure on companies known to cause significant environmental pollution “to clean up their act” or to suffer the (legal) consequences of their failure to do so has been mounting in the Netherlands.

In May 2021, a complaint representing 800 persons and organisations was [reportedly](#) filed against steel-making company Tata Steel and its directors for intentionally and unlawfully releasing substances likely to endanger public health onto or into the soil, into the air or into the surface water, resulting in a criminal investigation that is still pending.

In September 2023, at least 2,700 criminal complaints alleging similar conduct were [reportedly](#) filed against the directors of chemical company Chemours and its predecessor DuPont.



A) ENDANGERMENT OF PUBLIC HEALTH (OR THE LIFE OF ANOTHER)

At present, a possibly promising road to hold FFCs criminally liable is Article 173a or Article 173b of the Dutch Criminal Code (DCC). Both articles require the unlawful release of a particular substance (or substances) that endangers public health (or the life of another). This requires – *inter alia* – proof that (a) the substance endangers public health, (b) the FFC at trial can be held responsible for releasing that substance, and (c) releasing that substance is unlawful. In addition, Article 173a DCC requires intent, whereas Article 173b DCC requires negligence on the part of the FFC.

It is worth noting that Article 173a DCC (and Article 173b DCC) only requires that releasing the substance *endangers* public health or the life of another, meaning that (a) no *actual* harm needs to have been done, and (b) endangering future public health or the lives of others suffices.

One last requirement is that the release of the substance needs to be unlawful. A criminal prosecution for violation of Article 173a/b DCC of an FFC, if there is proof that it acted outside the terms of its permit(s), is a viable option.

B) ALTERNATIVES UNDER THE ECONOMIC CRIMES ACT

It is a common feature of Dutch prosecution policy to prosecute such companies for violating environmental rules and requirements, insofar as punishable under the Economic Crimes Act (*Wet op de economische delicten*).

The Economic Crimes Act is a collective law, which criminalises various violations of environmental laws. One of the offences included in the Environmental Crimes Act is the intentional violation of regulations attached to environmental permits.

Due to the fact that Dutch criminal law does not require proof of malicious intent, in such cases proof that the legal entity acted knowingly and willingly suffices in order to convict. Generally, that will not be difficult to prove, if only because in economic life, people always act deliberately.²⁰

Among the environmental rules and regulations criminally punishable on the basis of the Economic Crimes Act is also the Environmental Management Act (*Wet Milieubeheer*).

Chapter 16 of that Act implements the European Emissions Trading Directive (2003/81/EC), among others prohibiting the exploitation of a greenhouse gas plant without a permit, the prohibition to emit more than for which one has emission rights, the obligation on some companies to submit an emission report to the Dutch Emission Authority, and the obligation of these companies to comply with a validated monitoring plan that contains specific data about the installation and emissions.

At present, these prohibitions are mainly enforced by use of administrative law, but the Act does allow for criminal prosecution. According to the Explanatory Memorandum, this is particularly the case when violation of the rules derived from the European Emissions Trading Directive are accompanied by ‘aggravating circumstances’.²¹



²⁰ HR 18 March 1952, NJ 1952, 314 (annotated by Röling, who stated that “one simply does not canned beans out of non-chalance”).

²¹ Ibid (p. 120-121).

THE UNITED KINGDOM

Below is the relevant analysis that was conducted by Henry Blaxland KC and Paul Kingsley Clark, from Garden Court Chambers based in London, United Kingdom. The analysis explores corporate manslaughter under The Corporate Manslaughter and Corporate Homicide Act of 2007.

CORPORATE MANSLAUGHTER

The Corporate Manslaughter and Corporate Homicide Act 2007 ('CMCHA') applies to the whole of the UK, and creates a criminal offence of corporate manslaughter in England, Wales and Northern Ireland (the same offence is referred to as 'corporate homicide' in Scotland).

It was introduced to remove certain barriers to the prosecution of large organisations where a corporate management failing has led to death. Broadly, its effect is to impose criminal liability upon an organisation where the way in which its activities are managed or organised (by its senior management) causes death and this amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

It replaces the previous law of involuntary manslaughter by gross negligence as applied to organisations. In particular it abolishes the 'identification principle' – i.e. the requirement of proving that a 'directing mind' – i.e. an individual at the very top of the company, who could be said to embody the company in his/her actions and decisions – was personally guilty of manslaughter (*R v P&O European Ferries (Dover) Ltd.*²²).

One of the effects of the identification principle was to create a barrier to the prosecution of large companies with complex management structures: in general, only smaller companies with hands-on directors had been convicted of corporate manslaughter.

In contrast to the identification principle, under the CMCHA the court considers management systems and practices across the organisation. It is concerned with how an activity is managed and the adequacy of those arrangements. The offence is triable in the Crown Court only in England and Wales, and so would involve a trial by jury. However, an organisation cannot be prosecuted under the Act without the consent of the Director of Public Prosecutions.



²² [1991] 93 CR App R 72.

If convicted, the penalty is an unlimited fine (section 1(6)). As the offence can only be committed by an organisation (rather than an individual), imprisonment is inapplicable. In addition to a fine, the courts have power also to impose the following:

- A. Remedial order. This requires the organisation to take steps to remedy the management failure, including any deficiencies in health and safety policies, systems or practices (section 9).²³
- B. Publicity order. This requires the organisation to publicise the conviction (section 10).²⁴
- C. Compensation order. Under the Sentencing Act 2020, the court should consider whether to order the defendant to pay compensation to the victim's family.

The question is whether a prosecution under the CMCHA might be pursued against one or more FFCs for their activities in producing and marketing fossil fuels. The following elements need to be proved:

- A. The defendant is a qualifying organisation;
- B. The organisation caused a person's death;
- C. There was a relevant duty of care owed by the organisation to the deceased;
- D. There was a gross breach of that duty
- E. A substantial element of that breach was in the way in which its activities were managed or organised by senior management; and
- F. The defendant does not fall within one of the exemptions for prosecution under the Act.



The key challenges (as regards the possibility of prosecution of FFCs for corporate manslaughter on the basis of the contribution to emission of greenhouse gases) will be in proving the requirements of causation and gross breach of duty.

Whilst challenging, we do not consider the causation issue to be insurmountable; and developing jurisprudence as to civil liability suggests that it might well be possible to establish the content of an effective duty of care.

²³ A remedial order may only be made where the prosecution make an application for such an order after consulting the appropriate regulatory authority (or authorities), such as the Health and Safety Executive, Office of Rail Regulation, Food Standards Agency or local authority. The remedial order can require specific steps to be taken within a given time scale. Failure to comply with the order is a criminal offence, punishable by an unlimited fine.

²⁴ A publicity order may require publication in a specified manner of the fact of conviction, specified particulars of the offence, the amount of any fine and the terms of any remedial order. Publicity orders are a new sanction in England and Wales and are only available for offences under the Act committed on or after 15 February 2010 (Corporate Manslaughter and Corporate Homicide Act 2007 (Commencement No. 2) Order 2010 (SI 2010/276)). It is a criminal offence not to comply with the order, punishable by an unlimited fine.

ITALY

Below is the relevant analysis conducted by Alessandro Gariglio, lawyer at the Bar of Alessandria, Italy, which reflects on the different environmental crimes under Italian criminal law.

DEATH OR INJURY AS A CONSEQUENCE OF ENVIRONMENTAL POLLUTION

Title VI bis of Book Two of the Criminal Code provides for two articles which are relevant to our analysis:

(a) Article 452 bis, “environmental pollution”, with the aggravated provision of

(b) Article 452 ter, “death or injury as a consequence of the crime of environmental pollution”.

The provision of Article 452 bis is particularly relevant in three aspects: the first aspect is the fact that, for the first time, environmental pollution as the direct cause of death of an individual is taken into consideration from a regulatory point of view. The second limiting aspect is that only the negligent hypothesis is taken into consideration. The third aspect is the attribution of responsibility to society and not only to natural persons.

Legislative Decree 231 of 2001 regulates the administrative liability of legal persons, companies²⁵ and associations, including those without legal personality, for offences resulting from crime.

Article 25 undecies provides the basis for liability for the environmental crimes relevant to companies which are referred to in Article 452 bis, among others, of the Criminal Code.

In order to hold the FFC and/or their managers liable for climate homicide, it is necessary to prove the constituent elements as required by Articles 40, 41 and 42 of the Criminal Code. In particular, the scientific correlation between the pollution committed by FFCs, climate change and the event of death must be demonstrated: this constitutes evidence of the objective element of the crime. On the other hand, it is necessary to demonstrate, from a subjective point of view, that the industrial choices of the FFCs have been made with full knowledge and awareness of the negative effects on the climate and consequently on human health.



²⁵ Sanctions for a company can only be economic or by disqualification.

The proof required to ascertain the environmental crime can be effectively achieved by relying on results of specific medical-epidemiological studies, which demonstrate the actual endangerment of collective safety, without the further need to verify singular harmful events which occurred against individuals²⁶.

In order to demonstrate a causal link between the climate-altering conduct of the FFC, the climatic alteration, and the death event of the individual subject, even if only as a contributing cause as indicated by Article 41, paragraph 1 of the Criminal Code²⁷.



Another way to prove the causal link is to resort to laws of statistical-epidemiological coverage, which is a frequently practised method, especially when there are large numbers of people involved and a non-univocal cause of death, and where medico-legal coverage for each individual is absent.

Regarding the use of epidemiological studies to prove the objective element of conduct, the doctrine proposes interesting alternative readings aimed at overcoming the serious deficiency of the judicial system which, until now, has not had the strength to pursue, punish and sanction deaths resulting from conscious environmental and climatic alterations. An accredited thesis to overcome this limit is that of the alternative assessment²⁸.



26 Barresi, "Legal Asset and Causal Assessment in the Crime of Death or Injury as a Consequence of the Crime of Environmental Pollution" <https://archiviopenale.it/File/DownloadArticolo?codice=15c5414c-fd20-4587-ba03-290bb0591f05&idarticolo=15276>

27 "does not exclude the causal relationship between the act or omission and the event."

28 L.Masera, "Epidemiological evidence of an increase in mortality and criminal liability", in *Diritto Penale Contemporaneo*, 4/2014, p. 343.

FRANCE

Below is the relevant analysis that was conducted by Luca d'Ambrosio, of counsel at Lysias Partners and Associate Researcher at University Paris 1 Panthéon-Sorbonne. The analysis explores (A) Involuntary manslaughter and bodily harm, and (B) Refraining from fighting a disaster likely to create a danger for people's safety under French criminal law.

In France, climate litigation has already entered the criminal field. Between 2020 and 2022, four associations filed several complaints – against the company TotalEnergies SA – for the offences of pollution and deceptive commercial practices²⁹. The same group of associations filed a new complaint in September 2023. The plaintiffs accuse the company, this time, of having committed several offences against persons: abstaining from fighting a disaster creating a danger for people's safety, involuntary manslaughter, involuntary attacks on personal integrity and destruction or damage to property belonging to others likely to create a danger for people³⁰. Echoing the facts already alleged against the firm before the civil judge, under the 2017 duty of care law, the plaintiffs point out the impacts that the drilling project led by the French firm in Uganda is causing to local populations – impacts “which would be akin to *climaticide*”³¹. Beyond these specific actions, the plaintiffs more broadly accuse the firm of culpable inaction, which means not putting in place the necessary measures to fight against climate change – “a ‘disaster’ which already affects half of the world's population and which the oil company should be obliged to avoid”³².

The above mentioned complaints challenge the legal person's criminal liability. Recognised by the “New Criminal Code” of 1994, the legal person's criminal liability regime under French law does not contain any restriction on legal entities likely to be subject to criminal liability: consequently, any commercial company, French or foreign, committing an offence on the territory of the Republic may be held criminally liable under French criminal law³³. No restrictions are provided either for offences attributable to legal entities: a legal person's criminal liability can, in principle, be engaged for any offence under French criminal law.



29 Wild Legal, Press Release, «Nous accusons TotalEnergies de mensonge climatique», 28 January 2023 (available at <https://www.wildlegal.eu/post/nous-accusons-totalenergies-de-mensonge-climatique>).

30 Wild Legal, Press Release, «Nous attaquons TOTAL au pénal pour abstention de combattre le sinistre climatique...», 3 October 2023 (available at <https://www.wildlegal.eu/post/cp-nous-attaquons-total-au-penal-pour-abstention-de-combattre-le-sinistre-climatique>).

31 Statement of W. Bourdon to Monde («TotalEnergies visé par une plainte au pénal pour ‘abstention de combattre un sinistre’ et ‘homicide involontaire’», 2 oct. 2023).

32 Ibid.

33 French law explicitly excludes the possibility of incurring the State's criminal liability.

A) INVOLUNTARY MANSLAUGHTER AND BODILY HARM

The offence of involuntary manslaughter is defined by Article 221-6 of the Criminal Code as “act which caused, under the conditions and according to the distinctions provided in Article 121-3, by clumsiness, imprudence, inattention, negligence or breach of an obligation of caution or safety imposed by law or regulation, the death of others”. It is punishable by three years of imprisonment and a fine of 45,000 Euros.

1- Regarding the characterisation of fault, the French legal system does not deviate from other European systems.

Unintentional offences can be constituted by both a fault of commission and a fault of omission. In the latter case, the agent will be accused of a deviation from the normal diligence that the legal system expects of him “taking into account, where applicable, the nature of his missions or functions, his skills as well as the power and means at his disposal”³⁴. The standard of conduct can, for its part, arise both from a textual source (“obligation of prudence or safety provided for by law or regulation”³⁵) and from a non-textual source. In this last scenario - which the texts refer to through the terms “imprudence” or “negligence” - there is by definition no particular regulation of the agent’s activity: this leaves the judge free to determine the standard of conduct for comparison, namely the behaviour that an averagely diligent or prudent person would have followed in the given case.

In matters of climate change, the judge will have to determine the standard of conduct that a moderately diligent company would follow in this area to limit such a phenomenon as well as the harm to individuals that results from it. Such an operation is far from ordinary: due to the difficulty of finding specific obligations in national law, the French judge should agree to look beyond both the national legal order, and the legal order itself. It is in fact at the intersection of soft law texts and scientific reports – which punctuate the still very nebulous horizon of “corporate climate responsibility” – that the national judge will be able to find the necessary elements to establish a standard of diligence applicable in the field of climate change³⁶. With this in mind, the judge might/could shift the focus first towards the OECD Guidelines for Multinationals. This soft law text was recently updated precisely to strengthen the recommendations to multinational companies in terms of reducing greenhouse gas emissions. These recommendations relate in particular to the scientific basis of corporate climate strategies, to the forecasting of specific climate change mitigation objectives in the short, medium and long term, as well as to the inclusion – “to the extent possible” - of indirect emissions known as Scope 3 in the climate change mitigation objectives³⁷. The judge might/could then integrate this standard by looking towards the IPCC + 1.5°C Report of 2018 and towards the Net-Zero Emissions (NZE) roadmap that the International Energy Agency (IEA) has developed in 2021 for the global energy sector. These documents envisage trajectories for reducing greenhouse gas emissions to achieve the objectives - now internationally agreed upon - of carbon neutrality in 2050 and a maximum +1.5°C increase in the average temperature of the planet by 2100³⁸. All of these elements could thus offer the judge a sufficiently precise “scale” to measure the negligence of the company concerned.

³⁴ Article 121-3, alinéa 3 of the Criminal Code.

³⁵ Ibid.

³⁶ On the Climate Change due diligence standard, see L. d’Ambrosio, «Face à l’urgence écologique: les promesses de la corporate due diligence», *Revue juridique de l’environnement*, 2022/HS21 n° spécial, p. 203-223.

³⁷ OCDE, *Principes directeurs à l’attention des entreprises multinationales*, mise à jour 2023.

³⁸ International Energy Agency, *Net Zero by 2050. A Roadmap for the Global Energy Sector*, mai 2021.

2- Causation between the fault and the damage is the most difficult element to characterise in the context of climate change.

The common reasoning based on the “but for test” is likely to come up against some difficulties when it comes to characterise each of the three segments of climate change causation: the contribution of anthropogenic emissions to the increase of the planet’s average temperature; the latter and the so-called extreme events (droughts, hurricanes, floods, heat waves and summer heat) that occur locally; finally, these events and the harm - in this case the death or injury of one or more individuals. However, such difficulties are not insurmountable.

Concerning the first segment of climate change causation, the French judge could apply the approach already developed to characterise causation of offences committed by several agents. In this context, it should first be established that each act is a “necessary condition” for the harm and secondly that each agent is linked to the offence by its participation. Whereas the latter element may be easily established based on the company’s historical emissions, the former element can prove more problematic. The French judge should indeed agree to reverse the common reasoning on causation by accepting the postulate that *all* greenhouse gas emissions produced by the FFC (or at least by the *Carbon Majors*) have a causal power on global warming and, consequently, on the damage incurred by the offences of involuntary manslaughter and bodily harm³⁹.

The second segment of climate change causation is the least problematic: the science of attribution, which studies the causal relationships between climate disruption of anthropogenic origin and extreme events, now offers very precise and in-depth analyses making it possible to assert, for example, that waves of heat affecting Europe would have been “extremely rare” without human-caused climate change⁴⁰. Such studies therefore seem to offer a sufficient nomological basis to found the causal reasoning of the criminal judge.

Finally, the third segment of causation - between the extreme event and the death or injury - could be established with less or more difficulties depending on the extreme event.

B) REFRAINING FROM FIGHTING A DISASTER LIKELY TO CREATE A DANGER FOR THE SAFETY OF PEOPLE

Article 223-7 of the Criminal Code provides that: “Anyone who voluntarily refrains from taking or instigating measures enabling, without risk to himself or to third parties, to combat a disaster likely to create a danger for the safety of persons is punishable by two years of imprisonment and a fine of 30,000 Euros”.

Introduced in 1992 without producing case law, the offence of abstention from fighting a disaster has been used in cases relating to major disasters of natural or human origin: massive pollution (*Erika* case), Covid 19 pandemic, and climate change (*Total* case). Although the offence was not

³⁹ A similar reasoning has been developed with regard to exposure to asbestos: adherence to the thesis according to which any exposure to asbestos would have increased the risk of contracting a cancerous pathology would make it possible to incur the criminal liability of all managers who succeeded each other at the head of a company during the exhibition. It is obvious that such reasoning leads to shifting causal reasoning from the area of damage to that of risk.

⁴⁰ World Weather Attribution, *Extreme heat in North America, Europe and China in July 2023 made much more likely by climate change*, 25 July 2023 (“Without human induced climate change these heat events would however have been extremely rare. In China it would have been about a 1 in 250 year event while maximum heat like in July 2023 would have been virtually impossible to occur in the US/Mexico region and Southern Europe if humans had not warmed the planet by burning fossil fuels”).

upheld in the first two cases, it plays a central role in the complaint filed in September 2023 against the company Total for its climate inaction. The reason is easy to understand: the offence of abstention from fighting a disaster punishes simple omission, regardless of the requirements linked to damage and causation. The decisive elements to characterise this offence therefore lie in (i) the existence of a disaster likely to create a danger for people and (ii) the voluntary (iii) abstention from combating it.

The notion of disaster is polysemic: the disaster can be of human or natural nature, accidental or criminal. It does not consist of a one-off event either: as the Court of Cassation recalled with regard to the Covid-19 pandemic, the notion of loss “is not limited to a precise and determined fact in its materiality, but concerns a protean event taking place over time, which forces the investigating judge to provide information on the whole phenomenon which is by nature indivisible”⁴¹. In the absence of additional details - but reasoning by analogy with other offences provided for in the French Criminal Code, we can affirm that the dangerousness of the disaster must be scientifically proven in the sense that there is no uncertainty about the risks it creates for the safety of people. These elements in the definition undoubtedly make it possible to qualify climate change as “sinister” under the terms of Article 223-7 of the Criminal Code. Its reality, as well as its consequences on human beings, are now widely accepted and documented as evidenced by the sixth IPCC Report “Impacts, adaptations and vulnerabilities” published in February 2022.



⁴¹ Cour de Cassation, 20 janvier 2023, n° 22-82.535.

The element of abstention from fighting the disaster involves identifying an obligation to act which has not been respected. The characterisation of abstention under Article 223-7 should not require a textual obligation: the legislator has always made such a requirement explicit since he considered it necessary to delimit the responsibility of the author. On the other hand, it seems necessary to demonstrate that the author had the possibility of intervening to combat the disaster, namely that, given the circumstances, he deployed all his means to neutralise the disaster or to limit its effects. In this regard, the judge should consider, on the one hand, the world's main emitters of greenhouse gases as actors likely to intervene and limit the consequences of climate change. The judge should also measure the abstention of the company concerned in the light of the climate diligence obligations which emerge at the confluence of legal and scientific standards.

The climate standard of diligence would, where appropriate, be used to characterise the material and non-moral element of the offence of abstaining from fighting a disaster. This offence is in fact an intentional offence. It will be necessary to ensure, on the one hand, the knowledge of the person concerned of the incident as well as its dangerousness for the safety of people and, on the other hand, the desire of the person concerned not to fight it. Regarding knowledge of the disaster, it is clear that if none of the world's main emitters of CO₂ could today continue to ignore the origins and consequences that climate change inflicts on humans (and on other beings), studies have reportedly shown that some of them (ex: [Shell](#), [Total](#)) have known about this since the 1970s⁴². Finally, regarding the desire not to fight against climate change, it would be appropriate to offer the judge particularly significant elements: from this perspective, in addition to the documents structuring the company's climate strategy, other elements - such as lobbying actions, greenwashing practices, massive investments in fossil fuels, or "carbon bombs"⁴³ - can be usefully mobilised to characterise the desire not to act against climate change.

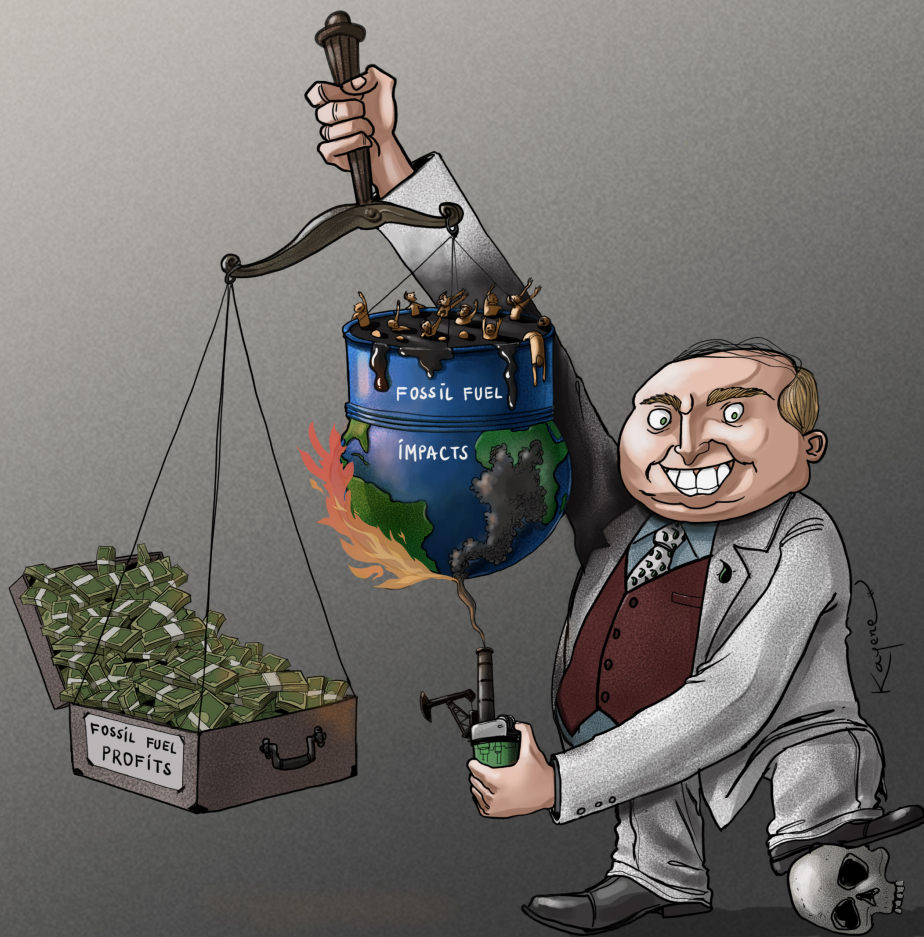
⁴² *Total, v. Christophe Bonneuil, Pierre-Louis Choquet, Benjamin Franta, « Early warnings and emerging accountability: Total's responses to global warming, 1971-2021 », Global Environmental Change, 2021.*

⁴³ *By this expression, we refer to fossil projects which condemn, according to a survey published in October 2023, fossil extraction projects which alone ruin efforts to limit the rise in the average temperature of the planet to 1.5 °C. See the website [Carbonbombs.org](#)*

KEY FINDINGS AND CONCLUSION

The following key findings show that there could be legal basis to prosecute fossil fuel companies for the following crimes:

- Reckless endangerment of human life (or negligent public menace), and negligent homicide under Czech law;
- The endangerment of public health (or the life of another) under Dutch law;
- Corporate manslaughter under UK law;
- Death or injury as a consequence of environmental pollution under Italian law;
- Involuntary manslaughter and bodily harm, and refraining from fighting a disaster likely to create a danger for people's safety under French law.



In conclusion, although criminal law offers relevant norms and instruments, which could be used to end the impunity of fossil fuel companies, and to make them accountable for the lives they are endangering, they are being under-used in that particular context in the history of criminal law.

In order to test those laws and put them more fully into practice in the context of climate homicide, strategic litigation focused on criminal law is crucial. The criminal [complaint](#) filed by Darwin Climax Coalitions, Sea Shepherd France, Wild Legal and Stop EACOP-Stop Total in Uganda against TotalEnergies for its “climaticide actions” is an important development in that regard.

The recollection of analysis presented above aims at widening the scope of discussion around the criminal liability of fossil fuel companies for the lives they are endangering, as well as inspiring further research - and action - across European countries where these companies are headquartered.

DEMANDS

Fossil fuel companies must be held legally accountable for endangering lives. Fossil fuel greed should not be prioritised over the safety and survival of people and the planet.

To put an end to fossil-fuelled deaths and harms, public prosecutors must hold fossil fuel companies to account in the criminal courts, and must call for the investigation of their crimes.

To make sure the planet is habitable for generations to come, governments, legislators, and courts must:

- Hold the fossil fuel industry accountable for the lives they endanger;
- Stop all new fossil fuel developments;
- Commit to a rapid and fair phase-out of fossil fuels;
- Make polluters pay for the climate destruction they cause.