

A HANDBOOK FOR PRACTITIONERS | FRANCE

# Civil Liability for Human Rights Violations



## AUTHORS

### Lucie Chatelain

Advocacy and Litigation  
Manager  
Sherpa

[PROFILE](#)

### Dr Virginie Rouas

Research Associate  
School of Oriental and  
African Studies (SOAS)  
University of London

[PROFILE](#)

### Esther Sebillotte

Legal Trainee  
Sherpa

[PROFILE](#)

**Legal Disclaimer:** The information materials and opinions contained in this publication are for general information purposes only, are not intended to constitute legal or other professional advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. We do not accept any responsibility for any loss which may arise from reliance on information or materials contained in this publication. You should consult a suitably qualified lawyer on any specific legal problem or matter.

**Publication Information:** This country report is one of the 19 reports prepared for a [comparative project on civil liability for human rights violations](#) led by the Bonaverio Institute of Human Rights. It follows a unified template, and some terms in this report were defined consistently for the purposes of the project. To access other country reports and introduction from the project team, please [click here](#).

**All online resources cited and/or referenced in this report were accessed on 1 April 2022. Publication Date: October 2022**

Cover photo by Leo Patrizi (courtesy of iStock).



# CONTENTS



RETURN TO THIS  
TABLE OF CONTENTS



VIEW THE START OF  
THE CURRENT SECTION



INTERACTIVE

## TABLE OF CONTENTS

Page	Content	Average Read Time
P4	Overview of Jurisdiction	1 minute
P5	Introduction	2 minutes
P6	General Questions	1 minute
P7	Question 1	8 minutes
P10	Question 2	3 minutes
P12	Question 3	2 minutes
P13	Question 4	6 minutes
P16	Question 5	2 minutes
P17	Question 6	2 minutes
P18	Question 7	1 minute
P18	Question 8	1 minute
P20	Case Scenarios	1 minute
P21	Case Scenario 1	7 minutes
P25	Case Scenario 2	6 minutes
P28	Case Scenario 3	7 minutes



# FRANCE



France has a civil law system. The law of civil remedies primarily refers to forms of extra-contractual liability equivalent to tort liability. The French law of civil remedies may be a valuable tool for recovering compensation for human rights violations in certain contexts, for instance, to hold the State accountable where violations concern individual freedoms or occur in the context of specific public activities such as justice or pre-trial detention.

Moreover, in 2017, France passed the so-called Duty of Vigilance Law, which creates specific duties of care for companies with respect to human rights and environmental abuses and provides for civil liability. At the same time, victims of human rights violations often prefer criminal law avenues to obtain redress due to certain procedural barriers hindering access to civil remedies.

4

## INDICES

22/167

Democracy Index  
2021 Ranking

89/100

Freedom House  
2022 Score

22/180

Transparency International  
Corruption Index 2021 Ranking

The focus jurisdictions within the scope of the project have been selected to maximise diversity and representativeness. They reflect both common law and civil law traditions, a wide geographic distribution, different political systems, and varying levels of socio-economic development. The latter factors may impact the overall efficacy of the law on civil remedies and respect for the rule of law as a value. To provide useful context about the jurisdiction, each report indicates the relevant ranking or score of that jurisdiction in three leading global indices on democracy and the rule of law: [Democracy Index](#) by the Economist Intelligence Unit (measures the state of democracy in 167 states and territories); [Freedom House](#) (rates people's access to political rights and civil liberties with 100 being an optimal score); and [Transparency International Corruption Index](#) (ranks 180 countries by their perceived levels of public sector corruption).



## Introduction

1. France has a civil law system. Most of French law is codified in a comprehensive system of codes, which are constantly updated. These codes govern most areas of law. In civil matters, most of French tort law is governed by only a few rules laid down in the [Napoleonic Civil Code of 1804](#), which is still in force.
2. The 'law of civil remedies', as defined for the purposes of this project, may encompass various private and public legal regimes under French law.
3. The law of civil remedies primarily refers to extra-contractual liability (also known as non-contractual liability) equivalent to tort liability in common law jurisdictions. Extra-contractual liability designates situations of civil liability that occur in the absence of a contract between the parties. It can be divided into general extra-contractual liability regimes (governed by the Civil Code) and special extra-contractual liability regimes (governed by codes, laws, and case law).
4. At the same time, the law of civil remedies can refer to civil compensation sought in the context of criminal proceedings. In accordance with the rules of the French criminal system, victims of criminal offences can seek civil remedies either directly through the criminal court (ancillary civil action) or through subsequent civil proceedings.
5. Finally, while the liability of public bodies that form part of the State is governed by rules of administrative law and decided by administrative courts, in some cases civil courts may rule on the liability of public authorities or order compensation for damage caused by these actors.
6. The French law of civil remedies can be a powerful tool to seek compensation for human rights violations. For example, extra-contractual liability regimes have the potential to hold private actors, such as individuals and companies, accountable when human rights abuse takes place in the context of horizontal relationships. Civil courts can also hold the State accountable in specific situations of abuse, such as violation of individual freedom, or when gross negligence occurs in the context of specific activities, such as pre-trial detention or criminal investigations.
7. Nevertheless, because of the inadequacies of French civil procedural law - in particular the lack of discovery procedure - and the possibility for victims to request civil remedies as part of criminal proceedings, victims of human rights violations will often prefer criminal law avenues in order to obtain remedies.



# General Questions



Q1

## Can a claim under the law of civil remedies in your jurisdiction be brought against public bodies, corporations and/or individuals when one of the three defined harms results in human rights violations?

### GENERAL EXTRA-CONTRACTUAL CIVIL LIABILITY

A victim of human rights violations may be able to bring a civil claim against private persons, including individuals and corporations, under the **extra-contractual civil liability rules**. The [Civil Code](#) recognises different types of extra-contractual liability, including liability for harm caused by one's own act, by others, and by things.

8. Victims may file a **fault-based liability claim** under Civil Code [Articles 1240](#) and [1241](#). Accordingly, when one person causes harm to another, the tortfeasor must compensate for the resulting damage. This rule applies whether the harm is caused by the tortfeasor's fault ([Article 1240](#)), or negligent or imprudent conduct ([Article 1241](#)). Originally, [Article 1240](#) covered intentional faults (*delicts*), while [Article 1241](#) dealt with negligent or imprudent faults (*quasi-delicts*), but this distinction has lost its significance over time. This fault-based liability regime is the most commonly used civil liability regime. It has been invoked by victims of human rights violations, environmental pollution, and modern slavery.<sup>1</sup> It is worth mentioning that following the adoption of the Law on the duty of vigilance of parent and instructing companies ([Duty of Vigilance Law](#)) in 2017,<sup>2</sup> victims of human rights violations committed within corporate groups or in the context of business outsourcing can now file a fault-based liability claim against the parent or lead company under the conditions set out in Civil Code Articles [1240](#) and [1241](#). This legislation is presented in further detail in [43]-[44] below.
9. Victims of human rights violations may also be able to seek civil remedies under Civil Code [Article 1242](#), which provides for liability for damage caused by other people and things. [Article 1242](#) establishes a general vicarious liability principle as well as special vicarious liability regimes.
10. Under the **general principle of vicarious liability**, a person is liable for damage caused by the acts of others for whom they are responsible. Vicarious liability applies to persons who have authority over the wrongdoer. For a long time, the Court of Cassation refused to see an affirmation of a general principle of vicarious liability in the new [Article 1242](#) (which came into force in 2016). However, in the [Blieck](#) case,<sup>3</sup> it reversed its position and recognised that an association managing a care centre was liable for the fault of a disabled person in the care of the centre. Since [Blieck](#), the Court of Cassation has applied this liability regime to certain guardians, including persons having custody of individuals with disabilities or minors, and sports associations, for acts of their members. However, it has not established the existence of a general principle of vicarious liability. As a result, the benefit of using this vicarious liability regime to seek redress in the context of human rights violations is limited.

<sup>1</sup> Soc 3 April 2019, 16-20.490 (Court of Cassation, Labour Chamber).

<sup>2</sup> [Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre \(1\)](#).

<sup>3</sup> Cass ass plén 29 March 1991, 89-15.231, [Blieck](#) (Court of Cassation, Full Court).

11. [Article 1242](#) also establishes **special vicarious liability regimes**. One of them is the liability of employers for damage caused by their employees (*responsabilité des commettants du fait de leurs préposés*). An employer is liable for any damage caused by their employee while performing the functions for which they were hired.
12. [Article 1242](#) also establishes the principle of liability for damage caused by things in one's custody. This liability regime is relevant in cases involving environmental pollution. Please see [30] below for relevant case law.

### SPECIAL EXTRA-CONTRACTUAL CIVIL LIABILITY

In addition to the standard rules of extra-contractual liability, France has a number of **special extra-contractual civil liability regimes** based on statutes and case law that govern the reparation of damage and may be useful to victims of human rights violations.

13. In the context of environmental pollution, victims may sue in civil court under the jurisprudential theory of **abnormal neighbourhood disturbance** (*trouble anormal du voisinage*).<sup>4</sup> This theory seeks to put an end to irregular disturbances caused by 'neighbours', as well as to repair or prevent further damage. It is often used to halt industrial and agricultural pollution. Victims must prove that the trouble exceeds normal neighbourhood inconvenience. One advantage of this theory is that liability is strict, and victims are not required to demonstrate the existence of the neighbour's fault. However, under the anteriority rule, the tortfeasor may be exempt from liability if the activities in question were present before the victims moved into the vicinity. Nonetheless, the Court of Cassation appears to be reconsidering the application of the anteriority rule. In 2021, it ruled that a building owner could initiate civil proceedings about a neighbourhood disturbance that existed on their property before the purchase.<sup>5</sup>
14. In 2016, France added a new category of damage to the Civil Code.<sup>6</sup> According to the new [Article 1246](#), 'anyone responsible for ecological loss is obliged to repair it'. [Article 1246](#) aims to repair damage to the environment itself, not to humans or their property. Ecological loss is defined as the 'non-negligible harm to the elements or functions of ecosystems or to the collective benefits derived by humans from the environment' (Civil Code [Article 1247](#)). Remediation mechanisms for this type of damage are discussed in greater detail in [48] and [50] below.
15. Workers who have suffered from labour rights violations have access to civil remedies through special compensation and liability regimes provided for by the [Labour Code](#) and the [Social Security Code](#). For instance, Labour Code [Article L4121-1](#) requires employers to protect their workers' safety and health. If a worker is injured in the course and place of employment (a workplace accident), they are automatically entitled to compensation (a lump-sum payment) under occupational injury insurance ([Social Security Code](#) Livre IV). Furthermore, if the accident was caused by the employer's 'inexcusable fault', the victim can seek additional compensation ([Social Security Code](#) Article L452-1). This social security scheme is exclusive and prevents the use of standard civil liability claims. It is only in the

<sup>4</sup> This theory is of praetorian origin. See [Civ 27 November 1844](#). It has been applied in the field of industrial and agricultural pollution. See [Civ \(3\) 28 June 2018, 17-18.755](#) (Court of Cassation, Civil Chamber).

<sup>5</sup> [Civ \(3\) 17 November 2021, 17-26.026](#) (Court of Cassation, Civil Chamber).

<sup>6</sup> [Loi n° 2016-1087 du 8 août 2016 pour la reconquête de la biodiversité, de la nature et des paysages](#).



event of an 'intentional fault' that the victim can seek additional compensation against the employer for the full damage suffered, under standard civil liability law ([Social Security Code Article L452-5](#)).

## CIVIL COMPENSATION IN CRIMINAL PROCEEDINGS

Victims of criminal offences can seek **civil remedies as part of criminal proceedings** (Code of Criminal Procedure [Articles 2 and 3](#)). In such cases, the criminal court decides on the criminal liability of the indicted person and on the civil remedies to be granted to the victims. The victim may also file an action in a civil court, which must stay proceedings until the criminal court has ruled on the criminal case.

16. The civil court is bound by the outcome of the prosecution or criminal ruling. If the person prosecuted is convicted, discharged, or acquitted in criminal proceedings, the civil court may not contradict what has been decided (principle of *autorité de la chose jugée au criminel sur le civil*). A criminal conviction entails the admission of a civil fault. However, a criminal acquittal does not necessarily imply that there is no civil liability. For instance the facts may not fall within the scope of criminal law but still constitute a civil fault (eg an acquittal based on insanity).
17. A distinction should be made between **unintentional and intentional criminal fault**. Pursuant to the [Code of Criminal Procedure](#) Article 4-1, the absence of unintentional criminal fault does not preclude the exercise of an action before the civil courts to obtain compensation for damage under [Civil Code](#) Article 1241 or in the context of proceedings relating to workplace accidents and occupational diseases. However, the existence of civil fault under [Article 1241](#) or inexcusable fault under Social Security Code [Article L452-1](#) must be established. In the case of intentional criminal fault, the civil judge will generally be bound by the criminal decision.<sup>7</sup>

## STATE LIABILITY IN CIVIL COURTS

**In France, administrative law rules govern State liability.** While general civil liability rules do not apply to the State, there are only limited circumstances when a civil claim can be commenced in relation to the damage caused by public authorities.

18. According to the principle of separation of administrative and judicial powers, which dates back to the French Revolution, France has two separate jurisdictional orders, the judicial order and the administrative order.<sup>8</sup> Because of this dual legal system, judicial courts cannot hear liability claims against the State, and general civil liability rules do not apply to the State.<sup>9</sup>
19. Nonetheless, judicial courts can hear liability claims against the State in the context of specific public activities, such as justice or pre-trial detention. For example, Code of Judicial Organisation [Article L141-1](#) provides that the State is obliged to repair the damage caused by the defective functioning of the public service of justice. However, this liability is only incurred by gross misconduct (*faute lourde*)<sup>10</sup> or by a denial of justice.

<sup>7</sup> Civ (2) 23 November 1988, Bull. civ. II, no 225.

<sup>8</sup> [Loi des 16-24 août 1790 sur l'organisation judiciaire](#), Arts. 10, 12 and 13.

<sup>9</sup> T confl 8 February 1873, *Blanco* (Conflict Tribunal).

<sup>10</sup> [Crim 15 March 2016, 14-87.237](#) (Court of Cassation, Criminal Chamber).

20. Furthermore, victims of unlawful detention can seek redress from the State through the judicial courts, including civil courts. According to the Constitution [Article 66](#),<sup>11</sup> no one may be arbitrarily detained, and the judicial authority, which is the ‘guardian of individual freedom’, ensures that this principle is respected under the conditions laid down by law. In addition, Code of Criminal Procedure [Article 136](#) recognises that judicial courts have exclusive jurisdiction in all cases involving an infringement of personal freedom. This also applies to any civil proceedings directed against the public authority or its agents raising an infringement of personal freedom, such as unlawful deprivation of liberty.
21. Finally, the judicial judge is also competent to order reparation of damage caused by **administrative trespass** (*voie de fait*), which generally refers to an illegal decision or act carried out by the administration that seriously violates individual freedom or a property right (see the case of [L’Action Française](#))<sup>12</sup>. Victims of specific human rights violations committed by public bodies can seek compensation on this basis. For example, in March 2022, the Douai Court of Appeal ruled that a prefect’s decision to dismantle a migrant camp in Calais constituted administrative trespass.<sup>13</sup>
22. A distinction must be made between the administration’s liability and that of its agents. Since the [Pelletier case](#),<sup>14</sup> French law has distinguished between service fault and personal fault when damage is caused to third parties. A **service fault** is a fault committed by a public officer while performing their duties, with the resources of the service and without any personal interest. By contrast, a **personal fault** refers to a fault committed while the agent was not on duty (eg an accident caused by a staff member using their personal vehicle outside the performance of their duties).<sup>15</sup> A fault may also be qualified as ‘personal’ while the agent was performing their duties if the conduct was incompatible with the agent’s duties (eg malicious intent or animosity towards a subordinate or a user of the service).<sup>16</sup>
23. As a result of this distinction, an action for damages caused by a ‘service fault’ is brought against an administrative or public legal person (eg the police) before the administrative court, while an action for damages caused by a ‘personal fault’ is brought against a public agent (eg police officer) before the civil court.



## What are the elements of the civil remedies that you have identified above that have to be established by a claimant seeking the remedy?

In France, extra-contractual liability generally requires three elements: damage (*dommage*); the conduct causing damage and giving rise to liability (*fait générateur*); and a causal link between the two (*lien de causalité*). However, the requirements for each of these elements may differ depending on the liability regime.

<sup>11</sup> [Constitution du 4 octobre 1958](#).

<sup>12</sup> [T confli. 8 April 1935, Lebon 1227, L’Action Française](#)

<sup>13</sup> [‘A Calais, le préfet condamné pour le démantèlement d’un camp de migrants’](#) *Libération* (Paris, 30 March 2022).

<sup>14</sup> [T confli 30 July 1873, Pelletier](#) (Conflict Tribunal).

<sup>15</sup> T confli 24 July 1947, *Dame Cames*, Lebon 507 (Conflict Tribunal).

<sup>16</sup> Civ (1) 9 December 1986, Bull. civ. I, no 295 (Court of Cassation, Civil Chamber).

24. For the **fault-based liability regime** outlined in Civil Code Articles [1240](#) and [1241](#) to apply (see [8] above), victims must establish three elements: damage; the tortfeasor's fault (whether intentional or negligent); and a causal link between the damage and the tortfeasor's fault.
25. In order to be compensated, victims must first generally demonstrate that they have suffered damage or loss as a result of the violation. However, in the case of specific human rights (eg right to privacy), the French courts accept that the mere finding of violation gives rise to reparation.<sup>17</sup>
26. Second, victims must prove that the tortfeasor was at fault. French courts accept that a simple breach of a standard of conduct, whether or not it is spelled out in laws and regulations, is sufficient to establish the tortfeasor's fault, and that a civil fault may result from the tortfeasor's positive act or omission.<sup>18</sup>
27. Third, victims must establish a direct and certain causal link between the damage and the tortfeasor's fault, which can be difficult in cases involving environmental pollution. The courts sometimes accept the 'high probability' that the fault caused the damage by establishing factual presumptions.<sup>19</sup> However, in cases of uncertain scientific causality, the precautionary principle does not waive proof of the causal link, and victims must demonstrate 'serious, precise, reliable and consistent presumptions'.<sup>20</sup>
28. For the **employer's liability for damage caused by their employees** to apply, victims must establish that an employee committed a harmful act while performing their duties. They must also demonstrate a relationship of subordination between the employer and the employee, that is, that the employer has the right to give the employee orders or instructions on how to perform the duties for which they are employed. An employment contract is frequently the source of such a relationship. In the absence of an employment contract, French courts have also accepted that an act committed by an occasional employee or a friend or family member providing temporary assistance to a company director may result in the employer's liability. One advantage for victims is that this is a strict liability regime. Victims are not required to prove the employer's fault, and the employer cannot exonerate themselves by demonstrating that they have not committed any fault.
29. For **liability for damage caused by things in one's custody** to be applicable, victims must prove that damage was caused by a thing over which a person had custody.
30. The **concept of 'thing'** has been broadly interpreted by French courts. A thing can be a solid, liquid, or gaseous substance, as well as a sound or electrical wave. In the context of civil claims for environmental damage, courts have accepted that a thing could be a fuel or a hydrocarbon emitted from a reservoir,<sup>21</sup> liquid nitrogen fertilisers released into a river,<sup>22</sup> or sulphurous gas emissions.<sup>23</sup> Victims must also show that the object was instrumental in causing the damage.

---

17 [Civ \(1\) 5 November 1996, 94-14798](#) (Court of Cassation, Civil Chamber).

18 Civ 27 February 1951, Bull. 77, *Branly* (Court of Cassation, Civil Chamber).

19 TGI Albertville 26 August 1975, JCP 1976 II, n 18384.

20 Civ (3) 18 May 2011, 10-17.645 (Court of Cassation, Civil Chamber).

21 Civ (2) 12 October 2000, 99-10.734 9 (Court of Cassation, Civil Chamber).

22 Nancy 11 April 2000, *Sté coopérative agricole Champagne céréale c/ Collot*.

23 Civ (2) 5 March 1975, No 72-14.320, 72-14.507 and 72-14.509 (Court of Cassation, Civil Chamber).

31. Finally, they must establish that the person whose liability is sought is the custodian of the thing, in other words, the person with the power to use, direct, and control the thing. This condition creates difficulties in environmental cases, particularly when *res nullius*, or things without a custodian, are involved (such as water and snow). Furthermore, if the owner is presumed to be the thing's custodian, the presumption falls when the owner demonstrates that they have transferred custody of the thing in fact or through a contract. As a result, in environmental cases, this liability regime is rarely applied.



### Does the law of your jurisdiction recognise civil liability for complicit or accessory conduct (or a similar concept) in relation to the three defined harms?

The concept of **complicit or accessory conduct** does not exist as such in French civil liability law. Findings of criminal complicity may however have an impact on civil liability. Indeed, there is a statutory joint and several liability for civil damages resulting from criminal offences (*obligation solidaire* under [Articles 375-2, 480-1 and 543](#) of the Code of Criminal Procedure).

32. As a result, if a victim claims civil remedies as part of criminal proceedings (see [17] above), all perpetrators who are convicted for the offence, as well as their accomplices, will be **jointly and severally liable** for the damage directly caused by the offence. The same applies if a victim claims, before a civil judge, compensation for a damage caused by a criminal offence.
33. In civil proceedings, if the damage suffered by the victim results from the acts or omissions of several tortfeasors, the victim may request compensation of the full amount from any of them (*obligation in solidum*). The joint tortfeasors' respective proportion of liability only affects their mutual relationships but does not affect the extent of their obligation towards the victim.<sup>24</sup>
34. For this joint and several liability to apply, there must be only one damage (as opposed to several discrete damages respectively attributable to different tortfeasors), but the liability of the different tortfeasors may be based on different grounds.
35. If a tortfeasor paid more than its share to the victim, they are entitled to request the other tortfeasor(s) to pay their own share. To apportion liability between joint tortfeasors, judges have traditionally relied on their respective contribution to the damage, ie on the seriousness of their respective fault.<sup>25</sup> More recently, some decisions have relied on other factors to assess contribution to the damage, including, for example, the respective market share of pharmaceutical companies that commercialised a molecule used in a pharmaceutical formulation that gave rise to the damage.<sup>26</sup>

<sup>24</sup> [Civ \(2\) 4 February 1981, 79-12.946](#) (Court of Cassation, Civil Chamber).

<sup>25</sup> [Civ \(2\) 25 January 2007, 06-13.611, \*Etablissement Français du Sang\*](#) (Court of Cassation, Civil Chamber).

<sup>26</sup> [CA Versailles 30 June 2016, 14/04397, \*Distilbène\*](#) (Court of Appeal, Versailles).

Q4

## When can a parent company be held liable under the law of civil remedies for the wrongful acts and/or omissions of a subsidiary or independent contractor in a supply chain?

Pursuant to the principle of legal separation of corporate entities within corporate groups, there is no general principle according to which a company would be vicariously liable for acts and/or omissions committed by a subsidiary.<sup>27</sup> The legislation and the courts only recognise the existence of the group and the parent company's liability in an exceptional and fragmented manner.

36. **Bankruptcy law** provides for certain exceptions in cases of asset confusion between a parent company and its subsidiary, or if the subsidiary is deemed fictitious (Articles [L621-2](#), [L631-7](#) and [L641-1](#) of the [Commercial Code](#)). In addition, in certain cases, the parent company may also be regarded as a *de facto* director and may be ordered to pay for its subsidiary's liabilities in case of mismanagement or '*faute de gestion*' (Commercial Code [Article L651-2](#)). Finally, Environmental Code [Article L512-17](#) provides that the parent company may be ordered to pay for environmental rehabilitation measures when it committed serious misconduct that contributed to its subsidiary's bankruptcy.
37. Another exception exists in **labour law** through the concept of co-employment. A parent company may only be regarded as a co-employer in limited circumstances, where 'there exists, beyond the necessary coordination of economic actions between companies belonging to the same group and the state of economic domination that such membership may cause, a confusion of interests, activities and management resulting from the parent company's interference in the economic and social management of its subsidiary'.<sup>28</sup>
38. Furthermore, two doctrines have been developed by case law: the **appearance doctrine** (*théorie de l'apparence*) and the **interference doctrine** (*théorie de l'immixtion*), pursuant to which a parent company may be held vicariously liable for its subsidiary's acts. These can be compared to the doctrine of 'piercing of the corporate veil'<sup>29</sup> in certain common law jurisdictions. According to the appearance doctrine, a parent company may be liable for its subsidiary's obligations towards a third party when the latter could in good faith believe that it was dealing with the parent company. It has only been applied in contractual settings. The interference doctrine requires positive acts of interference in the subsidiary's management.<sup>30</sup> Interference is strictly defined.<sup>31</sup>
39. Similarly, there is no general principle according to which a company would be vicariously liable for the acts and omissions of an independent subcontractor.
40. As mentioned at [11] and [28] above, an employer may be vicariously liable for the **fault or negligence of their employee** committed in relation to their functions

<sup>27</sup> [Com 26 March 2008, 07-11.619, ADEME v. Elf](#) (Court of Cassation, Commercial and Financial Chamber).

<sup>28</sup> [Soc 24 May 2018, 17-15.630](#) (Court of Cassation, Labour Chamber).

<sup>29</sup> See discussion in the following project reports: [28] Australia; [29] Bangladesh; [42] Canada; [74] Hong Kong; [36] Malaysia; [44] US; [87] Zambia.

<sup>30</sup> [Com 26 February 2008, 06-20.310](#) (Court of Cassation, Commercial and Financial Chamber).

<sup>31</sup> [Civ \(3\) 25 February 2004, 01-1.764, Marks and Spencer](#) (Court of Cassation, Civil Chamber).

(Civil Code [Article 1242](#) para. 5). For this principle to be applicable, the employee must participate in the activities of their employer and do so under their authority and control (regardless of whether such authority and control are effectively exercised), but an employment contract between them is not necessary. As a result, a company is in principle not vicariously liable for the acts and omissions of an independent subcontractor, unless the above conditions are met in practice.<sup>32</sup>

41. However, a parent or lead company may be civilly liable **for its own actions and omissions** under Civil Code Articles [1240](#) and [1241](#). It has been recognised that a parent company may be obliged to pay damages to its subsidiary's employees under Articles [1240](#) and [1241](#) when its own fault contributed to the subsidiary's economic difficulties and therefore to the economic lay-off of its employees.<sup>33</sup>
42. The parent company's failure to respect a certain standard of conduct may also amount to a civil fault, triggering civil liability.

#### SPOTLIGHT: ERIKA CASE

In the landmark [Erika case](#), which was a criminal case against the French company Total and its Panama subsidiary for an oil spill off the coast of Brittany,<sup>34</sup> the Court of Cassation relied on the monitoring procedure (vetting) put in place by Total, and its failure to respect this procedure, to find that Total's acts and omissions were committed 'recklessly and with knowledge such damage would probably occur', under the International Convention on Civil Liability for Oil Pollution Damage.<sup>35</sup> Such unilateral commitments need to be specific for this attribution of liability.<sup>36</sup>

43. Direct liability is facilitated by certain **specific legal regimes** that impose special vigilance or due diligence obligations upon the parent or lead company.

#### SPOTLIGHT: DUTY OF VIGILANCE LAW

The [Duty of Vigilance Law](#) applies to companies incorporated in France that employ more than 5 000 employees in France (including in their subsidiaries), or more than 10 000 employees in France and abroad (including in their subsidiaries). This legislation was based on the insufficiencies of existing soft law instruments (including the United Nations [Guiding Principles on Business and Human Rights](#) and the Organisation for Economic Co-operation and Development (OECD) [Guidelines for Multinational Companies](#)) for preventing human rights and environmental abuses.

32 [Civ \(3\) 8 September 2009, 08-12.273](#) (Court of Cassation, Civil Chamber).

33 Soc 8 July 2014, 13-15.573, *Sofarec* (Court of Cassation, Labour Chamber).

34 This case was a criminal case. Victims introduced ancillary civil actions to obtain civil compensation for the damage caused by oil pollution.

35 [Crim 25 September 2012, 10-82.938](#) (Court of Cassation, Criminal Chamber).

36 [CA Versailles 22 March 2013, 11/05331, Tramway de Jerusalem](#) (Court of Appeal, Versailles).



It introduced new articles in the Commercial Code ([Articles L225-102-4](#) and [L225-102-5](#)), which require large French companies to establish, publish, and effectively implement a 'vigilance plan' (*plan de vigilance*). This vigilance plan must contain adequate and reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, the health and safety of persons, and the environment. It must address risks and violations arising from the activities of 1) the company; 2) the companies it controls, directly or indirectly; and 3) subcontractors or suppliers with which there is an established business relationship, when these activities are related to this relationship. The vigilance measures, which should be developed with the company's stakeholders, must include, but are not limited to: risk mapping; procedures to regularly assess the situation of subsidiaries, subcontractors or suppliers; appropriate actions to mitigate risks and prevent serious violations; an alert mechanism; and a monitoring scheme to follow up on the measures implemented and assess their efficiency.

The [Duty of Vigilance Law](#) provides for two different enforcement mechanisms. First, any person with legal standing may request a judge to order a company to comply with the legal provisions through an injunction, provided that they first formally requested the company to comply and that the company failed to do so within three months ([Article L225-102-4-II](#)). It is specified that periodic penalty payment may also be requested, that is, fines payable on a daily or on a per-event basis until the defendant complies with the injunction. Second, victims may seek compensation against a company for the damage that could have been prevented had that company respected those requirements, in accordance with general tort principles under Civil Code Articles [1240](#) and [1241](#) (Commercial Code [Article L225-102-5](#)). The duty of vigilance therefore creates a new standard of conduct for companies that, if not satisfied, can amount to the fault or negligence necessary under French civil law to trigger civil liability, if a damage and a causal link between both are established. For that reason, the duty of vigilance has sometimes been compared to a specific, statutory duty of care in common law countries.<sup>37</sup>

44. So far, seven cases have been initiated against companies under these provisions.<sup>38</sup> No decisions on the merits have been rendered. The defendant companies raised jurisdictional objections, claiming that commercial courts, as opposed to civil courts, were competent. After diverging decisions, the Court of Cassation confirmed the competence of civil courts,<sup>39</sup> and [Law No 2021-1729 of 22 December 2021](#) designated the Paris Judicial Tribunal as specifically competent in those matters.

<sup>37</sup> Parance, B. and Groulx, E., 'Regards croisés sur le devoir de vigilance et le duty of care' (2018) 145 *Journal du droit international* 21.

<sup>38</sup> These cases have been filed against Total (two cases), EDF, Suez, Casino, La Poste, and Yves Rocher. Formal notices have also been sent to Teleperformance, XPO Logistics, Total and McDonald's, but have not given rise to court cases so far. The alleged breaches relate to deforestation (Casino), climate change (TotalEnergies), labour rights and freedom to join a union (La Poste, Yves Rocher, Teleperformance, XPO Logistics, McDonald's), the rights of indigenous people (EDF, Casino) or the right to water (Suez). See '[Cases](#)' (Duty of Vigilance radar).

<sup>39</sup> [Com 15 December 2021, 21-11.882, Total Ouganda](#).

45. The Labour Code also provides for certain due diligence obligations for companies with respect to the employees of their subcontractors (Labour Code [Articles L3245-2](#), [L. 8222-1 to 5](#) and [L8281-1](#)).

Q5

### What remedies are available under the law of civil remedies to victims of the three defined harms in your jurisdiction?

**Monetary compensation** is the preferred method of reparation. In some situations, other types of remedies, such as reparation in kind or judicial injunctions may be awarded.

46. Victims can seek **civil damages** in civil courts as well as criminal courts if the violation is also considered a criminal offence. The principle of full reparation (*principe de la réparation intégrale*) applies. Courts can order the tortfeasor to compensate the plaintiff's pecuniary loss (ie material and economic damage), non-pecuniary loss, and bodily injury. Victims cannot seek punitive damages under French law.
47. **Reparation** may also be symbolic. French courts may award a *euro symbolique* to recognise that the victim has suffered a wrong or that their right has been violated (eg the climate change case *l’Affaire du Siècle*).<sup>40</sup>
48. In some situations, courts will favour **reparation ‘in kind’** (*en nature*). Reparation in kind aims to undo the damage by immediately and materially restoring the previous situation. For example, Civil Code [Article 1249](#) provides that reparation for ecological loss is primarily provided in kind. If it is not possible to carry out reparation in kind, or if the remedial measures are insufficient, courts will order the person responsible to pay damages, allocated to the reparation of the environment, to the claimant, or, if the claimant cannot take the appropriate measures to this end, the State.
49. Claimants may also use **fast-track proceedings** before civil courts (*référé*) to seek provisional or conservatory measures or injunctive reliefs without (or before) initiating a trial on the merits. For example, claimants may ask the court to order any measures necessary to prevent imminent harm or to put an end to a manifestly unlawful disorder (*référé conservatoire ou de remise en état*).<sup>41</sup>
50. Claimants may also seek judicial injunctions on the merits in civil proceedings. For instance, under the [Duty of Vigilance Law](#), any person with legal standing may ask a competent judge to issue an injunction compelling a company to comply with its legal obligations. In the context of the reparation of ecological loss, the judge may prescribe reasonable measures to prevent or stop the harm (Civil Code [Article 1252](#)).
51. Following the court's decision, the judge may order a periodic penalty payment until the decision is enforced (*astreinte*),<sup>42</sup> and, in certain cases, the publication of the court's decision according to the modalities that the court has defined (such as on the website of the companies) (eg under the Duty of Vigilance Law).

40 [TA Paris 3 February 2021, 1904967, 1904968, 1904972, 1904976/4-1](#).

41 Code of Civil Procedure, [Article 835](#).

42 [Code of Civil Enforcement Procedures, Article L131-1](#).



Q6

## What are the advantages and disadvantages of using civil claims as a means of human rights protection in your jurisdiction?

52. There are some **advantages** of using civil claims to obtain redress for human rights violations in France:

- General civil liability regimes are broadly defined under French law: a civil fault or negligence is generally easier to prove than a criminal fault.
- A civil plaintiff may be entitled to request an injunction even in the absence of any damage, for instance pursuant the Duty of Vigilance Law or in *référé* procedures (see [49] above). Such preventive injunctions cannot be requested in criminal proceedings.
- The legal standing of non-governmental organisations is more broadly defined in civil procedure than in criminal procedure. According to decisions rendered by civil jurisdictions, ‘an association may act in the name of collective interests, as long as these interests are part of its statutory purpose’.<sup>43</sup> In contrast, in criminal cases the legal standing of non-governmental organisations has recently been interpreted in a restrictive manner.<sup>44</sup>
- Collective action mechanisms (*actions de groupe*) are available in certain civil law matters (pertaining to consumers, competition, environment, health, discrimination and personal data). These collective action mechanisms – although very limited – do not exist in criminal proceedings.
- Legal costs are to be borne by the losing party. However, the judge is supposed to take account of equity and of the economic situation of the parties, so that a losing party will not necessarily have to pay for the other party’s costs (Code of Civil Procedure [Article 700](#)).

53. Having said that, there are several reasons that using civil claims in France may be **less advantageous** than in other jurisdictions

- In the absence of discovery or disclosure procedure in France, the difficulty of accessing key evidence may hinder access to civil remedies. Existing mechanisms – such as Code of Civil Procedure [Article 145](#) – have been shown to be of limited use in cases of environmental abuses caused by corporations.<sup>45</sup>
- The amount of damages granted by civil judges in France tends to be limited when compared with other jurisdictions. This is particularly so as there is no provision for punitive damages.

<sup>43</sup> [Civ \(3\) 26 September 2007, 04-20.636](#) (Court of Cassation, Civil Chamber).

<sup>44</sup> [Crim 7 September 2021, 19-87.031, Lafarge](#); [Crim 8 September 2020, 19-84.995](#).

<sup>45</sup> [Paris CA 17 September 2020, 19/20669 and Civ \(1\) 9 March 2022, 20-22.444, Perenco](#) (Court of Appeal, Paris).

Q7

## Can civil claims be brought against a foreign defendant and if so, what are the rules for that?

54. In the context of transnational civil litigation, private international law rules will determine whether victims of human rights violations can bring a civil claim in France against a foreign defendant. Since France is a Member State of the European Union (EU), French courts must apply the [Brussels I bis Regulation](#), which governs jurisdiction in cross-border civil and commercial litigation when the defendant is domiciled in a EU Member State.<sup>46</sup>
55. According to Brussels I bis Regulation [Article 4\(1\)](#), French courts have jurisdiction to hear claims initiated against **persons domiciled in France**, whatever their nationality. Under [Article 5\(1\)](#), French courts will also have jurisdiction over defendants domiciled in other Member States in the limited circumstances set out in [Articles 7 to 26](#).
56. If the **defendant is not domiciled in a Member State**, French law governs the jurisdiction of French courts (Brussels I bis Regulation [Article 6\(1\)](#)). The concrete application of this rule has proven to be problematic in the context of transnational civil litigation against corporate defendants domiciled in third countries, such as foreign subsidiaries of French companies. Litigants have attempted to bring civil claims against such companies in French courts under the *forum necessitatis* doctrine. However, the Court of Cassation imposed extremely stringent requirements on the application of this doctrine, which have limited the possibility of suing foreign corporate defendants in French civil courts (see the [COMILOG](#) case).<sup>47</sup>

Q8

## Can you recommend resources for further research and consultation to anyone interested in learning more about civil liability for human rights violations in your jurisdiction?

### Academic and NGO resources

- Cossart, S and Chatelain, L, 'Human Rights Litigation against Multinational Companies in France' in Meeran, R and Meera, J (eds), *Human Rights Litigation against Multinationals in Practice* (OUP 2021).
- Danis-Fâtome, A and Viney, G, 'La responsabilité civile dans la loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre' [2017] *Recueil Dalloz* 1610.
- FIDH, [Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms](#) (3rd edn, 2021).

<sup>46</sup> [Regulation \(EU\) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters \[2012\] OJ L 351/289.](#)

<sup>47</sup> [Soc 14 September 2017, 15-26.737 and 15-26.738 \(Court of Cassation, Labour Chamber\).](#)

- Grimonprez, B, 'Pour une responsabilité des sociétés mères du fait de leurs filiales' [2009] *Revue des sociétés* 715.
- Hannoun, C, 'Le devoir de vigilance des sociétés mères et entreprises donneuses d'ordre après la loi du 27 mars 2017' [2017] *Droit social* 806.
- Hautereau-Boutonnet, M, *Responsabilité civile environnementale* (Dalloz 2020).
- Rouas, V, [Achieving Access to Justice in a Business and Human Rights Context: An Assessment of Litigation and Regulatory Responses in European Civil-Law Countries](#) (University London Press 2022).
- Rouas, V, 'France: Untapping the Potential of Civil Liability to Remedy Human Rights Violations' in Aristova, E and Grusic, U (eds), *Civil Remedies and Human Rights in Flux: Key Legal Developments in Selected Jurisdictions* (Hart Publishing 2022).

## **Websites**

---

- [Duty of Vigilance Radar](#)
- [Sherpa](#)
- [International Federation for Human Rights \(FIDH\)](#)



# Case Scenarios

## 1 Case Scenario

A wave of peaceful anti-government protests in the capital city of X Country denounced controversial legislation reforming electoral law. X Country's police responded to the peaceful protests with violence and brutality. The protesters were beaten and tear gassed. Some were detained for several days without charge or access to the lawyers. Human rights activists reported alleged torture and other ill-treatment in detention.

The protesters gathered in the market square where many shops and office buildings are located. Security Co is a private company providing security to the premises and personnel of the shops and offices. There is no evidence that personnel of the Security Co were involved in the violence that injured protesters. There is, however, evidence that on several occasions personnel of Security Co provided X Country's police with vehicles, equipment, and water. [READ MORE](#)

## 2 Case Scenario

X Group is a group of extractive companies. Parent Co is the parent company of X Group which is responsible for the overall management of X Group's business. X Group's extractive operations are carried out by its subsidiaries. Every subsidiary is incorporated as a separate legal entity and is responsible for an individual project. Subsidiary Co is a licence holder and operator of a major extractive project. Parent Co is the sole shareholder of Subsidiary Co.

X Group has been accused of severe environmental pollution arising from oil spills caused by Subsidiary Co's extractive project. Oil extracted by Subsidiary Co leaked and flowed into local rivers and farmland in the neighbourhood of the project site, destroying crops and killing fish. The result was that the food and water supplies of the local population were severely affected, and in addition members of the local community also experienced breathing problems and skin lesions. Journalists

and environmental activists publicised the harm done to the local environment and community. Parent Co has made no statements about the oil spills but, in a recent report to its shareholders, Parent Co repeated that the X Group was committed to its policy of operating in an environmentally sound manner and ensuring the health and safety of its workers and those affected by its business operations. [READ MORE](#)

## 3 Case Scenario

Factory Co owns a garment factory that supplies many large international clothing retailers. The working conditions in Factory Co's factory have generally been poor and exploitative and have included physical abuse for non-compliance with production targets, sexual harassment of female workers by male supervisors, and compulsory unpaid overtime. Local trade unions have regularly accused Factory Co of poor factory workplace safety, including a lack of emergency procedures, ineffective fire safety equipment and few emergencies medical supplies. Two months ago, during a fire at Factory Co's garment factory, seventy-six workers died and fifty-eight were injured, many seriously. Preliminary investigations suggest that employees suffocated or were burned alive because windows were barred, emergency exits closed, smoke alarms did not work, and supervisors did not implement safety protocols and fire evacuation procedures.

Brand Co is the major purchaser of clothes produced by Factory Co's garment workers. It has been an enthusiastic and very public advocate for human rights standards and expressed its commitment to responsible business practices. Several civil society organisations wrote an open letter to the CEO of Brand Co calling on Brand Co to demonstrate leadership in preventing, addressing, and remedying adverse human rights impacts in its supply chain. [READ MORE](#)



# Case Scenario 1

Q1

Could injured or unlawfully arrested protesters bring civil claims against the police and/or Security Co (and/or its personnel) in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.

## Claims against the police and/or police officers

57. As stated in [18]-[23] above, judicial courts can hear liability claims against the State in a limited number of situations. Case Scenario 1 presents several situations of abuse to which different legal liability rules may apply. A distinction must first be made between protesters who were injured by police during the protest, and those who were unlawfully arrested and detained following the protest. Another distinction must be made between the administration's liability and that of its agents or public officers.
58. In Case Scenario 1, it is likely that **injured protesters** will only be able to bring a claim against the **police** in **administrative courts**, which have jurisdiction to assess the police's liability for damage caused in the event of an administrative police operation aimed at preventing public disorder.<sup>48</sup>
59. On the other hand, **demonstrators** who have been **arbitrarily detained and/or subjected to ill-treatment in police custody** may seek compensation from the **police** in **civil court** based on Constitution [Article 66](#) and Code of Criminal Procedure [Article 136](#), which recognises that judicial courts have exclusive jurisdiction in all cases involving an infringement of personal freedom.
60. French courts have also ruled that **judicial courts** are competent to assess the liability of the **police** for damage caused during a judicial police operation, such as where the disputed facts occurred while a 'suspect' was in police custody,<sup>49</sup> or where persons suspected of having committed a criminal offence are detained and abused on police premises.<sup>50</sup>
61. Both injured protesters and demonstrators arbitrarily detained and/or subjected to ill-treatment in police custody can seek civil liability against police officers if they can demonstrate that those officers committed a **personal fault**.

48 CE 11 May 1951, 2542, *Consorts Baud* (Council of State).

49 CE 10 February 1956, Lebon T. 747, *Cts Volmerange* (Council of State).

50 T confli 9 July 1953, Lebon 591, *Dame Vve Grange c/Nardon et autres* (Conflict Tribunal).

62. Finally, victims may seek compensation for damage caused by '**administrative trespass**' before the judicial court (see [21] above). They must establish two cumulative elements under this ground: 1) a manifest irregularity in an administrative decision or its execution, which 2) results in an infringement of an individual freedom or an infringement leading to the extinction of a property right.<sup>51</sup>

### **Claims against Security Co and/or its personnel**

---

63. As mentioned at [11], [28] and [40] above, a company may be civilly liable not only for the damage caused by its own fault or negligence, but also for damage caused by their employees' fault or negligence in the functions for which it has employed them.
64. To **hold Security Co liable for its own actions**, victims would have to prove that Security Co committed a fault or negligence that contributed to the harm suffered by the victims; ie that the company's representatives acted in breach of a required standard of conduct, causing harm to the victims. This assessment will depend on the factual circumstances in which Security Co's own representatives contributed to the human rights violations committed by the police, for instance by giving formal instructions to employees to support the police's violations.
65. Victims may also rely on **Security Co's vicarious liability** for the acts of its employees. In such a case, they would need to establish that Security Co's employees committed a fault or negligence that contributed to the harm that they suffered.
66. The employer will however not be held vicariously liable if the employee, acting without authorisation and for purposes outside their duties, has placed themselves outside the functions for which they were employed (so-called '**abuse of function**' – *abus de fonction*). The concept of abuse of function is strictly interpreted by the Court of Cassation. For instance, a nightclub has been found liable for the damage caused by its bouncers who were convicted of intentional violence by a criminal court.<sup>52</sup> An intentional fault, even if criminally punished, does not absolve the employer of liability for damage caused by the employee during the usual performance of their duties in the workplace and during working hours, whether it is theft<sup>53</sup> or involvement in contraband committed using the company's vehicle.<sup>54</sup>
67. In the case at hand, it appears that Security Co's employees supported the police's violations with equipment and vehicles belonging to the company, in the workplace and during working hours. If the employees' fault and causation may be established, Security Co could be held vicariously liable.
68. However, under Civil Code Articles [1240](#) and [1241](#), Security Co's personnel may be held personally liable, either as co-defendants if Security Co can demonstrate an abuse of function, or in a case initiated by Security Co itself against its own employees who overstepped their duties. If Security Co's personnel acted within the scope of their functions, they cannot be held personally civilly liable.<sup>55</sup>
69. In any event, it may be challenging in the case at hand to establish the direct causal link between Security Co's potential fault or negligence and/or that its personnel, and the harm suffered by victims.

---

51 [T.confl. 17 June 2013, 3911, \*Bergoend v ERDF Anecy Léman\*](#) (Conflict Tribunal).

52 [Civ \(2\) 2 May 2011, 10-20.590](#) (Court of Cassation, Civil Chamber).

53 [Civ \(2\) 29 May 1996, 94-15.460](#) (Court of Cassation, Civil Chamber).

54 [Crim 19 February 2003, 02-81.851](#) (Court of Cassation, Criminal Chamber).

55 [Ass plén 25 February 2000, 97-17.378 97-20.152, \*Costedoat\*](#) (Court of Cassation, Full Court).



**If civil claims would not be the preferred route for holding perpetrators in Case Scenario 1 to account, please indicate any other legal avenues available to the protesters.**

70. In France, such a case is more likely to be tried in criminal courts, including when civil remedies are pursued. However, criminal decisions tend to dismiss police officers' criminal liability. When civil actions are permitted under the conditions outlined in [18] - [23] above, they can provide a more efficient means of obtaining redress for victims.
71. Following an [investigation](#) of the General Inspectorate of the National Police ([IGPN](#)), an administrative judge is the competent authority to hear cases on the functioning of the police. In the case of more serious accusations against police officers, where there may be a criminal offence, the criminal courts are competent.
72. In the case at hand, and based on the [Criminal Code](#), **police officers** could be convicted before the criminal court for torture or acts of barbarism ([Article 222-1](#)), violence ([Articles 222-10, -11, -13, -14](#)) and other potential offences, including non-assistance to a person in danger ([Article 223-6 al 2](#)), and abandonment of a person unable to protect themselves ([Article 223-8](#)). Furthermore, Criminal Code [Articles 432-4 to 432-6](#) punish persons holding public authority who are involved in an infringement of personal freedom or unlawful deprivation of liberty. These convictions could give rise to compensatory damages under the conditions mentioned in [16] - [17] above.
73. The **personnel of Security Co** could be convicted for interference with the exercise of a public function (Criminal Code [Articles 433-12 and 433-13](#)), or for complicity in violence or other offences (Criminal Code [Article 121-7](#)).
74. It would be difficult to hold **Security Co** liable in a criminal court. Under Criminal Code [Article 121-2](#), legal persons are criminally liable for offences committed (1) on their behalf and (2) by their organs or representatives. The two conditions do not appear to be met in this case.
75. Protesters could also file an action in administrative court to obtain the State's conviction. The **French government** may be held liable for gross negligence (*faute lourde*) as a result of the national police service's malfunctioning.



## Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 1?

76. There have been several cases concerning **police violence** during demonstrations. After exhausting all criminal justice system appeals,<sup>56</sup> the family of Rémi Fraisse, a 21-year-old botanist killed by a grenade thrown by a gendarme, sought compensation from the State. The Toulouse Administrative Court recognised that under Code of Interior Security [Article L211-10](#), the State was liable for damage caused by crimes and misdemeanours committed by open force or violence, by armed or unarmed assemblies or demonstrations, either against persons or property.
77. The *Commission d'indemnisation des victimes d'infractions* of the Paris Judicial Court awarded provisional compensation to Jérôme Rodrigues, a Yellow Vest activist who was injured in the eye during a demonstration in January 2019. The investigating judges indicted a police officer in January 2020 for 'voluntary violence resulting in permanent mutilation or disability', which was aggravated by several circumstances.<sup>57</sup>
78. The European Court of Human Rights (ECtHR) has also issued significant rulings in cases involving police violence. In *Castellani v France*,<sup>58</sup> it found a violation of Article 3 of the [European Convention on Human Rights](#) (ECHR). The applicant claimed that he was the victim of police violence during his arrest, and that the intervention of the security force (a *groupe d'intervention de la police nationale*) and the use of force were neither necessary nor proportionate. In *Chebab v France*,<sup>59</sup> the ECtHR found France in violation of ECHR Article 2 (right to life) due to the inadequacy of France's investigation into the use of lethal force against the applicant by the police.
79. There have been many high-profile lawsuits on police brutality in France but, to our knowledge, no cases concerning **companies assisting police officers during a demonstration**.
80. However, a civil lawsuit was brought against multinationals that produced Agent Orange, a highly toxic defoliant used by the US army during the Vietnam War. In May 2021, the Evry Tribunal dismissed the claims of [Tran To Nga](#), a Franco-Vietnamese woman who was suing 14 US multinational agrochemical companies as a victim of 'Agent Orange'.<sup>60</sup> The court concluded that the defendant companies had 'acted on behalf of and for the order of the US State' and were thus entitled to sovereign jurisdictional immunity. The claimant appealed this ruling.

---

<sup>56</sup> [Crim 23 March 2021, 20-82,416](#) (Court of Cassation, Criminal Chamber).

<sup>57</sup> [See further here](#).

<sup>58</sup> *Castellani v France* (App [No 43207/16](#), 30 April 2020).

<sup>59</sup> *Chebab v France* (App [No 542/13](#), ECtHR, 23 May 2019).

<sup>60</sup> [TJ Evry 10 May 2021, 14/04980](#).



# CaseScenario 2

Q1

**Could the local community, or its representatives, or someone acting on their behalf, bring civil claims against Parent Co and Subsidiary Co in your jurisdiction? Please also indicate the key elements of liability that would need to be shown by the claimants to hold the perpetrators liable.**

## Claims against Subsidiary Co

81. Victims of the oil spill could sue Subsidiary Co under Civil Code [Articles 1240](#) and [1241](#). They would have to show: 1) that they suffered harm as a result of the oil spill; 2) Subsidiary Co's intentional fault, negligence, or imprudence; and 3) that there was a causal link between the harm and Subsidiary Co's fault. While a violation of legal requirements is not required to establish civil fault, in practice, the fault or negligence is usually the result of a violation of environmental obligations.
82. Under Civil Code [Article 1242](#), victims could also sue Subsidiary Co for damage caused by things in its custody. They would have to prove that the damage was caused by oil over which Subsidiary Co had custody. They must establish that Subsidiary Co had the power to use, direct, and control the spilled oil. While this should be simple if Subsidiary Co owns the oil, this presumption could be reversed if Subsidiary Co can show that it transferred custody of the spilled oil in fact or through a contract. Finally, the oil spilled must have been instrumental in causing the damage.
83. Neighbouring victims may be able to hold Subsidiary Co liable under the theory of abnormal neighbourhood disturbances. Proving that the trouble (the oil spill) exceeds normal neighbourhood inconvenience would be easy for victims. Furthermore, under this provision they would not have to prove the existence of Subsidiary Co's fault.
84. If Subsidiary Co's oil operations were present before the victims moved into the vicinity, Subsidiary Co could be exempt from liability under the anteriority rule. However, this may not be the case due to a recent decision of the Court of Cassation (see [13] above).
85. Victims could hold Subsidiary Co and Parent Co jointly and severally liable under the theory of abnormal neighbourhood disturbances (see [13] above) in certain circumstances, such as if Parent Co is Subsidiary Co's franchisor,<sup>61</sup> or the owner of the oil pipelines.<sup>62</sup>

61 [Civ \(2\) 21 May 1997, 95-17,743](#) (Court of Cassation, Civil Chamber).

62 [Civ \(3\) 22 June 2005, 03-20,068](#) (Court of Cassation, Civil Chamber).

## **Claims against Parent Co**

---

86. Pursuant to the principles of legal separation of corporate entities, Parent Co would in principle not be vicariously liable for the acts or omissions of Subsidiary Co.
87. In the present case, we assume that no bankruptcy proceedings have been introduced against Subsidiary Co, and that Parent Co has not abnormally interfered in the management of its subsidiary, so that no exception to the general principle of separation of legal entities seems to apply (see [36]-[38] above).
88. However, Parent Co could be held civilly liable for its own acts and omissions if those amount to a civil fault or negligence that directly contributed to the damage. In particular, if Parent Co is subject to the **Duty of Vigilance Law** ([Articles L225-102-4 and 5 Commercial Code](#)), victims may be able to request civil remedies directly against Parent Co, or against Parent Co and Subsidiary Co as co-defendants. In order to do so, they will need to establish the following elements:
- Parent Co is indeed subject to the provisions on the Duty of Vigilance, which only apply to companies that employ more than 5 000 employees in France or 10 000 employees worldwide.
  - Parent Co has exclusive control over Subsidiary Co, as specified under Commercial Code [Article L333-16 II](#), or maintains an established commercial relationship with it.
  - Parent Co has failed to respect the legal requirements, in that it has failed to take adequate measures to identify risks to and prevent violations of the environment, health and safety, and human rights, resulting from Subsidiary Co's activities; or that it has failed to effectively implement those measures.
  - The harm could have been avoided if Parent Co had indeed complied with the legal requirements.
89. It is important to note that the Duty of Vigilance Law does not create a new civil liability regime, but it does create new, specific obligations that not only concern the corporations' activities, but also the activities of its subsidiaries, suppliers and subcontractors, thereby facilitating the claimant's ability to prove that the parent company has committed a fault giving rise to liability.
90. If Parent Co is not subject to the Duty of Vigilance Law, it may still be possible to demonstrate that it committed a civil fault or negligence under Civil Code Articles [1240](#) and [1241](#). It will notably depend on whether Parent Co has failed to respect certain general standards of conduct, whether its own public statements regarding its environmental commitments are specific enough, and whether it may be established that the damage could have been prevented if the company had respected those standards or specific commitments (see the *Erika* case in [42] above).

## **Remediation of pure environmental damage**

---

91. According to Civil Code [Article 1246](#), anyone who is responsible for ecological loss, defined as the non-negligible harm to ecosystem elements or functions, or to the collective benefits derived by humans from the environment, must repair it. [Article 1246](#) aims to repair environmental damage rather than damage to persons or property. It applies to both natural and legal persons who are responsible for ecological loss.

92. In Case Scenario 2, Subsidiary Co and/or Parent Co could be obliged to repair the ecological loss caused by the oil spill. However, only a limited number of public authorities and environmental NGOs can bring a claim under Civil Code [Article 1246](#). In particular, the action for compensation for ecological loss is limited to action by 'associations approved or created for at least five years at the date of the introduction of the proceedings and which have as their object the protection of nature and the defence of the environment'. This seems to exclude associations of local residents affected by instances of pollution which are often created following environmental disasters.

Q2

**If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 2 to account, please indicate any other legal avenues available to the local population.**

93. Subsidiary Co could face criminal charges under the Criminal Code for criminal offences against individuals, such as endangering people's lives ([Article 223-1](#)).

94. Subsidiary Co could also face criminal charges under the Environmental Code. For example, [Article L216-6](#) punishes the act of discharging into water substances whose action or reactions cause harm to health or damage to flora or fauna. Furthermore, [Article L432-2](#) punishes discharges into rivers of substances that have destroyed or harmed fish. As mentioned before, the local population could claim civil compensation in the context of those criminal proceedings or in subsequent civil proceedings.

Q3

**Are there any high-profile lawsuits in your jurisdiction that are relevant to Case Scenario 2?**

95. The *Erika* case (see [42] above) is a landmark environmental case in France. Total, France's largest oil company, was charged for maritime pollution along with its subsidiaries and a number of companies and individuals. International conventions limited the liability for maritime pollution to the shipowner, its manager, or its captain. However, the Court of Cassation found that Total had indeed committed a reckless act within the meaning of the [Civil Liability Convention 69/192](#). This fault gave rise to its civil liability and justified its joint and several liability to pay compensation.

96. In 2019, 10 000 tonnes of chemicals burned at Lubrizol's factory and NL Logistics, two industrial sites in Rouen. The fire caused no casualties, but did cause a soot fallout in five administrative departments. The Lubrizol fire is regarded as one of France's most significant industrial disasters since the AZF fertiliser factory explosion in Toulouse in 2001. In 2021, Lubrizol was charged with releasing harmful substances into water.<sup>63</sup>

63 Laurent Radisson, 'Lubrizol : la mise en examen de l'industriel confirmée' *Actu-environnement.com* (Paris, 30 June 2021).

# CaseScenario 3

Q1

Would it be possible to bring a civil claim against Factory Co and/or Brand Co? Please also indicate the key elements of liability to be shown by the claimants to hold Factory Co and/or Brand Co liable.

## Claims against Factory Co

97. In order to assess whether civil claims could be brought against Factory Co, it is necessary to distinguish between those violations that may be regarded as work accidents under French law, and other violations.
98. A **work accident** is defined as any accident that occurred as a result of or during work and caused immediate or delayed physical injury (Social Security Code [Article L411-11](#)). In Case Scenario 3, the deaths and serious injuries of workers, as well as the reported physical abuses for non-compliance with production targets could be regarded as work accidents. Work accidents may give rise to different compensations: benefits in kind for health expenses resulting from the accident; daily allowances for prescribed medical leaves, temporary incapacity for work benefits, permanent disability pensions; as well as pensions for certain next of kin. These compensations are paid by the French Social Security Fund, and victims are not entitled to rely on general civil liability law to claim compensation directly from their employer.
99. Victims are only entitled to an increased lump sum compensation (*majoration*) and damages for other harms caused by the workplace accident if they can demonstrate the employer's **inexcusable fault** (Social Security Code [Article L452-1](#)). Employers have been required to ensure the safety and health of their employees at work since the decision of the Court of Cassation in the *Asbestos* case. A breach of this obligation is considered an inexcusable fault 'when the employer had or should have known the risks that the employee was facing and did not take necessary measures to protect them from those risks'.<sup>64</sup>
100. Factory Co was aware of the risks that its employees faced. Local trade unions had alerted the company to the lack of emergency procedures, ineffective fire safety equipment, and limited emergency medical supplies. Factory Co also appears to have failed to take the necessary measures required by the Labour Code. Injured employees, their next of kin, as well as their survivors should be able to demonstrate Factory Co's inexcusable fault and obtain not only the lump sum benefits mentioned above, but also additional compensation for other losses. However, they may not be able to obtain full compensation for all losses, even in case of inexcusable fault, as only some losses can give rise to an increased lump sum.

64 [Soc 28 February 2002, 00-13,546](#) (Court of Cassation, Labour Chamber).

101. In case of **intentional fault** of the employer, victims are entitled to claim compensation directly from their employer for the full damage suffered (Social Security Code [Article L452-5](#)), and the Social Security Fund may recover from the employer all the benefits it has paid to the employee.
102. In the case at hand, the employees who suffered physical abuse for non-compliance with production targets may be entitled to claim full compensation for the damage suffered.<sup>65</sup>
103. The other reported violations (sexual harassment of female workers, compulsory unpaid overtime) would not be regarded as work accidents. The competent French employment tribunal (*Conseil des Prud'hommes*) would have jurisdiction to hear those claims, as they relate to an employment contract.
104. Sexual harassment is prohibited both by Criminal Code [Article 222-33](#) and Labour Code [Articles L1153-1 ss](#) (subsequent Articles). Victims may seek compensation through a civil action in the context of criminal proceedings or, in the absence of criminal proceedings, before the competent employment tribunal. In the case at hand, if the sexual harassment was not committed by a company's representative, victims will either have to demonstrate (i) that Factory Co failed to take necessary measures to ensure their health and safety against sexual harassment or/and, (ii) that Factory Co is liable under Civil Code [Article 1242](#), para 5 (liability of the employer for acts of its employee).

## Claims against Brand Co

105. Under Social Security Code [Article L454-1](#), if the work accident is caused by a third party, the victim is entitled to rely on general provisions of civil liability to claim full compensation for the damage. The same applies if the work accident was caused both by the employer's fault and by a third party.<sup>66</sup> No previous claim against the employer is required.<sup>67</sup>
106. In the case at hand, Brand Co may be considered a third party. Indeed, the co-employment doctrine does not seem to apply: the conditions described in [37] above do not seem to be met.
107. The victims may therefore claim full compensation to Brand Co if they can demonstrate that it committed a civil fault that caused or contributed to their damage. In particular, the victims may be able to rely on Commercial Code [Article L225-102-4 and 5](#) (pertaining to Duty of Vigilance).
108. First, the victims will need to demonstrate that Brand Co employs enough employees to be subject to these provisions, which only apply if the company and its subsidiaries in France employ more than 5 000 employees, or if the company and its subsidiaries in France and worldwide employ more than 10 000 employees.
109. Second, they will need to show that Brand Co's duty of vigilance applied to the activities of Factory Co that gave rise to the violations, ie that Factory Co was a supplier with whom Brand Co maintained an established commercial relationship and that those activities related to that relationship.

65 [Civ \(2\) 4 February 2010, 09-13.332](#) (Court of Cassation, Civil Chamber).

66 [Soc 22 December 1988, 85-17.473](#) (Court of Cassation, Labour Chamber).

67 [Civ \(2\) 4 April 2013, 12-13.921](#) (Court of Cassation, Civil Chamber).

110. Third, victims will have to prove that Brand Co failed to comply with its legal duty of vigilance, ie that it failed to take adequate measures in its vigilance plan to identify the risks to and prevent the violations to human rights, the health and safety of individuals, and fundamental freedoms resulting from Factory Co's activities, and to implement those measures effectively.
111. Finally, causation will have to be shown between the damages suffered by the claimants and Brand Co's lack of vigilance, ie that those damages could have been avoided had Brand Co complied with its obligations.
112. If Brand Co is not subject to those provisions, it may be more complex to demonstrate a civil fault which could result from a violation of the different due diligence obligations spelled out in the Labour Code (see [45] above), or through a failure to respect general standards of conduct or Brand Co's own specific commitments (see [42] above).



**If civil claims would not be the preferred route for holding the perpetrators in Case Scenario 3 to account, please indicate any other available legal avenues available to the victims and/or their families?**

113. Given the seriousness of the reported violations, this case would probably be tried in criminal courts. As previously mentioned in [4] above, victims and/or their families may participate in criminal proceedings as civil parties. However, with respect to work accidents, the civil liability regime provided for in the Social Security Code is exclusive, meaning that victims may not claim compensation during criminal proceedings, unless the employer committed an intentional fault, or a third party is liable.
114. A number of criminal offences could be identified against Factory Co, including sexual harassment (Criminal Code [Article 222-3](#)), endangerment of other people's lives ([Article 223-1](#)) or manslaughter ([Article 221-6](#)).
115. Brand Co could also be held criminally liable if it is established that it failed to respect an obligation of care or safety within the meaning of Criminal Code [Article 121-3](#) relating to non-intentional offences (carelessness, negligence or failure to comply with an obligation of care or safety) and the deliberate endangerment of other people's life.



**Are there any high-profile lawsuits in your jurisdiction relevant for Case Scenario 3?**

116. In September 2001, an explosion occurred at the AZF chemical factory in Toulouse, which was operated by the company Grande Paroisse, killing thirty-one people, injuring many more, and causing extensive property damage. Grande Paroisse was a subsidiary of Atofina, which at the time handled all of Total's chemical activities. In October 2017, the Paris Court of Appeal found the director of AZF's

plant guilty of manslaughter and involuntary injury. Grande Paroisse was fined EUR 225 000 for its actions. The decision was upheld in cassation.<sup>68</sup>

117. Sherpa and ActionAid France filed a criminal complaint against electronics company Samsung over labour conditions in its factories in China, Korea and Vietnam (the original indictment was annulled in April 2021).<sup>69</sup> Sherpa and Ethique sur l'étiquette also filed a criminal case against Auchan in connection with the 2013 Rana Plaza collapse in Bangladesh.<sup>70</sup> However, both complaints were based on the prohibition of misleading commercial practices under French consumer law. This legal basis can only allow consumers (rather than direct victims) to seek compensation. In the [Samsung](#) case, the organisations' complaint was found inadmissible for lack of legal standing. In the [Auchan](#) case, the investigative judge dismissed the case in April 2022, claiming a lack of evidence. The appeal is pending.
118. As detailed in [44] above, so far seven cases have been filed under the Duty of Vigilance Law, including on the basis of allegations regarding workers' rights. Only one of these cases relates to alleged violations occurring in a company's supply chain, rather than violations resulting from the activities of subsidiaries. In 2021, NGOs brought a case against supermarket Casino for failing to properly identify risks and prevent human rights and environmental abuses in its beef supply chain in the Amazon.<sup>71</sup> The case is still pending.



---

68 [Crim.17 December 2019, 17-87,465](#) (Court of Cassation, Criminal Chamber).

69 ['Samsung target of a lawsuit that would expose human rights violations'](#) (Sherpa).

70 ['Auchan and the Rana Plaza, deceptive business practices?'](#) (Sherpa).

71 ['Casino Guichard-Perrachon'](#) (Duty of vigilance radar, 6 July 2021).

