

Residents living next to a phone mast vs. the mobile phone company Bouygues Telecom



Florence looking out at the disguised relay phone mast put up by Bouygues Telecom

Analysis

The Story

JUDGEMENT

Versailles Court of Appeal

TOWN OF TASSIN LA DEMI-LUNE - FRANCE

Versailles Appeal Court Judgement 4 February 2009.

Residents living next to a phone mast vs. the mobile phone company Bouygues Telecom

The relay base station belonging to Bouygues Telecom which was the subject of the Versailles Appeal Court judgement was installed in 2006 on a pylon 19 metres high disguised as a pine tree, a few tens of metres away from the homes of the plaintiffs (in fact on a plot belonging to a landscape gardener), in spite of the original refusal by the mayor of Tassin la Demi-Lune and the persistent opposition from a residents' action group called "Les Riverains du Gouttet".



[ZOOM](#)

Knowing full well that this was a delicate situation, the operator Bouygues Telecom was cautious in making its first request for planning permission so as not to upset the people living nearby. Thus the application and the authorisation granted originally in June 2006 were modest in that they concerned only two GSM frequencies of 880/890 MHz and 925/935 MHz. Needless to say there followed the inevitable consequence and in 2008 Bouygues Telecom asked for and obtained an extension for UMTS in 3 frequencies ranging from 1935 MHz to 2140 MHz.

The mobile telephony operators are well used to legal sagas, in fact it is one of their strategies, but looking at the latest evidence there are signs that the situation is changing, not only on the ground among the public but also on the legal "ground".

In fact this is not the first time a mobile phone operator has been condemned at a first hearing, but it is the first time that an appeal court has upheld the sentence.

The judgement given by the Versailles Appeal Court on 4 February 2009 confirms and upholds the judgement given at the first hearing on 18 September 2008 before the Crown Court of Nanterre (Tribunal de Grande Instance, TGI), which demanded the dismantling of the relay base station belonging to Bouygues Telecom in the name of the principle of precaution. The locals had brought an action against the mobile phone operator on the basis of 'exceptional nuisance to one's neighbour'. [\[Jugement du TGI\]](#) [\[Analysis-Fr\]](#).

Bouygues Telecom lodged an appeal against the decision of the Nanterre Court, without being aware that for some time the "reasonable" and credible proofs of the harmfulness of artificial microwave radiation of the populace had been accumulating, the most significant of these being the report from the BioInitiative scientific consortium. The locals concerned also left nobody in any doubt about the strength of their feelings.

As a result it is not so surprising that the Versailles Appeal Court went beyond the terms of the judgement of the Nanterre Court in its reasoning in favour of the plaintiffs, who had been complaining of various physical and health problems ever since the installation of the phone antennas. The 14th Chamber of the Appeal Court estimated in particular that "*no factor provides grounds for categorically denying the existence of an impact on public health from exposing people to ELF radio waves and electromagnetic fields*".

Among other reasons for its decision the judgement stipulates that "*while the reality of the risk remains hypothetical, it becomes clear from reading the contributions and scientific publications produced in debate and the divergent legislative positions taken in various countries, that uncertainty over the harmlessness of exposure to the waves emitted by relay antennas persists and can be considered serious and reasonable*".

"That a recent report entitled Bio-Initiative was presented on 31 August 2007 by people whose university credentials and body of work accomplished show them to be worthy of respect, and provide grounds for setting aside the criticism made by the company Bouygues Telecom based on the absence of any mandate issued by a national or international body and of any statement that did not distinguish between electrical installations and mobile phones."

"That this BioInitiative report (a report which the European Parliament, on reading it, said had challenged their thinking), without providing a definitive answer on the point, concluded that the limits of ELF exposure set by ICNIRP in particular are inadequate to protect people."

Maître Richard Forget, representing the plaintiffs, noted with satisfaction, "*Bouygues Telecom has been sentenced to take down the phone antennas at Tassin-la-Demi-Lune, with a penalty clause of 500€ per day of delay*".

But the main point is that "*It's a turning point on the issue of mobile phones, a shift in the balance of power between the phone companies and local residents*."

"*This decision makes official the fact that there is a health risk and gives us the means to compel the operators to limit the threshold of emission to 0.6 V/m, instead of the 1.8 V/m registered for the relay antennas in this case.*"



Me Richard Forget

Florence, one of the local people who brought the case, said as soon as she heard about the Appeal Court judgement: "*We are not dyed-in-the-wool ecologists but we think there are certain things about the relay antennas that are bad for your health - they are for us, that's for sure. We're delighted for all the people like us, who live near phone antennas and are fighting against them.*"

The French Association of Mobile Phone Operators (AFOM), which is the phone companies' "dog of war", suffered a rude shock when they heard of the verdict.

They immediately put out a [Presse Release](#) in which they "express their surprise and their perplexity", repeating the argument about their obligation as operators to provide coverage of the country, in particular for UMTS licences. In their communiqué the AFOM, a veritable lobbying institution, once again opposes and mixes up its obligations in commercial law, which are a matter for private companies, with service to the public.

Nevertheless - and it's a first! - on the positive side it's clear that the AFOM is making the government health authorities face up to their responsibilities: "*The AFOM desires the public authorities to express themselves loudly and clearly on the subject of relay antennas and health.*"

Practically speaking, if Bouygues Telecom wants to appeal to the High Court they are obliged to take down the base station and its antennas.

"*The installations will be dismantled within the time required,*" says Bouygues Telecom, adding, "*We are considering a possible appeal because this judgement goes against the jurisprudence of the Council of State and of four other judgements from the appeal courts.*"

Maître Christophe Lapp, representing the company, warns, "*If this decision became a precedent, it would call into question the whole network of relay antennas belonging to all the operators ...What's more, it puts us in conflict with our practical obligations as drawn up by the government, which requires us to provide coverage of 98% of the country. The government has got to make the final decision.*"

This assessment, which naturally echoes that of the AFOM, has the merit of compelling the government to move beyond the stereotyped [communiqués from the Ministry of Health](#) (Fr).

The reaction was not slow to follow, since Nathalie Kosciusko-Morizet (NKM), just recently appointed Secretary of State for the Development of the Digital Economy, announced that she intends "to start again from the beginning with the thorny dossier of the dangers of EM radiation" and wishes to gather "a mini-round table on mobile telephony".

The problem with NKM is that she has a narrow-minded approach to the question, having said from the start, "*My analysis of the Interphone study, of which we already know the main results, leads me to have doubts on the impact of using the phone itself. On the other hand there is no new evidence on relay antennas.*"

With her experience NKM should be well aware that the role of those who shoulder the responsibility of the government in matters of public health is to consult with scientists and organisations who are independent, and not with scientists and organisations led by those who, as a matter of common knowledge, have a conflict of interest.



Nathalie Kosciusko-Morizet

It is surprising that France, which is a country that upholds the law, should have written into the government decree 2002-775 a recommendation that comes indirectly from the private organisation [ICNIRP](#).

Since then [May 2002] no Minister of Health has thought of asking for an expert opinion on whether a radiation level of 10,000,000 $\mu\text{W}/\text{m}^2$ of UMTS microwave frequency (the famous 61V/m specified in the [decree 2002-775](#)) is compatible with human health. In this situation it is not really surprising that more and more people are either discovering the beginnings of a devastating health condition or finding themselves faced with health problems they could never have imagined.

It is just as surprising, but positively so, to see that in the last little while the law in its great wisdom is taking the place of the authorities in matters of public health on the issue of the biological and health [impact](#) of electromagnetic radiation on the human being.

If NKM wants a genuine "mini-round table on mobile telephony" she will have to take some firm steps in a new direction before the cases brought to court over the massive artificial radiation of the populace move out of the domain of civil law into the domain of criminal law, a move that might not be so far off.

Another important aspect on the issue of non-ionising radiation, Maître Corinne Lepage wants to see created an offence of "retention of scientific information that could result in harm to public health".

Maître Richard Forget highlights the essential point: "A legal precedent is now established, all the Bouygues Telecom relay antennas are now under suspended sentence."

Serge Sargentini
Publishing Director,
Next-up organisation.

Versailles Court of Appeal



JUDGEMENT

04 February 2009



Crown Court of Nanterre
JUDGEMENT

Crown Court of Nanterre (TGI) - France : Citizens living near phone masts vs. Bouygues Telecom.

Extract from the Judgement given on 18 September 2008 [\[Judgement PDF page 4\]](#):

"Reason for the decision: the health risk.

"To expose one's neighbour against his will to a certain risk, and not a hypothetical one as the defence has claimed, constitutes in itself a public nuisance. Its egregious character is due to the fact that it has a bearing on human health.

"If this risk were to materialise in significant health problems, this would constitute a different type of offence deserving a more severe sentence, in accordance with the gravity of the problems."

Taking effective action
is making mobile phones compatible with human health,
it's getting the **BioInitiative** standard

[0.6V/m, why ? \(click\)](#)





Reinforcement for the foundations of the concrete pylon used to disguise the Bouygues Telecom antennas (Tassin la Demi-Lune)



Local residents come out in force to support the Gouttet action group. (Tassin la Demi-Lune-France).