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Notre Dame d'Allençon
Residents' Action Group
vs.
the Mobile Telephone
Company
Orange France SA



Françoise Aubin (Residents' Action Group) and Me Denis Seguin

French Republic
In the name of the People of France

5 March 2009

**The District Court
of Angers**
has pronounced the following
Judgement

LE 05 MARS 2009

TRIBUNAL DE GRANDE INSTANCE D' ANGERS

REPUBLIQUE FRANÇAISE
N° du dossier : 08/00765
ORDONNANCE
TRIBUNAL DE GRANDE INSTANCE DE
ANGERS DÉPARTEMENT
MAINE-ET-LOIRE A RENDU LE JUGEMENT

Le CINQ MARS DEUX MIL NEUF, Nous, [REDACTED] Président du Tribunal de Grande Instance d' ANGERS, assisté de [REDACTED] Greffier, avons rendu la décision dont la teneur suit :

ENTRE :

Madame [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Madame [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Madame [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Madame [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Monsieur [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Monsieur [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Madame [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Madame [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Monsieur [REDACTED]
[REDACTED]
49380 CHAVAGNES LES EAUX

Monsieur [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

C.EXE : Me SEGUIN
C.C. : Me GENTILHOMME
Me DE LA TASTE
1 Copie Dossier

05 MARS 2009

Madame [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Monsieur [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Madame [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Madame [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Monsieur [REDACTED]
[REDACTED]
49380 NOTRE DAME D'ALLENCON

Madame [REDACTED]
[REDACTED]
49380 CHAVAGNES LES EAUX

Représentés par Me D. SEGUIN, avocat au barreau d'ANGERS

ET :

S.A. ORANGE FRANCE
1 avenue Nelson Mandela
94110 ARCUEIL

Représentée par Me M. GENTILHOMME, avocat au barreau de PARIS

SAS SPIE OUEST CENTRE
7, rue Julius et Ethel Rosenberg
44800 ST HERBLAIN

Représentée par Me DE LA TASTE, avocat au barreau de NANTES

Vu l'exploit introductif du présent Référé en date du 01 Décembre 2008; les débats ayant eu lieu à l'audience du 05 Février 2009 pour l'ordonnance être rendue ce jour, ce dont les parties comparantes ont été avisées ;

FAITS-PROCÉDURE-PRÉTENTIONS DES PARTIES

Par déclaration de travaux en date du 3 septembre 2008, dont récépissé du 9 septembre, la société ORANGE FRANCE a saisi la commune de Notre Dame d'Allençon du projet d'installation sur l'église de trois antennes de couleur identique au clocher à hauteur des abat-sons du 1^{er} niveau, et de la création d'une zone technique à l'intérieur de l'église au niveau du 1^{er} palier.

Après avis favorable du conseil municipal, le maire de la commune a délivré le 12 septembre 2008 une décision de non opposition aux travaux et la société SPIE OUEST CENTRE, contractante du maître de l'ouvrage, a fait procéder à l'affichage de la décision, ce qui a été constaté par huissier le 23 septembre 2008.

Facts of the Case – Procedure – Claims of the Parties

By presenting a declaration of works on 3 September 2008, receipt of which was noted on 9 September 2008, the company Orange France notified the town council of Notre Dame d'Allençon of its plan to install three relay antennas on the church in a colour matching the bell tower at the level of the shutters, and to install a technical control area inside the church on the first landing.

On 12 September 2008, with the consent of the town council, the mayor indicated that there was no objection to the works and the company SPIE Ouest Centre, the contractors retained by the site manager, posted a notice of the decision, as officially recorded on 23 September 2008.

By a writ dated 1 December 2008 several persons, local residents and/or parents of pupils attending the school next to the church, acting on the basis of article 809 clause 1 of the Code of Civil Procedure and in opposition to the company Orange France and the company SPIE Ouest Centre, lodged with us a petition to forbid Orange France to install one or more telephone antennas in the church tower, with a penalty for any observed offence, and to sentence them to pay 4000€ in accordance with article 700 of the Code of Civil Procedure.

They cite the precautionary principle as outlined in article 1.110-1 of the Code of the Environment.

They point out the imminent danger posed by the installation of a mobile phone antenna that emits radiation constituting a health hazard, the absence of which cannot be guaranteed by the company Orange France; they emphasise the closeness of their homes and of the school, cite the European Parliament resolution of 4 September 2008, and various scientific studies.

[The company Orange France] cites their duty towards the public interest for the sake of which they are creating the relay network, the need to improve coverage of the country, and the burden imposed on them by instructions from the State that oblige them to achieve this, on pain of significant financial penalties.

They conclude that the installation functions in accordance with current regulations, which impose a safety margin with a factor of 50 between the threshold at which serious effects [from radiation] appear and the statutory limit.

They maintain that there is no scientific controversy on the subject and that the reports and notices issued by the administrative authorities combine in agreeing that there are no biological or health effects from this type of radiation; it emphasises that the public has a very low level of exposure to radiation due to the shape and the height of the beam and besides that the law does not recognise that any health hazard exists.

Reasons for the Judgement

It follows from the terms of article 809 of the Code of Civil Procedure that:

"The presiding authority can always, even in the presence of serious contestation, impose such measures of conservation or repair as are deemed necessary, either to prevent imminent harm or to put an end to an obviously illicit nuisance."

It follows from article 2 of the constitutional law of 1 March 2005 that a charter of the environment exists, which declares in particular that:

"Art. 1: Each person has the right to live in an environment that is balanced and respects health.

Art. 2: Everyone has a duty to take part in the preservation and the improvement of the environment.

Art. 3: Everyone must, in the conditions defined by the law, avoid any harm that they might cause to the environment or, failing that, limit its consequences.

Art. 4: Everyone must contribute to repairing the harm they cause to the environment, in the conditions defined by the law.

Art. 5: When the materialisation of any harm, even if its outcome is uncertain in the state of scientific knowledge, might affect the environment in a serious and irreversible manner, the public authorities should, in application of the precautionary principle and in the domains for which they are responsible, put in place procedures for evaluating the risks and adopt provisional and proportionate measures to prevent the materialisation of the harm."

It follows also from article 1.110-01 of the Code of the Environment that:

I: Natural spaces, resources and areas, the landscape and its natural features, the quality of the air, the animal and plant species, and the diversity and balance of nature to which they all contribute are part of the shared heritage of the nation.

II: Their protection, their enhancement, their restoration, their repair and their management are in the public interest and contribute to the objective of sustainable development which aims to satisfy the needs for development and health of present generations without compromising the capacity of future generations to meet their own needs. Within the framework of laws that define their field of action, they are governed by the following principles:

"1: The principle of precaution, according to which the absence of certainty, in the light of scientific and technical knowledge of the time, should not delay the adoption of effective and proportionate measures with the aim of avoiding the risk of serious and irreversible harm to the environment at an economically acceptable cost ..."

On the right to bring the petition:

The church is built on the plot numbered 468 on the local map and it is not contested that several petitioners live in homes in close proximity to the church; nor is it contested that several petitioners have children who attend the village school situated on plot 470 adjacent (cf. the attestation by the head of the school of 15 January 2009).

In any case, since each citizen has the right to an environment that is balanced and respects health, it matters little if the petitioners live more or fewer metres away from the planned site for the installation of the antenna, or even in a neighbouring community, once it is not contestable or contested that they could be within range of the radiation emitted.

On the relevant regulations:

On 12 July 1999 the Council of the European Union passed a recommendation defining the basic restrictions and the levels of reference concerning the limits of exposure of the public to electromagnetic fields (from 0Hz to 300GHz).

In an interministerial circular from the government dated 16 October it was explained that the level of reference was set at a level 50 times less than that at which it was possible to observe significant heating of human tissues, in order to guarantee the absence of non-thermic effects, which had not been proven but which were currently being studied.

The regional authorities were invited to set up a system of joint consultation on choosing the placement of antennas, in order to take account of public concerns regarding the potential health effects of the fields generated. The circular referred to disagreements between neighbours, consultation with parents of school children, nearby residents, etc.

By a decree of 14 November 2001 the levels set by the European Union were included, without any change, in the regulations relevant to the operators of the communications networks.

It is true however that these upper limits (from 48 to 61 V/m depending on the frequency of the networks, 900MHz, 1800MHz or UMTS) are not the same as those adopted by every country; in fact many European countries have set stricter limits (for example, Belgium: from 20.6 to 30.7 V/m, Italy: 6 V/m), which reveals at the least a divergence in the degree to which public health is considered important.

It is also noted that it is not contested that certain States, European and otherwise, have instituted a regulation defining an exclusion zone around dwellings or buildings considered sensitive.

This approach has been included in French regulations, there also at a minimal level in relation to the considerations it is based on.

The report of the Director General of Health of 16 January 2001, called the Zmirou report, concluded (d):

"The objective of reducing the level of public exposure to the minimum possible concerns in particular those who are potentially vulnerable such as children and certain of the sick. With this in mind, the group of experts recommends that **"sensitive" buildings** (hospitals, crèches and schools) **situated less than 100 metres from a macrocellular station should not be within direct range of the beam from the antenna** ... the group of experts thinks that the respect of these measures by the operating companies is of a kind to reduce the fears of the public, in particular of parents concerned about the exposure of their children while attending school ..."

The concept of an obligatory exclusion zone was not incorporated in the regulations.

The decree of 3 May 2002, based evidently on the same recommendation, must here be recalled in its principal terms:

Article 2

The persons mentioned in Article 1 should see that the level of exposure of the public to the electromagnetic fields emitted by the apparatus of the telecommunications networks and by the wireless installations that they make use of is below the limits set in 2.1 of the annexe to the present decree.

These levels are considered to be respected when the intensity of the electromagnetic fields emitted by the apparatus and wireless installations concerned is below the levels of reference defined in 2.2 of the same annexe.

Article 3

When several wireless installations or appliances are emitting electromagnetic fields in a certain place, the persons mentioned in Article 1 should see that the level of exposure of the public to the electromagnetic fields emitted by the whole group of installations and appliances concerned is below the limits set in A of 2.3 of the annexe to the present decree.

The obligation defined in the above clause is satisfied when the electromagnetic fields emitted by the whole group of installations and appliances meet the levels of reference defined in B of 2.3 of the same annexe.

Article 5

The persons mentioned in Article 1 shall communicate to the administration or the authorities responsible for the frequencies concerned, at their request, a dossier containing either a declaration that the apparatus or installation meets the standards or specifications mentioned in article 4, or documents proving respect of the exposure limits or, as the case may be, the levels of reference. This proof can be presented by using a measurement protocol in situ, within the boundary of the relevant field, of the level of exposure of the public to electromagnetic fields, details of which are published in the official Journal of the European Community or in the official Journal of the French Republic.

The dossier mentioned in the preceding clause shall also detail actions taken to ensure that inside schools, crèches or health establishments that are situated within a radius of 100 metres of the apparatus or installation, the exposure of the public to the electromagnetic fields emitted by the apparatus or installation is as low as possible, while maintaining the quality of the service provided.

The fact that the Council of State has rejected appeals against the requirements of this regulation on the grounds that it respects the upper limits set by the above-mentioned recommendation does not alter the matter.

In fact it is clear from the matter under consideration that the standard is old (1999), adopted without change by France, and that it is even termed "obsolete" by the European Parliament in its resolution of 4 September 2008 on the mid-term evaluation of the European plan of action on matters of environment and health 2004-2010, the resolution being adopted as follows:

22: ...notes that the limits of exposure to electromagnetic fields fixed for the public are obsolete insofar as they have not been revised since the recommendation 1999/519/EC of the Council of 12 July 1999 concerning the limits of exposure of the public to electromagnetic fields (from 0Hz to 300GHz), that these limits obviously do not take account of the subsequent development in information and communication technologies, nor indeed of the recommendations put forward by the European Environment Agency or of the more demanding emission limits imposed by example by Belgium, Italy or Austria, and that they do not take account of vulnerable groups such as pregnant women, newborn babies and children;

23: *...in consequence requests the Council to revise its recommendation 1999/519/EC in order to take account of the best national practices and thus to set more restrictive limits of exposure for the whole range of apparatus that emits electromagnetic radiation in the frequencies from 0.1Hz to 300GHz;"*

It appears also that agreements have been reached between operating companies and local communities on more restrictive contractual limits of exposure (cf. the letter from the president of the National Observatory for the security of school establishments and higher education, a state body, and the mention in the list of reasons for the proposed law no. 2491 not included in the order of the day).

On the respect of the present regulations:

It is very clear that the company Orange France has not contributed to the debate any item that might enlighten the court on the features of its installation and the respect of current standards or precautions taken.

Moreover it could have presented a full explanation, in the sense of the dossier referred to in article 5 of the 2002 decree, on *"the actions taken to ensure that inside schools, crèches or health establishments that are within a radius of 100 metres of the apparatus or installation, the exposure of the public to the electromagnetic fields emitted by the apparatus or installation is as low as possible, while maintaining the quality of the service provided."*

There is no doubt, in view of the various local maps produced in the debate and after measuring the distances according to the scale indicated, that the site of the school is less than 100 metres from the church tower.

Moreover the beam from an antenna is not simply linear and the Zmirou report specifies that it has a broad horizontal spread of 120° and a narrow vertical spread; installed at a height of about 20 metres (the plan is for 24 metres) it touches the ground at a distance between 50 and 200 metres.

It can be deduced from these factors that the site of the school is very likely to be subjected to radiation from the antenna oriented on the azimuth 100 and that the school should be classed as a "sensitive" building in the sense of the Zmirou report as well as the 2002 decree.

If only for the sake of "handling the extreme anxieties of the parents", which the company Orange France recognises in its documents as the reason for the recommendation in the Zmirou report and consequently in the 2002 decree of "a tightly restricted range", the company Orange France should have presented specific details on the technical aspects referred to above and not been content to produce the administrative dossier authorising the works, which is limited strictly to town planning regulations and does not provide an answer to the question of environment and public health raised by the nearby residents and local users.

It is all too evident that the planning proposal submitted by the company Orange France does not provide any means of verifying the respect of the statutory limits applicable in France, which as has been shown are some of the most lax. Nor does it offer any assurance regarding the precautions, not set up as strict regulations but included as recommendations, relating to the sensitive building of the nearby municipal school.

It is appropriate to recall here the precautionary principle as set out in article 1.110-1 of the environment code:

"1: The principle of precaution, according to which the absence of certainty, in the light of scientific and technical knowledge of the time, should not delay the adoption of effective and proportionate measures with the aim of avoiding the risk of serious and irreversible harm to the environment at an economically acceptable cost ..."

In the state of uncertainty about the technical features of the planned installation and considering the known risks to public health in the event of exceeding the current standards, standards which have been shown to be particularly lax and denounced as such, in the state of uncertainty about the guarantees offered for the protection of the sensitive building of the municipal school, and finally in the absence of any proof of the impossibility of making use of an alternative site, the precautionary

principle compels us to forbid the realisation of the plans to install relay antennas on the bell tower of the church of Notre Dame d'Allençon, an interdiction that constitutes an effective and proportionate measure with the aim of avoiding the risk of serious and irreversible harm to the environment at an economically acceptable cost. This reasoning coincides in the present case with that cited in accordance with article 809 clause 1 of the Code of Civil Procedure and it is within our competence to take any measure to prevent imminent harm, a definition that includes obviously the health hazard for residents living near the proposed installation.

In accordance with article 696 of the Code of Civil Procedure the terms of article 700 of the Code of Civil Procedure will be applied in the amount of 2500€.

For these reasons

Following debate in public that has presented arguments for both parties,

In presence of the company SPIE Centre,

We forbid the company Orange France to proceed with the realisation of plans to install relay antennas on the bell tower of the church of Notre Dame d'Allençon, subject to a penalty of 5000€ per day per observed offence of carrying out the prohibited works from the date of the present notification.

We sentence it to pay the costs of the hearing and to pay 2500€ to the petitioners as a group in accordance with article 700 of the Code of Civil Procedure.

Judgement handed down this day and recorded by the Clerk of the Court.

The present decision has been signed by, President andClerk of the Court.

Ainsi fait et prononcé à la date ci-dessus par mise à disposition au greffe. La présente décision a été signée par [REDACTED], Président et [REDACTED] Greffier.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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is making mobile phones
compatible
with human health,
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IMMEDIATELY

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