

PERSPECTIVES REPORT ON THE FRENCH CLASS ACTION

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The French class action entered into force on 1 October 2014 as part of the Consumer law called 'the Hamon Act'. A tidal wave was expected for this long-awaited law. A year after its entry into force, the results are underwhelming. For the time being, only six class actions have been instituted before French courts, compared to the thousands brought each year before the US Courts. Several reasons may underline this limited number of class actions.

The limited scope of the French class action

The French class action targets only

consumer victims; the consumer being defined as any natural person acting for purposes which fall outside of his trade, business, craft or profession. Therefore, businesses and professionals cannot gather together in order to start a class action.

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Remedies may only be sought for economic losses resulting from material damages suffered by consumers.

A monopoly of accredited consumer associations has been introduced for the defence of consumers. As of today, 15 consumer associations are entitled to act on behalf of consumers. Unlike the US system, the French class actions functions on an opt in with

publicity basis, hence requiring a positive act on the part of the consumer willing to take part in the action.

The Consumer Law provides for a two-stage procedure: (i) a civil courts decision on the professional's liability; and (ii) a compensation stage allowing consumers to recover damages following the court's decision. This quite restrictive conception



of the class action could explain the reason why only six class actions have been introduced within the last year.

Only six class actions have been brought since the adoption of the Consumer Law

So far, various class actions have been brought before French courts by accredited consumer associations (UFC Que Choisir, SLC-CSF, CLCV, etc.). It is important to note that each case has had an impact on the image of the companies concerned by the class action, which led the said companies to set up internal committees to face the media coverage.

The French accredited consumer association UFC Que Choisir was the first consumer association to bring a class action. On 1 October 2014, UFC–Que Choisir filed a class action against FONCIA, a company specialised in residential property management and real estate services, on the same day class action lawsuits became legal in France.

UFC–Que Choisir summoned FONCIA to appear before the District Court of Nanterre on behalf of tenants over the allegedly illegal fees it charges renters. UFC–Que Choisir argues that FONCIA has collected €44m in illicit charges over the past five years, according to a press release issued by UFC–Que Choisir on 1 October 2014.

Toward the extension of the scope of French class action?

Labour law. The President François Hollande has

called for an extension of the scope of class actions to labour law and more particularly to discrimination in companies and in access to employment. This wish was echoed by the Prime Minister and by a Ministry of Labor and Employment report dated 2 April 2015. The class action for discrimination could be effective as from 2016 since the Bill on 21st Century Justice, which is backed by Christine Taubira, the French Minister of Justice, was voted in first reading by the Senate on 5 November 2015.


Health. Following a bill proposal of 17 March 2015, the French class actions might be extended to personal injury claims against health products manufacturers, suppliers of service providers using health products. Using the same framework as the one on consumers, patients and users' associations will have the monopoly to bring class actions for damages for similarly situated users having suffered physical injuries. An issue for the judge will probably be to deal with the heterogeneity of patients' personal injuries.

Environment. Class actions on environmental issues were considered quite early but are not yet part of the legal framework. Permitting associations for the protection of the environment to represent individual victims for environmental damage before the courts could be beneficial, allowing compensation for individual victims for their personal damage (not only with regard to the collective interest) resulting from an offence against the environment. However, the purpose of such

class action does not entirely concur with the one existing for consumers, which is basically to seek remedies for mass damage where the harm caused to each consumer is minimal. On the contrary, environmental damages may be very important and affect a restricted number of persons.

Conclusion

The Ministry of the Economy is satisfied with the development, even though timorous, of the Consumer Law class action and greets the engagement of the associations. It highlights that this procedure is meant to ensure equilibrium in the relationship between consumers and professionals.

As from January 2016, the generalisation of the mediation mechanism to the consumer field will complete and reinforce the class action tool, the scope of which might also be extended to other fields. It appears that the class action mechanism is riding high in public opinion – the legislator just needs to follow up. 



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