

A Renewed Interest in French Class Actions?



IN SHORT

The Situation: Class actions (*action de groupe*) were implemented in France in 2014. Three-and-a-half years after its entry into force, the French class action has not met the expected results.

The Result: Only a few class actions have been filed so far, and the length of the proceedings does not allow us to have a good overview of the success of this mechanism.

Looking Ahead: The first French class action, which was brought in 2014 against Foncia, a property management company, should come to an end soon: in the case of success for consumers, the attractiveness of class actions will certainly increase.

The main aim of the Consumer Act No. 2013-344 of March 17, 2014, adopted on the initiative of former French Minister Benoît Hamon, was to strengthen consumer protection by offering consumers a new legal mechanism: the class action (*action de groupe*).

Currently regulated by articles L.623-1 *et seq.* of the Consumer Code, the class action "*à la française*" allows approximately 15 nationally certified consumer associations to bring before civil courts claims for damages suffered by at least two consumers and that are caused by a professional's failure to fulfil its statutory or contractual obligations.

The French class action was initially designed to defend only consumer rights. However, it has been rapidly extended to other areas such as discrimination (in particular at work), environment, personal data and health.

While broadening its scope has increased the enthusiasm of the supporters of the class action mechanism, it did not have the expected impact on consumer disputes.

A report published by the French Court of Auditors on December 18, 2017, underlines that the number of class actions brought before French courts is still low (less than 10 as of today), and no significant case law has yet stood out more than three years after its entry into force. According to the report, class action proceedings prove to be particularly long and therefore tend to dissuade consumers from bringing them.

A previous report published in October 2016 by the National Assembly's Committee on Economic Affairs provides more information on the reasons for the class action's shortcomings. This report gave an update on the situation two years after the entry into force of the Consumer Act, and it highlights five major implementation difficulties that may explain the limited success of the class action: (i) limited number of associations entitled to file class actions and insufficient number, among them, of associations having sufficient funds to conduct class actions; (ii) time-consuming procedure; (iii) difficulties in qualifying the heads of damages; (iv) competition from other legal instruments, such as joint actions by lawyers (*actions conjointes*); and (v) distrust of judges who tend to convince the parties to find a solution through alternative dispute resolution.

Today, however, class actions are once again at the fore. Indeed, on March 13, 2018, hearings of the first class action (filed on October 1, 2014, day of the entry into force of the 2014 Consumer Act) were held before the Nanterre District Court.

These court proceedings have been brought by the consumer association UFC-Que Choisir against Foncia (a property management company) for a notification service that was allegedly illegally invoiced to its tenants for the sum of €2.30 per month. The estimated number of victims (318,000 tenants) and the amount of damages claimed (€44 million) make this class action one of the largest to date. The judgment should be issued on May 14, 2018.

If the court were to find Foncia liable, this would certainly be an incentive for other consumer associations to explore the class action as a viable option in France.



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TWO KEY TAKEAWAYS

1. The length of the proceedings, the limited number of associations entitled to lead class actions, the difficulty in assessing damages, and a general distrust of it by some legal practitioners are the main hurdles that hinder the success of the French class action.
2. On May 14, 2018, the judgment will be issued in the *Foncia* case, France's first class action, which was brought in October 2014 by consumers requesting €44 million for damages allegedly suffered by 318,000 consumers.

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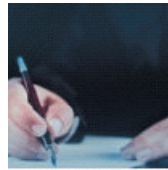
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