

Collective litigation in Finland

by Klaus Viitanen
LL.D., Docent in Commercial Law
University of Helsinki
Finland

1. General

The Finnish civil litigation system. Finland, as the other Nordic countries, belongs to the countries, which have the civil law system. The legislation is seen as the primary source of law and the courts base their judgments on the articles of acts. However, on the contrary to many other civil law countries, Finland and the other Nordic countries have not codified their civil law. Instead of one single Civil Code, the civil law -questions are in these countries regulated by separated acts.¹

Finland has a dual court system. There are the general courts, which deal with civil and criminal law cases, and the administrative courts, which deal with disputes between private persons and public authorities, e.g., disputes on taxes, social security, protection of environment. The general courts are divided into three levels: to the courts of first instance, to the Courts of Appeal and to the Supreme Court.

The courts of first instance were reorganised in year 1993. Before the reform, there were two types of general courts of first instance: the Town Courts and the Rural District Courts. In 1993, these courts were unified and are now called as District Courts. At this moment there are 66 District Courts in Finland. They have jurisdiction over all civil and criminal cases within their territorially limited districts.

The procedure in the general courts in Finland is regulated by the *Code of Judicial Procedure*. Besides the organisation of the courts of first instance, also the rules on civil procedure in the Code of Judicial Procedure were radically reformed in year 1993. The new civil procedure is based on principles of centrality, orality and immediacy.² The procedure was divided into two stages: to the written and oral preparation and to the main hearing. In practice 95 per cent of all cases are settled during the written preparation.

¹ See, e.g., *Zweigert-Kötz*, pp. 276-285.

² See, e.g. *Ervo*, pp. 56-64 and *Toiviainen*, pp. 105-121.

Also the cost rules were reformed in the same year. According to the present cost rules, it is the loser who has to pay the legal expenses of his own and those of the other party. This was also the main rule before the reform, but in practice courts used to approve approximately 60 per cent of the winners claim on legal expenses.

There are six Court of Appeals in Finland. The procedural rules in these courts were reformed in 1998. Before the reform, the procedure in the Courts of Appeals were in practice only written. One of the purposes of the reform was to increase the amount of oral hearings in these courts. This has, however, made the procedure in these courts more slower and definitely also more expensive. The Supreme Court is situated in Helsinki, and it acts as the court of final appeal.

The administrative courts have two instances. Firstly, there are eight regional Administrative Courts, which deal with complaints against administrative acts. The judgements of these courts can then be appealed in the Supreme Administrative Court, which is situated in Helsinki. However, as a compulsory first complaint instance, there are several public complaint boards, which have to deal with the case, before it may taken to an administrative court. That is why, also in cases which belong to the jurisdiction of the administrative courts, there are in practice three levels of instances.

In addition to the general and administrative courts there are also few special courts with rather limited jurisdiction. The Market Court is a special court for cases which deal with the protection of consumer's collective interests, unfair competition or competition law. Insurance Court have jurisdiction over cases which deal with compulsory social security insurances.

The different forms of group litigation in Finland. In principle the different forms of group litigation may be divided roughly to two main group on the basis, what kind of remedies are available. In group litigation for injunction the courts are entitled to impose only injunction orders. The procedures are in this report called as *group action for injunction*. The main aim of these actions is to protect the collective interests and rights of different groups. However, in Finland most collective interests and rights are protected by state or municipal authorities. These authorities are entitled to impose by themselves injunction orders against natural or legal person who have infringed these interests and right. In Finland the most well-known systems, where authorities have competence to impose injunction order without the need to take legal action in a court, may be found in the competition law, environment law and in legislation which is regulating equality

between men and women. Because the decisions in these questions are made outside the courts, they have been left outside the scope of this report.

However, in the protection of consumer collective interests, with the exception of product safety issues, the competence of state authorities is much more limited. In questions concerning the use of unfair marketing practices or unfair standard contract terms, the Finnish Consumer Ombudsman has to take legal action against a trader in the Market Court in case the Ombudsman does not succeed to persuade him to abandon in a voluntarily way the infringements of the law. Group actions for injunctions initiated by the Finnish Consumer Ombudsman and settled by the Finnish Market Court, will be dealt in chapter 2 of this report. The most relevant act in this context is *the Consumer Protection Act* (34/1978), which was adopted in year 1978. During the years it has been amended several times.³ Also relevant acts in this context are *the Consumer Agency Act* (1056/1998), *the Market Court Act* (1527/2001) and *the Act on Certain Proceedings before the Market Court* (1528/2001).

In group litigation action for compensation is it, however, possible to claim monetary compensation for damages which a certain group of person has suffered due to the infringement of their individual rights. This form of group litigation is in this report called as *group action for compensation*. Group action for compensation may be non-representative or representative. In a non-representative group action for compensation all those person who have suffered damaged, has to be parties of the trial in order to receive compensation. These kinds of non-representative actions has been traditionally possible in the Finnish courts on the basis of so called consolidation of actions. In addition, test and pilot cases are also possible in Finnish courts, although they are not given any kind of special treatment in the Finnish procedural legislation. These forms of non-representative group actions for compensation will be dealt in chapter 3 of this report.

After fifteen years discussions and hard debates *the Group Action Act* (444/2007) was finally adopted in February 2007 and it entered into force in October 2007. This act, which however is applicable in mass consumer disputes only, provides first time a possibility for a representative group action for compensation. According to this act, the Finnish Consumer Ombudsman may in a mass consumer dispute take a legal action in a general court and represent a specified group of consumers without an express permission of group members, and this results in a judgment that is binding both and against all the members

³ For an English translation of this act, see the home page of the Finnish National Consumer Agency/Ombudsman <http://www.kuluttajavirasto.fi>.

of the group. The main features of Group Action Act will be presented in chapter 4 of this report.

In Finland there exists also a system for out-of-court settlement of consumer disputes. In the municipal level consumers may receive legal advice from the municipal consumer advisers. They may also try to mediate between the disputing parties. In the state level the Public Consumer Dispute is settling individual consumer disputes by giving recommendations.⁴ Since March 2007 the Finnish Consumer Ombudsman has been entitled to initiate a special group complaints in this Board. In case the Board regards the complaint as justified, it may recommend that the trader in question should give compensation to all consumers who have suffered damages. The possibility to present a group complaint will be dealt in chapter 5 of this report.

2. Group action for injunction in consumer issues

The Market Court. The final decision-making power when assessing whether marketing practice or standard contract terms may be regarded as unfair or not, has in Finland been given to a special court, called as the Market Court. Its jurisdiction is limited to the following areas of law: consumer law (only marketing and standard contract terms), unfair competition and competition law. The court consists of professional judges, and expert members, who in practice may be also representatives of different interests groups. In the main hearing the Finnish Market Court normally consists of three professional judges and from one to three expert members, everybody with an individual right to vote.⁵

Right of action. In consumer matters a court procedure in the Market Courts is initiated by a petition of the Consumer Ombudsman. The Consumer Ombudsman is a special state authority, whose task is to supervise marketing practices and the use of standard contract terms, but also to promote consumer interests in general.

The right of action has been formally restricted to the Consumer Ombudsman only. However, if the Consumer Ombudsman refuses to file a petition with the court for the

⁴ For more details of the Finnish out-of-court system for the settlement of individual consumer disputes, see *Viitanen 1989*, pp. 141-165.

⁵ See *the Market Court Act*, art.9.2.

hearing of cases concerning advertising measures or contract terms, the petition may be filed by a registered association looking after the interests of traders, consumers or employees.

In practice competitors often take legal actions against each others in the Market Court, but on the basis of unfair competition law, which provide to them more than only a secondary right of action. However, consumer organisations have not shown interest to use their right of action. In spite of the fact that the secondary right to institute proceeding in the Market Court has been available since year 1978, it has never been used.

The right to take legal action against traders used to be also in Finland reserved only to the Finnish Consumer Ombudsman and the secondary right to the Finnish consumer/trade/employee organisations. Due to the directive 98/27/EC on injunctions for the protection of consumers' interests⁶, so called *injunction directive*, the legislation was amended also in Finland so that in cross-border matters a case may also be initiated by petition of a foreign authority or organisation. However, in Finland so far there have been no cases in the Market Court which would have been initiated by foreign authorities or organisations. Neither has the Finnish Consumer Ombudsman used the benefits of the injunction directive 98/27/EY in other Member States.

However, the Finnish Market Court solved its first case concerning cross-border marketing already in year 1987. In that case a big multinational company was marketing its products via satellite television from Britain to Finland. The Consumer Ombudsman took legal action in the Market Court against the Finnish subsidiary company of the multinational company in question. The court stated, that the Finnish Consumer Protection Act was applicable in the case due to the fact that marketing was intentionally targeted also to the Finnish consumers. Perhaps the most interesting point in this case was the fact, the injunction order with a conditional fine was imposed to the Finnish subsidiary company.⁷

In case infringements of law are observed, the Consumer Ombudsman has an obligation to persuade the trader in question to abandon unfair marketing practices or the use of unfair contract terms in a voluntarily way.⁸ The trader is asked to sign a written engagement in which he promises not to continue unfair marketing practice or the use of unfair

⁶ See OJ N:o L 166, 11.6.1998. For more details of this directive, see, e.g., *Côté*, pp. 18-28.

⁷ See the case number 1987:13 of Finnish Market Court.

⁸ See, e.g., *the Consumer Agency Act*, art.5.

contract terms. The use of soft law methods has shown to be extremely effective during the years. The great majority of clear infringements of law are solved by this way without need to use any legal sanctions. Even in more principal cases traders often prefer to change their marketing practices instead of letting the Consumer Ombudsman to take the case to the court.

In cases of minor importance, the Consumer Ombudsman is entitled to impose by himself an injunction order together with conditional fines. In case a trader resists in a certain time limit, the injunction becomes void and the Consumer Ombudsman has to take the case to the court. The Consumer Ombudsman may also impose a temporary injunction order in urgent cases. It is valid until the courts starts to try the case.

Remedies. In case the Market Court considers a marketing practice as unfair, it imposes an *injunction order*. The purpose of this order is to prohibit the trader to carry on his illegal activities. The injunction order is strengthened with a conditional fine, usually between 50 000 - 100 000 euros. Conditional fine is a fine which the trader has to pay in case he does not comply with the court order. The Court may also order the trader to arrange *corrective advertising*. This means an obligation to correct, normally by a totally new advertisement, the information given in unfair marketing.⁹ In practice the significance of corrective advertising has been rather small. The reason for this is the simple fact, that marketing campaigns have in practice ended a long ago before the judgment is given.

The Finnish Market Court does not have other remedies available. Criminal sanctions are in principle available, but the criminal procedure takes place in general courts, which also impose the sanctions. In practice criminal sanctions have been used very seldom. In 1980s the Consumer Ombudsman tried to use criminal sanctions against unscrupulous traders, but the criminal charges were dismissed or the punishments were so low, that there was no sense to bring new criminal cases to the courts.¹⁰

Neither does the Market Court has jurisdiction to order compensation of damages in individual cases. This means that individual consumers, who want to claim compensation for their economic damages caused by unfair marketing practices or the use of unfair standard contract terms, have to take legal action in a general court in case out-of-court

⁹ See, *the Consumer Protection Act*, ch. 2, art. 9.

¹⁰ See, e.g., *Wilhelmsson 1996*, p. 149.

procedures turn to be useless. Due to the risk of high costs of litigation, this possibility is at this moment often more theoretical than practical.

Right to appeal. The judgment of the Market Court used to be final. No one had the right to appeal to the Court of Appeal or directly to the Supreme Court. However, since year 2002 the parties have had right to appeal to the Supreme Court provided that the Supreme Court grants a leave to appeal.¹¹ The parties have been quite active to use their new right to appeal. In fact, it has been used in most cases and the Supreme Court has been so far quite liberal when granting its leave to appeal. In its final decisions, the Supreme Court has confirmed the judgement made by the Market Court. The changes have been minor ones.¹²

Legal expenses. In consumer law cases the no-cost rule is applied in the Market Court. This means that both parties have to carry their own legal expenses in spite of the outcome of the case. In spite of the no-cost rule, the lack of sufficient resources has probable been one reason for the unwillingness of consumer organisations to initiate cases in the Market Court.¹³

Preventive measures. In practice the preventive measures play much more significant role than the court cases. The Consumer Ombudsman gives advance opinions, issues marketing guidelines and carries on negotiations with the trade organisations concerning standard contract terms. The aim is to prevent any infringements of law by informing the traders and by negotiating with them. These preventive measures are not based on the law, but have been created in practice during the years.

Advance opinion is an opportunity for an individual advertiser to check beforehand whether a planned marketing campaign is infringing the marketing law or not. On request, the Consumer Ombudsman will give a statement regarding his view of the lawfulness of the planned marketing arrangement. Once the Consumer Ombudsman has shown "green light", he does not in practice interfere on his own initiative with an arrangement covered by the advance opinion and implemented within a reasonable time of its delivery. In year 2004 the Consumer Ombudsman gave altogether 107 advance opinions.¹⁴

¹¹ See *the Act on Certain Proceedings before the Market Court*, art. 21.

¹² See, e.g., *Bärlund*, pp. 424-427.

¹³ See *Viitanen 1999*, p. 552.

¹⁴ See *Consumer Agency/Ombudsman. Annual report 2004*, p. 22.

The Consumer Ombudsman has issued during the years *marketing guidelines* in several sectors of marketing. These guidelines are mainly based on the existing case law and their purpose is to inform traders what kind of marketing practices are infringing the law. For example, in year 2004 the Consumer Ombudsman issued three new guidelines: Marketing error situations; Minors, marketing and purchases and Changes in contract terms. In addition the Finnish National Consumer Agency and the National Board of Education prepared principles concerning marketing and sponsorship in schools.

The third preventive method used by the Consumer Ombudsman is *negotiations with trade organisations concerning standard contract terms* in several branches of business.¹⁵ A good example of these negotiated standard contract terms are the Package Travel Contract Terms, which are used in practice by almost all Finnish travel agencies. The result of these negotiations do not necessarily mean that the Consumer Ombudsman approves all the contract terms used in the negotiated standard contract terms, but he approves most of them.

There are many benefits connected to these negotiations. From traders' point of view the probability that Consumer Ombudsman would take actions against negotiated contract terms is in practice quite minimal. From consumers' point of view one benefit is that consumer law prohibits only the use of unfair contract terms. By these negotiations it is possible to add to the standard contracts new terms which improve consumers' contractual position compared to the earlier used standard contract terms, or even compared to the mandatory consumer contract law provisions. This fact clearly shows the task of the Consumer Ombudsman to promote consumers collective interests, and not only to supervise, whether the legislation in force is violated or not.

¹⁵ See, e.g., *Wilhelmsson 1994* s. 34.

3. Non-representative group action for compensation

Consolidation of actions. The settlement of mass disputes is in principle possible also in the traditional civil procedure. If there are several plaintiffs against the same defendant, the court may join these actions in one proceeding if that contributes to a quicker and proper trial of the case.¹⁶ This is called as consolidation of actions. In spite of fact that all these cases are handled in the same trial, it is basically question of several individual claims which for economic reasons have been consolidated. This means also that all the members of the group who wants to have compensation must be involved in the trial as plaintiffs. In case a consumer organisation or another third party is representing the members of a group, it must have a proxy from each of them. In consolidated cases the same principle is applied as in most other countries concerning legal expenses. It is the loser who has to pay his own trial costs and those of the other party.¹⁷ This means that all the members of the group who are plaintiffs in the trial have to bear their part of the legal expenses if the case is lost.

Pilot cases. The second alternative in the settlement of mass consumer disputes are the so called pilot cases. This means that only one case is taken to a court and in the other cases parties comply with the court's judgement made in the pilot case. In most pilot cases this happens without any prior agreement between the plaintiff and defendant.

In Finland the Consumer Ombudsman can assist consumers in a court in an individual dispute if a case has significance for consumers' general interests and a preliminary ruling is desired. The Consumer Ombudsman can also decide that the National Consumer Agency will pay for consumer's all legal expenses, including those which he has to pay to the other party if the case is lost.¹⁸

In practice the Finnish Consumer Ombudsman makes from 2 to 6 decisions to provide aid of this kind each year. For example, in a recent case, the Consumer Ombudsman assisted a consumer in all three court instances in a dispute where a consumer had bought consumer goods from USA via internet and paid by using her VISA -credit card. She never received the ordered goods, but got anyway a bill from her VISA -company. She started to claim her money back from VISA on the ground of connected lender liability, as imple-

¹⁶ See *the Code of Procedure*, ch.18, art. 1-8.

¹⁷ See *the Code of Procedure*, ch. 21, art 1.

¹⁸ See *the Consumer Agency Act (1056/1998)*, art. 9.

mented into the Finnish Consumer Protection Act, ch. 7, art. 13. In February 2007 the Finnish Supreme Court decided, that the Finnish VISA -company was liable for the non-performance of the foreign seller and ordered the company to pay back the price of the goods.¹⁹ This judgement will have a great importance in the future, especially when cross-border internet- shopping is coming more and more frequent among ordinary consumers.

The main problem in the use of pilot cases is that from procedural law viewpoint the court's judgement do not differ in any way from judgements given in normal individual cases. It does not have *res judicata* -effect in other similar cases. This means that the defendant who has lost his case, do not have any legal obligation to comply with the judgment in other identical disputes. The effects of pilot cases are only based on defendant's fear that a preliminary ruling may encourage other consumers to take legal actions in similar cases. Creating a precedent is only helpful in situations where a company is willing to comply with the ruling in all other cases too.

In Finland pilot cases have shown to be useful in some situations, but there are also a lot of examples where traders have been unwilling to comply with decisions made in pilot cases. In the latter cases time limits on claims have caused problems to those consumers who have waited for the results of a pilot case. If a pilot case is under consideration for years, other claims with a similar basis can lapse. Preventing this may require individual measures on the part of each consumer, which conflict with the main idea of a pilot case.

4. Representative group action for compensation

4.1. The law drafting of the Finnish Group Action Act

In Finland the law drafting procedure for a representative group action for compensation started already in the Ministry of Justice in the beginning of 1990s. The first committee published its proposal in 1995.²⁰ This committee would have provided the right of action to individual members of a group (class action) and registered organisations, which aim is to promote the interests of the group (action by organisation) but not without further regulation to administrative authorities (public action). The scope of application would

¹⁹ See *the Supreme Court Judgement 2007:6*, issued in 2 February 2007.

²⁰ See *OLJ 1/1995*.

have been general: group action would have been possible in all cases where there exists a lot of individual disputes in which the facts are identical or almost identical.

This proposal was, however, strongly resisted by trade organisations. According to these organisations there was no need for such a court action. Besides they argued that representative group action for compensation would not fit to the Finnish procedural system. One of the main arguments was also that the adoption of group action for compensation before other Member States would cause serious problems to Finnish enterprises in the Internal market.

Because of heavy resistance from the business side the Ministry of Justice set a new committee to continue the preparation in order to find an amicable compromise. The second committee published its proposal in June 1997.²¹ In this proposal the scope of application of the new action was restricted only to mass consumer disputes and environmental damages. The individual members of a group and in mass consumer disputes also the Consumer Ombudsman would have had the right of action.

However, at the end of last decade, the Ministry of Justice decided not to submit any proposal to the Parliament concerning the adoption of group action for compensation. The decision was made by the Minister of Justice, who was representing the Conservative Party and who worked before his appointment as the chairman of the Finnish Enterprise's Association. The decision was criticised and it drew a lot of public attention because it was made by a man who had very close connections to the business lobby organisations.

The law drafting continued in this decade and in March 2006 a new committee report was published. It contained a proposal on group action for compensation, which scope of application was, however, much more restricted when compared to the other Nordic countries. Government's proposal concerning new legislation on group action was given to the Parliament in September 2006 and the new act was adopted in 13 February 2007.²² The Finnish Group Action Act (*Ryhmäkannelaki*) (444/2007) entered into force in October 2007.

²¹ See *OLJ 3/1997*.

²² See *OLJ 4/2006* and *HE 154/2006*.

This means that a representative group action for compensation is now possible in all Nordic countries except Iceland. In Sweden the Group Action Act (*Lagen om grupprättegång*) was adopted already in year 2002 and it entered into force in January 2003. In Norway, the chapter 35 of the new Act on Civil Procedure (*Tvisteloven*) introduced group action for compensation to the Norwegian procedural system. These rules will come into force in January 2008. In Denmark a proposal was given to the Parliament in October 2006 and it was adopted in the beginning of this year. These rules will also enter into force in the beginning of next year.

4.2. The Finnish Group Action Act 2007

The scope of application. The scope of application is in most Nordic Group Actions Acts general. This means that group action will be possible in all kinds of disputes on the condition that they fulfil the general requirements of group actions, e.g., it is question of disputes where the facts are identical or at least identical to each others, and it is sensible to handle these disputes together in one trial.

However, in this respect the Finnish Act differs clearly from the other Nordic countries. According to the committee report published in year 2006, the scope of application was planned to be restricted to two types of disputes: to mass consumer disputes and to environmental damage issues. The government's proposal was even more strict: group action would be possible in mass consumer disputes only.²³ This opinion was also adopted by the Parliament.

So, according to the article 1.1. of the Finnish Group Action Act the act applies, within the limits of the competence of the Consumer Ombudsman, to the hearing of a civil case between a consumer and a business as a class action.

The right of action. Group actions can be divided into three types on the basis who the plaintiff may be. Firstly, we may identify a proper *class action*, where the plaintiff is a member of the group and seeks, e.g., redress also for his own damages which he has suffered. Second possibility is that the plaintiff is not a member of the group, but a public authority responsible for the supervision of collective rights of a certain group. This kinds of actions has been called as *public action*. Thirdly, there are actions where the plaintiff is

²³ See *OLJ 4/2006* s. 53-56 and *HE 154/2006*, pp. 16-17.

a private group, e.g., a consumer organisation, which has received legal standing. These actions has been called as *actions by organizations*.²⁴

There is also a clear difference between other Nordic countries and Finland concerning the question *who may act as a plaintiff* in a group action for compensation. In other Nordic countries all above-mentioned types of group action for compensation are possible. So, in Denmark, Norway and Sweden the plaintiff may be a member of the group (class action), an organisation, who is protecting the interests of a certain group of citizens (action by organisation), or state authority, e.g., the Consumer Ombudsman (public action).²⁵

In Finland only a public action will be possible. According to article 4 of the Finnish Group Action Act, the Finnish Consumer Ombudsman has exclusive right to take legal action on behalf of a specified group of consumers. This means that consumer organisations or individual consumers do not have even a secondary right of action in cases where the Consumer Ombudsman have decided not to start a legal proceeding. According to the committee report published in year 2006, in environmental damage issues the environmental organisations would have had a right of action, but only a secondary one.²⁶ This secondary right of action was naturally dropped away when the scope of application of the act was decided to be limited to consumer mass disputes only.

The formation of the group. In group actions judgements have legal effect for all members of the group, although they are not parties to the case. However, there are in principle two opposite ways how the group may be formed. Firstly, all persons who fill certain requirements will become automatically members of the group. Those, who do not want to be members of the group have to use their right to *opt out*. The opposite alternative is the *opt in* -model. In this alternative only those persons, who have joined the group by registration, will be members of the group and will be covered by the judgement.

In Finland only opt in -alternative is available. This is also the case in Sweden and the main rule in Norway and Denmark. However, in these two last-mentioned countries also opt out -alternative is possible in mass disputes, where individual court actions are not sensible, e.g., due to the fact that the monetary interest of individual cases is so low. This

²⁴ See, e.g., *Bourgoignie*, pp. v-vi.

²⁵ See, e.g., *the Norwegian Act on Civil Procedure*, ch. 35, art.3.

²⁶ See *HE 154/2006*, p. 20 and *OLJ 4/2006*, pp. 61-67.

possibility increases usefulness of group action, especially in mass consumer disputes. However, in Denmark the opt out -alternative is available in public actions only.²⁷

Rules for the procedure. The group action for compensation in Finland starts by an application for summons. It should contain also arguments, why the case should be heard as a group action.²⁸ Only six courts of first instance have competence to deal with group actions. After receiving the application for summons, the court will study, whether the general requirements - e.g., the claims are based on same or similar circumstances - that the case may be heard as a group action for compensation, have been fulfilled.²⁹

If they are fulfilled, the court shall give the parties a notice of the commencement of the group action. The court shall also set a time limit for class accessions. After this, the plaintiff should without delay give the known class members a notice of the filing of the case. The notice may be postal or electronic. If the notice cannot be given in either manner to all class members, an announcement of the class action may be published in one or several newspapers or in some other appropriate manner. The notice should contain, e.g., a brief description of the case and basic information on the class action as a form of procedure.³⁰

As already mentioned, the Finnish Group Action is based on opt in- model. Members, who has delivered, within the time limit, a written letter of accession belong to the class. However, in case a member delivers a letter of accession after the expiry of the time limit, but before the supplemented application for a summons has been submitted to the court, the plaintiff may for a special reason accept him or her as a class member. After receiving the letters of accession, the plaintiff must prepare a supplemented application for a summons, indicating the names and addresses of the class members, the particulars of their claims and, if necessary, supplemented grounds for the claims. The application for a summons must be submitted to the court within one month of the time limit set for class

²⁷ See the *Norwegian Act on Civil Procedure*, ch. 35, art. 7 and *Betænkning nr. 1468*, pp. 275-276.

²⁸ See the *Group Action Act*, art. 4-5.

²⁹ See *HE 154/2006*, p. 40.

³⁰ See the *Group Action Act*, art. 6-7.

accessions. The court should without delay issue the summons once it has received the supplemented application for a summons.³¹

During the preparation of the case, the plaintiff may expand the action to cover also new class members by amending the definition of the class, if this does not cause significant delay in the hearing of the case or unreasonable inconvenience to the defendant. On the other hand, if the plaintiff withdraws the action in respect of the claims of a given class member before the supplemented application for a summons has been submitted to the court, the court should strike the case from its docket for the respective part. However, in case the plaintiff restricts the action, after the submission of the supplemented application for a summons to the court, so that it no longer covers the claim of a given class member, the court should set a time limit within which the class member may notify the court that he or she wishes to pursue his or her case as a party in separate proceedings. If a class member notifies that he or she wishes to pursue the case as a party, the court should sever his or her claims in order for them to be heard in separate proceedings and decide how the proceedings are to continue.³²

Before the case is moved on to the main hearing, a class member may resign from the class by notifying the court in writing or in person at the court registry. In this event, the case should be struck from the docket in respect of the resigning class member. However, when the case has already been moved on to the main hearing, a class member may resign from the class only with the consent of the defendant. Also in this event, the case should be struck from the docket in respect of the resigning class member. Once the case rests for a decision, resignation from the class is no longer permitted.³³

The legal effects of the judgment given in a group action for compensation are regulated in article 16 of the act. According to it, the decision of the court is binding on the class members whom the court has in the decision designated as such.

The parties have the right to appeal against a decision issued on the basis of a class action. The normal rules for appeals, as provided in the Code of Judicial Procedure, shall be applied. A decision dismissing a procedural plea concerning the preconditions for a class action may be separately subject to appeal, unless the court, in order to avoid undue delay

³¹ See *the Group Action Act*, art. 8-10.

³² See *the Group Action Act*, art. 12-13.

³³ See *the Group Action Act*, art. 15.

or for some other special reason, orders that the decision be subject to appeal only in conjunction with the judgment or other final order on the main issue. So, only the parties have a right of appeal. However, in case the plaintiff does not appeal a decision issued on the basis of a group action for compensation, a class member shall have the right to appeal in respect of his or her claim within 14 days of the end of the appeal period or the respective counter-appeal period. A class member need not declare an intent to appeal. In other respects, appeal shall be governed by the provisions of the Code of Judicial Procedure.³⁴

Otherwise the procedure to be used in these representative group actions for compensation is primarily corresponding to ordinary legal procedure in civil cases. This is mentioned in article 1.3. of the act. According to it, in addition to the provisions of the act, the hearing of a class action shall in other respects be governed by the provisions on civil procedure, in so far as appropriate. The Group Action Act contains no regulation on applicable remedies in group actions for compensation. In this respect, all the same civil law remedies are available than in normal traditional individual civil cases, e.g, compensation of damages, price reduction.

4.3. Who funds group litigation?

The cost rules. In Finland the cost rules were reformed in year 1993 at the same time when the civil procedure in courts of first instance was very radically reformed. The obligation to pay the legal expenses is regulated in chapter 21 of the Code of Judicial Procedure. According to article 1 in chapter 21 of this code, the main rule in the civil procedure is that *the loser is obliged to pay all necessary and fair legal expenses of the other party.*

The decision, how much the loser has to pay to the winner, is made together with the judgment of the case and includes the exact amount, which the loser has to pay. That is why, the parties should present their claims - usually directly based on attorney's bills - on legal expenses before the case rests for decision. In practice the courts do not cut very much parties claims on legal expenses. This is one of the main reasons, why the legal expenses have raised very much in Finland during the last 15 years. The attorneys present higher and higher bills after realising that the courts take usually them as a starting point when making its decision on legal expenses. At this moment they do not exist any scales or ceilings for loser liability to pay the legal expenses of the winner.

³⁴ See *the Group Action Act*, art.18.

The Group Action Act does not contain any rules for parties liability to pay other parties legal expenses. That is why, the general costs rules in ch. 21 of the Code of Judicial Procedure will be applied also in the group actions for compensation. In individual disputes the legal expenses of both parties easily exceed in practice 10 000 euros already in the court of first instance. However, in more principal cases, as in mass disputes, the expenses may be several hundred of thousands of euros. In most probable, this will also be the reality in group actions for compensation.

In group actions for compensation in Finland - as in Sweden - only the parties in the case are responsible for the costs. Since the members of the group are not parties to the proceedings, they will not be responsible for the costs. On the contrary, in Denmark and Norway the members may become partly responsible of the legal expenses. The ceiling of members' liability will, however, be decided by the court already in the beginning of the trial.³⁵ The key question here is, whether the liability is individual or collective. In case the ceiling is individual, but not collective, this makes it possible for the potential members of the group to assess, whether it is economically sensible to opt in or not.

Evaluation of the present situation. The most essential question when evaluating the practical significance of group action for compensation is, how the actions will be financed. Group actions entail much higher costs than individual cases in a normal civil procedure, albeit that in individual cases too the costs of litigation are the biggest obstacle to the use of courts in consumer disputes.³⁶ In group actions the plaintiff takes a great financial risk, which in practice is too big for individual consumers or small and medium-size consumer organisations. So, if group action is wanted to serve as a serious alternative in the settlement of mass consumer disputes, which would also work in practice, the problem of high litigation costs, has to be solved first.

When assessing the Finnish group action for compensation from this viewpoint, one has to admit, that the situation is far from satisfactory. The Finnish civil procedure is based on the so called English rule: the loser has to pay the expenses of his own and those of the other party. These kinds of cost rules create barriers for access to justice. Who is willing and able to start a group action for compensation, if he has to pay the expenses from his own pocket? The fact, that the Finnish Group Action Act gives the right of action to public

³⁵ See *the Norwegian Act on Civil Procedure*, ch. 35, art. 14 and *Betænkning nr. 1468*, pp. 276-277.

³⁶ See, e.g., *Cappelletti 1993*, p. 285.

authorities only, do not solve the financial problem. Also public authorities, including the Consumer Ombudsman, have to work with limited economic resources.

In Sweden group action for compensation, with a general scope of application, has been possible since year 2003. So far the number of actions in Sweden has been only six. One of them have been started by the Swedish Consumer Ombudsman.³⁷ It is obvious that the risk of high legal expenses has been the main reason for the small number of group action for compensation in Sweden.

Different ways for improvements. However, the legislator may use different methods to lower the economic threshold in group actions, in case there is enough political will to use them. Firstly, by using *the no-cost rule and contingency fee or conditional fee -payment systems* it would be possible to transfer the financial risk from the parties to the law offices. In this system both parties would cover only their own expenses and attorneys would be paid only in the event of a successful outcome. Law offices may accept this kind of payment system, because if they win the case, they are able to charge much higher fees than in normal cases and they will also receive good publicity, which will increase goodwill towards the office and bring new clients to the firm in the future. This system has been very popular way to finance class actions in the United States.³⁸

However, this system does not fit very well to the Finnish legal system and would probably be strange in many other European countries, too. As mentioned before, in Finland the main rule is that the loser has an obligation to pay winner's all legal expenses. No-cost rule in group action for compensation would mean a clear exception from this main rule. Contingency fee and conditional fee -payment systems are in principle possible, but are not used in Finland in practice. The amount of attorneys in Finland is still quite reasonable, which means that there is no need to attract new customers by using payment systems where the risk would be transferred to law firms. Attorneys prefer to work on hourly wages, which mean that their income do not depend on the outcome of the case at all. That is why, it is also probable that the use of conditional fees will not become popular in Sweden, in spite of the fact that this possibility is expressly mentioned in the Swedish Group Action Act.³⁹

³⁷ See, e.g., *Lindblom 2005*, pp. 152-161.

³⁸ See, e.g., *Lindblom 1989*, pp. 283-334.

³⁹ See *the Swedish Group Action Act*, art. 38-41.

Perhaps a more realistic way to reduce the cost risk and to decrease the economic threshold for access to courts in group actions for compensation might be *adoption of scales and ceilings for losers liability to pay the legal expenses of the winning party*. In fact, these scales and ceilings would be rather useful in all civil cases. Naturally, in the settlement of mass disputes much higher ceilings have to be used than in purely individual cases. These scales and ceilings would help the court to decide, what is the reasonable amount of legal expenses the loser should be obliged to pay. In addition, they would make the total amount of legal expenses more predictable at time, when the group action for compensation is under preparation. These scales and ceiling would not have direct effect on how much the attorneys would be allowed to charge from their clients. However, in practice these scales and ceilings would have similar effects on attorneys fees as direct regulation of attorneys fees. When the parties would be no longer able to transfer all their legal expenses to the other party, even if they win the case, much more attention has to be paid on the questions, how much the party is willing to invest on the case and how much the attorney will change.

Secondly, it is possible to use *different kinds of funding systems*. A public or private fund could financially support the plaintiff who brings a group action. These funds could receive state subsidies, but also a certain percentage of the money won by group actions could be channelled into these funds to be used as capital for future cases. These kinds of funding systems are already used at least in Canada. In spite of the fact, that there have been problems in their practical functioning, mainly due to inadequate initial capital, in principle these funds forms an interesting alternative, which should investigate very carefully.⁴⁰

The first Finnish committee, which published its report in year 1995, also drew special attention to the financing of potential group actions. It proposed the establishment of a special State Group Action Board. This board would have received its funding mainly from the state budget. Potential plaintiffs could apply for economic support which would also have covered the legal expenses which the plaintiff would have had to pay to the other party in cases which were lost. Naturally, the Board would have had to consider whether there were good enough grounds to bring a group action or not.⁴¹ In practice, this Board would have decided in which cases group action is brought and in which not.

⁴⁰ See *L'Heureux*, pp. 456-457 and *Watson*, pp. 274-277.

⁴¹ See *OLJ 1/1995*, pp. 21-23, 60-65, 103-105 and 115-117.

However, the second Finnish committee, which published its report in June 1997, abandoned this idea. The willingness to public savings was the main reason. According to the instructions which were given to the committee when it started its work, the new legislation should not cause any extra expenses to the state.⁴²

Unfortunately, the second committee did not propose any alternative models how the problem of financing could be solved. As mentioned above, it would be possible to establish a special fund which could finance group actions without continuous state aid. A certain percentage of the money received by successful group actions could be channelled into this fund. Instead of using public resources the fund would collect its capital mainly from private sources. In this system only the basic capital would normally be needed from the state.

The amount of needed capital at the time of establishment and during its work would depend whether the previously mentioned scales and ceilings for the liability to pay legal expenses would be also adopted. On the other, the establishment of a special fund would also have influence on how high liability ceilings would be acceptable. So, both these ways - scales/ceilings and funds - to increase the practical accessibility of group action for compensation would have influence on each other and would also support each other.

5. Group complaints in the Consumer Dispute Board

The traditional court procedure in most countries has been criticised because it is not applicable to the settlement of mass disputes, including consumer mass disputes. The same criticism - the inability to solve mass disputes - may also be directed against the Finnish Public Consumer Complaint Board and against similar bodies in other Nordic countries.⁴³

However, an interesting experiment started in the Swedish board already in year 1991. It is now a permanent system based on the law. The Swedish Consumer Ombudsman is entitled to bring to the Swedish Consumer Complaint Board a special group complaint against an individual trader. The Board may - if it considers the complaint justified - recommend that the trader should give the recommended remedy to all consumers who have similar demands against the same trader, but who have not personally complained to

⁴² See *OLJ 3/1997*, pp. 2, 97-98 and 131-133.

⁴³ For more details about these boards, see *Viitanen 1996*.

the Board. If the Ombudsman is not interested in bringing a group complaint, consumer and labour organisations are entitled to do so. For some reason, the right to complain has not been given to individual consumers. So, a procedure comparable with a class action is not possible in the Board.

The Swedish Consumer Ombudsman has brought approximately one or two group complaints to the board every year. Most of the Board's decisions given in these cases are said to be complied with.⁴⁴ However, it is unclear how the compliance has been controlled in these cases when most of the consumers involved are not known by the Board. Opt in-system is not applied in these group complaints.

In Finland a committee, which published its report in January 2006, proposed that a similar system should be adopted also in Finland. According to this proposal, the Finnish Consumer Ombudsman could bring a group complaint to the Finnish Consumer Complaint Board in consumer disputes, where several consumers have similar kinds of claims against the same trader, and it would be possible to solve all of them by a single decision. In the Finnish proposal right to complain, not even a secondary one, was not given to single consumers or consumer organisations. The decisions of the Board in group complaints was meant to be recommendations just like in other issues handled by the Board.⁴⁵

The Government's proposal on new legislation for the Board, which consisted also the possibility for group complaints and the change of the Board's name to the Consumer Dispute Board, was left to the Parliament in September 2006.⁴⁶ It was adopted by the Parliament in January 2007 and entered into force two months later.⁴⁷ So far the Board has not received any group complaints initiated by the Consumer Ombudsman.

⁴⁴ See *ECLG 2005*, pp. 5-6, *Ljungqvist*, pp. 20-21 and *TemaNord 1998:572*, pp. 56-65.

⁴⁵ See *OLJ 1/2006*, pp. 9-10, 15.

⁴⁶ See *HE 115/2006*.

⁴⁷ See art. 4 and 26 of the new act (*Laki kuluttajariitalautakunnasta (8/2007)*).

6. Conclusions

In a modern society it is not uncommon that many people suffer economic damages due to problems which are more or less similar as other peoples. The reason for this is the increasing mass production of goods and the mass supply of services, e.g., in transportation and in insurances. However, the dispute settlement systems in most countries has been unable to solve these mass disputes. The traditional civil procedure is only aimed at solving disputes between individual litigants.⁴⁸ However, the same problem may also be seen in most out-of-court procedures which have been created during the last few decades. They are rather forceless in front of the mass disputes.

In the discussion on the settlement of mass disputes most attention over the last few decades has without doubt been paid to group action for compensation. However, in most European countries the possibility of bringing an group action for compensation do not yet exist. Group action for compensation - like small claims courts - has been much more popular in common law countries outside the Europe. The most well-know examples may be found in the United States, Canada and Australia.⁴⁹ The lack of group action for compensation in Europe has been a problem, because it is expressly this type of court action which could be very useful in the settlement of mass consumer disputes. Group action for compensation is an important weapon when making justice more accessible in mass disputes.

The European Communities has not proposed any directive on group action for compensation. It is important to notice, that the directive on injunctions for the protection of consumers' interests (98/27/EC) entitles supervisory bodies to take legal action in other Member States only in order to impose an injunction order. The passivity of the EC concerning group action for compensation was, for example, used in the Finnish legal debate at the end of 1990s. It was argued that the adoption of group action for compensation before other Member States do so, would cause serious problems to Finnish enterprises in the internal market. This so called "EC -card" has also been used in the legal debate in Finland before. Thus, in matters concerning product liability it was possible to delay the adoption of strict liability for more than a decade.⁵⁰

⁴⁸ See, e.g., *Cappelletti 1989*, pp. 268-287.

⁴⁹ See, e.g., *Lindblom 2000*, pp. 427-439, *COM(93) 576*, pp. 63-64, *Eisenstein*, pp. 30-53, *L'Heureux*; pp. 445-461 and *Harland*, pp. 126-139.

⁵⁰ See *Viitanen 1994*, pp.165-167.

However, the argument that more advanced legislation would cause serious problems to domestic enterprises is rather questionable. It seems that it is based on an exaggerated conception of the effects of legal regulation on business activities. In Canada, for example, group action for compensation is possible only in three provinces, British Columbia, Ontario and Quebec. So far there has been no alarming news that group action has caused serious damage to enterprises domiciled in these provinces.⁵¹

Due to the active law drafting during the recent years, it seems that situation is slowly changing in Europe. Especially the Nordic countries have been quite active. Group action for compensation has been possible in Sweden since the year 2003. The Finnish Group Action Act was adopted the February 2007 and it entered into force in October 2007. In Denmark legislation, which enables the use of group action for compensation, was adopted in the beginning of year 2007. The Norwegian legislation on group action will enter into force in January 2008. So, in year 2008 group action for compensation will be possible in four Nordic countries.

When compared the Finnish Group Action Act to other Nordic acts, it is easy to notice, that the Finnish act is much more restricted. Firstly, its scope of application has been limited to mass consumer disputes only. Secondly, the right of action has been given to the Consumer Ombudsman only. However, it is good to remember, that group action for compensation has been a very sensitive political question in Finland since 1995, when the first committee report was published. Several proposals, all of them more radical than the adopted new act, were made during the years without any further legislative progress. The resistance from the business lobby organisations was very hard and successful. That is why, the final act is a more or less acceptable political compromise.

It is more than probable, that group action for compensation will be used quite rarely in practice in the Nordic countries. The major obstacle to the use of group action is the cost of litigation. In all four Nordic countries public action, where plaintiff is a public authority, is or will be possible. This means that in mass consumer disputes the Nordic Consumer Ombudsmen may bring group actions for compensation on behalf of group of consumers. However, the use of the Consumer Ombudsmen as plaintiffs instead of single consumer or consumer organisations do not solve the problem of financing. Also the state authorities have to work with limited yearly resources.

⁵¹ See, e.g., *Lindblom 2000*, pp. 428-429.

For example, the yearly budget which the Finnish National Consumer Agency may use for its own expenses is approximately EUR 6 000 000. The great majority of these monetary resources are, however, aimed to certain purposes: salaries for the permanent employees, rents, etc. This means that without extra resources the Finnish Consumer Ombudsman has to consider extremely carefully in which cases he starts a group action for compensation. As mentioned before, so far the Swedish Consumer Ombudsman has started only one group action in a four and a half year. So, one of the most important questions concerning the practical functioning of group action for compensation would without any doubt be the financing of these actions. *Who has afford to group actions for compensation?*

In case these financial problems are solved, group action for compensation may become an important instrument also in Finland when making justice more accessible in mass disputes. However, it's most important function will be the preventive one. Group action for compensation can, by its mere existence among other legal procedures, promote the opportunities to reach an agreement with the defendant in question, without needing to bring a suit to court.

One argument which is often used on behalf of group action for compensation is that it brings savings both to the disputing parties and to the court system because several individual disputes may be settled in one single court case. However, this argument is based on the assumption that there really would be several individual court cases if the group action for compensation were not recognised by procedural law. This is probable in cases in which the economic interest exceeds the costs of litigation and it also makes an individual court case feasible. However, in other cases - including most consumer disputes - only the possibility of collecting individual interests together makes it sensible to take legal action. Thus, in practice, in most cases group action for compensation actually increases expenses incurred by the court system, because it makes legal actions possible which would not otherwise be raised as individual actions. But at the same time it makes justice more accessible in mass disputes where access to justice is still a great problem today.

The situation where group action for compensation is possible in four Nordic countries, raises the question, how to enforce judgments given in cross-border group actions for compensation? The Brussels Regulation n:o 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters is applicable in individual cross-border civil and commercial disputes, but group actions for compensation have also clear collective elements. That is why, it is not clear, whether judgments - given in the future by Nordic courts in cross-border group actions for compensation - will be in

practice enforceable also in those Members States which have not yet adopted group action for compensation in their procedural law.

Bibliography

- Betænkning nr. 1436* Reform af den civile retspleje III. Adgang til domstolene. Betænkning nr. 1436. København 2004.
- Betænkning nr. 1468* Reform af den civile retspleje IV. Gruppesøgsmåls mv. Betænkning nr. 1468. København 2005.
- Bourgoignie, Thierry* Foreword. Group Actions and Consumer Protection. Edited by Thierry Bourgoignie. Bruxelles 1992, pp. v-vii.
- Bärlund, Johan* Om högsta domstolen som besvärsinstans i vissa marknadsrättsliga ärenden. Tidskrift utgiven av Juridiska Föreningen i Finland 2005, pp. 418-433.
- Cappelletti, Mauro* The Judicial Process in Comparative Perspective. Oxford 1989.
- Cappelletti, Mauro* Alternative Dispute Resolution Processes within the Framework of the World-Wide Access-to-Justice Movement. Modern Law Review 1993, pp. 282-296.
- COM (93) 576* Access of Consumers to Justice and the Settlement of Consumer Disputes in the Single Market.
- Côté, Charles-Emmanuel* Injunction Actions for the Protection of Collective Interests of Consumers. In Access to Justice and Alternative Dispute Resolution Systems in Central and Eastern Europe. Edited by Jean-Paul Pritchard. Louvain-la-Neuve 2001, s.11-81.
- Demeulenaere, Bernadette* Sweden's System to Resolve Consumer Disputes. Especially the Public Complaints Board and the Small Claims Procedure. Stockholm 1983.
- Eisenstein, Martin* Consumer Protection in the United States. Stockholm 1982.
- ECLG 2005* The need for group action for consumer redress. The opinion of the ECLG. ECLG/033/05. February 2005. Available in address: <http://www.europeanconsumerlawgroup.org>
- Ervo, Laura* The Reform of Civil Procedure in Finland. In Civil Justice Quarterly 1995, pp. 56-64.
- Harland, David* Group Actions: A Discussion of the Australian Proposals, with Some Other Perspectives from Asia and the Pasific. In Group Actions and Consumer Protection. Edited by Thierry Bourgoignie. Bruxelles 1992, pp.115-139.
- HE 115/2006* Hallituksen esitys eduskunnalle laeiksi kuluttajariitalautakunnasta ja Kuluttajavirastosta annetun lain muuttamisesta.
- HE 154/2006* Hallituksen esitys eduskunnalle ryhmäkannelaiksi ja laiksi Kuluttajavirastosta annetun lain muuttamisesta.
- Lindblom, Per Henrik* Gruppatalan. Göteborg 1989.
- Lindblom, Per Henrik* Progressiv process. Uppsala 2000.

- Lindblom, Per Henrik* Lagen om grupprättegång - bakgrund och framtid. Svensk Juristtidning 2005, pp. 129-191.
- L'Heureux, Nicole* Effective Consumer Access to Justice: Class Actions. Journal of Consumer Policy 1992, pp. 445-461.
- Ljungqvist, Richard* Konsumenters access to justice i Sverige och i det nya Europa. In Allmänna reklamationsnändens årsbok 1993/94, pp. 16-28.
- NOU 2001:32* Rett på sak. Lov om tvisteløsning (tvisteloven). Bind A. Oslo 2001.
- OLJ 1/1995* Ehdotus ryhmäkannelaiksi. Työryhmän mietintö. Oikeusministeriön lainvalmisteluosaston julkaisu. Helsinki 1995
- OLJ 3/1997* Ryhmäkannelaki. Työryhmän 1996 mietintö. Oikeusministeriön lainvalmisteluosaston julkaisu. Helsinki 1997.
- OLJ 1/2006* Kuluttajavalituslautakunnan toimivallan laajentaminen ja ryhmävalitusmenettely. Oikeusministeriön työryhmämietintö 2006:1. Helsinki 2006.
- OLJ 4/2006* Ehdotus laiksi ryhmäkanteesta. Oikeusministeriön työryhmämietintö 2006:4. Helsinki 2006.
- Ot.prp.nr. 51 (2004-2005)* Om lov om mekling og rettergang i sivile tvister (tvisteloven).
- Prop. 2001/02:107* Regeringens proposition. Lag om grupprättegång.
- SOU 1993:59* Ny marknadsföringslag. Slutbetänkande av Marknadsföringsutredningen. Stockholm 1993.
- TemaNord 1998:572* Nye utfordringer i klagesaksbehandlingen. Fra et nordisk seminar på Lillehammer den 5.-7. mars 1997. København 1998.
- Toiviainen, Heikki* Finland. A national report in Civil Justice in the Countries of the European Union. Edited by Elio Fazzalari, London 1998.
- Viitanen, Klaus* Consumers Access to Justice in Finland. In Consumer Protection in Czechoslovakia and Finland. Edited by Thomas Wilhelmsson and Jiri Svetska. Helsinki 1989, pp. 141-165.
- Viitanen, Klaus* Implementation of the EC directive on Product Liability in Finland. In The Implementation Process of EC Directives on Product Safety, Product Liability and Unfair Contract Terms. Edited by Françoise Maniet and Beata Dunaj. Louvain-la-Neuve 1994, pp. 165-185.
- Viitanen, Klaus* The Scandinavian Public Complaint Boards: the Aims, Present Situation and the Future. Consumer Law Journal 1996, pp. 118-126.
- Viitanen, Klaus* The Crisis of the Welfare State, Privatisation and Consumers' Access to Justice. In From Dissonance to Sense: Welfare State Expectations, Privatisation and Private Law. Edited by Thomas Wilhelmsson and Samuli Hurri. Aldershot 1999, pp. 549-566.
- Watson, Garry* Class Actions: The Canadian Experience. In Duke Journal of Comparative & International Law 2001, pp. 269-287.
- Wilhelmsson, Thomas* The Implementation of the EC Directive on Unfair Contract Terms - An Assessment from a Nordic Point of View. In The Implementation Process of EC Directives on Product Safety, Product Liability and Unfair Contract Terms. Edited by Françoise Maniet ja Beata Dunaj. Louvain-la-Neuve 1994, pp. 31-43.

Wilhelmsson, Thomas

Administrative Procedures for the Control of Marketing Practices - Theoretical Rationale and Perspectives. In *Twelve Essays on Consumer Law and Policy*. Edited by Tuuli Junkkari. Helsinki 1996, s. 142-163.

Zweigert, Konrad - Kötz, Hein

Introduction to Comparative Law. Third edition. Oxford 1998.

Act on Class Actions

Ryhmäkannelaki

(444/2007)

Section 1 — *Scope of application*

- (1) This Act applies, within the limits of the competence of the Consumer Ombudsman, to the hearing of a civil case between a consumer and a business as a class action. However, this Act does not apply to a civil case concerning the conduct of an issuer of securities or the offeror in a takeover bid or mandatory bid, as referred to in the Securities Markets Act (495/1989; *arvopaperimarkkinalaki*).
- (2) For the purposes of this Act, *class action* is defined as an action brought by the plaintiff on the behalf of the class defined in the action, with the objective that the judgment to be delivered in the case become binding also on the class members.
- (3) In addition to the provisions of this Act, the hearing of a class action shall in other respects be governed by the provisions on civil procedure, in so far as appropriate.

Section 2 — *Preconditions for a class action*

A case may be heard as a class action, if:

- (1) several persons have claims against the same defendant, based on the same or similar circumstances;
- (2) the hearing of the case as a class action is expedient in view of the size of the class, the subject-matter of the claims presented in it and the proof offered in it; and
- (3) the class has been defined with adequate precision.

Section 3 — *Competent court*

Class actions shall be heard by the District Courts of Turku, Vaasa, Kuopio, Helsinki, Lahti and Oulu. Among these courts, competence shall lie with the District Court located in the same Court of Appeal jurisdiction as the District Court where the defendant would be liable to respond were a claim covered by the class action presented as a separate case.

Section 4 — *Standing*

The Consumer Ombudsman, as the plaintiff, shall have exclusive standing to bring a class action and to exercise the right of a party to the case to be heard in court.

Section 5 — *Filing of a class action*

- (1) The application for a summons in a class action shall contain the following information:
 - (1) the class to which the action pertains;
 - (2) the known claims;
 - (3) the circumstances on which the claims are based;
 - (4) the basis on which the case should be heard as a class action;
 - (5) the circumstances, as known to the plaintiff, that are relevant to the hearing of the claims of given class members only;
 - (6) in so far as possible, the evidence that the plaintiff intends to offer in support of the action, as well as the facts that the plaintiff intends to prove with each item of evidence;

- (7) a claim for the compensation of legal costs, if the plaintiff deems this necessary; and
- (8) the basis for the competence of the court.

Section 6 — *Notice of the commencement of a class action*

- (1) Unless the action is ruled inadmissible or dismissed in accordance with chapter 5, section 6, of the Code of Judicial Procedure (*oikeudenkäymiskaari*), the court shall without delay and before issuing a summons give the parties a postal or electronic notice of the commencement of the class action and of the judge in charge of the preparation of the case. In addition, the court shall set a time limit for class accessions. For a special reason, the court may grant an extension to this time limit.
- (2) The plaintiff shall without delay give the known class members a notice of the filing of the case. The notice may be postal or electronic. If the notice cannot be given in either manner to all class members as defined, an announcement of the class action may be published in one or several newspapers or in some other appropriate manner. The plaintiff shall give the notice also to the defendant.

Section 7 — *Contents of the notice*

- (1) The notice given by the plaintiff shall contain the following information:
 - (1) a brief description of the case and the claims to be presented;
 - (2) a description of the class on behalf of which the action has been brought;
 - (3) the contact information of the plaintiff; and
 - (4) information about how to accede to the class and about the time limit set for class accessions.
- (2) In addition, the notice shall contain basic information on the class action as a form of procedure, the status of class members in the proceedings, settlement, the legal effects of a judgment delivered on the basis of a class action, the right of appeal, and the liability for legal costs.

Section 8 — *Class membership*

- (1) A class member as defined, who has delivered, within the time limit, a written and signed letter of accession to the class shall belong to the class.
- (2) If a class member, as defined, delivers a letter of accession after the expiry of the time limit, but before the supplemented application for a summons has been submitted to the court, the plaintiff may for a special reason accept him or her as a class member.

Section 9 — *Supplemented application for a summons*

The plaintiff shall prepare a supplemented application for a summons, indicating the names and addresses of the class members, the particulars of their claims and, if necessary, supplemented grounds for the claims. The application for a summons shall be submitted to the court within one month of the time limit set for class accessions. For a special reason, the court may grant an extension to this time limit.

Section 10 — *Summons*

- (1) The court shall without delay issue the summons once it receives the supplemented application for a summons.
- (2) In the summons, the defendant shall be exhorted to respond to the action in writing. In other respects, the issue of the summons and the response shall be governed by the provisions in chapter 5, sections 10–12, of the Code of Judicial Procedure, in so far as appropriate.

Section 11 — *Status of class members*

A class member shall be held equivalent to a party to the case in the application of provisions in the Code of Judicial Procedure on the relinquishment of the subject-matter of the dispute, the disqualification of judges, the effects of the pendency of proceedings, the joinder of actions and the hearing of parties. A class member shall enter his or her plea of disqualification of a judge as soon as possible after having been informed of the judges participating in the hearing of the case. A class member shall not participate in the proceedings as an intervener.

Section 12 — *Expansion of the action*

- (1) During the preparation of the case, the plaintiff may expand the action to cover also new class members by amending the definition of the class, if this does not cause significant delay in the hearing of the case or unreasonable inconvenience to the defendant. The information referred to in section 5 shall be provided in respect of the new class members, in so far as appropriate.
- (2) The provisions in chapter 14, section 2, of the Code of Judicial Procedure apply to the alteration of the claims of the plaintiff.

Section 13 — *Restriction of the action*

- (1) If the plaintiff withdraws the action in respect of the claims of a given class member before the supplemented application for a summons has been submitted to the District Court, the court shall strike the case from its docket for the respective part.
- (2) If, after the submission of the supplemented application for a summons to the District Court, the plaintiff restricts the action so that it no longer covers the claim of a given class member, the court shall set a time limit within which the class member may notify the court that he or she wishes to pursue his or her case as a party in separate proceedings.
- (3) If a class member notifies that he or she wishes to pursue the case as a party, the court shall sever his or her claims in order for them to be heard in separate proceedings and decide how the proceedings are to continue. At the request of the class member, the court may transfer a severed case to be heard by another competent court, if this is expedient in view of the hearing of the case. If the proceedings are not to be continued in respect of a claim referred to above, the court shall strike the case from its docket for the respective part.

Section 14 — *Hearing by sub-class*

The court may order that the claims pertaining to given class members or to given issues only be heard separately by sub-class, if this is conducive to the expedient hearing of the case.

Section 15 — *Resignation from the class*

- (1) Before the case is moved on to the main hearing, a class member may resign from the class by notifying the court of the same in writing or in person at the court registry. In this event, the case shall be struck from the docket in respect of the resigning class member.
- (2) Once the case has been moved on to the main hearing, a class member may resign from the class as referred to in paragraph (1) only with the consent of the defendant. Also in this event, the case shall be struck from the docket in respect of the resigning class member. Once the case rests for a decision, resignation from the class shall no longer be permitted.

Section 16 — *Legal effects of the judgment*

The decision of the court shall be binding on the class members whom the court has in the decision designated as such.

Section 17 — *Legal costs*

- (1) The provisions of chapter 21 of the Code of Judicial Procedure apply to legal costs.
- (2) A class member shall not be liable for legal costs. However, a class member shall be liable to the defendant for the costs arising from his or her conduct referred to in chapter 21, section 5, of the Code of Judicial Procedure.
- (3) If the claim of a class member has been severed to be heard in separate proceedings, he or she shall be liable as a party for the legal costs arising after the severance.

Section 18 — *Appeal*

- (1) The parties have the right to appeal against a decision issued on the basis of a class action, as provided in the Code of Judicial Procedure.
- (2) A decision dismissing a procedural plea concerning the preconditions for a class action shall be separately subject to appeal, unless the court, in order to avoid undue delay or for some other special reason, orders that the decision be subject to appeal only in conjunction with the judgment or other final order on the main issue.
- (3) If the plaintiff does not appeal a decision issued on the basis of a class action, a class member shall have the right to appeal in respect of his or her claim within 14 days of the end of the appeal period or the respective counter-appeal period. A class member need not declare an intent to appeal. In other respects, appeal shall be governed by the provisions of the Code of Judicial Procedure.

Section 19 — *Entry into force*

This Act shall enter into force on 1 October 2007.