

APPENDIX

Applicable Law

I. Action taken in the collective interest of consumers (Articles L. 421-1 to L. 421-8 of the Consumer Code)

A. Civil action

Article L. 421-1

Properly declared associations whose expressed aim is the protection of consumer interests may, if they are approved for this purpose, exercise the rights of a party to the prosecution¹ in respect of events directly or indirectly harming the collective interest of consumers.

The organisations defined in Article L. 211-2 of the French family and social welfare code are exempt from the need for approval to go to law under the terms of this Article.

Article L.421-2

Consumer associations referred to in Article L. 421-1, when acting under the terms thereof, may ask the civil court, ruling on civil actions, or the criminal court, ruling on civil actions, to order the defendant or the accused, if necessary under pain of a fine², to take any action to stop illegal behaviour or to remove illegal clauses from a particular contract or a standard contract offered to consumers.

Article L. 421-3

The criminal court to which the case is referred under Article L. 421-1 may, after finding the accused guilty, postpone sentencing and order the guilty party, if necessary under pain of a fine, to comply within a given time limit with its instructions to stop illegal behaviour or to remove illegal clauses from a particular contract or a standard contract offered to consumers.

Should the criminal court combine the postponement with a fine, it must specify the rate of the fine and the date from which it shall run. Postponement can occur only once and may be decided even if the accused does not appear in person. The judge may order the provisional enforcement of the injunction.

¹ “*partie civile*”: these rights include notice of hearings, the right to be heard, rights of appeal, and the right to demand damages.

² “*astreinte*”: a financial penalty, often increasing with time until a court order is obeyed.

Article L. 421-4

At the postponed hearing, which must take place within one year of the decision to postpone, the court shall pronounce the sentence and order payment of the fine, if there is one. It may, where appropriate, cancel the fine completely or reduce its amount. The fine is collected by the Treasury in the same way as a criminal fine. It cannot result in arrest and detention.

Article L. 421-5

The fine is automatically cancelled whenever it is established that the person concerned has complied with an order made by another criminal judge to stop, under pain of a fine, an offence identical to the one giving rise to the proceedings.

B. Action to stop illegal behaviour

Article L. 421-6

Associations referred to in Article L. 421-1 and entities able to provide proof of their inclusion on the list published in the Official Journal of the European Communities under Article 4 of Directive 98/27/CE of the European Parliament and Council relating to actions to obtain an injunction to protect the collective interests of consumers may bring an action before the civil court to stop or prohibit any illegal behaviour in the light of the provisions transposing the Directives referred to in Article 1 of the aforementioned Directive.

The judge may order, on these grounds, if necessary under pain of a fine, the deletion of an illegal or abusive clause from any contract or standard contract offered to or intended for the consumer.

C. Legal intervention

Article L. 421-7

Associations referred to in Article L. 421-1 may join proceedings in civil courts and, in particular, request the application of the measures provided for in Article L. 421-2, where the initial proceeding aims to repair a wrong suffered by one or more consumers due to events that do not constitute a criminal offence.

II. Joint representative action (Articles L. 422-1 to L. 422-3 of the Consumer Code)

Article L. 422-1

Where several individual, identified consumers have suffered personal prejudice having a common origin through the actions of the same person, any approved association recognised as being a nationwide representative within the meaning of Title I may, if

instructed to do so by at least two of the consumers concerned, sue for damages before any court on behalf of those consumers.

The instruction cannot be solicited via a public appeal on television or radio, nor via a poster campaign, tracts, or personalized letters. It must be given in writing by each consumer.

Article L. 422-2

Any consumer who has agreed, under the terms of Article L. 422-1, to the institution of proceedings before a criminal court is, in this event, deemed to be exercising the rights of a party to the prosecution as defined by the Code of Criminal Procedure. Nevertheless, all notifications concerning the consumer shall be sent to the association.

Article L. 422-3

Associations instituting legal proceedings under Articles L. 422-1 and L. 422-2 may sue for damages before the examining judge or the relevant court having jurisdiction over the registered office of the company against whom the proceedings are brought or, failing that, over the place where the first offence was committed.

III. Action taken by authorized associations for the protection of health

Article 1114-2 of the Public Health Code

When a public action has been instituted by the national Ministry or the injured party, and subject to the victim's agreement, approved nationwide associations within the meaning of Article L. 1114-1 may exercise the rights of a party to the prosecution in respect of infringements covered by Articles 221-6, 222-19 and 22-20 of the Penal Code and infringements covered by the Public Health Code which harm the collective interests of health system users.

IV. Action taken by authorized associations for the protection of the environment

Article L. 142-2 of the Environment Code

Approved associations within the meaning of Article L. 141-2 may exercise the rights of a party to the prosecution in respect of acts which directly or indirectly harm the collective interests that they defend and which constitute an infringement of laws governing the protection of nature and the environment, the improvement of living conditions, the protection of water, air, soils, sites and landscapes, town planning, or laws aimed at combating pollution and nuisances, and infringements of the texts used in implementing these laws.

This right is also granted, under the same conditions, to associations which have been properly declared for at least five years at the date of the events and whose articles of

association specify the aim of safeguarding all or part of the interests described in Article L. 211-1, in respect of events constituting an infringement of the provisions relating to water, or the interests described in Article L. 511-1, in respect of events constituting an infringement of the provisions relating to legally preserved buildings.

V. Action taken by associations for the defence of investors (Articles L. 452-2 to L. 452-3 of the Monetary and Financial Code)

Article L. 452-2

If several individual persons identified in their capacity as investors have suffered personal prejudice having a common origin through the actions of the same person, any association referred to in Article L. 452-1 may, if instructed to do so by at least two of the investors concerned, sue for damages before any court on behalf of those investors.

The instruction cannot be solicited via a public appeal on television or radio, nor via a poster campaign, tracts or personalised letters. It must be given in writing by each investor.

However, if an approved association brings an action for damages before the civil or commercial courts under the third paragraph of Article L. 452-1, the presiding judge of the Tribunal de Grande Instance³ or the Commercial Court, as applicable, may issue a summary order authorising it to solicit a power of attorney from the shareholders empowering it, at its own expense, to act on their behalf and have recourse to the advertising channels referred to in the previous paragraph.

Without prejudice to the provisions of Articles L. 612-1 to L. 612-5 of the Commercial Code, the associations referred to in the previous paragraph draw up a balance sheet, a profit and loss account and an appendix each year, the scope and presentation of which are determined by decree, which are approved by the meeting of members. When the association brings an action in accordance with the previous paragraph, it sends those documents to the presiding judge.

Article L. 452-3

Any investor having given his agreement, as provided for in Article L. 452-2, for the bringing of an action before a criminal court is deemed in those circumstances to be exercising the rights of a party to the prosecution as defined by the Code of Criminal Procedure. Nevertheless, all notifications concerning the investor shall be sent to the association.

Article L. 452-4

An association bringing a legal action under Articles L. 452-2 and L. 452-3 may sue for damages before the examining judge or the relevant court having jurisdiction over the

³ *District Court*

registered office or domicile of the person against whom the proceedings are brought, or, failing that, over the place where the first offence was committed.

VI. Production of evidence in civil court cases

A. Production of evidence held by the parties or third parties (Articles 11 and 138 to 142 of the new Code of Civil Procedure)

The parties are required to cooperate in the investigative measures and the judge may draw conclusions from any failure or refusal to do so.

If a party holds evidence material, the judge may, at the other party's request, order him to produce it, if necessary under pain of a fine. He may, if requested by one of the parties, request or order, if necessary under pain of the same fine, the production of all documents held by third parties where there is no legitimate impediment to doing so.

Article 138

If, during the proceeding, a party wishes to rely on an authentic instrument or an instrument under private signature to which he was not a party, or a document held by a third party, he may request the judge hearing the case to order that a certified copy be sent to the court or the instrument or document itself be produced.

Article 139

The request may be made without any formality.

If the judge considers that the request is fully justified, he will order that the original or copy or extract of the instrument be sent or produced, as the case may be, under the conditions and guarantees that he determines, if necessary under pain of a fine.

Article 140

The decision of the judge will be enforceable on a provisional basis.

Article 141

If a difficulty arises or a legitimate impediment is put forward, the judge who ordered the sending or the production in court may, upon a simple request, withdraw or amend his decision. The third party may appeal against the new decision within fifteen days of its pronouncement.

Article 142

Requests for the production of evidence held by the parties must be made, and evidence must be produced, in accordance with Articles 138 and 139.

B. Summary procedure – preparatory inquiries (Article 145 of the new Code of Civil Procedure)

Article 145

If there is a legitimate reason to preserve or to establish, before any legal process, the evidence of the facts upon which the resolution of the dispute depends, legally permissible preparatory inquiries may be ordered at the request of any interested party, by way of a petition or by way of a summary procedure.

VII. Excerpts from the Decision of the Constitutional Council No. 89-257 DC of 25th July 1989 on the Law amending the Employment Code and concerning the avoidance of lay-offs and the right to retraining

THE CONSTITUTIONAL COUNCIL

Having regard to the Constitution,

Having regard to Act No. 58-1067 of 7th November 1958,

Having heard the Rapporteur,

1. Whereas the parties who brought the matter before the Council criticized the legality of the procedure of the adoption of the Act submitted to the scrutiny of the Constitutional Council and the contents of Articles 1, 6, 7, 10-IV, 25-II, 28, 29 and 30 thereof,

(...)

ON THE SUBSTANCE

(...)

With regard to Article 29 concerning the right of trade unions to go to court:

WHEREAS:

20. The purpose of Article 29 of the Law is to add to the Employment Code an Article L. 321-15 thus worded: *“Representative trade unions may bring to court any action arising from the provisions of any laws, regulations or industrial agreements governing lay-offs on economic grounds and the termination of employment contracts referred to in the third paragraph of Article 321-6 of this Code on behalf of an employee, without having to produce proof that the employee concerned gave them power to act on his behalf. The employee concerned must have been informed by registered letter with a form for acknowledgment of receipt and not have signified his objection within fifteen days of the date on which the trade union informed him of its intention. Once this time*

limit has passed, the trade union must notify the employer, by registered letter with a form for acknowledgment of receipt, of its intention to go to court. The employee may at any time intervene in the legal proceedings instituted by the trade union.”

21. According to the parties who brought the matter before the Council, this Article conflicts with the provisions of the Preamble to the Constitution of 1946, which links the defending of a worker’s individual rights by a trade union to the worker’s belonging to that union; the parties further contend that the right of trade unions to go to court on behalf and instead of an employee constitutes a violation of Article 1 of the Declaration of Human Rights in so far as it has the effect of placing trade unions above individuals; and that this is an attack on the freedom of employees and, in particular, on their freedom of conscience.

22. According to the sixth paragraph of the Preamble to the Constitution of 27th October 1946, to which the Preamble to the Constitution of 1958 refers, “*All men may defend their rights and interests through union action and may belong to the union of their choice*”; the reaffirmation, by these provisions, of the freedom of association does not prevent the legislature, which by virtue of Article 34 of the Constitution is responsible for determining the fundamental principles of labour law and trade union law, from granting trade unions prerogatives that may be exercised on behalf of their members but also on behalf of the members of a social group which the trade union deems it its duty to defend.

23. The arrangements for implementing the prerogatives granted to trade unions must respect the employee’s personal freedom, which, like the freedom of association, is a principle of constitutional value.

24. Therefore, if the legislature is at liberty to permit trade unions to bring an action to court with the aim of spontaneously coming to the aid of an employee or of furthering a collective action via an individual case, it is only on condition that the individual concerned be afforded the opportunity to give his assent with full knowledge of the facts, and that he remain free to conduct personally the defence of his interests and to put an end to the action in question.

25. Article 29 of the Law allows any representative trade union, in the specified circumstances, “*to bring to court any action on behalf of an employee without having to produce proof that the employee concerned gave it power to act on his behalf.*” The employee concerned must be informed by registered letter with a form for acknowledgment of receipt in order that he may, if he so desires, object to the trade union’s initiative, but he is deemed to have agreed to the action if he does not respond within fifteen days.

26. In order for such arrangements to respect the employee’s freedom with regard to trade unions, the letter sent to the employee must contain all useful information concerning the nature and purpose of the action, the scope of his agreement, and his acknowledged right to put an end to the action at any time. The employee’s tacit agreement can be taken for granted only to the extent that the trade union produces proof, when instituting the proceedings, that the employee had personal knowledge of

the letter containing the abovementioned details. Only under these conditions does Article 29 of the Law not conflict with the employee's personal freedom.

HAS DECIDED:

Article 1: The Law amending the Employment Code and concerning the avoidance of lay-offs and the right to retraining is not unconstitutional.

Article 2: This Decision shall be published in the Official Journal of the French Republic.

Decided by the Constitutional Council meeting on 25th July 1989.