

Class Action Lawsuit (as an innovative consumer's protection mechanism)

-French model-

دعوى الجماعة (كألية مستحدثة لحماية المستهلكين)

-النموذج الفرنسي-

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Abstract:

Consumer protection associations are of great importance in defending the interests of consumers, as they derive their content and strength from the consumer himself. They are considered the most capable of expressing the consumer's needs and requirements, as they are entrusted with many tasks. They collect information about products and disseminate it to raise awareness and educate consumers. They also raise consumer awareness of the importance of quality of goods and services and monitor compliance with specifications. They are therefore the most suitable to restore the balance between the interests of consumers and professionals, especially when they monitor and exert effective pressure on the executive authority and economic institutions to modify bad behavior. Recently, the French legislature has supported the existence of these associations by granting them the right to file "class action" lawsuits to claim compensation for damages resulting from the improper actions of economic institutions. This raises questions about the strength of this new mechanism in adjusting the balance of power.

Keywords: Consumer; Professional; Damages; Associations; Lawsuit.

ملخص:

تكتسي جمعيات حماية المستهلك أهمية بالغة في الدفاع عن مصالح المستهلكين، كونها تستمد مضمونها وقوتها من المستهلك نفسه لذلك تعتبر الأقدر على التعبير عن حاجاتهم ومتطلباتهم، لهذا يناط لهذه الأخيرة العديد من المهام، حيث تقوم بجمع المعلومات حول المنتوجات ونشرها لنشر الوعي وتثقيف المستهلك، كما تقوم بتوعية المستهلك بأهمية جودة السلع والخدمات ومراقبة مطابقات مع المواصفات، وبهذا تكون الأنسب للقيام بإعادة التوازن بين مصالح المستهلك والمتدخل، خاصة عندما تراقب وتمارس ضغوطا فعالة على السلطة التنفيذية، والمؤسسات الاقتصادية لتعديل تصرفاتها الغير المشروعة، لهذا تدخل المشرع الفرنسي مؤخرا ودعم وجودها بحق ممارسة "دعوى الجماعة" للمطالبة بالتعويض عن الأضرار الناجمة عن تصرفات الغير السوية للمؤسسات الاقتصادية، الأمر الذي يجعلنا نتساءل حول هذه المكنة الجديدة ومدى قوتها في تعديل موازين القوى.

الكلمات المفتاحية: المستهلك؛ المحترف؛ الأضرار؛ الجمعية؛ الدعوى.

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Introduction:

Consumer protection associations were not established in the way and with the strength that they are known for today. Rather, they are the result of many consecutive developments and movements that have led to the emergence of this powerful institution. In general, an association refers to an agreement in which natural or legal persons come together on a contractual basis for a non-profit purpose, sharing their knowledge and means for a limited or unlimited period in order to promote various professional, social, scientific, religious, educational, and other activities.

The legislators' belief in their importance, particularly in the field of maintaining balance in civil society, many legislators emphasized the need to establish and support them through all financial and legal means. The French legislator was particularly interested in consumer protection associations, dedicating a special chapter to them and subjecting their establishment to the common law of associations on July 1, 1901. Naturally, they are the opposite of companies, as associations are generally established for non-profit purposes¹, and their main role is to give weight to consumers in civil society. They also represent their interests before administrative and judicial bodies.

Since the adoption of the idea of establishing associations to protect consumers, France has recognized three major directions: the family direction, the union direction, and the consumer direction. The family direction involves saving needy families from problems they face, such as budgeting, housing, product quality and safety, education, loans, and remote business transactions (at home). Its intervention is preventive (conducting investigations, preparing budget models, studying price increases, etc.). This category includes the National Council for Lay Family Associations (Can-fal), and others.²

As for the union direction (trade unions), their tasks are limited to defending workers' interests. These associations do not benefit from the rights recognized by consumer protection associations. Under this direction comes the Association of Labor Forces for Consumers (Afoc), the Association for Information, Defense and Education of Consumers (CGT), the Association for Consumer Defense, Education, and Information (Adeic), and so on.

On the other hand, regarding the consumption direction (represented mainly by the Federal Union of Consumers (UFC-que choisir)), which includes 154 local associations; this direction exerts significant pressure on economic operators. It represents consumers in 40 counties, is a founding member of the European Bureau of Consumer Unions and International Consumer, and is also considered by consumer associations: the Confederation of Consumption, Housing, and Framework of Life, the General Confederation of Housing³, the National Confederation of Housing, the Independent Federation of Transport Users, and so on.³

The diversity and multiplicity of consumer protection associations in France has given them a kind of power. Since their inception, they have been striving to maintain a balance within the market between the interests of professionals and consumers, which is not an easy task. This requires the association to act with a sense of responsibility and objectivity, taking on a neutral role. However, they may encounter actions by economic institutions that require them to show the aggressive side of their nature in order to correct deviant behavior that undermines the market, after exhausting all friendly means. In such cases, their actions will be more aggressive and bold, especially if the harm affects a considerable number of consumers.

Resorting to the judiciary has been one of the means for which consumer protection associations have fought and achieved in many forms, after initially being completely rejected. It has become a reality since 1973 under the Royer Law. This law allowed consumer protection associations, for the first time, to intervene in court to file lawsuits to redress damages that affect the common interests of consumers, not the personal interests of the victim.⁴ This was confirmed by the French Court of Cassation, which stated: "Damage, whether direct or indirect, resulting from a

violation or infringement of the common interests of consumers, which licensed associations can claim to correct, should not be confused with personal damage resulting from the violation, which they can claim personally.”⁵

In contrast to the previous lawsuit, the French legislator allowed consumer protection associations to defend individual consumer interests. This lawsuit is indeed a starting point from the original idea and is called “joint representation action,” which means that the association establishes itself as a civil party if one or more consumers suffer individual damages with a common origin, that is, if the cause of the harm is the same professional.

However, practical reality in France proves the failure of this claim due to the strict and precise conditions that must be met in order to pursue it, especially the requirement of obtaining an agency and burdening it with informing every consumer of the proceedings of the case.⁶ The main reason for the failure of this claim is the responsibility borne by the association resulting from this agency.⁷ The failure of the joint representation claim brought by consumer protection associations has led politicians and scholars to adopt another method that ensures the repair of the damages suffered by a large and significant number of consumers⁸, especially when their interests overlap. This method is known in the United States as class action. This claim is based on the idea of allowing the affected party or parties to form a group among themselves and resort to the judiciary in order to demand the repair of damages caused by the same economic institution.

The first case that was presented as a class action and achieved a remarkable success was the Texas City disaster in 1947, which was considered the largest maritime disaster in history. 8,000 affected people gathered to demand the US federal government to repair the damages caused by the explosion of the French ship “Le SS Grandcamp”⁹, based on the Federal Tort Claim Act. The American judiciary approved this solution and followed it by regulating the rules that govern this claim in the Rules of Justice in 1912, which were revised in 1937.

In France, the idea of class action lawsuits was initially rejected until the issue was brought up seriously in early 2005, when former French President Jacques Chirac expressed his hope of creating a system similar to that of American law. This desire was approved by the law of March 17, 2014, related to consumer protection. This raises the question of how the French legislature was convinced to include this type of lawsuit in its legal system, and what is the legal system applied to these lawsuits.

Talking about this type of lawsuit requires us first to identify its historical roots, then discuss its concept and the boundaries within which it is practiced. The modernity and importance of this type of lawsuit led the French legislature to intervene with a set of provisions and conditions that are applied within it. Therefore, we will address the conditions and procedures followed to practice it, as explained below.

Section1: The historical roots of the class action lawsuit

The discussion of the emergence and development of the class action lawsuit in French law requires a study of the jurisprudential and legislative path it went through before being recognized.

1- Jurisprudential debate about the establishment of a class action lawsuit:

Some jurists believe that the appearance of the class action lawsuit, originally attributed to American law, was never a new concept. Instead, they believed that it’s an inheritance passed down from ancient times, or as some call it, the “dark ages,” which operated within the framework of the group and the necessity of protecting the tribe, and moved to take shape in the context of a lawsuit filed by the group to compensate for the damages it suffered.¹⁰

As for France, it was not acceptable, or more precisely, appropriate, as some French jurists expressed their rejection of including such a lawsuit in the French legal system when the prospect of recognizing it emerged in 1980.¹¹ This rejection was never sterile but was supported by several legal arguments, which made recognition of it a path of impossibility. In fact, it is worth mentioning the most important points on which opponents relied to stop the spread of this lawsuit in French law.

The first criticism raised by opponents of the idea of recognizing a class action lawsuit was inspired by the legal texts already present in French law. Opponents believed that the legal means available to defend the collective individual interests of consumers were actually sufficient and clear, and there was no need to invent or introduce a new or additional lawsuit to carry out this task.¹²

The second criticism raised by opponents, was more pressing than the first, as the rules on which the class action lawsuit was based were not consistent with the basic constitutional and traditional principles of French civil procedure law. These opponents believed that introducing the American model of a class action lawsuit was a lack of respect for the basic principles of civil procedure law, which are essentially based on equality between litigants, the validity of the thing that has been decided, the principle of appearance, and the principle of “non-admissibility of representation in litigation”. They saw that it was not appropriate to sacrifice all these principles in order to seize the opportunity to adopt a model that did not fit the legal traditions of France.

Finally, the disapproval of the jurists for the idea of adopting a class action lawsuit was due to the image conveyed by American opponents of the class action, as some have likened it to a “Frankenstein monster”, which has raised concerns among many French practitioners.

These concerns relate to the issue of compensation for damages that economic institutions and financial position in the market on the one hand. On the other hand, these opponents see recognition of such lawsuits as a restraint on the brakes of economic development and creativity in economic institutions. Worse still, such lawsuits are economic and ethical liabilities because lawyers who may deviate the lawsuit to achieve personal interests that may reach the level of “judicial blackmail” or even release the plaintiffs from their responsibilities have abused them.¹³

Despite the strong criticism that the idea of recognizing the inclusion of a class action lawsuit faced, there is a side of French jurisprudence that strongly supports the inclusion of such a mechanism in French law. Supporters of this approach start from the same point as opponents, which is the existing legal texts. Their claim is that the mechanisms of this lawsuit already exist and are mainly represented in the joint representation lawsuit. They only lack reactivation and re-operation, because the technical restrictions and strict conditions for filing a joint representation lawsuit have made it an ineffective mechanism for defending consumer rights.¹⁴

Moreover, the poor performance of consumer protection associations in handling the powers of attorney provided by consumers and their limited resources have made many consumers abandon the idea of resorting to such lawsuits, which raises the idea of resorting to individual litigation. This was not possible for many of them, and perhaps the idea of proof and legal expenses was one of the most important obstacles facing consumers, not to mention the possibility of conflicting court judgments.¹⁵

The supporters of recognizing the class action lawsuit did not stop at this point, but added several arguments for their position, because the feeling of rejection for this lawsuit was very prevalent among jurists and practitioners. Supporters saw it as a mechanism for activating the rights of plaintiffs, starting from the idea that a powerful economic operator will not be harmed or affected

by his business number if each victim affected by his actions demands their rights individually. On the contrary, it will cast doubt on the law that governs the relationship between the economic operator and the consumer, which will undoubtedly facilitate escaping punishment each time. This can be described as a mocking violation of the law and the contractual relationship. Therefore, it is not surprising if the French Competition Council decided to support the recognition of this lawsuit.¹⁶

2. Legislative recognition of group lawsuits:

This intense legal debate did not deter some jurists who openly expressed their opinion when circumstances allowed. Mr. M. Calais-Auloy, an expert in consumer law, was the first to propose adopting a group lawsuit when he chaired two committees set up by the government (the Consumer Dispute Settlement Committee and the Consumer Law Reform and Amendment Committee) in a report during 1983 and 1984. During which he supported allowing licensed consumer protection associations to file group lawsuits if consumers suffer damages from the same professional.¹⁷

In the same year, 1984, a draft law was proposed to the National Council by Stasi, Proriol and Zeller, with the participation of M. Caballero, aimed at including a new procedure in the Civil Procedure Law, namely the “multi-party” lawsuit, which would erase any reluctance to accept a group lawsuit.¹⁸

In 1990, Mr. M. Calais-Auloy submitted a new proposal regarding the possibility of including a group lawsuit in consumer law. The proposals continued without success until hopes of adopting this lawsuit faded away, until 2005 when former French President “Jacques Chirac” expressed his hope for the creation of a system that “allows groups of consumers and consumer protection associations to file joint legal actions against abusive practices in some markets.” Indeed, a group was formed to work on this proposal, tasked with studying ways and means to facilitate the inclusion of group lawsuits in French law without it paralyzing commercial life mechanisms. This group presented its reports to the seal keeper on December 16, 2005.¹⁹

This ebb and flow of the idea of recognizing group lawsuits from 1990 to 2005 in France was met with recognition by many neighboring European countries, such as Portugal (1995)²⁰, Italy (1998), Spain (2001), and Sweden (2003)²¹, whose positions were consistent with the European Committee's movements since 1985. This raised the issue of consumers resorting to the judiciary through a memorandum, where it discussed the need to enable consumers to have access to the judiciary to protect their rights.²²

In 2008, the European Commission published another Green Paper on November 27, 2008 entitled “On Common Consumer Complaints,” which is linked to a White Paper dated April 2, 2008, entitled “Compensation Claims for Violations of European Rules on Prohibited Agreements and Abuse of Dominant Positions.” In this paper, the Commission expressed its hope of creating a mechanism for a bloc that would allow for the collection of individual compensation claims for victims of violations related to competition rules.²³

Events continued to unfold towards the activation of the idea of recognizing a claim that would allow consumers as a group to claim compensation for damages that may result from institutions' actions that violate competition rules. In 2011, the Commission announced a public consultation on common complaints, and following this consultation, the European Parliament adopted a resolution on February 2, 2012, stipulating the need to address every proposal related to common complaints as a violation of consumer rights, which requires their inclusion in a set of unified principles, ensuring uniform access to justice.²⁴ On June 11, 2013, the European Commission finally adopted a directive and recommendation calling on member states to adopt a

national legal system for common complaints that is proportionate to the internal systems of member states and ensures respect for consumer interests.

To this end, the French legislator has expedited the adoption of a legal system that allows for the repair of damages resulting from the illegal actions of economic institutions. After many proposals and debates that lasted for ten years since the former president Jacques Chirac's speech²⁵, the French legislator finally recognized the necessity of adopting the group claim and including it in its legal system under the law of March 17, 2014, which added a special chapter under the title of "Group Claim" to the Consumer Law.²⁶

Section2: Definition of class action and its scope of application

The French legislator introduced the class action lawsuit into the French legislative system under Law No. 2014-344 of March 17, 2014, which was completed by Decree No. 1086-2014 dated September 24, 2014. This came after a long legal and economic analysis of the dimensions of this lawsuit that lasted thirty years. Article L623-1 of the Consumer Code laid the foundation for this lawsuit. Therefore, we will first define its concept and then address its scope of application.

1. Definition of class action :

Article L623-1 of the Consumer Code states the following: "Associations defending consumer interests, which are licensed as provided for in Article L811-1 and are represented at the national level, may appear before civil courts to seek redress for personal injury suffered by consumers who are in a similar or identical situation and that was caused by the failure of one or more professionals to fulfill their legal or contractual obligations."²⁷

Through a preliminary examination of the legal texts, class action can be defined as "a collective legal action that allows consumers who have suffered damages from the same professional to form a group and assert their rights before the judiciary."²⁸ It can also be defined simply as a legal avenue that allows consumers to come together to file a lawsuit seeking redress for damages caused by the same professional. Since this lawsuit was the result of a long legal debate, it received significant attention from the French legislator, who surrounded it with many conditions and procedures that must be followed, distinguishing it from the class action known in the United States.

The adoption of this lawsuit by the French legislator was not a coincidence, nor was it inspired by neighboring countries' adoption of it. It was the result of a long legal and economic analysis that revealed the most important advantages that could be achieved by adopting such lawsuits, which can be summarized as follows:

- Firstly, this lawsuit allow consumers to obtain special compensation when damages are widespread and of low value.
- Additionally, this lawsuit makes it easier to process all files related to damages suffered by consumers in one go, without the need to process them individually and in batches that may end with conflicting court decisions.
- This lawsuit is an effective mechanism for repairing civil damages compared to individual compensation claims, especially when it comes to collective disputes.
- This lawsuit is a means of regulating the actions of economic institutions in the relevant market, as consumers now have a way to band together to claim their rights, no longer being weak as they were in the past.²⁹
- In fact, this lawsuit embodies the true meaning of the intersection between competition law and consumer law.³⁰

2. Scope of application :

The progress of the French legislature towards recognizing class actions has allowed for the establishment of legitimate boundaries for their practice. Therefore, it is not always possible to resort to them in all cases. For this reason, consumers who wish to file such claims must respect their application scope, which can be derived from Article L623-1 of the Consumer Law, as follows:

- I. A class action is a consumer action that is open to consumers who have suffered damage in connection with the purchase of goods or the use of services. Therefore, it concerns consumer contracts. The action that allows for resorting to legal action is not only related to the professional's failure to fulfill legal obligations but also extends to contractual obligations.³¹
- II. The class action can be reopened in the event of repairing the damage caused by practices that restrict competition. Practices that restrict competition are those that impede and disrupt the rules of competition in the relevant market, as precisely defined by the French legislature in the Commercial Law in the following articles: Article L420-1 of the French Commercial Law (prohibited agreements), Article L420-2 of the French Commercial Law (abuse of a dominant position), Article L420-2/1 of the French Commercial Law (abuse of an economic dependence position), and Article L420-5 of the French Commercial Law (unjustifiably low pricing).

However, filing the action in this case requires a decision from the National Competition Authority or the competent European authority condemning the economic institutions being sued.³² Furthermore, this decision must have exhausted all ordinary and extraordinary appeal avenues (i.e., it must be a final decision).³³

Section3: Conditions and procedures for filing a class action lawsuit

Through a preliminary review of the legal texts regulating class action lawsuits, it appears that these lawsuits are primarily based on claims of civil liability, which aim to remedy the harm suffered by consumers. However, this did not prevent the French legislator from taking the necessary care by defining clear boundaries for them to avoid any ambiguity or suspicion that legal interpreters might fall into. Article L632-1 of the Consumer Code specifies the conditions that must be met in order to initiate a class action lawsuit. As this type of lawsuit is foreign to the French legal system, it has been provided with procedures that are appropriate for its multi-party nature. The following provides further clarification on this matter.

1. The necessary conditions for initiating a class action lawsuit :

Article L623-1 of the Consumer Code specifies the conditions that must be met in order to initiate a class action lawsuit, whether it relates to the plaintiff, the subject matter of the lawsuit, or the entity responsible for the subject matter. The main reason for this attention is perhaps the novelty and seriousness of the lawsuit, and these conditions are as follows:

- I. The first condition is that the French legislator has entrusted the task of filing a class action lawsuit exclusively to licensed consumer protection associations, which are represented at the national level. Therefore, consumers are prohibited from practicing this even if they form a group among themselves. The literal interpretation of Article L623-1 of the Consumer Code raises two important points, the first of which is that the French legislator has restricted the filing of such lawsuits to licensed associations, which raises the traditional question of when consumer defense associations become licensed.

Firstly, associations in France cannot defend or represent consumer interests at the administrative and judicial levels unless they obtain a license as a basic requirement. Although this

role is authentic in some legislations, it is exceptional in French law.³⁴ The articles L811-1 and L811-2, as well as R811-1 and R811-2, of the French Consumer Law strictly define the necessary conditions for obtaining a license. Failure to meet these conditions results in the revocation of the license. These conditions are as follows:

- The association must be legally declared and have legal personality.
- The association must be completely independent of any professional activity, except for consumer cooperative companies that can obtain a license despite their professional activity.³⁵
- The main objective of creating this association must be to defend consumer interests.
- At least one full year must have passed since the establishment of the relevant association.
- The association must have active and public activity, but its evaluation is very difficult, especially as it is assessed by considering the publication of advertisements.
- Its composition must be convincing, meaning that it should contain at least 10,000 individual members for associations with a national character.³⁶

If the aforementioned conditions are met, the association is permitted to submit an application to the Regional Directorate for Competition, Consumer Affairs, and Fraud Control (DDCCRF), where it is located. A ministerial decision grants a license to national associations and a decision from the prefect (regional governor) for regional or local associations. This license is only granted after obtaining the opinion of the general minister and the general prosecutor of the appeals court (Article L811-2 of the Consumer Law).³⁷

The duration of the license is set at five years and can be renewed under the same aforementioned conditions. Licensed associations are required to submit an annual report on their activities based on the conditions specified in the June 21, 1988 decision. Currently, fifteen (15) national associations are licensed to operate in France.³⁸ The license may also be revoked if one of the aforementioned conditions is found to be defective or if one of them is not met during the license period after obtaining the opinion of the general prosecutor.³⁹

The second point raised by the aforementioned article is the use of the very interesting term “une,” which suggests that only one association is entitled to bring this action. This may seem logical, as it is not reasonable for the same claim to be raised by several associations, even if they are licensed to ensure the unification of judicial rulings. However, the French legislator has chosen another solution by allowing several associations to take action and bring this claim at the same time in accordance with Article R623-1 of the Consumer Law.

On the other hand, in order to ensure the effectiveness of the lawsuit in reality, the French legislator obliged consumer protection associations - licensed for this purpose - to seek the assistance of a lawyer before the court to ensure the smooth conduct of collective action procedures.⁴⁰

- II. The second condition is that the aim of a class action lawsuit must be to repair damages that affect only consumers. This condition forces us to draw red lines that prevent those not affected from resorting to them even if harm is done. The concept of the allowed consumer to file such lawsuits is defined in the preliminary article: “It is any natural person who does not intervene due to his commercial, industrial, craft, literary, etc. activities.”⁴¹

What the French legislator observed is that he avoided defining the consumer in many of the amendments that were made to the Consumer Law until the issuance of the Hamon Law on March 17, 2014, which was itself subject to amendments under Law No. 2017/203. By examining this article, we find that the French legislator considered the consumer status to apply to every natural person except the legal person who acquires goods and services for the satisfaction of their personal

needs, while considering the legal person who does not meet their professional needs as non-professional. Therefore, this lawsuit is prohibited for people who have been harmed due to their profession or those who have suffered environmental damage.⁴² This means that the latter is the responsibility of the natural consumer, not the legal person. This condition may be subject to criticism, as it prohibits legal persons from resorting to this lawsuit even if they are victims of improper actions, which is illogical.

In the same context, the group claim is not credible for all consumers who have the concepts of the aforementioned material, but rather the French legislator stipulated the necessity of the presence of consumers in a similar or identical situation, meaning that they suffer from certain actions by the same professional, that is, they are victims of the same professional.⁴³ In reality, this condition may make it difficult to identify all the consumers concerned by the lawsuit, and although this difficulty disappears in some cases, there are some complex situations where identification is impossible, which gives the judge the authority to estimate and determine this.

On the other hand, it is not enough for consumers to be victims of the same professional's actions, but a necessary condition for their right to compensation to be fulfilled. These consumers must be linked to the professional by a contract of sale or service delivery, or they must be victims of practices that restrict competition. Thus, the legislator has defined with precision and strictness the scope of its application, leaving no room for interpretation.

The French legislator did well by not limiting the number of consumers required to form a group, and thus it is sufficient for only two consumers to be harmed for such claims to be accepted. However, this machinery is not licensed for individual consumers. If the number of consumers affected by the same actions of the same professional is predetermined, the French legislator refers to it as "simplified collective action" as stipulated in Articles L623-14 to L623-17, supplemented by Articles R623-11 to R623-15 of the Consumer Code. These articles are subject to all general conditions related to simplified collective action, except for two conditions:

- Identification of the affected consumers and determination of their number, which are essentially known.
- The consumers must have suffered the same level of harm.⁴⁴

III. The third condition is that the main objective of filing a collective action is to redress individual personal damage to consumers. Therefore, licensed associations cannot claim redress for damage that affects the common interests of consumers.⁴⁵

On the other hand, we find that the French legislator has more precisely defined the scope of such action, limiting it to material damage resulting from financial loss, thus excluding physical, moral, and environmental damage.⁴⁶ Finally, collective action is pursued before the civil court and is permanently excluded from the jurisdiction of administrative courts. It should be noted that the French legislator did not stop at this limit but stipulated that the collective action must be filed before the High Court (TGI) under Article R623-2 of the Consumer Code.

Regarding regional jurisdiction, Article R623-2 of the Consumer Protection Law designates the defendant's domicile as the place of jurisdiction. In the case of multiple defendants, the licensed consumer association may choose to file the lawsuit in any court with jurisdiction over one of the defendants.⁴⁷ However, if the defendant is a foreigner or a person with an unknown domicile, the Paris High Court (TGI) has jurisdiction.⁴⁸

2. Procedures for Filing a Class Action Lawsuit :

If the aforementioned conditions and requirements are met, consumer protection associations may file a class action lawsuit, which is divided into two important stages as follows:

2.1 The First Stage of Filing a Class Action Lawsuit :

Normally, licensed consumer protection associations do not file class action lawsuits unless there are indications of success. If the association receives complaints from a considerable number of consumers against the same professional for the same actions, it must ensure that no prior class action lawsuit has been filed against this professional for these actions. The association should also consider that there may be consumers who have been harmed by the same action of the professional. The following is an explanation of how to initiate the procedures for filing a class action lawsuit.

2.1.1 Introduction to the Class Action Lawsuit:

If the aforementioned conditions are met and the reasons for filing the lawsuit are verified, the consumer protection association proceeds to initiate the procedures for the lawsuit. The proceedings begin with a summons or a subpoena, which must include the required information in lawsuits filed before the ordinary courts (TGI).⁴⁹ This must include all individual cases being defended, and the association's license to protect consumers must be attached.⁵⁰

If the class action lawsuit is filed, it suspends the individual lawsuits filed by consumers seeking to remedy the same damages, provided that the suspension does not exceed six (6) months from the day of the judgment or the agreement to settle (L423-20 of the Consumer Protection Law).⁵¹ In this case, consumers can either join the class action lawsuit or file an individual lawsuit to remedy the damage done to them.

If a professional receives a summons (petition) from a licensed consumer protection association, they have the choice of taking one of two paths:

First solution: reaching a friendly and satisfactory agreement for all parties involved. In this regard, the professional can request the application of the provisions of the February 8, 1995 law on mediation if all parties agree to resort to this solution.⁵² The judge then appoints a third party to reach a satisfactory agreement between all parties involved (the professional and the consumer protection associations concerned), provided that the professional agrees to repair the individual damages caused to the consumers.⁵³ The concerned consumer protection associations can also directly accept this solution with the professional, provided that the judge approves the agreement reached by the parties, ensures its conformity with the interests of the consumers, and gives it the executive form. The reached agreement is then published by all available means to inform the concerned consumers.

Second solution: This is the case where the professional prefers the judicial solution or if a satisfactory solution has not been reached by all parties. The collective lawsuit proceedings continue.⁵⁴

2.1.2 The judge's position regarding the collective lawsuit :

Closing the door to reconciliation opens the way for the competent judicial authority to rule on the lawsuit before it. The judge responsible in this regard plays a significant and diverse role, and his judgment will cover many points.

According to Article L623-6 of the Consumer Code, the judge ensures that the necessary conditions for accepting the collective lawsuit are met, especially those stipulated in Article L623-1 of the Consumer Code.⁵⁵ The judge's original role is to rule on the professional's responsibility based on the cases defended by the licensed associations. In this regard, the judge relies on the

general rules relating to civil liability, and he can establish his judgment either, for example, according to the rules relating to compliance with the obligation to inform, unfair commercial practices, legal guarantee, etc., or resort to the provisions of Article 1382 of the French Civil Code.⁵⁶

If the matter relates to a restricted practice of competition, the role of the judge here differs as he will be bound by the decision issued by the competition authority or the relevant EU agency that convicted the disputed behavior. The judge is also required to ensure that the lawsuit filed before him is within the acceptable legal deadlines⁵⁷, meaning that the period for filing the group's lawsuit should not exceed 5 years from the day the conviction decision becomes final (i.e., after exhausting all appeal options).⁵⁸

The general rules of judicial proceedings (such as procedures, written documents, etc.) govern this initial stage of the proceedings. The group is obliged to bring evidence to prove its claim, as well as the professional, and the judge, in order to reach the truth, must take all necessary precautionary measures, especially those that create conclusive evidence, such as those brought by the professional (business books, etc.).⁵⁹

If the cases presented to the judge and the circumstances surrounding the case show that the professional is responsible for these actions, then the judge may rule as follows:

- Holding the responsible professional accountable.
- Identifying the total number of consumers who benefited from the responsible professional's accountability and researching the evidence of the connection between them.⁶⁰
- Determining the damages that must be remedied for each consumer or each group of affected consumers (L623-18 of the Consumer Protection Act).
- Determining the value of compensation or becoming familiar with all elements that allow it to be estimated (L423-3, al 2 of the Consumer Protection Act).⁶¹
- In the same decision, the judge orders all necessary measures to inform affected consumers to join the group (R623-16 of the Consumer Protection Act).

This point is very important as it plays two essential roles, on the one hand, it allows identifying the victim consumers who have not been identified and informing them of the existence of group lawsuits, as well as the results of these lawsuits, and on the other hand, it opens the door to the second stage of the proceedings.⁶²

The judge determines in detail the deadlines and procedures for joining the class action, as for the advertisement directed to consumers, it should include the information specified by the judicial ruling (the procedure, content, and deadline for joining, information about the person to be informed about this joining).⁶³

As for the procedures and means necessary to inform consumers, the French legislator did not require a specific method for consumer notification. Therefore, all available means are valid, and the judge can choose more than one method to inform the largest number of consumers, whether nationally or locally, or by using communication channels (such as television, written press, audio, internet sites, social media, etc.), or by sending messages via email or text messages.⁶⁴ It is the responsibility of the professional to inform consumers, and this step cannot be taken until the court decision becomes final (i.e., after exhausting all ordinary and extraordinary appeals).

2.2 The second stage of the collective lawsuit procedures

It is considered important as it outlines the final access lines for the collective lawsuit. This stage also attempts to identify the consumers who have fallen victim to the actions of the professional. This stage consists of two important steps: consumer joining the collective lawsuit, and compensating the consumers.

2.2.1 Consumer joining the collective lawsuit :

If the first stage of the procedures ends with informing the consumers of the judgment issued against the professional, then the second stage begins with the reaction of the consumers who have fallen victim to the same professional. They have the option to take one of two positions: either to join the collective lawsuit and benefit from the judgment issued against the professional without the hassle of filing a new lawsuit and preparing evidence, or to choose the longer route of filing an individual lawsuit to claim damages related to each of them.

The first option stops the individual lawsuit but does not cancel it. However, French law has not explicitly stated whether joining the collective lawsuit prohibits the exercise of the individual lawsuit for the same actions, although the legal logic tends to lean towards prohibition.⁶⁵

It is agreed that joining the collective lawsuit is not mandatory, and therefore the system here resembles the opt-in system known in American law, but it differs fundamentally from it. Under the 2014 law, joining the lawsuit would be final, meaning that the professional is responsible for these actions. The organized consumer victim who joins the collective lawsuit will benefit from the judgment issued against the professional and accepts to be compensated according to pre-announced conditions.⁶⁶

The participation of consumers in a class action is not unconditional, but subject to limited deadlines in the ruling or agreement reached with the professional. Therefore, it must not be less than two months and must not exceed six months from the date of completion of the procedures taken to announce the ruling or agreement (Article L623-8 of the Consumer Code). The ruling or agreement also specifies the methods of joining.⁶⁷

In fact, Article L623-8 of the Consumer Code has specified three ways to complete the joining procedures, as the consumer who wants to join either directly contacts the professional responsible for the damages, the association concerned with the matter, or any qualified person (such as a lawyer, judicial officer, etc.). It should be noted that resorting to this last solution is usually done in case of a large number of consumers claiming compensation in order to relieve the burden on the Consumer Protection Association concerned.⁶⁸

This joining must also be supported by any means that ensures its arrival to the judge concerned with the case and must include specific data (such as the name and surname of the victim consumer, his/her address, e-mail address (if any), and the value of the compensation for the damages he/she suffered).⁶⁹

2.2.2 Consumer Compensation:

Article L623-18 of the Consumer Code stipulates that the convicted professional is individually responsible for compensating all damages suffered by the consumers who filed or joined the class action, according to the conditions specified in the ruling issued against him/her (which specifies the value of the compensation, methods, deadlines, etc.).⁷⁰

In normal cases, the value of compensation is equal among all consumers, but it may happen to vary between one consumer and another, and in this case, the judge must determine the reasons and criteria that contributed to the assessment of the compensation. The judge may also order the responsible professional to provide in-kind compensation.⁷¹

The judge concerned with the matter must specify the deadlines that the professional must comply with to implement the ruling issued against him/her, which is divided into two consecutive deadlines. The first concerns the deadline for the professional to intervene to repair the damage, and the second, after the end of the first deadline, concerns the notification of him/her of unsatisfactory compensation requests.⁷²

In exceptional cases, where the compensation to be paid exceeds a certain threshold, the judge may appoint an expert to assist him/her in the assessment of the compensation. Based on this, all compensation requests that are executed or those unsatisfactory requests are considered. In the latter case, all formalities and procedures followed before TGI are taken into account (i.e., they must be written, signed by a lawyer, and filed with the court clerk) within the deadline set by the relevant judge.⁷³

If the judge issues a ruling against the professional, he has two options: either to execute it comprehensively, meaning not to compensate consumers directly and resort directly to consumer protection associations or a lawyer or court reporter to pay the full compensation value. In the case where this task is assigned to the association, it is obliged to transfer it back to the deposit account with the Deposit and Consignment Fund for re-transfer to those concerned.⁷⁴

If the professional refuses to execute the court ruling, consumer protection associations may resort to compulsory execution based on the general rules related to compulsory execution (L623-21 of the Consumer Law).⁷⁵

Accepting consumer protection associations to proceed with collective lawsuits costs them many difficulties and expenses that may weigh heavily on them, especially since the compensations ruled by the judge are the right of the consumers affected by the actions of the professional. However, this does not prevent them from requesting that the relevant judge rule on the professional himself with all the costs incurred during the trial proceedings.⁷⁶

Finally, if all of the above procedures have been completed, or in other words, if the professional has repaired the damages caused to consumers, the judge may declare the end of the trial, which in turn ends the collective lawsuit.⁷⁷

Conclusion:

In conclusion, it can be said that the collective action lawsuit is indeed a legal and judicial development in the French legislative system, as it has paved a long way to reach where it is today. The acceptance of such lawsuits was not easy from the beginning, and in fact, the biggest victory achieved by their existence is restoring the balance between the consumer and the professional. The mere thought of the possibility of legally uniting and resorting to the judiciary in the form of a group can create anxiety and discomfort among professionals, especially since their reputation will be at stake. This may lead many institutions to opt for a peaceful solution rather than going through the legal procedures. However, these hopes have faced many obstacles that have made them insufficient to achieve the desired goal.

The failure of this lawsuit in France is attributed to the restrictions imposed by the French legislature, which deprived it of its main goal of being included in the legislative system, which is “to emphasize the legitimacy of protecting the interests of consumers and the necessity of achieving legal security for economic institutions.” Among the most important defects we have identified through the study of its legal system are the following:

- The first problematic issue that can be raised in this regard is restricting the party responsible for filing the lawsuit, mainly represented by licensed consumer protection associations, without others. In fact, it is good to enable associations to file such lawsuits

without the consumer, as the latter remains a weak party against the massive economic structures that they will have to face. On the other hand, this weapon may appear effective in reality, but it is a double-edged sword because it may burden the associations with long and difficult procedures to prove, which will make them avoid entering this tunnel from the beginning.

It is known that the scope of this lawsuit is limited to the Consumer Protection Law and the Competition Law, which is unreasonable, as there are many fields that can benefit from these procedures as long as the legislature has already accepted the idea of collective action. So what prevents applying it in other fields such as the environment, labor law, and other laws?

Taking into consideration the novelty of the group action lawsuit in French consumer law, it is still too early according to some jurists to evaluate its effects on practical reality.⁷⁸ It still requires a strong legislative will in order to establish its concepts in reality and activate legal texts by introducing some amendments to align with the spirit of the measures provided to protect consumers. Simplifying judicial procedures and granting consumers the right to file lawsuits and adopting this mechanism in fields other than consumption and competition are among the matters that the French legislature should focus on in the near future.

On the other hand, these lawsuits, with their conditions and procedures, can be adopted and implemented by legislations - including the Algerian legislature - especially since they are currently considered somewhat modern mechanisms for restoring balance between the consumer and the professional. All that is required is for legislators to avoid falling into the same mistakes made by the French legislature, while preserving the legal and economic reality of each country.

¹ Patrice Macqueron et des autres, Association (fondations-congrégation- fonds de dotation), memento pratique, Edition Francis Lefebvre, paris, 2014-2015, p18.

² Comert Mélanie et Virginie Coursiere-Pluntz Virginie et Flaicher-Maneval Elisabeth et Le Bourdon Amaury et Petrignet Nathalie et Redon Denis, Mémento pratique (concurrence-consommation), éditions Francis Lefebvre, 2015-2016, p.62.

³ Ibid, p.63

⁴ Leveneur Leurent, Code de la consommation, LexisNexis, 2016, p.382.

⁵ Pièdelièvre Stéphane, Droit de la consommation, 2édition, Economica, 2014, p.754.

⁶ Noblot Cyril, Droit de la consommation, Lextenso éditions, Montchrestien, 2012, p.24-25.

⁷ Pièdelièvre Stéphane, op. cit, p.754.

⁸ Claret Hélène et Paisant Gilles, Un nouveau projet de loi en faveur des consommateurs, la semaine juridique, hebdomadaire, n°49, Juris-Classeur, décembre2006, p.2251.

⁹ Sofiane Zaroil, L'action de groupe à l'épreuve du droit français, these du master, faculté de droit, université de Nîmes, 2018-2019, p6.

¹⁰ Marine Pavot, L'action de groupe dans la loi relative à la consommation, faculté de droit, Université Panthéon-Assas, Paris2, 2014, p1.

¹¹ Serge Guinchard, L'action de groupe en procédure civile française, revue internationale de droit comparé, n°2, vol 42, société de législation comparé, avril-juin, 1990, p599.

¹² Sébastien Denaja, avis n°1123, Assemblée Nationale... detailed website ... [http:// : www. Assemblée- nationale. Fr/ 14/ rapports/ r 1123. Asp ...](http://www.Assemblée-nationale.Fr/14/rapports/r1123.Asp) 28 septembre2022 (consulted on14/04/2022).

¹³ Marine Pavot, op cit, p3-4.

¹⁴ Ibid, p5.

¹⁵ Ibid, p5.

¹⁶ Sofiane Zaroil, op cit, p8.

¹⁷ Marine Pavot, op cit, p6-7.

¹⁸ Sofiane Zaroil, op cit, p8.

¹⁹ Guillaume Cerutti et Marc Guillaume, Rapport sur l'action de groupe, groupe de travail, 16 décembre 2005, p4.

²⁰ Despite recognizing this claim in principle, they disagreed on the labels given to this claim. In the US, it is called "class action," in England, "group action," in Sweden, "recours collectifs," and in Portugal, "action populaire." However, the French legislator preferred the term "action de groupe." (Ibid, p6).

²¹ Jérôme Julien, Droit de la consommation, Lextenso éditions, L.G.D.J, 2015, p611.

²² Marine Pavot, op cit, p7.

²³ Jérôme Julien, op cit, p609.

²⁴ Julie Roman, Action de groupe et droit de la concurrence, thèse du master, faculté de droit, université paris 2, panthéon-Assas, 2015-2016, p12.

²⁵ Adamou Abortchire et Virginie Cibert-Goton, Pratique du droit de la concurrence et de la consommation, Eska édition, paris, 2007, p22-23.

²⁶ Loi n°2014-344 relative à la consommation du 17 mars 2014, journal officiel, 18 mars 2014, p 5400.

²⁷ Article L623-1 du code de la consommation : « Une association de défense des consommateurs représentative au niveau national et agréés en application de l'article L811-1 peut agir devant une juridiction civile afin d'obtenir la réparation des préjudices individuels subis par des consommateurs placés dans une situation similaire ou identique ayant pour cause commune un manquement d'un ou des mêmes professionnels à leurs obligations légales ou contractuelles :

1° A l'occasion de la vente de biens ou de la fourniture de service ;

2° Ou lorsque ces préjudices résultent de pratiques anticoncurrentielles au sens de titre II du livre IV du code de commerce ou des articles 101 et 102 du traité sur le fonctionnement de l'Union européenne. »

²⁸ Sofiane Zaroil, op cit, p6.

²⁹ Sébastien Denaja, avis n°1123, Assemblée Nationale... detailed website ... [http:// : www. Assemblée- nationale. Fr/ 14/ rapports/ r 1123](http://www.Assemblée-nationale.fr/14/rapports/r1123).

²⁹ Rebeloy Vincent, La nouvelle action de groupe, Recueil Dalloz, n°16, 1 mai 2014, p.943.

²⁹ Article L623-24 du code de la consommation.

²⁹ Chevrier Eric, Loi relative à la consommation (analyse des principales dispositions de la loi et ses difficultés de mise en œuvre), Dalloz, mai 2014, p.3.

³⁰ Calais-Auloy Jean et Temple Henri, Droit de la consommation, 9édition, Dalloz, 2015, p.660.

³¹ Rebeloy Vincent, op.cit, p.943.

³² Article L623-24 du code de la consommation.

³³ Chevrier Eric, op.cit, p.3.

³⁴ For example, in Algeria, a consumer protection association established in accordance with the conditions stipulated in the Associations Law (Law No. 31/90 as amended by Law No. 06/12 concerning associations), which enjoys independent legal personality, can be established as a civil party in lawsuits against any actions that cause harm to its individual or collective interests related to its members in order to obtain compensation for the damages suffered and to hold the responsible party accountable. This is the fundamental principle.

³⁵ Adamou Albortchire et Cibert-Goton Virginie, op.cit, p.19.

³⁶ Julien Jurôme, op. cit, p.53.

³⁷ Adamou Albortchire et Cibert-Goton Virginie, op. cit, p.19.

³⁸ Comert Mélanie et des autres, op. cit, p.74.

³⁹ Julien Jurôme, op. cit, p.54.

⁴⁰ Article R623-5 du code de la consommation.

⁴¹ Article préliminaire : « Pour l'application du présent code, on entend par :
-consommateur : toute personne physique qui agit à des fins qui n'entend dans le cadre de son activité commerciale, industrielle, artisanale, libérale ou agricole... » la loi n°2017-203 du 21 février 2017 ratifiant les ordonnances n°2016-301 du 14 mars 2016 relative à la partie législative du code de la consommation et n°2016-351 du 25 mars 2016 sur les contrats de crédits aux consommateurs relatifs aux biens immobiliers à usage d'habitation et simplifiant le dispositif de mise en œuvre des obligations en matière de conformité et de sécurité des produits et services, JORF n°0045 du 22 février 2017.

⁴² Calais-Aulos Jean et Temple Henri, op. cit, p.659.

⁴³ Julie Roman, op cit , p48.

⁴⁴ Comert Mélanie et des autres, op. cit, p.80.

⁴⁵ Ibid, p.75.

⁴⁶ Marine Pavot, op cit, p39-40.

⁴⁷ Comert Mélanie et des autres, op. cit, p.75.

⁴⁸ Article L R623-2 du code de la consommation

⁴⁹ Indeed, class action is pursued in accordance with the provisions of the French Code of Civil Procedure, except for certain specific procedures outlined in Article R623-1 of the Consumer Code.

⁵⁰ Comert Mélanie et des autres, op. cit, p.76.

⁵¹ Calais-Auloy Jean et Temple Henri, op. cit, p.661.

⁵² La loi n° 95 /125 du 25 février 1995 relative à l'organisation des juridictions et à la procédure civile, pénale et administrative, JORF n°34 du 9 février 1995, p. 2175.

⁵³ Comert Mélanie et des autres, op. cit, p82.

⁵⁴ Calais-Auloy Jean et Temple Henri, op. cit, p.661.

⁵⁵ Julien Jurôme, op. cit, p.619.

⁵⁶ Calais-Auloy Jean et Temple Henri, op. cit, p.662.

⁵⁷ Comert Mélanie et des autres, op. cit, p.83.

⁵⁸ Article L623-25 du code de la consommation.

⁵⁹ Calais-Auloy Jean et Temple Henri, op. cit, p.662.

⁶⁰ Ibid, p.662

⁶¹ Julien Jurôme, op. cit, p.619.

⁶² Ibid, p.621.

⁶³ Comert Mélanie et des autres, op. cit, p.77.

⁶⁴ Calais-Auloy Jean et Temple Henri, op. cit, p.662.

⁶⁵ Ibid, p.663.

⁶⁶ Julien Jurôme, op. cit, p.622.

⁶⁷ Comert Mélanie et des autres, op. cit, p.77.

⁶⁸ Calais-Auloy Jean et Temple Henri, op. cit, p.662.

⁶⁹ Comert Mélanie et des autres, op. cit, p.79.

⁷⁰ Julien Jurôme, op. cit, p.622.

⁷¹ Calais-Auloy Jean et Temple Henri, op. cit, p.664.

⁷² Comert Mélanie et des autres, op. cit, p.80.

⁷³ Ibid, p.80.

⁷⁴ Calais-Auloy Jean et Temple Henri, op. cit, p.664-665.

⁷⁵ Julien Jurôme, op. cit, p.622.

⁷⁶ Calais-Auloy Jean et Temple Henri, op. cit, p.665.

⁷⁷ Julien Jurôme, op. cit, p.623.

⁷⁸ Ibid, p.623.

1- Bibliography: |

A- Low and code:

1. Code de la consommation.
2. Loi n°2014-344 relative à la consommation du 17 mars 2014, journal officiel, 18 mars 2014.

B- Books:

1. Adamou Abortchire et Virginie Cibert-Goton, Pratique du droit de la concurrence et de la consommation, Eska édition, paris, 2007.
2. Calais-Auloy Jean et Temple Henri, Droit de la consommation, 9^{ème} édition, Dalloz, 2015.
3. Chevrier Eric, Loi relative à la consommation (analyse des principales dispositions de la loi et ses difficultés de mise en œuvre), Dalloz, mai 2014.
4. Comert Mélanie et Virginie Coursiere-Pluntz Virginie et Flaicher-Maneval Elisabeth et Le Bourdon Amaury et Petignat Nathalie et Redon Denis, Mémento pratique (concurrence-consommation), éditions Francis Lefebvre, 2015-2016.
5. Guillaume Cerutti et Marc Guillaume, Rapport sur l'action de groupe, groupe de travail, 16 décembre 2005.
6. Jérôme Julien, Droit de la consommation, Lextenso éditions, L.G.D.J, 2015.
7. Leveneur Laurent, Code de la consommation, LexisNexis, 2016.
8. Noblot Cyril, Droit de la consommation, Lextenso éditions, Montchrestien, 2012.
9. Patrice Macqueron et des autres, Association (fondations-congrégation- fonds de dotation), memento pratique, Edition Francis Lefebvre, paris, 2014-2015.
10. Pièdelièvre Stéphane, Droit de la consommation, 2^{ème} édition, Economica, 2014.

B – Theses:

1. Marine Pavot, L'action de groupe dans la loi relative à la consommation, thèse de master faculté de droit, Université Panthéon-Assas, Paris2, 2014.
2. Julie Roman, Action de groupe et droit de la concurrence, thèse de master, faculté de droit, université paris 2, panthéon-Assas, 2015-2016.
3. Sofiane Zaroil, L'action de groupe à l'épreuve du droit français, thèse de master, faculté de droit, université de Nîmes, 2018-2019, p6s/ r 1123. Asp ... 28 septembre 2022.

C - Newspaper articles:

1. Claret Hélène et Paisant Gilles, Un nouveau projet de loi en faveur des consommateurs, la semaine juridique, hebdomadaire, n°49, Juris-Classeur, décembre 2006.
2. Rebeloy Vincent, La nouvelle action de groupe, Recueil Dalloz, n°16, 1 mai 2014.
3. Serge Guinchard, L'action de groupe en procédure civile française, revue internationale de droit comparé, n°2, vol 42, société de législation comparé, avril-juin, 1990.

E - Websites:

1. Sébastien Denaja, avis n°1123, Assemblée Nationale ...detailed website : [http:// : www. Assemblée- nationale. Fr/ 14/ rapports/ r 1123](http://www.Assemblée-nationale.Fr/14/rapports/r1123). Asp(consulted on 14/04/2022).