

Conformity with the ECHR of the impossibility for a syndicate of co-ownership to avail itself of the two-year limitation period of the action of professionals for the goods and services they provide to consumers. (Ruling No. 676 – 21-19.829)

28/09/2022



Appeal No. 21-19.829

Dismissal

Summary

Article L. 218-2 of the Consumer Code, which reserves to consumers the benefit of the biannual limitation period for the action of professionals for the goods and services they provide, is not contrary to Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms since consumers—natural persons—are not placed in a situation similar or comparable to that of non-professionals—legal persons. Therefore, a court of appeal is correct in holding that a homeowner association cannot avail itself of this biennial requirement

THE COURT OF CASSATION, THIRD CIVIL CHAMBER, ruled as follows:

CIV. 3

MF

COUR DE CASSATION (COURT OF CASSATION)

Public Hearing of 28 September 2022

Dismissal

Ms TEILLER, President

Ruling No. 676 FS-B

Appeal No. 21-19.829

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE COURT OF CASSATION, THIRD CIVIL CHAMBER, 28 SEPTEMBER 2022

The homeowner association of [Address 2], whose registered office is [Address 2], represented by its trustee, Gestion passion, domiciled at [Address 3], brought appeal No. 21-19.829 against the ruling delivered on 20 May 2021 by the Court of Appeal of Paris (Division 1, Chamber 2), in the dispute between it and A l'Abri, a limited liability company with registered offices at [Address 1], respondent at the quashing.

The appellant relies in support of his appeal on the two grounds of quashing attached to this ruling.

The case file has been sent to the Prosecutor General.

On the report of Mr Jariel, judge-referee, the observations of SCP Zribi and Texier, counsel for the homeowner association of [Address 2], of SCP Waquet, Farge and Hazan, counsel for the company A l'Abri, and the opinion of Ms Guilguet-Pauthe, Advocate-General, after discussions in the public hearing of 12 July 2022, attended by Ms Teiller, President, Mr Jariel, judge-referee-rapporteur, Mr Echappé, elder judge, Messrs Jessel, Jobert, Ms Grandjean, judges, Ms

Schmitt, Ms Aldigé, Mr Baraké, Ms Gallet, Ms Vernimmen, judge-referees, Ms Guilguet-Pauthe, Advocate-General, and Ms Letourneur, Chamber Registrar,

the Third Civil Chamber of the Court of Cassation, composed, pursuant to Article R. 431-5 of the Judicial Code, of the abovementioned President and judges, after having deliberated in accordance with the law, has delivered the present ruling.

Facts and Procedure

1. According to the ruling under appeal (Paris, 20 May 2021), in 2016, the homeowner association of the building [Address 2] (the homeowner association) instructed A l'Abri to carry out various works.
2. On 26 May 2020, this company summoned it for payment of an advance corresponding to unpaid invoices.
3. By the ruling under appeal, the Paris Court of Appeal dismissed the plea of inadmissibility based on a biennial limitation period for the action.
4. In its appeal against that ruling, the homeowner association requested that a priority question relating to the constitutionality of Article L. 218-2 of the Consumer Code be referred to the Constitutional Council.
5. The Court of Cassation (3rd Civ., 17 February 2022, Appeal No. 21-19.829, published) said that it was not necessary to refer the priority question of constitutionality to the Constitutional Council.

Reviewing pleas

On the second plea, appended hereafter

6. Pursuant to Article 1014, paragraph 2 of the Civil Procedure Code, there is no need to have a specially reasoned decision on this plea which is clearly not of such a nature as to entail quashing.

On the first plea

Statement of plea

7. The homeowner association objects to the decision to dismiss the limitation order as a plea of inadmissibility, when:

"1. the declaration of unconstitutionality, after referring to the Constitutional Council the priority question of constitutionality put forward in a separate and reasoned written form, will deprive the ruling under appeal of any legal basis, in the light of articles 61-1 and 62 of the Constitution;

2. the enjoyment of the rights and freedoms recognized in the Convention for the Protection of Human Rights and Fundamental Freedoms must be ensured, without distinction of any kind, based in particular on sex, race, colour, language, religion, political or any other opinion, national or social origin, membership of a national minority, property, birth or any other status; the same Agreement provides that every person has the right to respect for their property; property restrictions must be provided for by law, pursue a legitimate aim and strike a fair balance between the requirements of the general interest of the community and the imperatives of safeguarding the fundamental rights of the individual; by applying Article L. 218-2 of the Consumer Code, which does not expressly provide that the two-year limitation period applicable to the action of traders in respect of goods or services which they provide to consumers is to the benefit of non-traders, thus relying solely on the legal status of the homeowner association to deny it the benefit of

the limitation period, the Court of Appeal infringed Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms in conjunction with Article 1(1) of Additional Protocol No. 1 to that Agreement."

Court's response

8. On the one hand, since the priority question of constitutionality was not referred to the Constitutional Council, the objection, alleging annulment as a consequence of the loss of the legal basis of the ruling, became irrelevant.
9. On the other hand, the infringement of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms presupposes a difference in the treatment of persons placed in similar or comparable situations (ECHR, ruling of 13 November 2007, D.H. et al. v. Turkey). Czech Republic [GC], No. 57325/00, § 175; ECHR, ruling of 29 April 2008, Burden v. United Kingdom [GC], 13378/05, § 60).
10. The preliminary article of the Consumer Code provides that, for the purposes of the Code, "consumer" means any natural person who acts for purposes which do not come within the scope of their commercial, industrial, craft, liberal or agricultural activity and, "non-professional" means any legal person who does not act for professional purposes.
11. This difference in legal status, resulting from Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, is based on the legal personality of non-professionals, which does not place them in a situation similar or comparable to that of natural persons.
12. Unlike a natural person, pursuant to Act No. 65-557 of 10 July 1965 establishing the status of condominium ownership of constructed buildings, a homeowner association thus has three separate bodies: the trustee, the board and the general meeting of co-owners, whose operation, governed by this act, is also governed by a co-ownership regulation.
13. Therefore, in the absence of any difference in the treatment of persons placed in similar or comparable situations, the Court of Appeal rightly held that the homeowner association could not rely on the biennial limitation period for the action of professionals, for the goods and services they provide to consumers, as provided for in Article L. 218-2 of the Consumer Code.
14. The plea is therefore unfounded.

ON THESE GROUNDS, the Court:

DISMISSES the appeal;

Orders the homeowner association of the building [Address 2] to pay costs;

In accordance with Article 700 of the Civil Procedure Code, rejects the application made by the homeowner association of the building [Address 2] and orders it to pay to the company A l'Abri the sum of EUR 3,000;

Thus decided by civil chamber No. 3 of the Court of Cassation and delivered by the president in public hearing on the second day of the month of March of the year two thousand and twenty-two.

President : Mr Teiller

Reporting Judge-referee : Mr Jariel

Advocate-general : Ms Guilguet-Pauthe

Lawyer(s) : SCP Zribi and Texier – SCP Waquet, Farge and Hazan

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International

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