News 20.04.2016

Limitation of the temporal and material scope of application of the law on class actions held to be constitutional

Until recently, Belgian procedural law provided for no mechanism that allowed the claims of a large group of aggrieved civil parties to be dealt with in a global and efficient manner. Victims of mass damage had to follow the classic judicial path, which for them often appeared an expensive and inefficient procedure. The legislator attempted to provide an answer to this with the Act of 28 March 2014 introducing the class action in book XVII of the Economic Law Code. The new regulation makes it possible for a group representative, on behalf of a group of consumers, to initiate a proceeding with a view to obtaining compensation from a company that caused wrongful harm. You can find a more extensive discussion of this in our earlier-published newsflash.

An appeal for nullification was filed with the Constitutional Court against several provisions of the law, on the basis of the following arguments amongst others:

Limitation of the scope of application of the law to loss events whose cause arose after the entry into force of the Act (namely 1 September 2014) would entail an unequal treatment relative to victims of earlier loss events.

For the demand for collective remedy to be admissible, the invoked cause of the damage must constitute a violation of one of the contractual obligations of the company or one of the European regulations or statutes that are enumerated in the law. This limitative enumeration would not only be discriminating, but would also deprive a category of citizens of the right to legal assistance and an actual legal remedy.

The requirement of recognition that is imposed on associations so that they can act as group representative would discriminate against comparable foreign associations that do not enjoy this recognition.

By decision of 17 March 2016 (no. 41/2016), the Constitutional Court found a violation of the Constitution only on the basis of the last argument.

With regard to the limitation of the temporal scope of application, the Court found no unequal treatment, since victims of harm whose cause occurred before 1 September 2014 dispose of other legal instruments (for example, an individual claim) in order to obtain damages.

Nor was the second argument retained by the Court. The Court found that the legislator provisionally wished to limit the scope of application of the collective claim to the area of consumer rights, in which a large number of cases of limited individual damage (« small claims ») arise. Moreover, the legislator indicated that the new law fits within a gradual approach, and that it is not excluded that the scope of application will be expanded in the future.

Concerning the last argument, as mentioned, the Constitutional Court did find a violation of the principle of equality, since the required recognition is deemed to be in conflict with the free movement of services, because it has the consequence that comparable authorities from the EU and the EEA cannot act as a group representative. This unequal treatment is in conflict with the principle of equality. The law will have to be adapted on this point. In the meantime, judges will not be able to declare inadmissible a class action that is filed by an organisation as understood in article 4 of the Directive 2009/22/EC on achieving cessation of infringements within the framework of the consumer interests.

Except for the point of the required recognition, the new class action law thus survives the constitutionality review. The delineation of the material scope of application and the transitional provision which limits the temporal scope of application of the law to new loss events are deemed to be in accordance with the Constitution. Victims of earlier mass damages cases will consequently not be able to call upon the class action in order to obtain damages, but will instead have to avail themselves of the “classic” procedural possibilities for this.

For more information, you can consult Dave Mertens and Geert De Buyzer (authors) and Gwen Bevers (head of the business law department).

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