

## Case law

### Case Details

**National ID:** link

**Member State:** France

**Common Name:** link

**Decision type:** Other

**Decision date:** 03/02/2011

**Court:** Cour de Cassation (Supreme court)

**Subject:**

**Plaintiff:**

**Defendant:**

**Keywords:**

### Directive Articles

Unfair Contract Terms Directive, [Article 1, 1](#). Injunctions Directive, [Article 1, 1](#). Injunctions Directive, [Annex I](#)

### Headnote

Protection of consumers – association for the protection of consumers – pre-emptive challenge – action for an injunction to remove unfair contract terms – term in a standard form contract – contract term excluding the possession of a pet in a seasonal hire contract

The pre-emptive challenge open to accredited consumer organisations to have unfair clauses removed can be applied to standard term contracts aimed at consumers which are drafted by professionals with a view to general use.

The pre-emptive challenge is open to accredited consumer organisations to have unlawful clauses removed can be applied to standard term contracts aimed at consumers which are drafted by professionals with a view to general use.

### Facts

The association Clévacances Isère proffered a standard term contract of seasonal hire to its members who were owners of real estate. Certain terms of the contract appeared unlawful or unfair to the consumer association UFC 38 - Que Choisir which sought an injunction against Clévacances Isère to restrain the use of those terms.

Following the intervention of National Federation of leasing in France (Fédération nationale des locations de France) to the appeal, on behalf of Clévacances, the Court of Appeal distinguished, on the one hand, unlawful clauses capable of being struck out and, on the other hand, clauses which were unfair under the provisions of consumer law and could therefore only be used in non-commercial contracts.

### Legal issue

Article L. 421-6 of the French Consumer Code does not distinguish between the striking out of unlawful and unfair contractual terms.

The Court of Cassation assimilated the legal consequences of unlawful and unfair contractual terms by rejecting, on the one hand, the appeal against the removal of the litigious contractual term and, on the other hand, overturning the decision of the Court of Appeal in direct reference to articles L. 132-1 and L. 421-6 of the Consumer Code.

The pre-emptive challenge open to accredited consumer organisations to have unlawful or unfair clauses removed can be used to restrain the use or remove terms in standard contracts aimed at consumers which are drafted by professionals with a view to general use.

The judgment extends the scope of application of the pre-emptive challenge open to accredited consumer organisations by not distinguishing between the source of unlawfulness of the disputed contractual terms, whether that be the general law of contract or specific consumer law regulation.

### Decision

Full text: [Full text](#)

### Related Cases

No results available

### Legal Literature

No results available

### Result