

Case Details

Case Details

National ID	10296
Stato membro	Italia
Common Name	link
Decision type	Administrative decision, first degree
Decision date	11/12/2012
Organo giurisdizionale	Tribunale Amministrativo Regionale del Lazio (Roma)
Oggetto	
Attore	Codacons, Associazione Articolo 32 and Je. Sa
Convenuto	Ministero della salute, Presidenza del Consiglio dei Ministri e Conferenza Unificata Stato-Regioni
Parole chiave	consumer, injunction, qualified entity

Directive Articles

Injunctions Directive, [Article 3](#) Injunctions Directive, [Article 3, \(b\)](#)

Headnote

According to art. 137, paragraph 1, of the Consumer Code, the registration of the association in the national list of consumers and users associations is an essential requirement in order to consider it a "qualified entity" for the proposition of a compliant in court for the protection of the consumers' collective interests (art. 139 Consumer Code). Even the registration of all the associations of which the plaintiff (the association of associations) is composed is required since the registration ex. art. 137 of the Consumer Code is not extended singulatim to each of its associates.

Facts

Following a complaint by the plaintiff (an association whose associates are associations themselves) to the relevant public prosecutor's office to start investigating in relation to the dangerousness of the implants produced by Poly Implant Prothese (P.i.p.), The Superior Council of Health (C.S.S.), issued an opinion contained in a decree of 22th December 2011 declaring that, subsequent to investigations of French Authorities, it was discovered that the implants P.i.p. did not respect international standards. The implants were withdrawn from the market on the 1st April 2010. The opinion followed with the order to P.i.p. to call the patients with implants, specifying that the National Health Service would have been in charge of the surgeries if there was a specific clinical indication, without mentioning the modalities of substitution or the costs of surgeries for new implants.

On 8 February 2012 the Head of the Council of Ministries has summoned a State-Regions Conference to draft an agreement between the Government and the Regions on the management of owners of P.i.p. implants cases. Said document also foresaw other cases in which, even in absence of clinical signs, the doctor may suggest the implants removal.

With an act notified on the 28th February 2012 the plaintiffs contested and requested the annulments of the Ministry of Health decree of the 22th December 2011, in the parts in which there was no mention of the modalities for the charge, and in the parts in which it did not order the implants removal for every persons, even though it was a product not suitable for human use.

Legal issue

Is it sufficient, in order to comply with art. 137 and 139 of the Consumer Code, for an association protecting consumers' interests in court to be properly registered in the national list as required by art. 137, paragraph 1, of the Consumer Code, even if said association is an "association of associations"(that is an association whose associates are associations themselves), that includes in its structure an association that is not registered in the national list as well?

Decisione

The action was rejected, for lack of legitimation, since it was brought by Associazione Articolo 32, which is not registered in the national list of consumers' and users' associations as required by art. 137, paragraph 1, of the Consumer Code. The same legitimation or entitlement can't be recognized by the fact that it is part of Codacons, the "association of associations", registered in the national list, since the registration ex. art. 137 of the Consumer Code is not extended singulatim to each of its associates.

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Result

The regional administrative tribunal rejected the plaintiff complaint and declared it inadmissible.