



PRESS RELEASE

French duty of care: the Constitutional Court approves the major parts of the law
A historic step for the protection of human and environmental rights and a strong signal to the European and International community

Paris, the 24th of March 2017. Yesterday, the constitutional court published its decision following the referral by the French members of Parliament of the law which instituted a duty of care for transnational corporations (1). The council deemed that the the major parts of the text respected the Constitution, thus approving the creation of a new obligation for transnational corporations to implement duty of care as regards the protection of human and environmental rights. Although the council rejected the amendment which mentioned a fine for non-compliance, its decision approves the possibility to bring to the courts corporations which fail to comply to their new obligations. Our organizations* will remain alert to the effective application of the law, and active to ensure that this example can inspire similar achievements beyond France, with the adoption of similar legislation to protect human and environmental rights in Europe and at the international level (2).

Following the referral of the law to the Constitutional Court, our organizations produced a report which outlined the arguments in favor of the thesis that this text respected the Constitution, a thesis defended by a number of legal experts (3).

In its published answer, the Court mentioned the “*uncontested general interest goal which the legislator aims for*”, which is one of the chief reason our organizations have been lobbying for this law for several years.

If we are surprised that the Court judged that the mention by the law of infringement to “human rights” and “fundamental freedoms” was “*large and undetermined*” the court however confirmed that the law was comprehensible, a fact which the request had challenged.

Further, and by contrast to what the authors of the request contesting the law had claimed, the Court stated that the implementation of this obligation would “*not result into an excessive infringement upon corporations’ economic freedom*”.

At the end, the core of the dispositions of the law have been upheld, part from the mention of civil fines. Although these would have provided a stronger incentive for companies to respect the law, the rejection of the mention of fines does not undermine the architecture nor the general principle of the law. Indeed, the possibility for victims, organizations and unions to go to the judge in order to ensure that this new obligation is respected was approved by the Constitutional Court. The judge will be able to order companies to publish and implement in an effective way a plan to ensure that duty of care is respected or be threatened with fines, in order to prevent the infringement of human and environmental rights by the actions of corporations’ subsidiaries, subcontractors or suppliers, in France and abroad.

This law is a historical first step in the fight to regulate the activities of transnational corporations. Our organizations will thus continue to fight to strengthen the access to justice of victims of transnational corporations’ rights violation in France, in Europe and at the international level.

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Notes:

(1) The full answer of the Constitutional Court is available here: www.conseil-constitutionnel.fr/decision/2017/2017750dc.htm. Its press release: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2017-750-dc/communiquede-presse.148858.html>

(2) See our infographics on the progress achieved in: <http://bit.ly/2n6jmGo>^[1]

Further, since 2015, negotiations have started at the UN, in order to draft an international treaty regulating human rights and transnational corporations. See here for more information: <http://bit.ly/2fnE81V>

(3) Our organizations had presented a “report” [narrow door report in French] to the Constitutional Court which advocated that the law respected the French Constitution.: <http://bit.ly/2mwldEP>. The full legal report is available here:

https://issuu.com/collectifdong/docs/m__moire_-_alc-_201700300855450

Legal expert articles:

- National Lawyer's Bar : <http://bit.ly/2n5lcmV>
- Mireille Delmas-Marty and Kathia Martin-Chenut : <http://lemde.fr/2mHUIsl>
- Nicolas Cuzacq : <http://bit.ly/2li0tMw>
- Marie-Caroline Caillet : <http://bit.ly/2mMlukf>