

# “Judiciary Power and Tobacco Control”

Employers' liability

its role in facilitating  
adoption & implementation  
of smoke-free legislation in France

Brasilia, 16th April 2010



# CNCT : National Committee for Tobacco Control



NGO – French « ASH »

Funded in 1868,

Recognized as « acting for the public interest »

One of our missions :

Enforcement and improvement of the  
TC legislation

⇒ legal prevention - advocacy

# The French legal framework

NGOs are allowed to file civil suits against anti-smoking law offenders :

*"The associations whose statutory goal includes the struggle against tobacco, regularly registered for at least five years when the facts occurred, can become plaintiffs and request punitive damages for the infractions relevant to this act."*

*Evin Law 1991*

# Particularities and experiences from the French legal context

- The consequence of a national tobacco monopoly for centuries
- The way to compensate a lack of political will
- Results : NGO built the strong jurisprudence / TC legislation

# French legal context

- 1991 : Evin Law

*« It is forbidden to smoke in all public places such as schools and public transport, unless an area has been reserved for smokers. An executive order will be issued by the Council of State setting out the conditions for implementation of the previous paragraph.»*

- 1992 : Enforcement decree

- 2006 : New smoke-free decree

- 1993-2006 : development of a progressive and strong jurisprudence

# The employer's liability

## Case **Lefebvre c/ ACME Protection**: the facts

- Mrs Lefebvre, non smoker, worked in a collective office with smokers
- Complain / Employer
  - ⇒ signs
  - + forbidden to smoke in the office in the presence of Mrs Lefebvre
- No change
  - ⇒ She dismissed and sued her employer

# The employer's liability

## Case **Lefebvre c/ ACME Protection**: the legal procedure

- 26 March 2002 : Prud'Hommes, she lost
- 24 April 2003 : Court of Appeal, she won for unfair dismissal – 3 340 Euros for damages.
- 29 June 2005 : Court of Cassation confirmation :
  - ⇒ the employer is obligated to protect employees from harm caused by passive smoking,
  - ⇒ obligation of results not simply of means

# The result of a whole process

Other rulings regarding the protection toward passive smoking :

- 20 November 1996 : Case Ozeir, TGI Paris

*"Passive smoking can be fatal"*

- 16 March 2004 : The right to leave, Court of Appeals Rennes

Due to *"poisonous nature of tobacco smoke (...) a lethal and dangerous product because of its carcinogenic effects on both smokers and passive smokers"* the employer *"cannot force an employee (...) to work in a smoke-polluted atmosphere"*,

furthermore, *"an employee should not be reproached for refusing to work in these conditions, especially given that he/she is only asking for compliance with a public health law"*

# The result of a whole process

The transposition in the national law  
of a European Directive

/health and security at workplaces

*"The employer is not responsible only if it is in un-normal, foreign and unforeseeable circumstances or exceptional events whose consequences could not be avoidable". (see L 230-2 Labor Code)*

# The legal consequences

## 1. A legal insecurity for employers

- the possibility for an employee to break his/her work contract because his/her right for health is not respected
- the possibility for an employee to use its right to leave
- the risk to be faced to an "inexcusable fault"
- the risk of an insurance-related insecurity

# The legal consequences

## 2. A legal insecurity for employees

A non smoker can sue not only his/her employer but also his/her colleague.

A supervisor who would smoke or who let smoke someone could be implicated not at a disciplinary level but at a civil level, and he/she could be condemned to pay possible damages as well.

# The legal consequences

## 3. A legal insecurity for the State

- parallel with the jurisprudence concerning asbestos.
- the State could be condemned because it failed to enforce and control the effectiveness of the legislation protecting people from passive smoking

# The practical consequences

/ Employers, incl the HORECA sector

In support for a change in the legislation

In favour for a clear smoking ban

Opposed to any exemption that would lead to discrimination and legal insecurity

Opposed to any "softening" : after the political change in 2007, they asked the government not to adapt the smoke-free decree



# The practical consequences

- An employer can not decide whether his/her premises are smoker or non smoker
- An employer must not allow his/her employee(s) to enter in a smoking-room.
  - ⇒ No service in a smoking room
  - ⇒ Before the cleaning, nobody can smoke for several hours
- / Employees, trade-unions : passive smoking became an item of protection and condition of work
- / Whole population : we must protect everybody : non smokers and smokers and not focus our measure to specific and vulnerable populations

# Conclusion

Despite a very strong opposition by the tobacco industry and the tobacco retailers, the smoke-free decree was adopted.  
& the employer's liability contributed to this adoption and then to its implementation.

Employers' liability = a very good example of the key part played by legal actions in tobacco control.

# Thank you for your attention



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