

COLLECTIVE LITIGATION FOR CONSUMER PROTECTION UNDER VIETNAMESE LAW: IDENTIFYING AN APPROPRIATE PROCEDURAL MODEL

NGUYEN THI THUY HANG¹

HO MINH THANH²

Hue University of Law, Hue University, Vietnam

Email: ntthang@hueuni.edu.vn¹; hmthanh@hueuni.edu.vn²

Abstract

Collective litigation has become an increasingly important procedural mechanism for addressing consumer disputes arising from the same or similar unlawful conduct. This article examines the theoretical foundations of collective litigation, analyses the current Vietnamese legal framework, and identifies an appropriate procedural model for strengthening consumer protection. The analysis demonstrates that, although Vietnamese law has incorporated certain elements of collective consumer litigation through representative proceedings initiated by consumer organisations, it has not yet established a coherent procedural framework for collective claims. Existing shortcomings include the absence of specialised procedural rules, limited standing to commence representative proceedings, and the lack of clear provisions governing collective participation, the binding effect of judgments, and the distribution of compensation. Based on comparative experience, the article argues that Vietnam should develop a representative model of collective litigation by expanding standing to initiate proceedings and introducing dedicated procedural rules tailored to collective consumer disputes. Such reforms would enhance access to justice, strengthen consumer protection, and improve the effectiveness of civil enforcement in Vietnam.

Keywords: *collective litigation, representative litigation, consumer protection, civil procedure, Vietnam*

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The rapid growth of the digital economy and e-commerce has significantly increased consumers' digital vulnerability, allowing a single unlawful business practice or corporate misconduct to affect large numbers of consumers simultaneously.¹ Although the loss suffered by each individual consumer may be relatively small, the costs and complexity of litigation often make it uneconomical to pursue such claims, leaving many consumer rights unenforced in practice.² As a result, traditional individual

1 Helberger, N., Sax, M., Strycharz, J., & Micklitz, H.-W. (2022). Choice architectures in the digital economy: Towards a new understanding of digital vulnerability. *Journal of Consumer Policy*, 45(2), pp. 175–200. <https://doi.org/10.1007/s10603-021-09500-5>

2 Cappelletti, M., & Garth, B. (1978). *Access to justice: A world survey* (Vol. I), Sijthoff & Noordhoff, 6–15; Cappelletti, M., & Garth, B. (1978). Access to justice: The newest wave in the worldwide movement to make rights effective, *Buffalo Law Review*, 27(2), pp. 207–214.

litigation often proves ineffective because the costs and duration of legal proceedings frequently outweigh the potential compensation available to individual consumers. To address this imbalance, many jurisdictions have introduced class action or representative action mechanisms to improve access to justice, enhance enforcement of consumer protection law, and ensure more effective protection of consumer rights.³ In Vietnam, the 2023 Law on Protection of Consumer Rights (LPCR 2023)⁴ and the 2015 Civil Procedure Code have taken initial steps towards recognising the standing of social organisations to initiate proceedings to protect multiple consumers.⁵ However, Vietnamese law has yet to establish a comprehensive class action mechanism, thereby significantly limiting its practical application.

Existing scholarship has addressed class actions and representative mechanisms in consumer protection, primarily by presenting comparative experiences from selected jurisdictions or examining the relevant provisions of Vietnamese law.⁶ Although these studies provide valuable comparative and doctrinal insights, they pay relatively limited attention to the theoretical foundations of collective redress, particularly from the perspectives of access to justice, information asymmetry, and private enforcement. Similarly, little attention has been paid to whether the LPCR

3 Stöhr, A. (2020). The implementation of collective redress – A comparative approach. *German Law Journal*, 21(8), pp. 1606–1624. <https://doi.org/10.1017/glj.2020.95>; Hodges, C. (2008). *The reform of class and representative actions in European legal systems: A new framework for collective redress in Europe*. Hart Publishing, pp. 3–15.

4 Article 50, 70 of the 2023 Law on Protection of Consumer Rights.

5 Article 187.3 of the 2023 Law on Protection of Consumer Rights.

6 Quach, T. Q. (2013). Bảo vệ quyền lợi người tiêu dùng bằng các vụ kiện tập thể – Kinh nghiệm nước ngoài và các gợi ý hoàn thiện pháp luật. *Tạp chí Nghiên cứu Lập pháp* [Protecting consumer rights through collective actions: Foreign experiences and recommendations for legal reform. *Legislative Studies Quarterly*], 16(248), pp. 53–58; Phan, T. T. T. (2018). Kiến tập thể trong giải quyết tranh chấp tiêu dùng ở một số nước ASEAN và những gợi ý cho Việt Nam. *Tạp chí Nhà nước và Pháp luật* [Collective actions in consumer dispute resolution in selected ASEAN countries and implications for Vietnam. *State and Law Review*], 1(357), pp. 40–49; Dang, T. H. (2013). Giải quyết tranh chấp của người tiêu dùng theo thủ tục rút gọn. *Tạp chí Dân chủ và Pháp luật* [Resolving consumer disputes under summary procedure. *Journal of Democracy and Law*], Vol. 8; Vu, H. A. (2021). Bảo vệ quyền lợi người tiêu dùng theo pháp luật tố tụng dân sự Việt Nam. *Tạp chí Khoa học Kiểm sát* [Protection of consumer rights under Vietnamese civil procedure law. *Journal of Procuratorate Studies*], 1(45), pp. 47–54; Le, V. N., Nguyen, H. H. (2024). Đại diện khởi kiện vụ án dân sự để bảo vệ quyền và lợi ích hợp pháp của người khác, lợi ích công cộng và lợi ích của Nhà nước. *Tạp chí Nghiên cứu Lập pháp* [Representative standing to initiate civil proceedings to protect the lawful rights and interests of others, public interests, and State interests, *Legislative Studies Quarterly*], 9(488), pp. 42–51; Chau, B. A. (2024). Khởi kiện dân sự bảo vệ quyền lợi người tiêu dùng: Kinh nghiệm từ hệ thống thông luật và gợi mở cho Việt Nam. Báo cáo tại hội thảo “Thực thi Luật Bảo vệ quyền lợi người tiêu dùng năm 2023 trong xu hướng tiêu dùng mới” [Consumer civil litigation: Experience from common-law systems and implications for Vietnam. Paper presented at the Conference “Enforcing the 2023 Law on Protection of Consumer Rights under Emerging Consumption Trends”]. Ton Duc Thang University, May 2024; Pham, H. N., Nguyen, X. C. (2025 May 21). Giải quyết vụ án dân sự về bảo vệ quyền lợi người tiêu dùng theo thủ tục rút gọn – Một số hạn chế, bất cập và kiến nghị hoàn thiện. *Tạp chí Tòa án nhân dân điện tử*. [Resolution of civil cases on consumer protection under summary procedure: Limitations, shortcomings, and recommendations. *Journal of People's Court*]. <https://tapchitoaan.vn/giai-quyet-vu-an-dan-su-ve-bao-ve-quyen-loi-nguoi-tieu-dung-theo-thu-tuc-rut-gon-mot-so-han-che-bat-cap-va-kiem-nghi-hoan-thien13407.html>

2023 represents a substantive convergence with contemporary models of collective redress or merely introduces procedural adjustments.

This article addresses that question through doctrinal analysis of Vietnamese consumer and civil procedure law, supplemented by a very brief functional comparison with selected foreign models. The article argues that Vietnam need not adopt a United States-style class action regime. Its existing institutional structure instead provides a foundation for developing a representative model of collective consumer litigation. Making that model effective requires clearer rules on standing, admissibility, consumer participation, the binding effect of judgments, and collective compensation. The following analysis first considers why such a mechanism is justified before examining how far Vietnamese law already provides the necessary foundations.

1. The rationale for class actions in consumer protection

Consumer transactions expose individuals to recurring risks arising from defective or unsafe products, misleading information, unfair commercial practices, and one-sided terms in standard-form contracts.⁷ However, because the harm suffered by each individual consumer is typically small and dispersed, few choose to pursue legal proceedings.⁸ As a result, widespread violations of consumer rights frequently remain unchallenged, leaving consumers without effective legal protection in practice.⁹

From a theoretical perspective, class actions are grounded in the principles of access to justice and equality before the courts. As argued by Mauro Cappelletti and Bryant Garth, access to justice encompasses more than the formal right to commence legal proceedings. It also requires individuals to have a genuine opportunity to exercise that right in practice. However, litigation costs, procedural complexity, and disparities in resources between the parties often prevent civil rights from being effectively enforced.¹⁰ For this reason, Cappelletti and Garth identified representative procedures as a central feature of the second wave of the access to justice movement. Such procedures are designed to protect diffuse interests by enabling numerous small claims to be aggregated into a single action, thereby improving access to justice and strengthening

7 Šajin, N. (2020, June). *Enforcement of consumer protection legislation* (EPRS Briefing, PE 651.962). European Parliamentary Research Service.

8 Van den Bergh, R., & Visscher, L. T. (2008). The preventive function of collective actions for damages in consumer law. *Erasmus Law Review*, 1(1-2), pp. 5–30. <https://doi.org/10.5553/ELR221026712008001002002>

9 *Ibid*, pp. 15–16 & 28–29.

10 Cappelletti, M., & Garth, B. (1978). *Access to justice: A world survey* (Vol. 1). Sijthoff & Noordhoff, pp. 6–15.

the private enforcement of the law.¹¹ Similarly, Hodges argues that class actions serve not only as a mechanism for compensating victims but also as an important instrument of private law enforcement that promotes deterrence and encourages compliance by businesses.¹²

The theoretical foundations of class actions are also closely linked to the principle of protecting the weaker party in civil and commercial legal relationships.¹³ According to the Organization for Economic Co-operation and Development (OECD), consumer markets are characterised by information asymmetry, whereby businesses typically possess substantially more information than consumers regarding the quality, safety, and characteristics of goods and services.¹⁴ This imbalance impairs consumers' ability to make informed purchasing decisions and makes it considerably more difficult for them to detect unlawful conduct, gather evidence, and enforce their rights when disputes arise.

Against this background, class actions provide an effective procedural mechanism for aggregating claims that arise from the same or similar legal and factual circumstances. By allowing litigation costs to be shared among numerous claimants, class actions improve access to justice and help restore procedural balance between consumers and businesses.¹⁵ Where businesses engage in practices such as supplying defective products, making misleading representations, committing commercial fraud, or causing environmental harm that affects public health, the resulting damage often extends to large numbers of consumers rather than a single individual. Nevertheless, individual consumers frequently choose not to pursue legal proceedings because the expected costs, time, and legal risks exceed the potential value of any individual recovery.¹⁶ This phenomenon has been described as

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- 11 Cappelletti, M., & Garth, B. (1978). Access to justice: The newest wave in the worldwide movement to make rights effective. *Buffalo Law Review*, 27(2), pp. 207–214; Hodges, C. (2008), *supra* note 3.
 - 12 Hodges, C. (2008), *supra* note 3.
 - 13 Murphy, B., Cameron, C. (2006). Access to justice and the evolution of class action litigation in Australia. *Melbourne University Law Review*, 30(2), pp. 399–440, at 401.
 - 14 Organisation for Economic Co-operation and Development. (2010). *Consumer policy toolkit*. OECD Publishing. Retrieved April 2, 2026, https://www.oecd.org/content/dam/oecd/en/publications/reports/2010/06/consumer-policy-toolkit_g1ghc0d8/9789264079663-en.pdf
 - 15 Hodges, C. (2008), *supra* note 3; Hensler, D. R. et al. (2000). *Class action dilemmas: Pursuing public goals for private gain*. RAND Institute for Civil Justice, pp. 3–15.
 - 16 Herold, S., et. al. (2018). *Sammelklagen, Gruppenklagen, Verbandsklagen – Bedarf es neuer Instrumente des kollektiven Rechtsschutzes im Zivilprozess? Ergebnisse der Legal Research Group zum 72. Deutschen Juristentag* [Should new collective action instruments be implemented into German civil procedure? Results of the ELSA Legal Research Group to the 72nd 'Deutscher Juristentag'] (Working Paper). SSRN. <https://doi.org/10.2139/ssrn.3323878>; Heese, M. (2019). Die musterfeststellungsklage und der Dieselskandal [The model declaratory action and the Diesel scandal]. *JuristenZeitung*, 74(9), pp. 429–431; Geiger, C. (2015). *Kollektiver rechtsschutz im zivilprozess: Die gruppenklage zur durchsetzung von massenschäden und ihre auswirkungen* [Collective legal protection in civil proceedings: The group action for the enforcement of mass claims and its implications]. Mohr Siebeck. <https://doi.org/10.1628/978-3-16-167063-3>

rational disinterest and was identified by Cappelletti and Garth as one of the principal barriers to access to justice in modern consumer disputes.¹⁷

When thousands or even millions of consumers independently decide not to litigate, unlawful business conduct may nevertheless cause substantial aggregate harm while allowing the wrongdoer to retain significant illicit gains. Cappelletti and Garth provide the broader access-to-justice justification for representative procedures: such procedures enable the effective protection of diffuse interests that conventional individual litigation cannot adequately vindicate.¹⁸ Molavi, by contrast, advances a more specific economic justification, explaining how aggregation makes individually unviable claims financially sustainable.¹⁹ This article adopts an integrated approach, treating the protection of diffuse consumer interests as the normative foundation of class actions and economic viability as the mechanism through which that objective is realised. From this perspective, the disparity between individual losses and aggregate social harm provides a compelling justification for class actions. By combining numerous individually low-value claims in a single collective proceeding, class actions alter the cost-benefit calculation of litigation and make judicial enforcement economically viable. According to Van den Bergh and Visscher, enforcing consumer rights through individual lawsuits is often ineffective due to consumers' lack of information about violations, litigation costs exceeding expected benefits, and the phenomenon of "rational apathy", while many tend to rely on the efforts of others (free-riding).²⁰ In this context, class action lawsuits are a crucial tool for improving law enforcement effectiveness and enhancing consumers' access to justice.

Hodges's analysis also draws attention to the enforcement dimension of collective redress beyond its compensatory function.²¹ The prospect of substantial collective liability, together with the reputational and commercial consequences of litigation, increases the expected costs of unlawful conduct and strengthens incentives for businesses to comply with the law.²² In this way, class actions contribute not only to the protection

17 Cappelletti, M., & Garth, B. (1978). Access to justice: The newest wave in the worldwide movement to make rights effective. *Buffalo Law Review*, 27(2), pp. 181–292. <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol27/iss2/1>

18 *Ibid*, pp. 214–220.

19 Molavi, M. (2021). Understanding the economics of class actions. In *Collective access to justice: Assessing the potential of class actions in England and Wales* (pp. 87–120). Bristol University Press. pp. 87–90. <https://doi.org/10.46692/9781529210019.005>

20 Van den Bergh, R. et al. (2008), *supra* note 8, pp. 9–13.

21 Hodges, C. (2008), *supra* note 3.

22 Hensler, D. R. et al. (2000), *supra* note 15, pp. 181–214; Coffee Jr., J. C. (1986). Understanding the plaintiff's attorney: The implications of economic theory for private enforcement of law through class and derivative actions. *Columbia Law Review*, 86(4), pp. 669–727. https://scholarship.law.columbia.edu/faculty_scholarship/26

of individual consumers but also to the promotion of market discipline and the more effective enforcement of consumer protection law.²³ This perspective complements the access-to-justice account of Cappelletti and Garth and Molavi's economic analysis of aggregation, but extends them by shifting attention from the ability of consumers to pursue claims to the broader effects of collective litigation on business behaviour and regulatory compliance. This enforcement function, however, requires a more cautious assessment. While improved access to justice and reduced litigation costs are generally direct benefits of collective litigation, deterrence may also produce undesirable effects, including coercive settlement pressure and over-deterrence where collective liability becomes disproportionate.²⁴ Accordingly, this article treats access to justice and economic viability as the primary justifications for collective litigation, while private enforcement and market discipline remain secondary benefits dependent on appropriate procedural safeguards.²⁵

From a comparative legal perspective, many jurisdictions have developed procedural mechanisms for collective consumer protection, including class actions in the United States,²⁶ and representative or collective redress mechanisms in Germany²⁷ and other European jurisdictions.²⁸ These jurisdictions do not, however, adopt an identical theoretical approach. The United States model most visibly reflects Molavi's economic account by aggregating individually low-value claims into economically viable proceedings, while also performing the private-enforcement function identified by Hodges. The German and EU models also incorporate all three rationales but channel them through qualified representative entities and safeguards against abusive litigation; consequently, Cappelletti and Garth's protection of diffuse interests and a controlled version of Hodges's enforcement rationale occupy greater institutional prominence, even though Molavi's cost-benefit problem is expressly recognized.²⁹ The comparative development therefore demonstrates convergence not upon a uniform procedural model, but upon an integrated theoretical justification

23 Hodges, C. (2008), *supra* note 3; Organisation for Economic Co-operation and Development. (2010). *Consumer policy toolkit* (2nd ed.). OECD Publishing, Chapter 9.

24 Hensler, D. R. et al. (2000), *supra* note 15, pp. 181-214.

25 Hodges, C. (2008), *supra* note 3; Organisation for Economic Co-operation and Development. (2010). *supra* note 23, Chapter 9.

26 Rule 23 of the Federal Rules of Civil Procedure; *Amchem Products, Inc. v Windsor*, 521 U.S. 591, 617 (1997).

27 Sections 1 and 2 of the Consumer Rights Enforcement Act (*Verbraucherrechtgedurchsetzungsgesetz*)

28 Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers, particularly recitals 5, 9-10 and Articles 1 and 4.

29 Directive (EU) 2020/1828 on representative actions for the protection of the collective interests of consumers, particularly recitals 5, 9-10 and Articles 1 and 4.

in which access to justice, economic viability, and effective enforcement are accorded different weight in different legal systems.

The foregoing analysis, jurisdictions have developed different forms of collective redress, including class actions, representative actions, and proceedings initiated by qualified organisations or other designated bodies. The choice among these mechanisms is closely connected to differences in procedural traditions, regulatory structures, and broader socio-economic conditions. For Vietnam, the relevant question is not simply whether a foreign model of class action should be transplanted, but how collective redress can be structured within the existing legal and institutional framework. The following section examines Vietnamese law from this perspective, with a view to identifying the approach currently being developed and assessing its principal strengths, limitations, and implications for further reform.

2. The current legal framework and practice of Collective consumer litigation in Vietnam

2.1. The current state of Vietnamese law on class actions in consumer protection

Vietnamese law does not provide a unified procedure for collective consumer litigation. Relevant mechanisms are instead dispersed across the 2015 Civil Procedure Code and LPCR 2023.

2.1.1. The standing and institutional framework for collective consumer litigation.

A notable feature of the current Vietnamese framework is that the LPCR 2023 recognises two forms of standing for social organisations, namely authorised representation of individual consumers and an independent right to initiate proceedings in the public interest. The two mechanisms perform different functions, and neither is equivalent to a class action in the technical sense.

Under Article 50(1)(g) of the LPCR 2023, a social organisation may represent consumers in civil proceedings concerning consumer protection where it has received both a request and a valid authorisation from the consumer in accordance with the law. The organisation acts within the scope of that authorisation and represents the rights of an identified consumer. It does not act on behalf of an undefined group. This form of representation may ease some practical burdens faced by consumers, but its collective reach remains limited. Each consumer must provide a separate authorisation, and the proceedings remain confined to the claims covered by each mandate. The mechanism is more accurately understood as facilitated individual representation rather than collective litigation.

The second basis is an independent right of action in the public interest. Article 50(1)(h) of the LPCR 2023 gives social organisations an independent right to bring civil proceedings in the public interest, provided that the conditions set out in Article 50(2) are satisfied. Unlike representative proceedings based on authorisation, this form of litigation does not depend upon the consent or authorisation of individual consumers. Instead, the social organisation appears before the court as an independent claimant seeking to protect public interests, the collective interests of consumers, or public order in the consumer market. This mechanism is therefore more capable of responding to mass consumer harm because it does not depend on individual authorisation.

However, not every dispute involving a large number of consumers concerns a truly diffuse interest. Misleading advertising, unsafe products or unfair contractual terms may generate homogeneous individual claims where each consumer retains an identifiable claim, while other practices may implicate broader collective or public interests that are not readily reducible to individual loss. The significance of Article 50(1)(h) LPCR 2023, therefore, lies less in the number of affected consumers than in allowing enforcement where reliance on individual claims would leave unlawful conduct insufficiently challenged.³⁰

The distinction becomes clearer when compared with the United States class action. Rule 23 of the United States Federal Rules of Civil Procedure (FRCP) permits one or more class members to litigate on behalf of a judicially certified class and, subject to applicable opt-out rules, the judgment may bind absent members.³¹ Vietnamese law contains no equivalent class-certification mechanism and does not make the class itself the procedural unit of litigation. Its model is instead institution-centred: collective protection depends on the standing of designated social organisations.

Germany provides a closer functional comparator. Both systems entrust collective enforcement to qualified entities rather than representative consumers. Yet the similarity in standing should not obscure an important procedural difference. The German model has developed from the *Musterfeststellungsklage*, which enabled qualified associations to obtain binding determinations on common factual and legal issues,³² to the Consumer Rights Enforcement Act (VDuG), which also introduced

30 On the risk of underenforcement where individual claims are economically impractical, see Stöhr, A. (2020), *supra* note 3, pp. 1608–1610. <https://doi.org/10.1017/glj.2020.95>

31 Federal Rules of Civil Procedure, r23. Legal Information Institute, Cornell Law School.

32 Stadler, A. (2018). Kollektiver Rechtsschutz – Chancen und Risiken. *Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht*, 182(6), pp. 623–626; Stöhr, A. (2020). *supra* note 3, pp. 1606–1624.

the *Abhilfeklage* as a collective redress action.³³ The German experience thus links entity-based standing to a specific procedural structure capable of producing collective legal effects. Vietnamese law, by contrast, recognises organisational standing without establishing an equally developed procedural framework for aggregating affected consumers or determining the consequences of a judgment for persons who are not direct parties to the proceedings.

Article 50(2) of the LPCR 2023 further limits public-interest standing to organisations that are lawfully established, have consumer-protection or related public-interest objectives, have operated for at least one year, and operate at district level or above. These conditions can be justified as safeguards against opportunistic or ad hoc litigation and as a means of ensuring minimum institutional capacity. At the same time, they reveal a trade-off in the Vietnamese design: the stronger the gatekeeping requirements, the smaller the pool of entities able to activate collective enforcement. Where qualified organisations lack resources, litigation expertise or incentives to sue, formal standing alone may do little to overcome under-enforcement.

The above comparison suggests that the principal weakness of the Vietnamese framework is not the absence of organisational standing, but the gap between standing and an effective collective procedure. Vietnam has adopted an entity-based model that is institutionally closer to Germany than to the United States, but it has not yet attached to that model sufficiently clear procedural consequences for collective adjudication and redress. Reform should therefore focus less on transplanting a US-style class action and more on strengthening qualified entities while developing procedural rules that allow representative proceedings to operate as genuine collective enforcement mechanisms.

2.1.2. *The procedural framework for collective consumer litigation*

Articles 70(2) and 70(3) of the 2023 Law on Protection of Consumer Rights improve access to justice by requiring consumer claims below VND 100 million to be resolved under the simplified procedure without satisfying the ordinary conditions in Article 317(1) of the 2015 Civil Procedure Code. This responds to a common problem in consumer litigation. The value of an individual claim may be too small to justify the time and cost of bringing proceedings.³⁴ The simplified procedure may reduce these barriers, but it

33 Act on the Collective Enforcement of Consumer Rights (Verbraucherrechtgedurchsetzungsgesetz – VDuG), 8 October 2023, Federal Law Gazette (BGBl.) 2023 I No. 272, p. 2, as last amended by Article 5 of the Act of 16 July 2024, Federal Law Gazette (BGBl.) 2024 I No. 240.

34 Under the simplified procedure, the court must decide whether to bring the case to trial within one month of accepting it and must open the hearing within ten days of that decision. The ordinary procedure allows four months for trial preparation and a further month for opening the hearing, subject to possible extensions. (Article 203(1)(a), Article 203(4) and Article 318(1) of the 2015 Civil Procedure Code).

addresses the cost of individual litigation rather than the separate problem of resolving numerous claims arising from the same conduct.

This limitation becomes particularly important when the same conduct causes similar losses to a large number of consumers. Vietnamese law does not provide a clear mechanism for bringing sufficiently similar claims together within one proceeding. Courts may therefore have to consider the same factual and legal issues in separate cases. This may increase litigation costs, consume judicial resources, and produce inconsistent outcomes in disputes arising from the same conduct. Consumers also lose the advantage of sharing the costs of evidence and legal representation. In addition, the absence of clear rules on participation and the effect of judgments makes it difficult for one proceeding to resolve the legal position of other consumers affected by the same conduct.

Article 72 of the 2023 LPCR addresses part of this problem by requiring the publication of information concerning proceedings brought in the public interest. Publication may enable affected consumers to learn of the proceedings and improve transparency. Its procedural effect remains limited, however, because Article 72 does not determine which consumers fall within the affected group, how they may participate in the proceedings, or whether they are bound by the judgment. Publication therefore provides information about collective proceedings but does not itself create a mechanism for organising consumer participation in them.

Article 73 of the 2023 LPCR provides a further collective element by allowing compensation that cannot be distributed to identifiable consumers to be used for consumer protection activities.³⁵ This prevents the remedial effect of public interest proceedings from disappearing merely because every affected consumer cannot be identified and may also strengthen deterrence. The provision does not, however, establish a procedure through which identifiable consumers with similar claims can participate in the same proceedings and receive compensation. It therefore addresses the disposal of undistributed compensation rather than the broader problem of collective compensation.

These provisions show that Vietnamese law has introduced several procedural elements relevant to collective consumer protection. They remain separate rather than forming a coherent procedure. The law facilitates smaller individual claims, provides information about proceedings brought in the public interest and regulates compensation that cannot be distributed to identified consumers. It does not yet provide an

35 Article 73 of the 2023 Law on Protection of Consumer Rights No 19/2023/QH15 of Vietnam.

integrated mechanism for combining similar claims, organising consumer participation and determining the collective effect of judgments.

2.1.3. Allocation of the burden of proof in collective consumer litigation

Article 91(1) of the 2015 Civil Procedure Code generally requires the party seeking judicial protection to prove the facts supporting its claim. Consumer litigation is subject to an important exception under Article 91(1)(a). A consumer is not required to prove the fault of the trader, while the trader bears the burden of showing that he/she was not at fault for the damage.³⁶ This modification responds to the information imbalance between the parties because evidence concerning production, quality control, internal procedures and regulatory compliance is often held by the business rather than the consumer.³⁷

The reform is useful but limited because it changes the allocation of proof only in relation to fault. Consumers or representative organisations may still need to establish other elements of the claim, including unlawful conduct or a product defect, causation, the identity or scope of affected consumers and the amount of loss. These matters may require technical information or business records that remain under the defendant's control. Reversing the burden of proving fault therefore removes one evidentiary obstacle without resolving the broader difficulty of obtaining the evidence necessary to establish a collective claim.

Its application to collective proceedings also requires closer examination. Article 91(1)(a) is framed in terms of a consumer who brings a claim. Where a social organisation acts as the authorised representative of individual consumers, the modified burden can operate in relation to those consumers' claims. The position is less clear when an organisation brings proceedings in the public interest in its own name. A narrow interpretation could therefore reduce the benefit of the evidentiary protection in proceedings designed to address harm affecting consumers collectively.

The modified burden may also influence business incentives, although its deterrent effect should not be overstated. A trader that bears the risk of uncertainty concerning fault has a stronger reason to preserve records capable of demonstrating compliance, including records concerning product safety and quality control. This incentive remains limited where claimants cannot obtain the information needed to establish the other elements of liability.

36 Prayuti, Y. (2019). Implementation of reversal burden of proof principle at Consumer Dispute Settlement Agency (BPSK) as a legal protection effort for consumers. In *Proceedings of the International Conference on ICT for Education, Engineering, and Sciences (ICSTES 2018)*. EAI. <https://doi.org/10.4108/eai.21-11-2018.2282274>

37 Australian Competition and Consumer Commission. (2024 May 21). Consumers lack visibility and choice over data collection practices. *Media release*. <https://www.accc.gov.au/media-release/consumers-lack-visibility-and-choice-over-data-collection-practices>

Any deterrent effect therefore depends partly on the rules governing access to and preservation of relevant evidence.

Overall, the modified burden of proof improves consumer protection, but it does not provide a complete evidentiary framework for collective litigation. Its effectiveness depends on whether claimants can obtain and preserve relevant business records, use technical evidence and address evidentiary issues common to numerous claims. Without adequate rules in these areas, reversing the burden of proving fault may have only limited practical effect in representative and public interest proceedings.

2.2. Practical application of collective consumer litigation in Vietnam

Although the LPCR 2023 and the 2015 Civil Procedure Code have provided a certain legal basis for the collective protection of consumers, Vietnamese courts have so far recorded and published almost no genuine class action cases. This absence reveals a gap between the legal framework and its practical application. It also suggests that the current mechanism has not provided sufficient incentives for consumers or social organisations to resort to litigation to protect public interests.

A review of practice shows that several disputes could have benefited from a properly designed and operational collective litigation mechanism. The Khaisilk³⁸ and Asanzo cases,³⁹ together with disputes concerning holiday ownership contracts,⁴⁰ illustrate forms of consumer harm capable of affecting large groups. The available material does not show that these disputes resulted in representative civil proceedings. The responses were predominantly administrative or individual. Their significance is therefore not evidence of collective litigation in practice, but evidence of a mismatch between mass consumer harm and the mechanisms through which such harm is currently addressed.

These cases illustrate the type of dispute in which multiple consumers suffer harm arising from the same business conduct. The loss suffered by each consumer may be relatively small, but the aggregate harm to the group can be substantial. This is precisely the kind of dispute for which many

38 Huong My. (2017 December 20). Vụ Khải Silk: Bài học cho doanh nghiệp và người tiêu dùng. *Tạp chí Bảo vệ pháp luật* [The Khai Silk Case: Lessons for Businesses and Consumers. *Procuracy Magazine*]. <https://baovephapluat.vn/kinh-te/kinh-doanh-phap-luat/vu-khai-silk-bai-hoc-cho-doanh-nghiep-va-nguoi-tieu-dung-48294.html>

39 Thuy Linh. (2024 August 16). Từ vụ Khaisilk và Asanzo bán hàng Trung Quốc gắn mác Việt Nam, Bộ Công Thương nói nỗi khó khi chưa xử lý. *Báo Người Lao Động* [From the Khaisilk and Asanzo cases of Chinese goods mislabelled as Vietnamese products, the Ministry of Industry and Trade Explains the challenges of enforcement. *Người Lao Động Newspaper*]. <https://nld.com.vn/tu-vu-khaisilk-asanzo-ban-hang-trung-quoc-gan-mac-viet-nam-bo-cong-thuong-noi-noi-kho-khi-chua-xu-ly-196240816155042209.htm>

40 Báo Khánh Hòa. (2018 November 17). Vụ kiện về hợp đồng sở hữu kỳ nghỉ: Tòa bác yêu cầu của nguyên đơn. *Cổng thông tin điện tử Tỉnh ủy Khánh Hòa* [Lawsuit concerning a holiday ownership contract: The court dismisses the plaintiffs' claims. *Khanh Hoa Provincial Party Committee Electronic Information Portal*]. <https://khanhhoa.dcs.vn/tin-bai/phap-luat/vu-kiem-ve-hop-dong-so-huu-ky-nghi-toa-bac-yeu-cau-cua-nguyen-don-2546>

jurisdictions employ collective litigation mechanisms to reduce litigation costs, secure access to justice, and strengthen deterrence against unlawful business practices. In Vietnam, however, the gap between legal rules and practical application means that such disputes continue to be addressed mainly through administrative measures or voluntary remedial action by businesses, rather than through an effective collective litigation mechanism.

3. Reforming collective consumer litigation for consumer protection in Vietnam

The preceding analysis identifies two priorities for reform. Vietnam should strengthen the institutional capacity to initiate representative proceedings and establish a coherent procedure for resolving claims arising from common consumer harm.

3.1. Expanding standing to bring representative proceedings

Under the current legal framework, standing to bring representative proceedings is vested primarily in social organisations participating in consumer protection. In practice, however, the number of organisations that satisfy the statutory requirements remains limited, while their financial resources, institutional capacity, and litigation expertise vary considerably. Therefore, consideration should be given to extending standing to selected public authorities with statutory responsibilities for consumer protection, such as competition authorities, market surveillance authorities, consumer protection agencies, or, where appropriate, the procuracy in cases involving widespread consumer harm or significant public interests. Broadening the range of entities entitled to initiate representative proceedings would strengthen enforcement of consumer protection law.

3.2. Establishing a dedicated procedural framework for collective consumer litigation

Vietnamese law would benefit from the introduction of a dedicated procedural framework for collective consumer litigation, either through a separate chapter in the 2015 Civil Procedure Code or through specialised procedural legislation. Such a framework should provide comprehensive rules governing the admissibility of representative proceedings, the identification and representation of affected consumers, appropriate mechanisms for participation based on comparative experience with opt-in and opt-out models, the legal effects of judgments, and the administration of collective compensation.

3.2.1. Admissibility requirements for collective proceedings

A central deficiency of the current Vietnamese framework is the absence of clear admissibility criteria for representative proceedings. Although the

2023 LPCR specifies the entities entitled to initiate proceedings and the conditions applicable to qualified social organisations under Article 50(2), it does not establish the requirements that must be satisfied before a court may permit a dispute to proceed as a collective action. Comparative certification and admissibility rules demonstrate the value of judicial screening before collective proceedings continue.⁴¹ Vietnamese courts should assess whether claims share sufficiently common factual or legal issues, whether collective resolution is more efficient than separate litigation and whether the representative entity can adequately protect the affected consumers.

Drawing on the above-mentioned comparative models, Vietnamese law should establish clear admissibility requirements for representative proceedings. Such requirements should ensure that collective litigation is reserved for disputes involving a sufficiently large number of consumers who have suffered harm arising from the same or substantially similar conduct, that common factual or legal issues predominate over individual questions, and that representative entities possess the capacity to protect the interests of the affected group effectively.

3.2.2. Participation through opt-in or opt-out mechanisms

An effective framework for collective consumer litigation should also establish clear rules governing the participation of affected consumers. Comparative experience generally distinguishes between two principal participation models: opt-in⁴² and opt-out. Given the current stage of development of Vietnamese procedural law, an opt-in mechanism appears to provide the more appropriate starting point for representative proceedings. It is more consistent with the existing institutional framework, which is centred on qualified representative organisations rather than judicially certified classes, while better accommodating the principles of procedural autonomy and fairness that underpin Vietnamese civil procedure. As collective consumer litigation develops in practice, the legislature may reassess whether broader participation mechanisms should be introduced for particular categories of disputes where more effective collective redress is required.

3.2.3. The binding effect and scope of judgments

Under the proposed opt-in model, judgments or court-approved settlements should generally bind consumers who have validly joined the collective proceedings. The court should clearly define the represented group and ensure that participating consumers receive adequate notice of

41 Federal Rules of Civil Procedure, Rule 23 (Class Actions). Legal Information Institute, Cornell Law School; Act on the Collective Enforcement of Consumer Rights (Verbraucherrecht-durchsetzungsgesetz – VDuG), 8 October 2023, § 4.

42 Stöhr, A. (2020), *supra* note 3.

the proceedings and their legal consequences. The binding effect should extend only to the common issues determined in the collective proceedings. Consumers whose claims involve materially distinct circumstances should retain the right to pursue separate remedies. This approach would preserve procedural autonomy while ensuring the finality and effectiveness of collective adjudication. If Vietnam later introduces an opt-out mechanism for particular categories of mass consumer disputes, the binding effect may be extended to all consumers falling within the defined class, subject to adequate notice and a genuine opportunity to opt out.

Conclusion

The analysis demonstrates that the central weakness of collective consumer redress in Vietnam lies not in the complete absence of representative mechanisms, but in the gap between their formal recognition and their capacity to produce effective enforcement. The LPCR 2023 has strengthened the role of qualified social organisations in protecting collective consumer interests, yet the procedural architecture remains fragmented and insufficient to overcome the barriers associated with dispersed losses, rational consumer inaction, and the limited incentives for individual litigation. Viewed through the lenses of access to justice and private enforcement, the effectiveness of collective redress therefore depends not merely on recognising a right to bring representative proceedings, but on providing procedural mechanisms capable of aggregating claims and producing meaningful remedies.

Comparative experience suggests that Vietnam should not simply transplant the US class action model or any particular foreign mechanism. A more appropriate approach is to develop collective consumer litigation incrementally from Vietnam's existing representative-action framework. This requires, first, strengthening the standing and institutional capacity of qualified entities and, second, establishing clearer procedural rules governing the initiation and conduct of collective proceedings, consumer participation, the effects of judgments, and the distribution of collective compensation. Such reforms would preserve the institutional logic of Vietnamese consumer protection law while addressing its principal enforcement deficit and moving the existing framework from formal collective representation towards effective collective redress. ●

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Author Contribution

All authors contributed to the study conception and design. All authors read and approved the final manuscript.

Declarations

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