

No 489511

FRENCH REPUBLIC

UNION FEDERALE DES
CONSOMMATEURS – QUE CHOISIR

ON BEHALF OF THE FRENCH PEOPLE

Mrs Ariane Piana-Rogez
Reporting Judge (Rapporteure)

The Conseil d'État, ruling as the Supreme Administrative
Court
(Litigation Section, 1st and 4th Chambers combined)

Mr Thomas Janicot
Consultant Judge (Rapporteur public)

Based on the report of the 1st Chamber
of the Litigation Section

Session of 8 September 2025
Decision of 1st October 2025

Rectified by Ordinance of 2 October 2025

Having regard to the following proceedings:

By an application and a memorandum in reply, registered on 20 November 2023 and 25 February 2025 with the Litigation Secretariat of the Conseil d'État, the Union fédérale des consommateurs – Que Choisir requested that the Conseil d'État:

1°) quash as ultra vires the implicit decision by which the Prime Minister and the Minister Delegate for territorial organisation and the health professions, attached to the Minister for Health and Prevention, dismissed its application seeking the adoption of adequate measures, firstly, to introduce territorial contracting arrangements for doctors, no longer allowing them to set up practice in areas with a significantly higher-than-average number of doctors, with the exception of Sector 1 (capped consultation fees defined by the Social Security Administration) where circumstances so require (replacing a doctor who is retiring or in an area very substantially under-served by Sector-1 doctors); secondly, to close access to Sector 2 (uncapped fees), with new doctors being required to choose only between Sector 1 with no fee surcharges and the regulated fee option (OPTAM), which governs fee surcharges; and finally to abolish public subsidies for doctors who do not comply with the agreed social security tariff, outside OPTAM;

2°) order the Government, within a period of six months, subject to a penalty for non-performance of €10,000 per day of delay, as its main application, to adopt the

implementing decree for Article L. 632-2 of the French Education Code and to take the measures referred to in the preceding point, and also, in the alternative, to take all necessary measures to ensure compliance nationwide with equality of access to general and specialist medical care;

3°) order the State to pay the sum of €6,000 under Article L. 761-1 of the French Code of Administrative Justice to cover the costs of its legal representatives.

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Having regard to the other evidence adduced;

Having regard to:

- the French Education Code;
- the French Public Health Code;
- the French Social Security Code;
- the decision of 9 February 2024 by which the Conseil d'Etat, ruling as the Supreme Administrative Court, did not refer the priority preliminary ruling on an issue of constitutionality raised by the Union fédérale des consommateurs – Que Choisir to the Constitutional Council;
- the French Code of Administrative Justice;

Having heard, in open court:

- the report by Ms Ariane Piana-Rogez, Master of Petitions,
- the legal opinion of Mr Thomas Janicot, Consultant Judge;

Cabinet Rousseau, Tapie, counsel for the Union fédérale des consommateurs – Que Choisir, having addressed the court after the legal opinions;

Whereas:

1. The evidence submitted shows that, by a letter of 13 July 2023, the Union fédérale des consommateurs – Que Choisir requested that the Minister Delegate responsible for territorial organisation and the health professions, attached to the Minister for Health and Prevention, firstly, introduce territorial contracting arrangements for doctors, no longer allowing them to set up practice in areas with a significantly higher-than-average number of doctors, with the exception of Sector 1 where circumstances so require (replacing a doctor who is retiring or in an area very substantially under-served by Sector-1 doctors); secondly, to close access to Sector 2, with new doctors being required to choose only between Sector 1 with no fee surcharges and

the regulated fee practice option (OPTAM), which governs fee surcharges; and finally to abolish public subsidies for doctors who do not comply with the agreed social security tariff, outside OPTAM. The Union fédérale des consommateurs – Que Choisir requested that the Conseil d'État cancel the implicit act rejecting its request and grant such injunctions as this annulment would require.

2. Where the administrative judges are requested to cancel the government's act refusing to take measures to put an end to the infringement of a legal obligation incumbent upon it, it falls to the administrative tribunals and courts, within the limits of their jurisdiction, to assess whether the government's refusal to take such measures is illegal and, if so, to order the government to take the necessary measure(s). However, and in any event, it is not for the judge, when ruling in such matters, to substitute their appreciation to the government's in conducting public policy or to order the government to adopt policies.

3. The applicant federation maintains, firstly, that it is the responsibility of the government to remedy the unequal distribution of community doctors throughout the national territory and the heterogeneity of the conditions of access to these professionals, and, secondly, that the measures implemented to date are ineffective because of their essentially incentive-based nature, and that only more restrictive provisions are likely, in its view, to guarantee equal access to doctors nationwide. It calls either for the adoption of new legislative provisions relating to the conditions under which community doctors may set up in practice, or for the definition, by means of an agreement between the Union nationale des caisses d'assurance maladie (National Union of Sickness Insurance Funds) and the doctors' representative trade unions, of new contracting arrangements to take account of the healthcare provision already available in the area of practice. Taken as a whole, these measures thus seek the modification of certain public policy choices, particularly those relating to the pricing of medical practice and the freedom of doctors to set up practice. Consequently, as stated in point 2, it is beyond the remit of the Conseil d'Etat, ruling as the Supreme Administrative Court, to substitute its appreciation to the government's by ordering it to adopt such measures.

4. It follows from all the foregoing that the submissions by which the applicant federation has sought the quashing as ultra vires of the challenged implicit decision to reject its request can only be dismissed. Accordingly, the same applies, by way of consequence, to its submissions seeking orders and penalty payments for non-performance, including those seeking an order for the Prime Minister to issue the implementing decree for Article L. 632-2 of the French Education Code. Its submissions presented under Article L. 761-1 of the French Code of Administrative Justice to cover the costs of its legal representatives must therefore also be dismissed.

OPERATIVE PROVISIONS:

Article 1: The application of the Union fédérale des consommateurs - Que Choisir is dismissed.

Article 2: The present decision shall be notified to the Union fédérale des consommateurs – Que choisir, the Prime Minister, the Minister for Labour, Health, Solidarity and Families, and the Minister for the Economy, Finance and Industrial and Digital Sovereignty.

Decision made following deliberations at the session held on 8 September 2025 at which sat: Mr Denis Piveteau, Deputy President of the Litigation Section, presiding; Ms Gaëlle Dumortier and Ms Anne Courrèges, Chamber Presidents; Mr Jean-Luc Nevache, Mr Édouard Geffray, Ms Marie-Astrid Nicolazo de Barmon, Mr Raphaël Chambon, Mr Jean-Dominique Langlais, State Councillors, and Ms Ariane Piana-Rogez, Master of Petitions-Reporting Judge.

Decision of 1st October 2025.

The Presiding Judge:
Signed: Mr Denis Piveteau

The Reporting Judge:
Signed: Mrs Ariane Piana-Rogez

The Secretary:
Signed: Mr Hervé Herber