



*Consumer Protection from Arbitrary Commercial Practices by the
Economic Agent in light of Law 04/02*

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Abstract:

The inclusion by the economic agent of arbitrary terms in the consumer contract "may harm the legitimate interests of the consumer and his rights", which is legally impermissible, especially given that the legislator considers the latter as the weaker party in the contract that must be protected, whether through general provisions (civil law) or specific provisions for consumer protection, including Law No. 04/02 which defines the rules applied to commercial practices (amended and supplemented). This law focuses on achieving integrity in commercial transactions, a principle that can only prevail with respect to market rules dictated by laws and regulations in this regard .

Consumer protection requires creating an atmosphere for free and ethical competition based on high morals and noble values. Therefore, Law No. 04/02 - as mentioned above - stipulates a set of rules to ensure consumer protection from arbitrary practices that may have negative effects on competitive activities, and on the consumer's freedom to contract. It also extends broad legal protection to his interests, whether civil or criminal.

Keywords: *Consumer contract; consumer; economic agent; arbitrary practices*

I. INTRODUCTION

The arbitrary commercial practices are the most burdensome for consumers, as they are unable to confront them due to their weak position in the face of the influence and power of the economic agent, leading to an imbalance in the contractual balance in favor of the stronger party.

The Algerian legislator defined arbitrary conditions in Article 03, paragraph 5 of Law No. 04-021,(2004 /02-04) which specifies the rules applicable to commercial practices as follows: "Condition: Arbitrary : Any clause or condition, alone or jointly with one or more other clauses or conditions, It would disrupt the visible balance between the rights and duties of the contracting parties.

It is evident from this paragraph that the legislator has defined only the arbitrary conditions that are included in the contract and lead to a disturbance in its balance, without addressing the broader and more extensive arbitrary practices. Additionally, the legislator did not specify the nature of the contracting parties, leaving room for interpretation; whether referring to transactions between economic agents among themselves, or only between the two parties of the consumption contract, the consumer and the economic agent. This brings us back to Article 1 of the same law, which states: "This law aims to establish rules and principles of transparency and fairness in commercial practices between economic agents and between them and consumers, as well as protecting and informing consumers." Therefore, this refers to the relationship between economic agents among themselves or between them and consumers as well. In the same context, the legislator should have used the term "obligations" instead of "duties" in the text mentioned in Article 5.

Based on the above, it could be stated that the term "practices" is broader than the term "conditions." because it covers all aspects of the relationship between economic agents and consumers. Therefore, arbitrary commercial practices can be defined as follows: "All unlawful commercial practices carried out by the economic agent, in the context of his relationship with the consumer, utilizing his economic power and technical and legal expertise, the purpose of these practices is to serve his own interests at the expense of the consumer's rights, which harms the latter.

Therefore, to understand the protective measures put in place by the legislator to safeguard consumer rights against such practices, the following problem is posed:

What are the types of protections enacted by the Algerian legislator to protect the consumer against arbitrary commercial practices by the economic agent under Law 04-02 ?

To answer this problem, the research plan is divided as follows:

First section: Civil protection of the consumer from arbitrary commercial practices.

- First request: The judge's confrontation with arbitrary conditions in the consumer contract

- Second request: The consumer's right to claim compensation for arbitrary practices they have been subjected to.

Second section: Criminal protection of the consumer from arbitrary commercial practices.

- First request: Penalties related to the crimes of deception and defrauding consumers.

- Second request: Penalties related to the economic agent's violation of his obligations towards the consumer.

- Third request: Penalties resulting from impeding the tasks of oversight officers and combating fraud.

1- First section: Civil protection of the consumer from arbitrary commercial practices:

The Algerian legislator has provided civil protection for consumers against arbitrary commercial practices - which may be carried out by the economic agent - through granting significant

authority to the judge to confront arbitrary conditions in the consumer contract (first request), as well as in affirming the consumer's right to seek compensation for such arbitrary practices (second request).

1.1 First request: The judge's confrontation with unfair terms in the consumer contract:

Article 110 of the Algerian Civil Law)September(1975 states: "If a contract is made by the method of submission and includes unfair terms, the judge may amend or relieve the contracting party from these terms according to justice, and any agreement to the contrary shall be void."

It is evident from the text of this article that the Algerian legislator has granted significant authority to the judge, allowing the imposition of appropriate penalties for arbitrary conditions, whether by modification or exemption, according to their discretionary power. The judge is not bound in exercising this authority except by the principles of justice, which ensures direct protection for the consumer according to their own interest.

1.1.1 Subsection One: The judge's interpretation of contractual terms:

Contract interpretation is the technical process by which the judge clarifies the terms of the contract when a dispute arises between the contracting parties regarding one or more contractual conditions after the dispute has been brought before the judge. The provisions for interpreting the contract have been set out in Articles 111 and 112 of the Civil Code, which cover three cases.

- Case of clarity of contract terms:

If the terms of the contract are clear such that their meaning can easily be discerned by the judge, deviation from them and their interpretation to ascertain the intention of the contracting parties is not permissible according to Article 111, paragraph 01 of the Civil Law.

- Case of ambiguity of contract terms:

In the case of ambiguity of contract terms and their interpretability, the principle is to seek the common intention of the contracting parties. The legislator has clarified objective criteria, according to Article 111, paragraph 02, which facilitate the judge's role in uncovering them. These criteria include reference to the nature of the transaction and the trust and confidence that should exist between the contracting parties, as well as customary practices in transactions.

- Case of doubt in interpreting contract terms:

Article 112, paragraph 01 of the Civil Law stipulates that if the judge has doubts about determining the intended meaning of the contract terms, this doubt should not harm the interests of the debtor but should serve their interests. However, paragraph 02 of the same article states that the interpretation of ambiguous terms in consent contracts must not be detrimental to the consenting party's interests.

The cases of interpretation are related to all contracts arising from the shared intentions that establish the contractual will. However, in consumer contracts, this differs as the latter are characterized as adhesion contracts because the professional is the contract maker who drafts its terms in a way that serves their interests. Therefore, an adhesion contract cannot be interpreted based on the mutual intent of the parties, which is already absent in such contracts. (Fatima Achoury, 2005)

Therefore, when interpreting consumer contracts, the judge is faced with one of two situations. The contract may either have clear wordings, in which case it is subject to the general rule that it cannot be interpreted in a way that goes beyond its apparent meaning. Alternatively, the wordings may be ambiguous. In this case, one must consider paragraph 2 of Article 112, which states that the contract cannot be interpreted in a manner that harms the interest of the adhering party.

This text represents a departure from the rule that states that ambiguity should be interpreted against the interest of the debtor to interpreting ambiguity in favor of the adhering party, regardless of whether they are a creditor or a debtor.

This special protection for the adhering party is based on the fact that a contract that the consumer did not play any role in its formulation or negotiation in his favor should not be interpreted. It is only fair for the adhering economic agent to bear the burden of his actions since he was responsible for the ambiguity that surrounded the contract by virtue of his sole editorial responsibility. (Al-Bandari, 1, January 2000)

Furthermore, the consumer is always the adhering party in a consumer contract, where the Algerian legislator assumes that they are the weaker party in the contract, whether as a creditor or debtor, and therefore they are the one who always deserves protection.

1.1.2 Subsection two:Revealing the arbitrary nature of the condition in the consumer contract:

After interpreting the contractual terms, the judge must search for those considered arbitrary according to the consumer's claim. Here, the judge will find themselves facing two types of arbitrary conditions:

1- The provisions stated in Article 29 of Law 04-02 and Article 05 of Executive Decree 06-306 (Mohamed Ibrahim Al-Bandari, 2000)determine the fundamental elements of contracts concluded between economic operators and consumers, including clauses that are considered arbitrary.

2- New conditions that the judge must ascertain their arbitrary nature.

In the first case, the judge does not have discretionary power since the conditions listed in the two lists are inherently arbitrary and the consumer is not required to prove their arbitrary nature. However, if the alleged arbitrary condition or conditions are not mentioned in the lists, the judge has broad discretionary power to ascertain their arbitrariness and subsequently decide whether to impose appropriate penalties or not.

In this context, it is worth noting that the Algerian legislator has established a general rule defining the arbitrary nature of a clause in Article 03 paragraph 05 of Law 04-02, which obliges this clause to result in apparent imbalance between the rights and obligations of the professional and the consumer.

Based on this, it is the consumer's responsibility to prove that the clause has led to a contractual imbalance.

The judge, using his discretionary power, must ensure the validity of the consumer's claim and may seek the opinions and recommendations issued by the Committee on Arbitrary Clauses, as well as any future changes in arbitrary conditions.

1.1.3 Subsection three:The judge's authority to amend or annul arbitrary conditions:

Article 110 of the Civil Law grants the judge explicit and direct authority to intervene in amending or voiding contracts of consent in order to reclaim the equality that these contracts lacked between their two parties. This can occur in two ways:

1- The first aspect involves amending arbitrary conditions by restoring them to a normal level to mitigate their negative effects on the consumer.

2- The second aspect involves exempting the consenting party entirely from the arbitrary condition or conditions, which is a direct penalty aimed at considering the condition void.

The judge often resorts to amending unfair conditions without nullifying them, except in cases where it is impossible to amend these conditions or if it is not possible to maintain the contract through amending or dropping the condition. This is particularly relevant because the legislator did not specify this case, indicating that the judge does not have the authority to annul the entire contract considering that it does not align with the legislator's aim of preserving contractual relationships and stability to the greatest extent possible.

1.2 Second request: The consumer's right to seek compensation for arbitrary practices:

The right to claim compensation is granted to anyone who proves specific damages, aiming to redress and alleviate these damages. While executing a contract containing arbitrary conditions, if the consumer incurs damage, their right to seek compensation is legally guaranteed. (06-306, 2006)

The Consumer Protection Law does not include specific rules regarding civil liability, indicating recourse to the provisions of Civil Law. Thus, the consumer has the right to claim compensation by filing a lawsuit before civil courts, which is the norm, or before criminal courts, which is the exception. Consumer protection associations can also be established as civil parties to obtain compensation

1.2.1 Subsection One: Consumer's Right to Claim Compensation in Criminal Courts:

Unfair commercial practices, including the inclusion of unfair terms in consumer contracts, incur both civil and criminal liabilities. They constitute a crime that harms the consumer. The consumer can file a claim for compensation in criminal courts, and it is easy for them to prove their claim, especially when they initiate public prosecution themselves.

Proof is facilitated when public prosecution is initiated based on a report of failure to settle or through direct inspection of the violation, particularly if the fine exceeds 3,000,000 Algerian dinars. Such reports hold legal weight until proven otherwise.

In practice, the consumer files a civil lawsuit before the criminal court by establishing themselves as a civil party. This is done either by submitting a civil claim to the investigating judge according to Article 72 of the Code of Criminal Procedure⁷ (amended and supplemented., 8 June 1966), or by providing a report at the clerk's office of the criminal section prior to the session, ensuring that it is done before the public prosecution expresses its requests on the matter. (adopted, 2009)

Consumers can also benefit from the last paragraph of Article 337 repeated, which empowers the court to compel the involved parties to appear directly before the court, provided the consumer obtains permission from the public prosecutor's office. This approach is swift and practical for consumers, especially if the prosecution file has reached the public prosecutor's office through inspection agents affiliated with the Directorate of Commerce, as they are the authority responsible for initiating public prosecution in the first place.

1.2.2 Subsection two: Consumer's Right to Claim Compensation in Civil Courts:

The basis of the consumer's claim for compensation as a direct claim before the civil judiciary is civil liability, which means the breach of the justified commitment by the economic operator in a way that causes harm to the consumer. Hence, the operator is obliged to compensate the consumer for the damage suffered. Civil liability is divided based on the type of obligation breached into two types:

Contractual liability arises when a contractual obligation is breached, and tortious liability applies when a legal obligation is breached resulting in harm to the other party.

- 1- The extent to which a consumer can base their claim on contractual liability rules:

The basis of consumer harm resulting from an economic operator implementing a condition or set of arbitrary conditions lies in the consumption contract that binds both parties. However, a consumer who is harmed by an arbitrary condition cannot base their claim on contractual liability rules. This is because, at face value, the economic operator imposing arbitrary terms on the consumer does not appear to violate their contractual obligations. The consumer's signature on the contract creates a presumption in favor of the economic operator, indicating to the civil judge responsible for adjudicating compensation claims that the consumer may have agreed to all contractual terms, including those granting the economic operator the freedom to delay or not fulfill their obligations.

It is worth mentioning that even if these conditions appear to be arbitrary and are legally binding, the judge cannot rule on anything other than what is asked of them. This is because the claim is a claim for compensation and not a claim for canceling or modifying the arbitrary conditions. Therefore, the judge only assesses the extent of any breach of contractual obligations, evaluating the presence of fault, the occurrence of harm, and the causal relationship between them.

2- Feasibility of Establishing a Consumer Lawsuit Based on Tort Liability:

It is necessary to address the extent to which a consumer can base their claim on contractual liability rules and then the extent to which it can be based on the rules of tortious liability.

A. Infeasibility of compensation based on abuse of right provisions:

The unilateral drafting of the terms of consumer contracts by the economic agent is a necessity dictated by economic, social, and technological developments in the face of the large-scale production and consumption that require speed in contracting. However, this cannot be considered a personal right for the economic agent in relation to the consumer. The unilateral drafting of contract terms only serves to perpetuate the reality that the economic agent exploits their strong position in their relationship with the consumer to impose one or more arbitrary conditions in model contracts that they have already drafted. Therefore, there is no basis for invoking the theory of arbitrariness in the use of the right by the consumer to claim compensation due to the absence of the concept of a right granted to the economic agent in the first place.

B. Feasibility of Compensation Based on Intervener's Breach of Information Obligation:

The commitment to disclosure is a legal obligation that lies on the economic agent in the pre-contractual stage. Any breach of this obligation obligates the economic agent to compensate the consumer based on liability for negligence.

The commitment to disclosure is achieved when the economic agent provides the consumer with all the information relevant to them in the manner specified by the law. Being an expert in their profession, the economic agent is presumed to be aware of the limits and significance of the information that should be important to the consumer. With the information provided, the consumer can actively choose to enter into a contract, negotiate to amend the contract terms, or refrain from finalizing the contract.

For the occurrence of liability based on negligence due to the professional's failure to comply with the disclosure obligation, the consumer must first prove the existence of the disclosure commitment in legal texts (Law No. 09-03 , March 2009). Subsequently, the consumer must then establish the elements of liability for negligence, namely fault, harm, and causal relationship.

The consumer can establish a claim on the basis of civil liability by providing evidence of detrimental practices, such as being deprived of necessary information required to make an informed

decision before entering into a contract, being misled by the economic operator, or including new conditions that the consumer was not aware of, for example, mentioned in additional documents referenced in the original contract. Regarding harm, it results from the economic operator's failure to provide essential information about the product, thus causing the consumer to be unable to realize their legitimate expectations of benefiting from the product or service while fully understanding its characteristics, features, and potential risks.

Furthermore, to succeed in seeking compensation, there must be a direct connection between the economic operator's error and the subsequent harm experienced by the consumer as per general legal principles.

3- The Role of Consumer Protection Associations in Litigation for the Benefit of Consumers:

According to Article 23 of Law 09-03, "regarding consumer protection and combating fraud", consumer protection associations are granted the right to resort to the judiciary to defend the interests of consumers. The article states: "When a consumer or several consumers suffer individual damages caused by the same intervener and of a common origin, consumer protection associations can establish themselves as civil parties." Article 22 of the same law also allows recognition of these associations for public benefit, thereby enabling them to benefit from judicial assistance provisions.

The legislator explicitly states that consumer protection associations can initiate lawsuits by establishing themselves as civil parties. It becomes evident that the competent judicial authority is the criminal judiciary. This is further confirmed by Article 65 of Law 04-02, which allows consumer protection associations to file lawsuits against any economic agent who violates the law. These associations can also establish themselves as civil parties to claim compensation for damages.

Establishing themselves as civil parties can be done either before the investigating judge by submitting a civil claim petition according to Article 72 of the Criminal Procedure Code, or by presenting their report to the clerk of the criminal section either before the session or during it. In either case, establishment must occur before the public prosecutor presents their requests in the matter, under the penalty of rejection.

Therefore, consumer protection associations have the ability to initiate public lawsuits for the first time. They can also establish themselves as civil parties after initiation by the public prosecutor. However, initiating public lawsuits by consumer protection associations through establishment before the investigating judge is unlikely, as it requires them to provide bail, which would burden these associations considering their limited resources, unless they benefit from judicial assistance by being recognized for public benefit.

It is worth noting that compensation for subsequent consumer damages, whether initiated by the consumer themselves or through consumer protection associations, is based on the discretionary power of the judge. The judge has absolute authority in this matter, determining what they deem appropriate based on the nature of the violation committed by the intervener and the severity of the damages, both material and moral.

2. Second Section: Criminal Protection of Consumers from Arbitrary Commercial Practices:

The legislator, under the provisions of Law 09-03, created a balance in the relationship between the consumer and the economic agent in several aspects, including the punitive aspect. This aims to protect the consumer as the weaker party in the relationship. Additionally, the Penal Code¹⁰ includes penalties imposed on anyone who unlawfully exploits the consumer through deceit, fraud, or mere possession of adulterated or counterfeit goods.

2.1 First request: Penalties related to deceiving and defrauding the consumer.

The legislator extended criminal protection to consumers by imposing penalties on every economic agent who attempted to deceive or defraud consumers when the elements of the crime are present.

2.1.1 Subsection One: Consumer Deception Crime:

Article 68 of Law 09-03 stipulates that anyone who deceives or attempts to deceive the consumer by any means or method is punishable under the penalties provided for in Article 429 of the Penal Code. The forms of deception, according to Article 68 of Law 09-03 and Article 429 of the Penal Code, include:

1/ Deception in the nature of the product by the consumer receiving a product different from the one contracted for.

2/ Deception in essential characteristics, composition, or basic components of goods.

3/ Deception in the type, quantity, or source of goods.

4/ Deception in the usability of the product and the expected outcomes.

5/ Deception in the expiry date of the product.

6/ Deception in information related to product usage methods and necessary precautions.

Referring to Article 429 of the Penal Code, it specifies a penalty of imprisonment from two months to three years and a fine of 20,000 to 100,000 DZD, or one of these penalties, for anyone who deceives or attempts to deceive the consumer. It also emphasizes the obligation to return the unjustly gained profits by the violator.

The legislator has indicated aggravated circumstances in Article 430 which stipulates the increase in the imprisonment term to five years and the fine to 500,000 DZD if the crime or attempted crime:

1/ Was committed through incorrect weighing, measuring, or other inaccurate tools.

2/ Used fraudulent methods or means to deceive in analysis processes, quantity, weight, or any changes through cheating in the composition, weight, or size of goods or products, even before the start of these processes.

3/ Involved false data aiming to give the impression of a prior valid operation or official oversight that did not actually exist.

It is worth noting that the crime of deception is considered an intentional crime that requires the presence of criminal intent, i.e., the deliberate violation of consumer rights through deceptive means. This includes all forms of misleading the consumer regarding the quality of the product or information contained in the purchasing and consumption process.

2.1.2 Subsection two: Consumer Fraud Crime:

Article 431 of the Penal Code stipulates that anyone who commits the crime of fraud shall be punished with imprisonment from two to five years and a fine ranging from 20,000 to 100,000 DZD. The physical actions include:

1/ Fraud in materials suitable for human or animal nutrition, medical substances, beverages, agricultural products, or natural products intended for consumption.

2/ Presentation, sale, or selling of counterfeit, spoiled, or poisoned materials.

3/ Presentation, sale, or selling of materials used in fraud.

4/ Incitement to use specific materials for fraud.

5/ Fraud in materials or their distribution deliberately while they are counterfeit.

Fraud is committed by adding a substance to or mixing it with another, by reducing a part of the elements involved in the original product, or by manufacturing a product contrary to legal and regulatory provisions or professional and trade customs regarding its components, composition, and specified quantities.

The legislator emphasized the punishment as per Article 432 of the Penal Code, stating: "If the adulterated or spoiled food or medical substance caused illness or incapacity to work for the person who consumed it or it was provided to, the person who committed fraud, as well as the one who presented, sold, or sold that material knowing it was adulterated or poisoned, shall be punishable with imprisonment from 5 to 10 years and a fine from 500,000 DZD to 1,000,000 DZD.

Culprits are subject to temporary imprisonment from ten to twenty years, and a fine from 1,000,000 DZD to 2,000,000 DZD if that material caused an incurable illness, loss of use of an organ, or permanent disability. Culprits are subject to life imprisonment if that material causes human death."

From Articles 431 and 432 of the Penal Code, it is evident that the legislator criminalized actions involving the sale of adulterated materials or those used in fraud, without distinction between materials for human or animal nutrition. Furthermore, the severity of the punishment under Article 432 reflects the gravity of the damages that may result from the circulation or consumption of adulterated materials, aiming to protect consumer health and ensure their right to bodily safety and life.

Proving criminal intent is necessary for the crime of fraud, meaning that the perpetrator knowingly engaged in actions that alter the nature or characteristics of materials or knew that the goods offered for sale were poisonous, adulterated, or expired, and intentionally aimed to deceive the consumer by committing these criminal acts.

2.1.3 Subsection three: Possession without Justifiable Reason of Means Used in Fraud:

The provisions of Article 433 of the Penal Code stipulate that individuals who possess, without lawful excuse, items such as food for humans or animals, beverages, agricultural or medical products that they know to be adulterated, spoiled, or poisonous, or who use materials intended for fraudulent activities, or who use incorrect scales, measures, or other machines for weighing goods are subject to imprisonment for a period ranging from two months to three years and a fine ranging from 20,000 to 100,000 Algerian dinars.

It is noteworthy that the legislator penalizes mere possession without a lawful excuse of adulterated, spoiled, or toxic substances without requiring the use of these substances, as a precautionary measure aimed at protecting consumers and avoiding potential harm from the circulation of unfit products for consumption. Moreover, it is worth noting that the crime of possession without a lawful excuse requires the presence of criminal intent, meaning that the perpetrator must be aware that the substances they possess are toxic, spoiled, or adulterated and that their intent is to possess these substances without a lawful reason.

2.2 Second request: Penalties related to the Violation of the Intermediary's Obligations towards the Consumer:

The economic operator is bound by a set of obligations towards the consumer, which include adherence to cleanliness, safety, security, compliance, warranty, and information. In case of any breach of these obligations, whether partial or complete, the legal provisions outlined in Law 09-03 establish penalties. Additionally, the penalties for abusive conditions are regulated within Law 04-02.

2.2.1 Subsection One: Penalty for Non-compliance with Cleanliness, Safety, Security, and Compliance Obligations:

According to Article 71 of Law 09-03, anyone who violates the obligation of food safety shall be punished with a fine ranging from 200,000 to 500,000 DZD. Article 72 states that anyone who violates the obligation of cleanliness and sanitary hygiene shall be punished with a fine ranging from 50,000 to 1,000,000 DZD, varying depending on the impact of the violation, such as consumer illness or death.

- In accordance with Article 73 of Law 09-03, anyone who violates the obligation of product safety shall be fined from 200,000 DZD to 500,000 DZD. Also, the consumer contract shall be voided, and compensation based on fault-based liability shall be imposed.

- According to Article 74 of Law 09-03, anyone who violates the obligation of conformity control shall be fined from 50,000 DZD to 500,000 DZD. Additionally, the consumer contract shall be voided, and compensation based on fault-based liability shall be imposed.

2.2.2 Subsection two: Penalty for Non-compliance with Warranty and Information Obligations:

Article 75 of Law 09-03 stipulates that anyone who violates the warranty obligation or fails to execute the product warranty shall be punished with a fine ranging from 100,000 DZD to 500,000 DZD. Article 76 states that anyone who violates the obligation of product testing shall be fined from 50,000 DZD to 100,000 DZD. Article 77 dictates that anyone who violates the obligation of post-sale service shall be fined from 50,000 DZD to 1,000,000 DZD.

Additionally, the consumer has the right to demand the annulment of the contract and compensation for damages incurred due to a breach of the product warranty obligation. Article 78 of Law 09-03 stipulates that anyone who violates the obligation of product labeling shall be punished with a fine ranging from 100,000 DZD to 1,000,000 DZD.

2.2.3 Subsection three: Penalty for Arbitrary Conditions:

According to Article 38 of Law 04-02, any intermediary who includes arbitrary conditions shall be punished with a fine ranging from 50,000 DZD to 5,000,000 DZD. Additionally, the judge has the authority to cancel the arbitrary condition or annul the contract.

2.3 Third request: Penalties Resulting from Obstructing the Duties of Monitoring Agents, Combating Fraud, and Conciliation Penalty:

The economic assistant may obstruct the tasks of the inspection agents and suppression of fraud by not complying with orders, refusing to provide the required documents and other actions that expose them to a range of penalties.

2.3.1 Subsection One: Penalties Resulting from Obstructing the Duties of Monitoring Agents and Combating Fraud:

- Anyone who sells a sealed or deposited product for conformity control or temporarily withdraws it from the offer for consumption or violates the temporary suspension procedure of the activity shall be punished with imprisonment ranging from 6 months to 3 years and a fine from 500,000 DZD to 2,000,000 DZD, or one of these penalties, according to Article 79.

- In addition to the previous penalties, the intermediary must pay the amount of the products sold involved in the violation to the state treasury based on the price applied by the violating intermediary or based on the market price, as per Article 80.

- Anyone who obstructs or performs any other act that hinders the completion of tasks carried out by monitoring agents and anti-fraud enforcement is punishable with penalties specified in Article 435 of the Penal Code. These punishments consist of imprisonment

ranging from two months to two years and a fine from 20,000 DZD to 100,000 DZD, in accordance with Article 84.

Obstructing tasks in this case manifests when the economic assistant refuses to allow the agents to enter industrial premises, storage spaces, or sales outlets, or fails to provide documents and records when requested, prohibits them from conducting inspections and analyses, taking samples, or in any other way.

2.3.2 Subsection two: Conciliation Penalty:

The legislator mentions this penalty in Articles 60 to 62 of Law 02-04, and then reinforces it in Law 09-03 by dedicating an entire section from Articles 86 to 93.

Article 60 of Law 02-04 allows the provincial trade director to reconcile with the economic officer if the fine for the violation equals to or is less than 1,000,000 DZD. If the fine exceeds 1,000,000 DZD but is less than 3,000,000 DZD, the Minister of Commerce may accept reconciliation. If the violation amounts to more than 3,000,000 DZD, the violation report is sent to the public prosecutor for legal proceedings.

According to Article 86 of Law 09-03, the inspectors responsible for supervision and fraud prevention can impose a fine on every party involved who commits an offense punishable by law. If this fine is not paid within 30 days, the report is sent to the competent judicial authority.

The scope of conciliation penalties is excluded by Article 87 of Law 09-03 in the following cases:

- If the recorded violation exposes the violator to a non-monetary penalty or relates to compensatory damages caused to individuals or properties.
- In cases of multiple violations where at least one of them does not call for a conciliation penalty.
- In case of recurrence. The amount of the conciliation penalty varies according to different violations as follows, as per Article 88:
 - Food safety violation: 300,000 DZD
 - Lack of cleanliness and sanitary hygiene: 200,000 DZD
 - Lack of product safety: 300,000 DZD
 - Lack of conformity control: 300,000 DZD
 - Lack of warranty or non-execution: 300,000 DZD
 - Failure to test the product: 50,000 DZD
 - Refusal to provide after-sales service: 10% of the purchased product price
 - Absence of product labeling data: 200,000 DZD

II. Conclusion:

After detailing the protection provided by the legislator to the consumer against abusive practices that may be committed by the economic agent or professional in the consumption contract, the results can be summarized as follows:

1- The Algerian legislator focused on the concept of consent in defining the consumption contract as an area for arbitrary conditions by emphasizing the idea of imbalance in the contractual relationship without clearly defining the nature of the contractual parties. This leaves room for interpretations regarding the applicability of these conditions to transactions between economic agents among themselves or if it is limited to the two parties of the consumption contract, the consumer and the economic agent.

2- The legislator restricted the scope of protection against abusive practices to written consumer contracts, meaning that this protection does not extend to oral contracts. However, in reality, there is a lack of documentation when entering into consumption contracts in Algeria. As a result, this situation encourages the economic agent to continue their abuse of consumer rights through unwritten arbitrary practices.

3- The Algerian legislator limited consumer protection to unfair terms that represent just one form of abusive practices, as these encompass all illegal practices applied by the operator to the consumer in real-life scenarios, resulting in harm to the consumer.

4- Some of the unfair terms mentioned in Executive Decree 06-306 have the same meaning as those in Law 04-02. Therefore, it would have been sufficient to address them in one of the texts to avoid duplication that could lead to contradictions.

5- Law 09-03 expanded the scope of consumer protection by imposing several obligations on intermediaries, including compliance with disclosure, food safety and cleanliness, product safety and conformity, warranty, and after-sales service.

6- The Algerian legislator in Law 04-02 specified only criminal penalties manifested in fines imposed for violations of its provisions and did not address civil penalties. This approach aligns with its deterrent nature. Relying on criminal penalties helps eliminate abusive practices over time, ultimately benefiting consumers.

7- Despite the significant role played by the judicial bodies in conducting investigations into violations of consumer rights or imposing penalties on economic agents who violate their obligations, the lengthy and costly litigation procedures, coupled with the absence of specialized departments to address consumer protection issues, discourage consumers from resorting to the judicial system to seek their rights. This situation further encourages economic agents to engage in more arbitrary practices.

8- Protection of the consumer from abusive practices remains limited under current circumstances, depending on the economic agent's compliance with the imposed obligations. On the other hand, for effective protection, it is essential for the legislator to introduce new legal provisions to expand the scope of criminal commercial practices. This would undoubtedly reduce the damages affecting the material and moral interests of the consumer. In cases of violations by the economic agent, imposing penalties, including fines or freedom-restricting penalties, remains the only effective means to deter such behaviors.

III. References:

1-Law No. 04-02 dated 23 June 2004, specifies the rules applied to commercial practices, amended and supplemented, Official Gazette Issue 41 issued on 27 June 2004, page 3 and subsequent.

2-Order number 75-58 dated 26 September 1975, containing the Civil Code, amended and supplemented, Official Gazette, Issue 78 issued in 1975.

3-Fatima Achoury, Interpretation of the Contract in Light of Algerian Civil Law, Master's thesis, University of Algiers, Faculty of Law, 2005, page 74.

4-Mohamed Ibrahim Al-Bandari, "Towards a Broader Concept of Consumer Protection in the Contract of Consent: A Comparative Study in Egyptian, Emirati, and French Law,"

Journal of Security and Law, United Arab Emirates University, Issue 1, January 2000, pages 289-290.

5-Executive Decree No. 06-306 dated 10 September 2006, specifies the essential elements of contracts between economic operators and consumers and provisions deemed abusive, Official Gazette, Issue 56 issued on 11 Sep 2006, page 16 and subsequent.

6-Articles 240, 241, 242 of the Code of Criminal Procedure.

7-Order number 66-155 dated 8 June 1966, includes the Penal Procedure Law, amended and supplemented.

8-The Algerian legislator adopted the commitment to information in articles 17 and 18 of Law 09-03 on consumer protection and the fight against fraud.

9-Law No. 09-03 dated 25 February 2009, relating to consumer protection and combating fraud, amended and supplemented, Official Gazette, Issue 15 issued on 8 March 2009, page 12 and thereafter.

10- Order number 66-156 dated 8 June 1966, contains the Penal Code, amended and supplemented.