Consumer Protection from Penalty Clauses Between General Rules and Consumer Protection Regulations

حماية المستهلك من الشرط الجزائي بين القواعد العامة و قواعد حماية المستهلك



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Abstract:

This study analyzes the regulation of penalty clauses under Articles 183–185 of the Civil Code, which treat the clause as a prior estimation of damages and relieve the creditor from proving harm. Despite its contractual nature, practice shows frequent abuse, especially in consumer adhesion contracts where penalties are imposed unilaterally and excessively. To correct this imbalance, the legislator empowered judges to adjust the clause—reducing it in cases of partial performance and exceptionally increasing it in cases of fraud or gross negligence. Consumer protection laws further classify disproportionate or one-sided penalty clauses as unfair terms, thereby reinforcing the protection of the weaker contracting party.

Keywords: penalty clause, unfair term, consumer protection, judicial intervention.

ملخص:

تتناول هذه الدراسة تنظيم الشرط الجزائي في المواد 183–185 من القانون المدني، التي تعدّه تقديرًا مسبقًا للتعويض وتعفي الدائن من إثبات الضرر. ورغم طبيعته التعاقدية، أظهرت الممارسة سوء استعماله، خصوصًا في عقود الاستهلاك والإذعان حيث يُفرض الشرط بشكل أحادي ومبالغ فيه. ولتصحيح هذا الخلل، منح المشرّع القاضي سلطة تعديل الشرط الجزائي بتخفيضه عند التنفيذ الجزئي، وبزيادته استثناءً في حال الغش أو الخطأ الجسيم. كما اعتبرت قوانين حماية المستهلك الشروط الجزائية المفرطة أو الأحادية شروطًا تعسفية، تعزيزًا لحماية الطرف الضعيف.

كلمات مفتاحية: الشرط الجزائي ، الشرط التعسفي ، حماية المستهلك ، تدخل القاضي.

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INTRODUCTION:

The contract is considered the most significant source of obligations in law, as it creates legally binding duties borne by both parties. Consequently, the contractual relationship establishes a debtor–creditor framework in which one party holds a claim, and the other is required to perform it. Under the principle of the binding force of contracts, the debtor must fulfill the obligation as agreed; therefore, non-performance or delay triggers liability to compensate the damage suffered by the other party.

Although the general rule entrusts the assessment of damages to the judge, nothing prevents the parties from agreeing in advance—either at the time of contracting or subsequently before the harm occurs—on a fixed amount of compensation. This practice is rooted in the principle that "the contract is the law of the parties." However, contemporary reality shows an increasing shift toward situations in which one party—the professional—unilaterally determines the amount of compensation imposed on the other party—the consumer—in the event of breach, often in an

exaggerated manner that bears no relation to the extent of the non-performance, and without imposing similar consequences when the professional fails to meet their own obligations. This issue prompted legislative intervention through Executive Decree 06/306, which identifies the essential elements of contracts concluded between economic operators and consumers and specifies clauses regarded as unfair.

Against this background, the central research question emerges:

To what extent is the consumer legally protected against penalty clauses?

To answer this question, the study adopts the following structure:

Section 1: Consumer Protection from Penalty Clauses as a Contracting Party

- **Subsection 1:** Definition of the penalty clause
- **Subsection 2:** Judicial authority to adjust the penalty clause

Section 2: Consumer Protection from Penalty Clauses under Consumer Protection Legislation

- **Subsection 1:** The penalty clause as an unfair term
- **Subsection 2:** Legal consequences of inserting a penalty clause in consumer contracts

Conclusion

1. Consumer Protection from Penalty Clauses as a Contracting Party

The legislator has intervened to limit the principle of the binding force of contracts by granting judges the power to adjust

the penalty clause in order to protect the weaker party in the contractual relationship—undoubtedly the consumer in their dealings with the professional (Section 2). However, this judicial power is subject to specific conditions, which will be presented after defining the concept of the penalty clause (Section 1).

1.1. The Concept of the Penalty Clause

The judge's authority to adjust the penalty clause must be exercised within certain limits and under specific conditions. This section therefore begins by defining the penalty clause (Subsection 1), followed by an examination of the requirements that must be met before the judge can exercise the power of modification (Subsection 2).

1.1.1. Definition of the Penalty Clause

The legislator regulated the provisions of the penalty clause in Articles 183, 184, and 185 of the Civil Code, without providing an explicit definition. Article 183 merely affirms the legitimacy of the penalty clause by stating: *"The contracting parties may determine in advance the amount of compensation by stipulating it in the contract or in a subsequent agreement…"*[1] The legislator wisely refrained from offering a definition, leaving room for legal scholars to elaborate their own.[2] Among the definitions advanced is that the penalty clause is a contractual term inserted by the parties—either in the contract itself or a later agreement—to ensure compliance with and performance of the contract. Thus, if one party breaches their obligation, they must pay a specified sum to the other. In essence, it is a contractual estimation of damages.

Another scholarly definition considers the penalty clause—or agreed compensation—as an undertaking by the debtor to pay a sum of money if they fail to perform their obligation or delay its performance, with the amount predetermined as compensation.[3]

A further definition describes it as an ancillary agreement

that predetermines the compensation owed to the creditor when the debtor breaches the obligation, resulting in harm to the creditor and after the debtor has been formally notified to perform.[4]

From these definitions, it is clear that the penalty clause is a contractual provision in which the parties agree upon the amount of compensation due in case of non-performance,[5] delay, or defective performance. It is, therefore, a prior agreement on the sum payable should contractual liability arise.

While the general rule is that the determination of compensation is left to the judge, nothing prevents the parties from agreeing upon it in advance, provided this is done before the damage occurs—that is, before the breach. The penalty clause, at its core, is a contractual pre-estimation of damages.

Article 183 of the Civil Code confirms that the penalty clause is merely a predetermined amount of compensation borne by the debtor if they fail to fulfill their obligation. This reveals its compensatory nature and excludes the judge's authority to assess damages.

The same article states that the penalty clause may be included either in the original contract or in a subsequent one. Although it is normally stipulated in the initial agreement—as its name suggests—nothing prevents its incorporation into a later contract. However, if the penalty clause is mentioned in a preliminary agreement but omitted from the final contract, the latter prevails, indicating that the parties abandoned the clause and no longer adhere to it.[6]

The legislator refers to the penalty clause as "agreed compensation," as seen in Article 183, which emphasizes its compensatory function by describing it as compensation determined in advance by the parties. Although historically termed a "penalty clause," the difference in name does not affect its

enforceability; it remains valid regardless of the wording used.

1.1.2. Conditions for the Judge's Exercise of the Power of Adjustment

Article 183 of the Civil Code refers to the application of Articles 176 to 181, which concern performance in return for consideration. Thus, entitlement to the penalty clause requires the availability of the general elements of contractual liability: contractual fault, damage, and a causal link, in addition to the requirement of formal notice under Article 179.
In reality, these elements are the same prerequisites for judicial intervention to modify the penalty clause, as the judge must first verify their presence before applying any adjustment.[7]

1.1.2.1. Contractual Fault by the Debtor

The penalty clause does not apply under civil law if the debtor's fault is absent, such as when performance becomes impossible due to a foreign cause[8]. Contractual fault arises when the debtor refrains from performing the agreed obligation, either partially or entirely, or delays its performance. The debtor's fault is presumed: the mere non-performance—whether total, partial, defective, or delayed—constitutes fault. The debtor may only rebut this presumption by proving the existence of a foreign cause.

1.1.2.2. The Occurrence of Damage to the Creditor

Damage constitutes the second pillar of contractual liability and is the basis for awarding compensation in general. With respect to the penalty clause—considered an agreed compensation under Article 183 of the Civil Code—the article refers to the application of Articles 176 to 181, which lay down the elements of contractual liability.[9]
Thus, the penalty clause becomes enforceable only if the creditor suffers damage resulting from the debtor's non-performance. Conversely, if the debtor breaches the obligation but no harm is sustained, no compensation is owed. Article 184(1) expressly

provides: *"The agreed compensation shall not be due if the debtor proves that no harm has been sustained by the creditor."* Damage is the harm suffered by the creditor due to the debtor's fault, whether material or moral. Some scholars argue that the penalty clause may extend to bodily harm as well, given the broad wording of Article 183, which covers all damage arising from contractual liability, including physical injuries.[10]

1.1.2.3. Causal Link

Causation refers to the connection between the debtor's fault and the harm suffered by the creditor. The debtor's non-performance must be the direct cause of the creditor's damage. In contractual liability, causation is presumed, though it is a rebuttable presumption.
The debtor may escape liability by proving a foreign cause—force majeure, the act of a third party, or the act of the creditor. Establishing a foreign cause severs the causal link between fault and damage, thereby preventing the application of the penalty clause, as provided under Article 176 of the Civil Code.

1.1.2.4. Formal Notice (Notice of Default)

In addition to the aforementioned conditions, the legislator requires that the creditor place the debtor in default in order to claim the compensation stipulated in the penalty clause, whenever such notice is required. Article 179 of the Civil Code stipulates: *"Compensation shall not be due except after giving notice to the debtor, unless otherwise provided."*
This principle has also been affirmed by the Supreme Court in Case No. 20679 (12 January 2000), which stated: *"It is legally established that compensation is not due except after the debtor has been placed in default… As required by Article 180 of the Civil Code. By ignoring this defense and failing to examine it, the trial judges erred, and the appealed decision must be annulled."*

Article 180 sets out the methods of formal notice, which may

take the form of a warning or any act serving as its equivalent. Notice may also be effected by mail in accordance with the law. The parties may also agree in the contract that the debtor shall automatically be considered in default upon the maturity of the obligation without the need for any further procedure.

Article 181 identifies specific situations in which notice of default is not required, indicating that notice is not an absolute requirement. These situations include:[11]

- When performance becomes impossible and useless due to the debtor's act.
- When the obligation concerns compensation for a harmful act.
- When the obligation involves returning something known by the debtor to be stolen, or something received without right and with knowledge of that fact.
- When the debtor expressly declares in writing their intention not to perform the obligation.[12]

In conclusion, once the aforementioned conditions are fulfilled, the penalty clause becomes enforceable, and the compensation it stipulates may be awarded. However, the judge may intervene to modify the penalty clause in certain cases expressly provided for in the Civil Code—an issue examined in the following section.

1.2. The Judge's Authority to Modify the Penalty Clause

The judge's authority to modify the penalty clause may take the form of reducing it (Branch 1) or increasing it (Branch 2). However, the latter is not permitted as a general rule and is allowed only exceptionally.[13]

1.2.1. The Judge's Authority to Reduce the Penalty Clause

Article 184, paragraph 2 of the Civil Code stipulates:

"The judge may reduce the amount of compensation if the debtor proves that the estimation was excessive, or that the principal obligation has been partially performed; any agreement to the contrary shall be void."

From this article, it appears that there are two situations in which the judge may reduce the penalty clause: first, when the agreed compensation is excessively high; and second, when the debtor has performed part of the original obligation.

1.2.1.1. Reduction of the Penalty Clause in Cases of Excessive Estimation

Once the conditions for enforcing the penalty clause are satisfied, it becomes binding upon both parties and the judge. The latter must award the agreed amount without increase or reduction, regardless of the extent of the creditor's harm, since the contract is the law of the parties. However, if the penalty clause is excessive—whether because both parties misjudged the potential harm, or because the debtor accepted an oppressive clause under coercion, pressure, or hastiness—it must be reduced.

Article 184 requires excessive estimation as a condition for judicial intervention. Comparative legal systems use different terms to express the same idea: Egyptian law requires the amount to be "grossly exaggerated," Iraqi law uses "drastic," Lebanese law "flagrant," French law "clearly excessive," and German law "disproportionately high." Despite linguistic differences, all systems agree that the excess must be substantial.[14]

Excessiveness refers to a large disproportion between the agreed compensation and the actual harm resulting from non-performance or delay. When the judge finds this disproportion, Article 184 obliges them to reduce the amount accordingly. The burden of proof rests on the debtor, who must demonstrate—by any means of evidence—that the agreed amount was

excessively high. If successful, the judge reduces the compensation to a reasonable level proportional to the harm. The judge need not equalize compensation with harm; compensation may remain slightly higher, provided the excess is not substantial. If the excess is minor, no reduction is permitted.[15]

Article 184 has been criticized for not specifying how the reduction is to be calculated, nor fixing a percentage, thereby giving judges wide discretionary power.
It also fails to specify criteria guiding the judge in assessing excessiveness. Legal scholars therefore propose two criteria:

- **Objective criterion**: based on the disproportion between harm and the penalty amount, independent of the personal circumstances of the parties.
- **Subjective criterion**: taking into account factors such as the debtor's good or bad faith, financial capacity, and surrounding circumstances.[16]

As for the timing of assessment, excessiveness must be evaluated at the moment the penalty becomes due—that is, when the harm results from non-performance or delay—consistent with the legal nature of the penalty clause.

1.2.1.2. Reduction of the Penalty Clause in Cases of Partial Performance

Article 184 also grants the judge authority to reduce the penalty clause when the debtor has performed part of the main obligation. Since the penalty clause is originally intended for total non-performance, justice requires that the debtor not be held liable for the entire amount when partial performance has occurred.

Article 184 is criticized for its overly broad wording, which implies that any partial performance leads to reduction. In reality, not all partial performance warrants modification. It is not enough that part of the obligation was performed; the creditor must have actually benefited from that performance—an aspect overlooked

by the Algerian legislator.

Thus, before reducing the penalty clause, the judge must determine the extent to which the creditor benefited from the partial performance and the harm caused by the remaining unperformed part.
If partial performance yields no benefit, reduction is unjustified. Similarly, if no harm occurs, the penalty clause cannot be enforced at all, since harm is a prerequisite for its application.

Reduction is based on the amount of the agreed penalty, not on the compensation that would be awarded in the absence of such a clause. The judge reduces the agreed amount to a level proportional to the unperformed portion, not necessarily equal to the actual harm.
The debtor must request reduction before paying the agreed compensation. If payment has already been made voluntarily, the debtor may not later claim excessiveness, as voluntary payment constitutes implied acceptance and waiver of the right to reduce the amount.[17]

1.2.2. The Judge's Authority to Increase the Penalty Clause

Article 185 of the Civil Code provides: *"If the damage exceeds the amount of compensation agreed upon, the creditor may not claim a higher amount unless he proves that the debtor committed fraud or gross fault."*

Thus, the judge may not increase the penalty clause to match the actual harm; they must uphold the agreed amount. The only exception is when the debtor acted fraudulently or with gross negligence. Even if the creditor proves that the agreed compensation is much lower than the actual damage, the judge remains bound by the amount stipulated, unless fraud or gross fault is established.[18]

In this sense, the penalty clause operates as a limitation of

liability, which is permissible in contractual liability except in cases of fraud or gross fault.

Following the example of Article 225 of the Egyptian Civil Code, the Algerian legislator grants the judge, as a general rule, only the authority to reduce—not increase—the penalty clause, thereby protecting the weaker party in the contractual relationship.

Therefore, the judge is strictly prohibited from raising the compensation when the agreed amount is disproportionately low, due to the clarity of Article 185. Any judgment awarding more would constitute a violation of the law and would be subject to annulment by the Supreme Court.[19]

2. Consumer Protection from the Penalty Clause Under Consumer Protection Legislation

In accordance with the principle of contractual freedom, the contracting parties are free to include in their contract any terms they wish. The penalty clause is one such permissible term that falls within this contractual freedom. However, practice has shown that the penalty clause often becomes unfair, especially in contractual relationships between consumers and professionals—given the consumer's weaker position.
This led the legislator to classify the penalty clause as an unfair term (Branch 1). And since unfair terms are tied to adhesion contracts, it becomes necessary to refer to the rules governing adhesion contracts to determine the legal consequences of inserting a penalty clause—particularly in the absence of a specific provision (Branch 2).

2.1. The Penalty Clause as an Unfair Term

Article 5 of Executive Decree 06/306, which defines the essential elements of contracts concluded between economic operators and consumers and identifies clauses considered unfair, provides that:

"Unfair are the terms through which the economic operator ... determines the amount of compensation to be paid by the consumer who fails to fulfill their obligations, without specifying equivalent compensation to be paid by the economic operator in case of failure to fulfill their own obligations."[20]

Thus, the legislator considers the penalty clause unfair whenever the contract sets the amount payable by the consumer but does not set the amount payable by the professional. The following will therefore define the unfair term doctrinally (Branch 1) and legislatively (Branch 2).

2.1.1. Doctrinal Definition of the Unfair Term

Legal scholars define the unfair term as a clause drafted in advance by the stronger party, granting them an excessive advantage over the weaker party.

Similarly, it is defined as any contractual clause that confers a benefit or advantage to one contracting party at the expense of the weaker party.[21]

In consumer contracts, it is further defined as: *"In a contract concluded between a professional and a consumer, drafted unilaterally by the professional, a clause is deemed unfair if—considering the exclusive advantage it confers upon the professional—it results in an imbalance in the rights and obligations of the parties."*

These definitions agree that unfair terms are those included in contracts between professionals and non-professionals or consumers, granting the professional an excessive advantage that disrupts contractual balance.

2.1.2. Legislative Definition of the Unfair Term

At the legislative level, the Civil Code does not provide a definition of the unfair term, although Article 110 acknowledges

protection against unfair terms in adhesion contracts. This gap was later addressed through consumer protection laws, as will be explained.[22]

Conversely, several foreign legislations explicitly defined unfair terms, either in general rules or in consumer protection laws.

The German legislator—among the first to adopt a law in this field—provides in Article 9 of the Law of 9 December 1976 on General Contract Terms that such terms are void or ineffective when they impose an inappropriate or unreasonable detriment on the contracting party.

In case of doubt, unreasonable detriment is presumed when the term contradicts fundamental principles of the applicable legal order, or when it significantly limits essential rights and obligations arising from the nature of the contract to the point of jeopardizing the contract's purpose.[23]

The German definition thus rests on the criterion of *unreasonable detriment*, further clarified through two situations:

1. contradiction with fundamental principles of the legal system (reflecting the criterion of good faith),
2. significant reduction of essential contractual rights and obligations (reflecting the criterion of excessive advantage).

The French legislator also defined unfair terms. Article 35 of Law 78-23 of 10 January 1998 on consumer information and protection defined them as terms that may be prohibited, specified, or regulated when they appear to be imposed on consumers through the abusive exercise of economic power, granting the professional an excessive advantage.[24]

This definition was later amended by the Law of 1 February 1995 on consumer protection against unfair terms, which introduced a new definition—though without fundamental changes. Article 132(1) stated: *"An unfair term is one that creates a clear imbalance in the*

contractual relationship to the detriment of the weaker party, i.e., the adhering party, the non-professional, or the consumer."

Thus, the clause becomes unfair simply by causing a clear alteration of contractual balance.

In 2008, another reform—Article 86 of Law 776/2008—revised the definition by replacing "clear imbalance" with "serious impairment of contractual balance (*atteinte grave*)." This shift shows that the French legislator moved from:

- the criteria of economic power and excessive advantage (Law 78/23),
- to the criterion of clear imbalance (Law 1995),
- and finally to serious impairment of contractual balance (Law 2008),

influenced by the European Directive 93/13, whose Article 3(1) defines unfair terms as those that, contrary to good faith, cause a *significant imbalance* in the parties' rights and obligations to the detriment of the consumer.

In Algeria, although the Civil Code did not define unfair terms, the issue was addressed by Law 04-02 of 23 June 2004 on commercial practices. Article 3(5) states: *"An unfair term is any clause or condition, individually or in combination with one or more other clauses or conditions, that leads to a clear imbalance between the rights and obligations of the parties to the contract."*

Through this definition, the Algerian legislator clarified the concept of unfair terms and eliminated much ambiguity surrounding clauses that disrupt contractual balance—thus requiring judicial intervention. It is also evident that the legislator was influenced by both:

- French law, through the criterion of clear imbalance, and
- German law, through the adoption of lists of unfair terms classified according to their degree of harmfulness.

Thus, under the Commercial Practices Law, the legislator adopted the criterion of a *manifest imbalance* between the rights and obligations of the contracting parties, aligning with the 1993 European Directive and avoiding the criticisms directed at the French legislator before abandoning the criteria of economic power and excessive advantage.

However, the legislator is criticized for adopting this criterion without clarifying its precise meaning. Article 3 merely states that the unfair nature of a clause may be assessed individually or in combination with other clauses. This is consistent with Article 132/1 paragraph 5 of French law, which provides that the unfair nature of a clause must be evaluated at the time of contract conclusion, taking into account all circumstances surrounding its formation as well as the other clauses of any related contracts whose conclusion or performance is connected to the first.

Although the Algerian legislator did not adopt certain elements mentioned in the French text—such as expressly referring to the time of contract conclusion and all surrounding circumstances—the omission is appropriate, since such matters are inherently considered by courts when interpreting contracts, without the need for explicit legislative mention.

Based on the foregoing, under the Commercial Practices Law, the assessment of manifest imbalance may be carried out either by examining the clause in isolation or in relation to the contract as a whole.[25]

Assessing the clause separately corresponds to adopting a blacklist of unfair terms, such as those set out in Law 04-02 on commercial practices and Executive Decree 06/306. Both documents include non-exhaustive lists of clauses deemed unfair.

However, this approach is illogical and inconsistent with the

notion of manifest imbalance: a clause cannot be deemed unfair solely because it grants one party certain advantages. Another clause may compensate the other party, restoring contractual balance. Contracts must be viewed a[26]s indivisible wholes containing interconnected obligations; only by examining the contract in its entirety can one determine whether a clause is unfair.

Thus, although the legislator intended to provide effective consumer protection—described by some as *a more precise form of justice that is nonetheless difficult to achieve*—the same clause may be considered unfair or not depending on the overall contractual structure.

This makes it difficult to establish predetermined lists of unfair terms, since unfairness must be concretely assessed. Accordingly, only case-by-case judicial evaluation aligns with the criterion of manifest imbalance.[27]

Therefore, the legislator should reconsider either the definition provided for unfair terms—since issuing fixed lists contradicts Article 3 of Law 04-02, which requires examining the entire contract—or revise the drafting of Article 29 of Law 04-02, which explicitly sets out a list of unfair terms. The appropriate drafting would specify that the listed terms *may* be considered unfair, subject to judicial discretion and the overall content of the contract, in line with the criterion of manifest imbalance.[28]

2.2. The Sanction Resulting from Inserting a Penalty Clause in a Consumer Contract

Although the legislator addressed the *penal sanction* (Branch 2) in consumer protection laws, it failed to address the civil sanction, which necessitates referring to the rules governing adhesion contracts, given their connection to unfair terms (Branch 1).

2.2.1. Reference to the Rules of Adhesion Contracts Concerning Civil Sanctions

Article 110 of the Civil Code provides:[29] *"If the contract has been concluded by way of adhesion and contains unfair terms, the judge may modify these terms or exempt the adhering party from them…"*

Similarly, Article 3 paragraph 4 of Law 04-02 on commercial practices states:

"Any agreement intended for the sale of goods or the provision of services that is drafted in advance by one of the parties, with the other party adhering to it without the ability to make any real change…"

These provisions show that the legislator considers the existence of an adhesion contract a prerequisite for protection against unfair terms, reaffirming the adoption of the legal concept of adhesion contracts.

In the general provisions of the Civil Code, the legislator did not define adhesion contracts; like most Arab legislations, it merely addressed the manner of acceptance. Article 70 of the Civil Code states:

"Acceptance in adhesion contracts is established merely by agreeing to the terms set by the offeror without the possibility of negotiating them."

Although not a direct definition, this implicitly conveys the concept: the offeror unilaterally determines the contractual terms, and the other party cannot negotiate them.[30]

The legislator later provided a direct and precise definition—although limited to consumer relations—in Article 3/4 of Law 04-

02.

The use of the expression *"with the other party adhering to it without the possibility of making any real change"* clearly indicates that adhesion contracts are defined by:

1. the pre-drafting of contractual terms by one party, and
2. the impossibility for the adhering party to modify them.

This aligns closely with Article 70 of the Civil Code.

Thus, the legislator's definition is accurate and realistic: the essence of adhesion contracts is not economic dominance itself, but the inequality that allows the stronger party to unilaterally impose pre-drafted terms—some of which may be unfair—without allowing the weaker party to negotiate or modify them meaningfully.

Accordingly, since consumer contracts are adhesion contracts, and since the penalty clause they may contain is deemed an unfair term under Article 5/9 of Executive Decree 06/306—because it imposes compensation exclusively on the consumer and not on the professional—it contradicts the original function of penalty clauses, which are meant to apply to any debtor regardless of their status.
Thus, the legislator grants the judge the authority to modify or annul such unfair clauses.[31]

2.2.2. Penal Sanction

Article 17 of Executive Decree 06/306 provides: *"Sanctions for violations of Article 5 of this decree shall be applied in accordance with Law 04-02."*

Article 38 of Law 04-02 states: *"Unfair commercial practices and abusive contractual practices shall be punishable by a fine ranging from fifty thousand dinars (50,000 DZD) to five million dinars (5,000,000 DZD)."*[32]

Conclusion

This study demonstrates that the penalty clause, although grounded in the principle of contractual freedom and the autonomy of will, can lead to significant imbalance when applied without limitation. In practice, the excessive estimation of penalties and the unilateral imposition of such clauses by the stronger party have transformed the penalty clause into an instrument of unfairness rather than a tool for safeguarding contractual performance.

To counter these effects, the legislator intervened indirectly by empowering the judge to adjust the penalty clause, thereby providing necessary protection to the disadvantaged party and placing reasonable limits on the autonomy of will. This judicial authority has been elevated to a matter of public order, rendering any agreement aimed at excluding it legally void and preventing stronger parties from circumventing judicial oversight.

Modern legal systems increasingly recognize judicial intervention as an essential mechanism for restoring contractual balance and protecting weaker parties from abusive terms, thus reinforcing the judge's active role in contractual justice.

Nevertheless, this research highlights a persistent legislative shortcoming: consumer protection laws remain incomplete in addressing civil sanctions related to unfair penalty clauses, continuing instead to rely implicitly on general rules. Addressing

this gap is necessary to ensure comprehensive and effective protection for consumers within modern contractual frameworks.

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[14] Article 176 of the Civil Code: *If the debtor becomes unable to perform the obligation in kind, he shall be ordered to compensate for the damage resulting from non-performance, unless he proves that performance became impossible due to a cause beyond his control; the same applies if the debtor delays in performing the obligation.*

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