

The legal regime of the termination of distribution contracts

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Abstract:

Distribution contracts are contracts born from practice and they are governed by contract law and competition law and by numerous factors such as the technical and commercial distribution conditions.

In this type of contract, the parties have great freedom in drafting its content, in order to ensure good collaboration between the supplier and the distributor for an effective marketing of products and services. The termination of the fixed-term distribution contract upon the arrival of the term is only compliance with the wishes of the parties. Exceptionally, it is possible to unilaterally terminate this contract when the parties have included an automatic termination clause. concerning contracts of indefinite duration, the principle of the prohibition of perpetual commitments, which is justified in contract law by the concern to preserve individual freedom, would require that the termination of this type of contract be always possible, provided that the notice period is respected.

Keywords: contract; Distribution; supplier; distributor; notice period.

1. INTRODUCTION

In a consumer society characterized by mass production, where the essential objective of companies is no longer to produce but to sell, distribution proves to be a determining function in the delivery of products from the manufacturer to the user or end consumer¹.

The latter, who is no longer a passive customer, but who dictates his choices and requirements, particularly in terms of security, quality, reliability of products or services, but also moderation of prices, comfort of the purchasing act.

Distribution is an economic operation, essential in our time, it plays a logistical

¹ D. LEGAL, Commercial and Business Law, Sirey ed, 17th ed., 2007, Paris, p. 330.

function so indispensable that it tends to prevail over that of manufacturing, defined as one of the three stages of this activity, following that of production and preceding that of consumption. Distribution is considered by jurists and economists as essentially an intermediation activity¹.

This economic operation is organized by distribution law, which is “a special law, primarily contractual in nature, which is a branch of business law, it is a law for professionals, essentially, uncodified and in constant and rapid evolution”².

The distribution contract is often characterized by a logic of legal independence that aligns with the fundamental motivations of the supplier.

If he has, in fact, chosen to establish a distribution network formed of partners who are external to him, it is primarily because, "from a commercial standpoint, he relies on the entrepreneurial spirit and the interested dynamism of these partners, in promoting his products and his brand, and secondly because, from a financial standpoint, he intends to escape the burden of the investments that will be necessary for them as well as the consequences of their potential economic failure" and because the termination of distribution contracts is less burdensome than that of other contracts such as that of a commercial agency.

It is very common for the distributor to organize the distribution of its products. To do this, he will choose the type of network he wishes to create, depending on the distribution needs of his products. When it comes to products or services requiring significant know-how, it will create a franchise network. For products where the investments are so heavy that without exclusivity it is unlikely that distributors will agree to commit, the supplier will turn to a network of exclusive dealers.

This article raises, among other things, the issue of the compensatory indemnity to which the distributor may, in certain cases, be entitled upon termination of the distribution contract.

This issue arises because, on the one hand, distribution contracts are concluded for a short or medium period (generally one or two years and rarely more than three years for the concession contract, and between 5 and 10 years for franchise contracts) and on the other hand, the non-renewal at its term of such a contract risks practically causing significant harm to the distributor who is generally under a close economic dependence on his supplier and who, by losing his contract, will often lose the benefit of the clientele he helped to create.

The failure to renew at the end of the contract can sometimes lead to the ruin of the distributor when its business is entirely and exclusively devoted to the resale of the sole products of its supplier.

¹ D. et N. Ferrier, *Law of Distribution*, 8th ed.. Lexisnexis, 2017, n° 3.

² J. BEAUCHARD, *Law of Distribution and Consumption*, University Press of France, 1996, p. 28.

From the above, we can ask the following question: what legal regime applies at the end of the distribution contract?

The following sub-questions branch off from the main problem: is unilateral termination permitted? and what are the effects of this termination?

In order to study the regime applicable to the end of the distribution contract, we will first address the causes of extinction and then in a second time the effects of this extinction.

2. The causes of the termination of distribution contracts

In accordance with common law, the extinction of the contract results from the arrival of the term, if it was concluded for a fixed duration, or from its unilateral termination when it is concluded for an indefinite duration. The assignment of the contract also leads to the disappearance of the contractual ties between the contracting parties.

2.1 Fixed-term contract

The relationship between the supplier and the distributor is meant to last. Both parties have an interest in maintaining the contract. Attached to the brand, the clientele has its habits with the distributor and does not like to have to change. The distributor's interest is obviously to continue the contract in order to one day transfer it with the business assets. The supplier also finds advantages in the sustainable maintenance of relationships with a distributor "with whom he has collaborated for many years, who knows the products perfectly and generally has the trust of the local clientele."¹

But on the other hand, the supplier also has an interest in having a dynamic and efficient network of resellers, and this requires that he can renew his network by eliminating the least active members. We will study the arrival of the term, before addressing the possibility of early termination.

2.1.1 The Arrival of the Term

The duration of distribution contracts may be freely determined by the parties. When the contract is for a fixed term, it must be carried out to its conclusion. Termination before the term is wrongful, except in cases of serious breach by the co-contractor. In this case, unilateral termination may be permitted, but at the risks and perils of its author. At the agreed term, neither party is obliged to renew it. For the courts, the non-renewal of the concession contract, for example by the grantor, does not constitute an abuse of rights, but rather the exercise of a contractual right. It follows that the grantor who does not renew the contract that has reached its term commits no fault and therefore does not incur liability, unless it is established that he had undertaken to

¹ J. BEAUCHARD, op. cit, p. 186.

renew the contract, and unless it is demonstrated that he abused his prerogatives.

This classic jurisprudence refuses to admit that the grantor who does not want to conclude a new contract is obliged to justify themselves.¹

2.1.2 Early Termination

A fixed-term contract may be subject to unilateral termination when this possibility has been contractually provided for by the parties, by inserting an early termination clause, regardless of the contractually agreed duration.² The validity of such a clause is accepted in jurisprudence, "it is based on the prior consent of the contracting parties to the eventuality of unilateral termination, regardless of the contractually agreed duration."³ The French Court of Cassation has recognized the right for one party to a contract to terminate it unilaterally, even in the case of a fixed-term contract.⁴ According to the Court of Cassation, "the seriousness of the behavior of one party to a contract may justify the other party unilaterally terminating it at their own risk."⁵

This situation is considered a departure from the general rule that was stipulated in Article 1184 of the French Civil Code before its amendment by ordinance no. 2016-131 of February 16, 2016,⁶ which stated that the judiciary had the authority to rescind the contract in the event of a fault by one of the contracting parties, corresponding to Article 119 of the Algerian civil Code.

The supplier, like the distributor, may include a termination clause in their contract, each can terminate it if they claim sufficiently serious wrongful conduct to justify the termination.

2.2 Indefinite Duration Contract

This is a less common scenario; distribution contracts are generally concluded for a fixed term.⁷ The advantage of an indefinite duration contract is that the parties can

¹ Court of Cassation, Commercial Chamber, January 6, 1987, Civil Bulletin., IV, n°7 "the grantor of an exclusive concession contract concluded for a fixed term may terminate this agreement before its expiration within the contractually stipulated timeframe, without having to justify its decision to terminate it". In the same sense: Court of Cassation, Commercial Chamber, November 30, 1982, Civil Bulletin., IV, n°392. It should be noted that the same solution applies to other distribution contracts.

² F. BOUHAFS, The end of distribution agreements, master's thesis, Faculty of law and political science, University of Oran, 2012, P. 15

³ B. SAINTOURENS, The Breakdown of Distribution Agreements: Aspect of Legal Strategy, Review of Economic and Environmental Law, n°1, June 2008, p.39.

⁴ Court of Cassation, first civil chamber, 28 Oct. 2003; 13 Oct. 1998; 20 Feb. 2001, cited by B. SAINTOURENS, Ibid

⁵ Court of Cassation, first civil chamber, 28 Oct. 2003; aforementioned.

⁶ Important reform of contract law, the general regime and the proof of obligations.

⁷ B. BUISSON, M. DE LAGGER M and X. TANDEAU de MARSAC, Study on the exclusive concession contract, Sirey Edition, Paris, 1968, p. 74.

terminate it unilaterally at any time, under the prohibition of perpetual commitments,¹ except in cases of abuse of rights on their part. It is up to the victim of the breach to prove this abuse, which, in principle, is very delicate, unless the termination must be preceded by a notice letter.

It often happens, when the contract is for a fixed term, that business relations continue after the set term has expired. It is then possible to consider that a contract of indefinite duration has been established between the parties. For part of the doctrine, “it is a general principle that tacit renewal does not mean extension of the initial contract, but gives rise to a new contract of indefinite duration with the same clauses as the old contract “.²

Sometimes, the contract includes a clause addressing the issue of tacit renewal, stating that the contract will be renewed, unless otherwise specified by the parties, for the duration of the initial contract or, conversely, that the contract will not be renewable by tacit renewal.

Algerian law requires that anyone wishing to terminate a contractual relationship must respect a notice period, under penalty of compensatory damages³.

This notice period allows the distributor to prepare for their conversion, even when the parties' agreement has not taken the care to define it.

It is therefore established that the supplier must respect a notice period before terminating the contractual relationship. However, what should be its duration?

The notice is that which is provided for in the contract or, failing that, a notice of reasonable duration, that is to say, in accordance with commercial practices, except in the case of gross misconduct by the distributor, justifying immediate termination.

The duration of this notice varies according to the countries concerned: Belgium leaves it to its judges to determine the time necessary to find a similar concession, Denmark applies a notice period strictly proportional to the duration of the contract, France and Algeria refer to the practices of the profession.⁴

The duration of the notice period results from the practices specific to each area of economic activity; it is, for example, generally three months in the automotive dealership sector. This period allows the dealer to find another lessor or to pivot and sell off their stock.

¹ Ph. Le TOURNEAU, *The exclusive commercial concession*, Edition ECONOMICA, 1994, p.51. “The principle of the prohibition of perpetual contracts dictates that the termination of an indefinite duration contract is always possible.”

² *ibid*

³ For example: Article 34 of the Commercial Code regarding the commercial agency.

⁴ M. TRARI TANI and W. PISSOORT and P. SAERENS, *International Commercial Law*, Berti Publishing, 2007, p. 275.

In France, the obligation to respect a notice period before terminating a distribution contract was initially imposed by case law, and then was consolidated by paragraph 5 of Article L442-6 of the Commercial Code.¹

3. The Effects of Termination

The end of the distribution contract does not give the distributor the right to renewal, nor the right to compensation. Additionally, the supplier is not obligated to take back the stock remaining with the distributor.

3.1 The Absence of a right to Renewal

The supplier may terminate the contract of indefinite duration without having to provide a reason. Courts reject attempts made in the opposite direction that rely notably on the length of the relationship, the quality of the services provided so far, the development of the customer base achieved, or the significance of the investments made. In this regard, the ruling issued by the commercial chamber of the Court of Cassation on January 4, 1994, is significant.² The grantor, in a concession contract, had informed his dealer, who had been in place for twenty years based on annually renewed contracts, that the favor granted to him to sell FIAT vehicles alongside those of other competing brands could only be maintained in the future if he established separate commercial facilities. However, the dealer had undertaken works amounting to six million francs. Nevertheless, the contract had not been renewed. The former dealer then acted in liability against his former grantor for abusive exercise of his non-renewal option and obtained satisfaction from the Court of Appeal of Paris,³ which characterized a breach of the grantor's contractual good faith. However, the commercial chamber of the Court of Cassation clearly censured, stating that "regarding a contract concluded for a fixed term that had been terminated before its expiration within the contractually stipulated period, the grantor was not required to take into account the investments made by the dealer and furthermore that 'the grantor is not obliged to justify his decision not to conclude a new concession contract.'" ⁴

The reasons for non-renewal can be multiple: sometimes the supplier wishes to fully integrate the distributing company to make it a subsidiary or a simple branch. In other cases, the refusal to renew penalizes the inefficiency of the distributor or the violation of its contractual obligations.

¹ Law n°2001-420 of May 15, 2001 known as the "NRE law" amending the French Commercial Code, pursuant to this text, engages the liability of its author, "the act of abruptly terminating, even partially, an established commercial relationship, without written notice taking into account the prior duration and respecting the minimum notice period determined, with reference to commercial practices, by agreements between professionals."

² bulletin civil IV n°13; Quarterly Review of Civil Law 1994, p. 353.

³ Court of Appeal of Paris, May 13, 1999, Quarterly Review of Civil Law 1992, p. 394.

⁴ J. MESTRE, Unilateral Termination and Non-Renewal in Distribution Contracts in The Cessation of Business Relationships, French University Press, 1997, p.13.

3.2 The Absence of a Right to Compensation

The distributor is not entitled to receive a termination indemnity because there is no common interest mandate between him and the supplier, and the clientele attached to the business assets does not belong to him. On the other hand, he has the right to claim damages in the event of abuse of the right not to renew the contract by the supplier or in the event of abuse of the right of unilateral termination.

3.2.1 The Rejection of the Thesis of the Existence of a Mandate of Common Interest

Distributors have attempted to have the qualification of their contract as a mandate of common interest recognized by case law in order to obtain a customer indemnity in the event of contract termination.

Case law adopted this viewpoint for a short period of time. The Court of Lyon justified this qualification by considering that "the essential purpose of the contract was to develop sales in the envisaged sector and to achieve, in the interest of the parties, an increasingly significant turnover."¹

The Court of Cassation refused to extend the regime of the common interest mandate to contracts other than the mandate.²

The question of common interest in distribution contracts "was initially raised in great confusion. Indeed, a confusion was made between the notion of common interest and the consequences to be drawn in the event of contract termination." On one hand, the legislator (French) has acknowledged that distribution contracts with resellers are for some contracts of common interest, on the other hand, one should not deduce the principle of a right to compensation for the distributor at the end of the contract.

The second article of the Executive Decree No. 22-383, dated November 17, 2022, which defines the conditions and methods for exercising the activity of new vehicle agents, used the term "agency" instead of "concession contract" and defined it as "a contract by which the manufacturer granting new vehicles assigns to the agent the exclusive right to market one or several types of its vehicles on national territory."

¹ Encyclopedia lamy, economic law, 2001 edition, n° 4253.

² Ph. le TOURNEAU, Exclusive concession.-distribution, circuits and distribution networks.-inventory of various concessions.-foundation and protection of distribution networks - booklet.,1010, JurisClasseur Contracts – Distribution, n°99, who adds "it adheres to this rigorous but legally accurate position"; M. BEHAR TOUCHAIS and G. VIRASSAMY, Treaty on Contracts, Distribution Contracts, General Library of Law and Jurisprudence, Paris, 1999, p.175 "The domain of common interest was initially limited to the mandate contract, the Court of Cassation strictly overseeing it" see also G. VIRASSAMY,

Dependency contracts, essay on professional activities carried out in an economic dependency, General Library of Law and Jurisprudence, Paris, 1986, pp.227 and 229 "...because overall, almost all decisions rendered remain hostile to the extension of the notion of common interest to any contract other than the mandate."

It is noted that this definition lacks precision in the use of terms, as it does not relate at all to an agency contract, but rather to a concession contract, and the contractor is not an agent of the grantor but an independent trader.

Indeed, since the trial judges had not acknowledged the ability of the interested party to act on behalf of and for the account of a third party, in other words, the existence of a mandate, the Court of Cassation excluded any application of the notion of common interest. Even if the contract is qualified as a mandate (by the parties), the courts may rely on the activity of purchase for resale to apply the qualification of a distribution contract.

The hostility of the Court of Cassation to the application of the notion of common interest to distribution contracts has been approved by part of the doctrine, considering that "far from being common, the interests of the grantor and the grantee are perfectly divergent and that in distribution contracts, a latent antagonism remains between sellers, as they bear the risks of their activity, an antagonism manifested by the level of stock to be financed and its recovery at the end of the contract."¹

This analysis was taken up by Jean Guyenot who wrote that "the proposed qualification could miss the intended goal, because the contractual concept that the commercial concession postulates involves two persons whose wills meet, driven by interests not common, but divergent. For one, it is to manufacture to sell, for the other, it is to buy to resell ... In the contract, there are therefore not truly common interests, but rather an entanglement of the obligatory relations, starting from two opposite points to cross and lead to the two poles of the operation whose repetition under agreed conditions characterizes the commercial concession..."².

Conversely, other authors have argued that distribution contracts are not excluded from the notion of common interest. Mr. Théo Hassler observed that "the common interest appears when there is a convergence of interest between the parties. The term common does not mean that the interests of both parties are similar or that they merge into one; in reality, each pursues its own interest, but it happens that this coincides with the interest of the other party: the common interest is the happy meeting of two egoisms,"³ and the author continues that "other contractual situations reveal the imprint of the common interest. The law of distribution constitutes, in particular, a favorable ground for the emergence of convergence of interest... commission contracts, brokerage, referencing, and especially concession and franchising, are agreements of common interest."⁴

¹ M. BEHAR TOUCHAIS and G. VIRASSAMY, *op. cit.*, p.176.

² Commercial Court of Amiens November 29, 1973, *Review the palace gazette*, n° 1, 1974, p. 192.

³ T. HASSLER, *The common interest*, *Quarterly Review of commercial Law*, 1984, p.585. See also A. BÉNABENT, *Civil Law, Special Civil and Commercial Contracts*, Montchrestien ed, 8th ed, Paris, p.190. "unlike the ordinary seller-buyer couple, where interests are directly opposed, the producer and the distributor have interests that go in the same direction: to improve and increase sales to consumers. They are in a way associated in the pursuit of commercial success."

⁴ T. HASSLER, *op. cit.*, p.605.

However, case law has affirmed that the concession contract, not being a mandate of common interest, the concessionaire is not entitled to a termination indemnity, whether the termination is justified or not.¹

3.2.2 The belonging of the clientele

Distributors claim the existence of a common clientele with the supplier, for example, in the concession contract, “when the concessionaire is specialized in the sale of branded products, its clientele is less its own than that of the manufacturer... it is not possible to admit that the clients would only be those of the concessionaire,” the conceding party recovering its brand at the end of the contract, would also recover the clientele that the former concessionaire had rallied to this brand, which would have the effect of giving rise to the payment of compensation at the end of the contract. This conception is not acceptable economically and legally.

A) Economic Reasons

At the end of the contract, the dealer retains the benefit of its clientele. Indeed, the clientele is divided into two: that attached to the brand and products of the grantor, thanks to the activity of the dealer, will go to the grantor, and that attached to the dealer will continue to address itself to him².

B) Legal Reasons

The principle is that the clientele is the essential element of the business assets, without which it could not exist³. The business assets are an incorporeal movable property⁴. Therefore, commercial clientele is not a property; it is not subject to appropriation,⁵ “it represents the fruit of the activity carried out in the business

¹ Court of Cassation, Commercial Chamber, October 7, 1997, Dalloz Collection, 1998, p.413, note C. JAMIN; Court of Cassation, Commercial Chamber, November 30, 1982, n°81-11.978, cited by encyclopedia lamy, economic law, 2001 edition, n°4255, p.1600, overturning a decision of the Bordeaux Court of Appeal for having considered that a concession contract concluded in the common interest of the parties, its unjustified termination should lead to the payment of compensation, see also M. BEHAR TOUCHAIS and G. VIRASSAMY, op. cit., p.179 “...to say that the exclusive concession contract is a contract of common interest does not mean that the concessionaire is entitled to the same protection as the common interest agent at the end of the contract, simply because he is not an agent, but an independent reseller who has his own clientele.”

² D. FERRIER, Distribution Law, Technical Library, 4th ed., 2006, p. 297 ; M. GRANIER, The exclusive concession contract (Hermès), University of Montpellier 1, master's thesis, 2003, p. 44.

³ Article 78 paragraph 2 of the Algerian Commercial Code “the business goodwill necessarily includes the clientele and the customer base”; G. VIRASSAMY, Dependency contracts, op. cit, p.60, see also F. ZÉRAOUI-SALAH, Algerian Commercial Law Treaty, Business Funds and Intellectual Property Rights, Ibn Khaldoun ed, 2001, p.16. “...however, our legislator has expressly provided, contrary to the French legislator, that this element is mandatory...”; see also J. M. JACQUET, Ph. DELEBECQUE and S. CORNELOUP, International trade law, Dalloz, 1st ed., 2007, p. 463.

⁴ J.M. JACQUET, Ph. DELEBECQUE and S. CORNELOUP, ibid.

⁵ D. FERRIER, op. cit, p.298 ; M. GRANIER, op. cit, p.49.

assets. This fruit is perceived by the one who masters the constitutive elements of the business assets, that is to say, who organizes and exploits the attractive elements of the clientele; it does not matter whether he is the owner, lessor, or borrower of these elements, and whether he exploits them himself or through a manager, employee, agent, or a managing tenant."¹

These reasons lead the case law to refuse to recognize the right to a clientele indemnity for the former concessionaire since he retains his clientele.²

3.2.3 The Possibility of a Claim for Damages

The distributor has the option to bring a claim for the payment of damages in the event of an abuse of the right not to renew the contract by the supplier or in the event of an abuse of the right of unilateral termination.

A) The Abuse of the Right not to Renew

According to common law, applicable to distribution contracts,³ unilateral termination during the term of a fixed-term contract is a fault, giving rise to a civil liability action for the victim⁴, regardless of the author of the termination, whether it be the supplier, as is most often the case, or the distributor.

However, unilateral termination is justified when the partner commits a serious fault or fails to fulfill their obligations and the contract provides for this option through an express resolutive clause.⁵

It is sometimes provided that the grantor may terminate the contract when the grantee does not regularly pay for their purchases, or when they experience difficulties manifested by the existence of unpaid commercial paper.

The grantor is entitled to terminate a contractual relationship by non-renewal and even to modify the area of exclusivity that had previously been granted to its distributor at the time of contract renewal. However, it must inform its distributor in a manner that allows the latter to take useful measures and not leave the latter to believe that the contract will be renewed.⁶ The Court of Cassation thus ruled that the attitude of the grantor, who, as every year at the same time, had offered the dealer to renew his contract, while failing to indicate in a timely manner that this time it was not the same

¹ Y. SERRA, French Competition Law, Dalloz ed, Paris, 1993, p.11. "The clientele belongs to those who know how to take it."

² Court of Cassation, Commercial Chamber, March 9, 1976, Civil Bulletin., IV, n° 76; Court of Cassation, Commercial Chamber, November 20, 1979, Civil Bulletin., IV, n°298.

³ Article 1 bis of the Algerian Commercial Code "the relationships between merchants are governed by the Commercial Code, and in the absence thereof, by the Civil Code and the customs of the profession...".

⁴ Art. 106 of the Algerian Civil Code "the contract is the law of the parties. It can only be revoked or modified by their mutual consent or for causes provided by law."

⁵ F. BOUHAFS, op. cit., p. 38.

⁶ M. BEHAR-TOUCHAIS and G. VIRASSAMY, op. cit, p.163.

contract, but a modified concession, was faulty.¹ In the same spirit, the Court of Cassation ruled in a judgment of February 9, 1981, that "Mas Gol was entitled to rely on the commitments made to him for the renewal of an exclusive concession; from these statements, the Court of Appeal could deduce that the company VWF had committed a fault by proposing to Mas Gol for 1975 a contract whose economic terms were fundamentally different from the previous one, a fault for which it owed him compensation."²

In the event of the non-renewal of a fixed-term contract, the parties have agreed on a term, the arrival of which results in the end of their contractual relationship and they do not need to express any intention to terminate.³

It is necessary to distinguish according to the clauses of the distribution contract, whether it includes a tacit renewal clause, and provides for the conditions of the extension, which must of course be respected.

Thus, the Court of Cassation has considered that a grantor does not commit a fault in this case by notifying his grantee three days after the expiration of the contract, his intention not to offer a new one.⁴

In the event that the contract does not address the issue of tacit renewal, the case law is hesitant, but it sometimes imposes a notice period on the contractor.⁵

When the fixed-term contract has been renewed numerous times, one might think that these various renewals have created in the concessionaire the hope of the continuation of the contractual relations through a new renewal, unless at least being informed before the normal expiration of the contract. Thus, although the concessionaire is not entitled to renewal, it does not seem excessive to require the grantor to inform him if he does not wish to renew the contract.⁶

B) The Abuse of the Right of Unilateral Termination

In the case of a distribution contract with an indefinite duration, damages may be awarded to the distributor when the contract has been terminated without sufficient notice.

It has been observed in this regard that one can present "as a general rule for contracts of indefinite duration the obligation for the co-contractor who wishes to terminate, to notify the other party a certain time in advance. This rule corresponds to

¹ Court of Cassation, Commercial Chamber, July 11, 1978, Civil Bulletin., IV, n°199, p. 167.

² Court of Cassation, Commercial Chamber, February 9, 1981, Dalloz Collection, 1982, note J. SCHMIDT-SZALEWSKI, p. 4.

³ J. MESTRE, op. cit., p. 21.

⁴ Court of Cassation, Commercial Chamber., May 3, 1979, Civil Bulletin., IV, n°140.

⁵ Court of Cassation, Commercial Chamber., June 13, 1978, Bull. civ., IV, n°164, p.140, which simply notes that the supplier had not committed any fault by not renewing the fixed-term contract after having respected a notice period that fell within the prior expectations of the parties and was in accordance with the practice in the matter.

⁶ M. BEHAR-TOUCHAIS and G. VIRASSAMY, op. cit., p.159. "Moreover, requiring notice even when the contract is for a fixed term is not so exorbitant, particularly in the matter of distribution contracts."

the legitimate concern of preventing the victim of the termination from suffering significant harm by allowing them to cope with the situation and to conclude a new contract."¹

The judges of the lower court control the conditions of the termination and verify whether the grantor acted in a manner free from abruptness.

The brusqueness and then the abuse will be established if the termination occurs without respecting the notice period stipulated in the contract. But this will also be the case even when the parties' agreement has not provided anything in this regard. Case law has indeed acknowledged that it is appropriate in this case to refer to customary practices.²

There are no legal rules in Algerian law regarding concession contracts quantifying the duration of the notice period. The same applies in French law. However, the Court of Cassation ruled in a decision of March 9, 1976, "that the Court of Appeal could consider that given the long duration of the relationship that existed between the parties and the brevity of the notice period, the termination occurred with a brusqueness that conferred an abusive character to it."³

This case law essentially takes into account the length of the relationship between the parties to assess whether the duration observed by the supplier is reasonable or not.⁴

When the distributor has committed a breach of its contractual obligations, can the supplier terminate the contract without notice? The case law is hesitant. It is true that some rulings have allowed for immediate termination without notice, when the continuation of the indefinite distribution contract is likely to make the grantor responsible towards others,⁵ or in the case of serious misconduct by the distributor.⁶ Nevertheless, in the absence of an express clause for automatic termination, it is generally accepted that the non-performance of a contract does not allow the grantor to unilaterally terminate the contract; if they do so, they then take the risk that the termination will be declared to their detriment.

It may happen that the abruptness of the termination is not solely due to the lack of sufficient notice; the co-contractor was contacted in a timely manner but was led to believe that the contract would continue. Thus, the Court of Cassation also considered it abusive to terminate these relationships after leading the other party to believe that the relationships would continue. It noted "that the ruling states that the company BRIDEL had maintained for about seven years an ever-increasing business relationship with the company DEBIC; it adds that the latter, given the manufacturing and packaging times of

¹ J. AZEMA, French Competition Law, University Presses of France, 2nd ed, Paris, 1989, p.174.

² Court of Cassation, Commercial Chamber., December 5, 1984, Civil Bulletin., IV, n° 332, p. 270.

³ Court of Cassation, Commercial Chamber., March 9, 1976, Civil Bulletin., IV, n° 89, p. 75.

⁴ Court of Cassation, Commercial Chamber., July 7, 1980, Civil Bulletin., IV, n°288, p.235, which holds a duration of three months to be in accordance with customary practices in the matter.

⁵ Court of Cassation, Commercial Chamber., February 12, 1968, Civil Bulletin., IV, n° 69, p. 59.

⁶ Court of Cassation, Commercial Chamber., April 14, 1992, contract. competition. consumption. 1992, no. 8-9, p. 4. Observation. L. LEVENEUR, who censures the decision that held the supplier at fault "without investigating, as invited, whether the faults alleged by the SEPMIS company against the LASSERRE company were not of a nature to justify the immediate termination of the contract."

the product, had to build up stock in relation to the volume of orders, which were generally placed only a week or two before delivery; the ruling further states that the company Bridel, which does not establish the wrongful behavior attributed to the company DEBIC, abruptly ceased, in March 1984, its purchases from it after leading it to believe that their relationship would continue normally, although it had concluded, as early as the beginning of January 1984, an agreement with another supplier; that in light of these findings, the Court of Appeal could conclude that the company BRIDEL had abused its right to terminate its commercial relations with the company DEBIC."¹ In this case, the abuse of rights is accepted because the supplier led the distributor to believe that the contractual relationships would continue, while he already knew that they would not be.

The termination may also appear abrupt when the distributor agrees to make the investments required by the latter.

Distribution contracts often place the obligation on distributors, under penalty of non-renewal or termination, to make investments. These may relate to the presentation of sales premises or their extension, or to the acquisition of equipment or tools.

The importance of the investments required from a distributor may lead the latter to believe that the contractual relationships will be continuous.² However, it also happens that the distributor makes investments favorable to the marketing of the supplier's products without having been requested to do so by the latter. Until recently, the Court of Cassation refused to take into account that the termination of the contractual relations by the supplier followed investments made by the distributor. Thus, in a ruling of March 2, 1981, the Court of Cassation expressly ruled "that by signing a contract that does not contain any guarantee regarding the consequences of the withdrawal of the concession on the clientele as well as on the fate of the investments, the company Olivier accepted the risks presented by an exclusive concession contract."³

In a ruling dated January 11, 1983, while the concessionaire insisted in its appeal on the importance of the investments made at the request of the grantor, the commercial chamber ruled that "in the case of a fixed-term contract terminated within the time frame, the Court of Appeal was not required to respond to the distributor's conclusions, to legally justify its decision to dismiss its claim for compensation for abuse of rights."⁴

This very strict case law had been criticized by legal scholars. It had indeed been observed "that the extent of the investments made by one of the parties reasonably leads it to rely on the durability of the contractual link and thus, correlatively, mitigates the other party's freedom to terminate."⁵

¹ Court of Cassation, Commercial Chamber., July 11, 1978, Civil Bulletin., IV, n°63, p.60; Quarterly review of civil law., 1995, p.88, Observation. J. MESTRE, the party responsible for the breach was this time the buyer and not the supplier, but the principle remains the same.

² J. MESTRE, The flexibility of automatic subrogation, quarterly review of civil law, 1990, p.655

³ Court of Cassation, Commercial Chamber; March 2, 1981, Civil Bulletin., IV, n°113, p.87.

⁴ Court of Cassation, Commercial Chamber; January 11, 1983, Civil Bulletin., IV, n° 16.

⁵ J. MESTRE, quarterly review of civil law, 1990, p.655.

More recently, to censor a ruling that this time had taken into account the distributor's investments to qualify the decision not to renew as abusive, the Court of Cassation ruled "that by determining thus, whereas, in the case of a contract concluded for a fixed term that had been terminated before its expiration within the contractually stipulated deadline, the grantor was not required to take into account the investments made by the concessionaire, the Court of Appeal did not provide a legal basis for its decision."¹ In this case, the investments had been made by the concessionaire on his own initiative. In the same spirit, the commercial chamber, by ruling of October 7, 1997, refused to admit the abuse of rights because the concessionaire had not been compelled to make the disputed investments.²

On the contrary, when investments have been required by the supplier, it is abusive on their part to terminate the contract.³

It is in this spirit that the commercial chamber of the Court of Cassation ruled in its decision of January 20, 1998. In this case, the company CITROEN had entered into a concession contract with the company SCAO which imposed on SCAO the obligation to make investments to revive the concession, and which provided for the option to terminate this contract with one year's notice, without compensation and without having to justify the termination. However, the company CITROEN had terminated the contract two years after its conclusion, based on the persistent decline in automobile sales. The Court of Appeal had acknowledged that given the investments required from SCAO, the dealer needed a relatively long period of operation to revive the business, but, based on the clause allowing termination with one year's notice, it had dismissed the distributor's claim for compensation for abusive termination. However, the Court of Cassation overturned this decision, on the grounds that "in ruling thus, after having noted that the granting companies had conditioned the conclusion of the contract on the establishment of a company with a capital of 1,500,000 francs fully paid up, on the blocking of current accounts of 2,500,000 francs of partner contributions, and on obtaining 8,600,000 francs of various credits, that these conditions were met by the dealer, that the contract originally concerned a 'deficit' concession, that 'the hoped-for recovery of the concession implied, given the investments required from the company SCAO, that the concessionaire would benefit from a relatively long operating period to ensure the sustainability of its business' and that the right of first refusal as well as the promise of sale for a duration of six years attested that 'the parties had contemplated long-term contractual relations,' the Court of Appeal, since the granting companies...limited themselves to arguing that the grantor, by terminating a contract of indefinite duration with the contractual notice, was not committing any abuse of rights since the company SCAO was aware, at the time of the conclusion of the contract, 'of

¹ Court of Cassation, Commercial Chamber; January 4, 1994, Civil Bulletin., IV, n° 13, p. 10.

² Quarterly review of civil law, 1998, p. 350, n° 07, observation. J. MESTRE.

³ Court of Cassation, Commercial Chamber; April 5, 1994, Civil Bulletin., IV, n° 149, p.118.

the precariousness of the contractual ties," did not draw the legal consequences of its findings" and violated Article 1147 of the Civil Code.¹

3.3 The Fate of the Stock

The distributor will face a problem at the termination of the contract. Owner of his stock, he cannot sell the goods that remain to him nor impose their return on the supplier, in the absence of a clause stipulated to that effect. Indeed, it is common that on the day the distribution contract ends, the distributor has not had the time to resell all the goods purchased from the supplier, as the contract often imposes the maintenance of a minimal stock, which makes his sale before the end of the contract and after the termination of the agreement contractually faulty. The former distributor can no longer (in principle) sell these goods under penalty of committing an act of unfair competition towards the new distributor(s) benefiting from an exclusivity.²

Case law has resolved the issue by simply noting that the dealer is a firm buyer and that, having become the owner, it is he who bears the burden; he must therefore assume, like all retailers, the risk of unsold goods. 81 The majority of decisions rendered state that the dealer cannot require the grantor to take back the stock that remains with him, at least when no clause in the contract provides for it.³

Indeed, the relationship between the grantor and the dealer goes beyond the classical perspective of the sales contract. The links that unite them are structural in nature, and the sale operation must be placed within the permanent framework of the concession: "the concession is a framework agreement within which application contracts are inserted; there is a hierarchy between the framework agreement and the application contracts that imposes itself and requires interpreting the latter in light of the former. The purpose of the concession is to ensure the distribution of the grantor's products; the sales that the grantor concludes within this framework presuppose that he does not deprive the dealer of the possibility of resale, which is the common and dominant concern of both parties."⁴

It is sometimes judged that the grantor who wrongfully terminates the contract must buy back the stock, but this buyback then appears as a form of compensation, even though a clause of the contract excluded any obligation to take back.⁵

A clause may impose on the grantor the take-back of the remaining stock upon termination of the contract; it is advisable in this case to specify the terms of this take-back (price, payment deadline) .¹

¹ Court of Cassation, Commercial Chamber ; January 20, 1998, Civil Bulletin., IV, n°40, p.30 ; Dalloz collection, 1998, p. 41, note C. JAMIN.

² A. SAYAG, the framework contract 2- distribution, Technical Library, Paris, 1995, p. 13.

³ F. COLLART DUTILLEUL and Ph. DELEBECQUE, Civil and Commercial Contracts, Dalloz ed, 6th ed. Paris, 2002, p.892

⁴ M. CABRILLAC, note under Court of Appeal of Paris 12 Oct. 1966 and 3 Feb. 1967: Dalloz collection, 1967, p. 516.

⁵ Cass. com., 23 May 2000, <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007413030>, consulted on June 21, 2025.

The Court of Cassation has always taken into account the fault of the distributor to validate the refusal of the supplier to take back the stocks (expired products due to poor management for example).²

A clause may then provide for the benefit of the supplier a simple option to take back the stock; in this case, the supplier is free regarding his decision to take back.³

A clause may finally exclude any repurchase by the distributor of the stock at the expiration of the contract; contractual freedom allows it. The solution is for the distributor to negotiate a notice period long enough to sell off the stock before termination.⁴

Conceders who wish to prevent the products from being marketed in a "gray market" often agree to the repurchase of the stocks held by the distributor at the end of the contract. The contract provides for the repurchase value of the goods and the terms of their payment.⁵

The agreement is analyzed "as a promise of sale by the distributor or repurchase by the conceder, or as a bilateral promise equivalent to a sale; the item is determinable since it concerns the remaining stock in inventory."⁶

4- Conclusion

It appears through doctrine and especially French case law that the rights and obligations of the parties to the distribution contract are not balanced; the rights of the supplier are more significant than those of the distributor.

Indeed, the supplier has the right to control its distributor to ensure compliance with its obligations, the right not to renew the fixed-term contract upon its expiration, and the right to terminate the indefinite contract, subject to compliance with a notice period in accordance with industry practices.

Very few legislators have legislated on distribution contracts. The Belgian legislator had developed legislation concerning the concession contract with a single purpose, that of protecting the interests of concessionaires, which was justified by the fact that there were no automobile manufacturers, thus no grantors in Belgian territory.

As a result, the Algerian legislator could have drafted a text protecting concessionaires from potential abuses by grantors, particularly at the time of termination, either in a fixed-term contract where the grantor refuses to renew without justifying a legitimate reason, while the concessionaire has contributed to the notoriety of the grantor's brand and has committed no fault, or in an indefinite-term contract without respecting a notice period in accordance with industry practices, or when the

¹ B. SAINTOURENS, op. cit, p.50.

² Court of Cassation, Commercial Chamber , January 20, 1998, op. cit.

³ B. SAINTOURENS, op. cit., p.50

⁴ D. LEGAL, op. cit., p. 459.

⁵ D. FERRIER, op. cit, p.297.

⁶ Ibid.

grantor has notified the termination of the fixed-term concession contract but has led the concessionaire to believe that the contract would continue by encouraging the latter to make significant investments. Certainly, for this last hypothesis, the rules of good faith constitute an effective means to hold the grantor liable, but they remain quite vague. Thus, specific regulation would be more appropriate.

The precariousness of the distributor's situation is also reflected in the fact that he is not entitled to receive a termination indemnity because there is no common interest mandate between him and the supplier, and the clientele attached to the business does not belong to him. On the other hand, he has a claim for damages in case of abuse of the right not to renew the contract by the supplier or in case of abuse of the right of unilateral termination by the latter.

In producing countries, especially of motor vehicles, such as France and Germany for example, the doctrine is not in favor of legislative intervention in this matter; it believes that the rules of common law are sufficient to restore balance to the contract. This is not the case in Algeria where the importation of goods is far more significant than exportation, hence the need for specific regulation aimed at protecting dealers.

We have reached the following results and recommendations through this research.

Results:

- Distribution proves to be a determining function in the delivery of products from the manufacturer to the user or end consumer

- Distribution is an economic operation, organized by distribution law

- The supplier chooses the type of network he wishes to create, depending on the distribution needs of his products.

the distributor can claim the right to renew his contract and to compensation, which case law refuses in most cases

Recommendations and Proposals:

It would be preferable for the legislator to determine the notice period that must be respected in indefinite-term distribution contracts.

the cases in which early and unilateral termination may be permitted must be specified by the legislator

when there is abuse in not renewing the contract, especially if the supplier makes its distributor believe that the contract will be renewed,

Adequate compensation should be given to the distributor to repair the damage he has suffered on the one hand, and to prevent abuse on the part of the supplier on the other hand.

It is recommended that the legislator find a solution to the problem of unsold stock that remains with the distributor after the end of the contract, as he cannot sell it because he has lost the right to exploit the trademark, and he cannot force the supplier to return it.

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