

The impact of recent legislative developments in private contracts on the classic rules of contract

أثر التطورات التشريعية الحديثة في العقود الخاصة على القواعد الكلاسيكية للعقد

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Abstract:

Recent economic and technological developments have revealed the shortcomings of the classic legal theory based on freedom of contract, as it is no longer capable of regulating complex market economy contracts. This prompted legislators to restrict this freedom to achieve balance and protect vulnerable parties, evidenced by special legislation such as competition and consumer protection laws. Although civil law remains the general law, new economic actors and the growing role of special laws have brought fundamental changes to contractual relationships. These developments highlight the need to understand the impact of special legislation on classic rules and analyze the legal system's effectiveness in achieving justice and economic stability amidst rapid changes.

KEY WORDS: principle of freedom of contract, freedom of contract, consumer, special legislation, market economy

الملخص:

كشفت التطورات الاقتصادية والتكنولوجية الحديثة عن أوجه القصور في النظرية القانونية الكلاسيكية القائمة على مبدأ حرية التعاقد، حيث لم تعد قادرة على تنظيم العقود المعقدة التي ظهرت مع اعتماد اقتصاد السوق. وقد استلزم ذلك تدخل المشرعين لتقييد هذه الحرية من أجل تحقيق التوازن وحماية الأطراف الأضعف، كما يتضح من ظهور تشريعات خاصة مثل قانون المنافسة وقانون حماية المستهلك. على الرغم من أن القانون المدني لا يزال يمثل القانون العام، إلا أن ظهور جهات فاعلة اقتصادية جديدة وتزايد دور هذه القوانين الخاصة أدى إلى تغييرات جوهرية في تنظيم العلاقات التعاقدية. تسلط هذه التطورات الضوء على الحاجة إلى فهم تأثير التشريعات الخاصة على القواعد الكلاسيكية للعقد وتحليل فعالية النظام القانوني في تحقيق العدالة والاستقرار الاقتصادي في ضوء التطورات السريعة.

الكلمات المفتاحية: مبدأ استقلالية الأطراف، حرية التعاقد، المستهلك، التشريعات الخاصة، اقتصاد السوق.

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Introduction

Recent economic, social, and technological developments have revealed the shortcomings of classical legal theory, based on the principles of freedom of contract and freedom of will, in achieving contractual balance and justice. With the adoption of the market economy system in most countries around the world, types of contracts have emerged that are technically, financially, and legally complex, making the traditional simple conception of the pre-contractual and contractual stages disproportionate to these developments. As a result, most countries have moved to restrict the scope of the principle of freedom of contract in these two stages by imposing a set of restrictions and obligations that limit its negative aspects.

Contemporary reality has cast a shadow over the general principles of contracts, which are finding it increasingly difficult to accommodate the emerging requirements of contracts in their modern form. This is due to the rapid pace of economic and social developments, along with the emergence of previously unknown legal means and developments. As a result, amending these general provisions, and even repealing them in some cases, has become an urgent necessity imposed by the nature of modern transactions.

Despite this development, civil law has remained the general law governing all legal acts in general and contractual relationships in particular in various areas of legal life. However, the transformations that have taken place in economic life and the changing role of the state as a result of the adoption of a new economic model within the framework of a market economy have opened the way for the emergence of new actors in the economic arena, represented by private legal entities such as commercial companies and economic groups. This emergence was a natural result of the establishment of economic freedoms, foremost among which was freedom of trade, which paved the way for the emergence of these entities and the expansion of their contractual activities.

In response to these changes, the Algerian legislature, like many other comparable legislatures, has created new types of contracts in line with this modernity, as the general rules of contract alone are no longer sufficient to regulate them efficiently. The main objective of this approach is to achieve greater contractual justice or balance between the parties to the contractual relationship, with particular attention paid to protecting the weaker party as a general rule required by the nature of these new contracts.

These successive developments have also led to the emergence of an independent legislative system, which contains new legal rules that differ fundamentally from the traditional principles that prevailed in the regulation of contractual relationships under the provisions of civil law. Civil law, in essence, establishes the principles of contractual freedom, the binding force of contracts, and equality between the parties regardless of their economic status, with the primary aim of stabilizing financial transactions, especially economic relations, and achieving legal security in economic life.

However, the intervention of the legislator through special laws, such as competition law, has contributed to the reformulation of the traditional concept of contract within the market environment. The primary objective of these laws is to protect the market from monopolistic behavior and practices that restrict competition, which may seek to exploit strong contractual positions to dominate the market at the expense of freedom of contract and equal opportunities between traders.

This has led to significant interference by competition law in the heart of contract law, resulting in the emergence of many legal issues. Among the most prominent of these issues is the question of defining the concept of a contract within the framework of competition law, and the extent of its legality if the contract involves a prohibited practice or abuse that disrupts the balance of contractual relations, as well as restrictions related to public order in light of the adoption of a new general economic system that regulates economic life and contractual relations that arise in the market in light of the disparities that result from the economic situations of the contracting parties in the market.

The general theory of contracts has remained relatively stable for a long time. However, the emergence of consumer protection legislation, with its new legal concepts and techniques, has had a significant impact on the traditional foundations of contracts. This legislative intervention was primarily aimed at ensuring effective consumer protection, given the inequality in contractual positions that characterizes consumer relations. This leads us to pose the following question:

In light of the steady expansion of special legislation and contracts, what is the current scope of application of the general principles and provisions contained in civil law to these contracts?

We will attempt to answer this question by adopting the descriptive and analytical approach; this will involve studying and analysing the specific rules that affect the classical (general) rules, and explaining their nature through the following main topics:

- 1.The impact of private contracts on traditional contract theory and the role of the state in their formation.
- 2 - Manifestations of contractual freedom in specific legislation.
- 3 New mechanisms for consumer protection

1. The impact of private contracts on traditional contract theory and the role of the state in their formation:

With the development and spread of private contracts, traditional contract rules have undergone radical changes, with the state emerging as the main regulator to strike a balance between contractual freedom and the public interest. It is therefore necessary to study this impact and understand how the state intervenes in the formation of private contracts.

1.1 Expansion of the scope of private contracts:

Contemporary social and economic realities have given rise to new types of contracts that were not previously known, which take various forms, such as contracts for the preservation of rights and the sale of designs. In addition, other types of contracts have emerged to meet new needs, such as lease agreements and lease sales, in addition to distance selling methods that rely on modern means of communication, such as television, the Internet, or direct home sales. Contracts related to consumer loans, sales outside of commercial stores, home product sales, and various insurance contracts have also become important.¹

A financial lease agreement (leasing) is an agreement that allows one party (the lessor) to finance assets for the benefit of another party (the lessee), with the lessor retaining ownership of these assets until the lessee has paid all the agreed financing installments and accessories.²

Some authors define it as "a contract whereby a finance company leases to the lessee a machine or property necessary for a production or service project that the lessee is implementing, for a specified period in return for an agreed rent paid by the lessee to the lessor throughout the lease term as specified in the contract, provided that at the end of the lease term, the lessee may either lease the machinery or real estate again, or deliver the items to the leasing company to be re-leased to others, or to dispose of them in one way or another as permitted by the right of ownership, or to choose to purchase the equipment or property at the value agreed upon in the contract, which takes into account the total value of the rent paid by the lessee throughout the lease term."³

This contract is an integral part of the leasing process, which is a comprehensive financing mechanism involving multiple stages, with changing roles for the parties and subject to different legal provisions at each stage.

The provisions and rules governing the leasing process derive their sources either from traditional contracts covered by laws, foremost among which is the Civil Code, or from commercial customs that have arisen to facilitate transactions and relations between parties in this field.

Leasing contracts emerged in response to the need of economic operators to finance their investments and implement their productive projects, whether to finance movable property or real estate. In this context, the leasing contract shares some aspects with many classic contracts, such as the sale contract and the loan contract, especially with regard to the possibility of ultimately transferring ownership, which is achieved in the leasing contract when the beneficiary exercises his right to purchase the subject matter of the contract at the end of its specified term. It is also similar to a lease agreement in that the beneficiary pays for the assets covered by the agreement in periodic installments. As a means of financing productive projects, it bears similarities to a loan agreement. However, there are fundamental

¹ Arrar Assal, Contractual Balance at the Time of Contract Formation, Doctoral Thesis in Law, Faculty of Law, University of Algiers 1, 2014/2015, p. 236.

² Munther Al-Qadah, The Legal Nature of Leasing Contracts, Journal of Legal Studies and Research, Issue 01, 2025, pp. 156-174, p. 161.

³ Shamil Hadi Najm Al-Azawi, Obligations of the Contracting Party in Construction Contracts, Operating Contracts, Transfer of Ownership Contracts, and BOT Contracts, National Center for Legal Publications, 2016, p. 61.

differences that make it a separate contract, which was recognized by the Algerian legislature when it issued Decree No. 96-09 on lease financing, recognizing it as a specific contract governed by⁴. This leads us to say that it is one of the contracts of compliance.

New types of contracts have also emerged from social factors, including integration contracts or what are known as pre-employment contracts, which are a mechanism for tackling unemployment. The parties to these contracts are the National Employment Agency, which acts as an intermediary between the employer and the beneficiary, and the contract is for a fixed term.

1. 2 The role of state intervention in the formation of contracts:

The evolution of the role of the state, and its transition from a state that intervenes directly in the economy to a state that regulates and organizes markets, has had a profound impact on the content of the legal rules governing contracts. This shift is clearly reflected in the creation of independent administrative authorities responsible for regulating and controlling the market in various vital sectors. More importantly, these independent authorities are concerned with achieving a balance between the rights and obligations of the various market players and seeking to ensure contractual balance between the contracting parties (⁵).

The contract has undergone some changes, encroaching on multiple areas and adopting some of the regulatory provisions found in administrative law, in a qualitative departure from the sphere of private law, to also touch on some of the principles established in criminal law. All this highlights the contract's ability to overcome all the difficulties it faces, and its expansion extends with full force in terms of time and place⁶.

The fact that contracts transcend the realm of private law and extend into the realm of public law has given rise to what jurisprudence refers to as the phenomenon of the "universalization of contracts" (⁷), a term coined by Western jurisprudence as a result of the decline and erosion of the principle of freedom of contract, which has been subject to numerous restrictions.

In this context, state intervention in the field of contracts took on new forms, which in turn gave rise to new forms of contractual formalities, such as the requirement to obtain licenses, approvals, and so on. This trend comes as a consolidation of the concept of the general regulatory system, where the function of the state, as mentioned above, has become to regulate economic activity through the emergence of independent administrative authorities, as a fundamental mechanism for regulating the market economy and defining its legal framework.

⁴ Qahmous, Nawal, The Specificity of the Contractual Relationship in Special Legislation (Case Study), Algerian Research 1, Part I/Issue: 14, 2020, pp. 214–231, pp. 215 and 216.

⁵ Ahmed Baaji, Towards Reforming the General Theory of Contracts, Research, University of Algiers 1, Part I, Issue 14, 2020, pp. 231-252, p. 242.

⁶ Sofiane Marabetine, The Future of Contracts, Doctoral Thesis, Third Cycle, Specialization in Civil Law and Insurance Law, Faculty of Law, University of Algiers 1, 2020/2021, p. 251.

⁷ The term "generalization of the contract" means that the private contract, which was previously limited to individual will, has been subject to public will (the will of the state). It has lost some of its private nature and has become more public to the extent that it has lost that nature. Quoted from Lakhdar Halis, "Generalization of Contracts," Journal of Scientific Studies, Issue 01, 486-516, p. 489.

Perhaps the most prominent of these independent administrative authorities that perform the function of economic regulation are, for example: the Monetary and Credit Council (⁸), the Banking Commission, the Commission for the Regulation and Supervision of Stock Exchange Operations (⁹), and the Competition Council, which is the central institutional framework responsible for protecting free competition from all violations. Contracts are now negotiated by groups, and their effects extend to many parties, such as the collective labor agreements provided for in Article 114 of Law 90-11 on labor relations.¹⁰ Independent administrative authorities have the power to review and make recommendations, as well as to find solutions and exercise regulatory power by establishing legal rules independently.¹¹

2 - Manifestations of contractual freedom in specific legislation

We address these manifestations through competition law and consumer protection, respectively:

2. 1 Manifestations of freedom in competition law

The principle of freedom of contract was defined as a new concept of contract within competition law, developed through various contractual practices and behaviors that arise in the market, in the context of addressing them on the basis that its provisions aim to preserve the contractual positions of market participants, protect freedom of competition, and protect the market itself¹².

Contractual freedom is one of the fundamental pillars of the liberal economic system, whereby individuals and legal entities have the power to establish legal relationships and determine their terms according to their will. However, this freedom is not absolute, but is subject to restrictions required by considerations of public order and economic interest, foremost among which are the rules of competition law. The latter aims to ensure a free and fair market, which often requires the regulation of contractual freedom and the restriction of certain aspects of it that may lead to a distortion of legitimate competition.

The public regulatory system is a branch or section of the public order system through which the state aims to regulate economic relations and transactions, as society needs this regulation to achieve certain public benefits and economic and social objectives. The individual is thus guided in his transactions to achieve these goals and objectives. The general regulatory system includes what is known as the general competitive system, the general control system, and the general stock exchange system.¹³

The Algerian legislator has paid great attention to the phenomenon of contractual orientation in the economic sphere, particularly in the area of competition. The Algerian

⁸ Decree 12-92 of April 14, relating to credit and loans, J.R. No. 16, repealed by Decree No. 03/11 of August 20, 2003, J.R. No. 52, and supplemented by Law No. 17/10 of October 11, 2017.

⁹ Ahmed Baaji, The Impact of Legislative Guidance on General Contract Theory, Doctoral Thesis, Third Cycle, Specialization: Civil Law and Insurance Law, Faculty of Law, University of Algiers-1, 2018/2019, 252.

¹⁰ Zamam Juma, Updating the General Theory of Contracts in Light of the Phenomenon of Legislative Specialization, Journal of Legal and Political Studies, Part 2, Issue 06, 2017, pp. 222-244, p. 237.

¹¹ Emad Al-Sawalhiya, Independent Authorities in Arab Systems, e-kutubltd, 2020, p. 19.

¹² Al-Hamid Ben Chaâlal, Application of the Principle of Contractual Freedom in the Field of Competition, Academic Journal of Legal Research, Vol. 15, No. 02, 2024, pp. 275-294, p. 278.

¹³ Mansour Bouariwa, Contractual Freedom under the General Economic System, Journal of Research in Contracts and Business Law, Issue 05, September 2018, p. 45.

Competition Law contains specific rules relating to the economic environment of the contract, which adds a new dimension to the concept of the contract¹⁴.

Contractual freedom under competition law is based on the principle of balance between free competition and another principle, whereby a contract can be a means of achieving this balance. The competition law¹⁵ has confirmed this, as it includes the concept of contract in many of its provisions, whether explicitly stated or implied in the concept of agreement and commercial relations.

The relationship between competition law and contract law has undergone a remarkable development through their convergence and harmonization, In this context, the contract is considered a legal mechanism for achieving an economic system based on the fundamental concepts contained in private law, which has led to the emergence of coexistence between economic law and civil law, on the basis that the market represents an arena and a field for the attraction of property rights and their free transfer through contracts. Therefore, the principle of contractual freedom has spread and become ingrained in the field of competition.

The increasing contribution of contractual mechanisms in the field of competition has led to restrictions on contractual freedom through competition law. This restriction has taken forms and manifestations that have led some to speak of economic civil law, while others attribute the rules of protection contained in competition law to the civil spirit that bound the latter, considering that civil law is, for many legal thinkers, the defender of individual freedoms.

It can be said that the contract is a central concept in a market economy, as the development of economic life has led to the emergence of new types of contracts in light of the diversity of commercial relations, whether between producers or between other market participants. Therefore, the contract has come to occupy an important place in competition law, despite its detachment from its original concept and terminology as stipulated in civil law, The market has come to rely on contracts as a legal mechanism, even though the desired market equilibrium is not among the objectives of contract law, which only recognizes economic relations within the framework of relations between individuals. In this context, the objective of achieving the smooth functioning of the market may conflict with the interests of the contracting parties, which are included in civil law. If we continue with the example of a sales contract, we find that the rules of competition go beyond the sales contract concluded between the seller and the buyer, taking into account third parties, such as competitors or market interveners.

2. 1. 1 - Practices restricting freedom of contract through competition law:

The impact of competition law rules on general contract theory takes several forms, including, for example, transparency of offers, non-discrimination and non-discriminatory practices, refusal of conditional sales, non-specification of prices in distribution framework agreements, application of the law on agreements in commercial contracts (distribution agreements in particular), and monitoring of competitiveness clauses.

This influence begins with the formation of contracts, whereby competition law leaves its mark on contractual freedom, and extends to the relative effect of the contract and its binding force.

¹⁴ Nmouchi Habiba, The Principle of Contractual Freedom in Competition Law, Journal of Research in Contracts and Business Law, Issue 5, December 2018, pp. 340-348, p. 340.

¹⁵ Article 11 of Order No. 03-03 of 19 July 2003 on competition law, J.R. 43, issued on 20 July 2003, amended and supplemented by Law No. 18-12 of 25 June 2008, J. R 36.

2. 1. 2. The public interest as a justification for restricting competition:

In clearer terms, competition law can limit contractual freedom based on the traditional principle in civil law, which stipulates that the freedom of the parties to enter into a contract is restricted. This contractual freedom ends where the public order begins, as this restriction applies even in a liberal system. Market rules can therefore reduce this freedom of contract. If the parties agree to reduce competition between them by including a non-competition clause in the contract, and if this clause is likely to disrupt the market, the public economic order requires that this clause be excluded or redrafted to comply with market rules.

By regulating free competition, the state aims to preserve the general economic order, which consists of a set of controls embodied in the form of mandatory legal rules that regulate the economic behavior of market actors on the one hand, and on the other hand, aims to push institutions to give their best and offer the best variety of goods and services with better quality and better prices. Since the danger does not come from intense competition, but rather from practices that prevent or eliminate it¹⁶

Contractual freedom can also be limited, as opponents are obliged to contract because refusal to contract is punishable under competition law. In addition, a competitive market requires that there be a contract, as the system of dealing in the market is based on contracts¹⁷

2.2 Manifestations of freedom in consumer protection law:

Before we address the manifestations of changes in the principles of traditional contract theory on consumer contract laws, we must define the latter.

2. 2. 1 Definition of consumer:

A consumer contract is defined as: a contract concluded between two parties, the first of which is called the consumer and the second of which is called the professional or service provider for a non-professional purpose in exchange for a known price. Under this contract, the first party receives a product from the second party. The concept of the consumer is a central concept in the provisions of consumer law, which requires clarification of its meaning and the means of protecting it.

Some legal scholars have defined the consumer as: any person who enters into legal transactions in order to obtain money or services for the purpose of satisfying his personal or family consumption needs¹⁸.

Under Law No. 09-03 on consumer protection and the suppression of fraud, Article 3 defines a consumer as: "any natural or legal person who acquires, for consideration or free of charge, goods or services intended for end use in order to satisfy their personal needs or those of another person or animal in their care¹⁹."

¹⁶ Abdelrahim Boujleda, Restrictions on Freedom of Competition in Algerian Legislation, doctoral thesis, third cycle, LMD, specialization: business law, Department of Law, Faculty of Law and Political Science, 2022/2023, p. 82.

¹⁷ Nmouchi Habiba, op. cit., p. 345

¹⁸ Fatima Achour, The General Protection System: A Mechanism for Protecting the Weaker Party in a Contract, Journal of Legal and Political Research and Studies, Constitutional Institutions and Political Systems Laboratory, Issue 7, June 2019, p. 25.

¹⁹ Law No. 09-03 of 25/02/2009 on consumer protection and the suppression of fraud, Official Gazette No. 15, dated 08/03/2009

2. 2. 2 - The decline of the principle of consent in consumer relations according to traditional contract theory

The reasons for the decline of the principle of freedom of contract can be attributed to the following factors:

The phenomenon of inequality between the contracting parties is a characteristic that has come to define contractual relationships, given the economic superiority of the intervening party compared to the vulnerable position of the consumer, which has necessitated intervention to review it, either by the legislator or by the judiciary.

The birth of the consumer protection movement to defend the interests of consumers in the United States, which then spread to Europe and later to the Arab world and North Africa.

The proliferation of consumer legislation in most countries around the world and the issuance of numerous regulatory texts, which led to its inflation, to the point that only specialists could understand it, affecting the traditional concept of contract theory represented by the principle of freedom of contract.

These are the reasons and factors that have cast a shadow over the general theory of contracts, affecting it and reducing the role of the principle of freedom of contract in contractual relationships²⁰.

3.New mechanisms for consumer protection:

Algerian lawmakers faced challenges in developing new mechanisms aimed at protecting consumers in the digital environment, including:

3.1 .Legal regulation of e-commerce and strengthening digital consumer protection:

The economic and social developments that have prevailed in the field of transactions have made contracts in need of greater protection than that provided for under general rules. This has prompted legislators to intervene in an attempt to establish contractual freedom within the economic market in order to ensure a balance of interests, particularly in the relationship between professionals and consumers, which is skewed due to unequal economic knowledge. Professionals are usually aware of the specific characteristics of the goods or services offered on the market, while consumers are unable to distinguish between products and materials in terms of quality or suitability for consumption because they are unaware of the conditions under which they are produced. For these reasons, lawmakers have put in place a bunch of safeguards, like the right to information to keep consumers in the loop, and making false or misleading advertising illegal if it affects how much consumers want to buy products or services. This is to stop any actions that are against the law and protect consumers.

In line with many international laws, Algerian lawmakers have paid special attention to regulating e-commerce and providing the necessary protection for digital consumers. Since civil law doesn't really cover the specifics of this type of transaction or protect the parties involved enough, they've created two separate legal systems: one to protect traditional consumers and the other to protect online consumers. This approach came in response to the urgent need to protect consumers who place their trust in online suppliers²¹ as professionals who are expected to be fully familiar with the characteristics of the goods and services offered. Accordingly, the legislator has obliged the supplier to disclose all information related

²⁰ Bakhayeb Issa, The Impact of Consumer Legislation on the Principles of Traditional Contract Theory, Academy of Social and Human Sciences, Department of Economics and Law, Issue 20, June 2018, pp. 110–117, pp. 111 and 112.

²¹ The Algerian legislator defines an electronic supplier as: any natural or legal person who markets or offers goods and services via electronic communications (Article 2 of Law 18-05 on electronic commerce).

to the website and the products offered and their exact details, in addition to ensuring that the goods delivered comply with the specifications advertised digitally.

Online advertisements are one of the means used by suppliers to directly and indirectly promote goods through **electronic** means of communication, with some websites and web pages publishing misleading advertisements to attract consumers by displaying attractive images, inaccurate descriptions, and non-existent features of the products, suggesting a false quality that is completely different from reality. Some pages also resort to stealing images from well-known websites to display them to consumers as if they were their own, and even posting images and voices of famous people on social media as if they were their customers, in order to attract consumers²².

In view of the inadequacy of general legal provisions to regulate consumer contracts and adequately protect the parties thereto, the legislator has enacted special laws in several areas. Nevertheless, it would have been more appropriate to remedy this shortcoming by including in the Civil Code, as the general law, legal rules applicable to all contracts and providing greater protection for consumers. This can be achieved by establishing preventive and protective mechanisms that ensure that consumers are well informed and give their consent in good faith. This is what most legislation has introduced with the aim of establishing new legal mechanisms that protect consumers and are compatible with technological, economic, and social developments, thereby helping to enshrine prior information about the contract, which is considered a protective obligation that preserves the contract and protects it from factors that could lead to its collapse or invalidation, and maintains the stability of electronic commercial transactions. Added to this is the obligation to provide a product or service that complies with specifications, granting the right to reflect and deliberate as a preliminary protective mechanism for consumer satisfaction, and granting the right of return and withdrawal as a subsequent protective mechanism that takes effect upon conclusion of the contract²³.

3.1.- The consumer's right to information prior to the contract:

The Algerian legislator has regulated the consumer's right to information in legal and regulatory texts, which the economic operator is obliged to implement given the importance of this right as the fundamental pillar on which the economic cycle is based, as it provides greater transparency in commercial practices and protects the consumer from fraud or deception by the economic operator. The Algerian legislator has obliged economic agents to provide consumers with all information that is true, non-deceptive, and non-misleading, and with everything related to products and services and the circumstances of the contract, so that consumers can make the decision they deem appropriate to enter into the contract with satisfaction²⁴.

²² Halima Maalawi, Protecting Consumers from Commercial Fraud in the Digital Environment, *Journal of Legal Studies*, Vol. 11, No. 01, 2025, pp. 174–197, p. 180.

²³ Saliha Ben Ali Khalida Makki, Development of Mechanisms to Protect Electronic Consumer Satisfaction, *Research of the University of Algiers 1*, Part I, Issue 14, 2020, pp. 109-128, pp. 110 and 111.

²⁴ Ghazali Nasira, Rizk Allah Al-Arabi Ben Mehdi, The consumer's right to obtain information to form sound satisfaction before contracting, *Journal of the Researcher in Humanities and Social Sciences*, Volume 11, Issue 4, 2019, pp. 69/80, p. 69.

Algerian lawmakers have not defined the obligation to provide information in the same way as French lawmakers, leaving it to jurisprudence and the courts to define it in accordance with developments in consumer contracts and the means of concluding them.

The term "information" refers to a statement, indication, or instruction that can provide clarification regarding an event or issue. The obligation to inform requires one of the contracting parties (the debtor) to inform the other contracting party (the creditor) of all information and data that will help them make an informed decision to conclude the contract or its implementation. The debtor must comply with the obligation to inform in addition to the information and data provided to the creditor at the place of the contract; that is, he must inform him of all information that would ensure the contract is performed in good faith. Therefore, the obligation to inform requires honesty and integrity and the avoidance of deception and misleading the other contracting party²⁵.

The obligation to inform is characterized by several features, including:

- A general obligation prior to the contract: in terms of the scope of the obligation, this obligation is considered a general obligation that prevails over the period preceding the contract in all contracts concluded by electronic means - It therefore differs from the obligation to provide advice or counsel arising from a consulting contract. Its content is that the debtor must notify the other contracting party prior to the contract of all information and data relating to the contract to be concluded, in order to reach a sound, free, and informed consent in general. As a result, it is not a specific obligation to a particular contract,²⁶.

The obligation to inform is a reciprocal obligation:

The obligation to inform before contracting creates reciprocal obligations and is considered equivalent to the obligation of confidentiality and the obligation not to use²⁷.

3.2 .Justifications for imposing the obligation to inform:

The obligation to disclose information prior to contracting finds its natural place in the stage preceding the formation of the contract, which is the stage of consent and its correction. Failure to provide information that should be known to the other party is considered fraud by law, in accordance with the first paragraph of Article 86 of the Civil Code: Deliberate silence about a fact or circumstance is considered fraud if it is proven that the defrauded party would not have entered into the contract had they known about that fact or circumstance." Therefore, jurists consider that the obligation to inform is an obligation that arises in the stage prior to the conclusion of the contract, based on arguments and justifications represented by the obligation to inform in contracts of consent:

Informing the contracting party at the time of concluding the contract and during its execution is considered a delayed procedure if the intention is to influence the decision of the contracting party. The general rule is that the principal arises before the branch, and the obligation arises before its source arises, as the contract has not yet been concluded to the extent that it can be said that this obligation is a contractual obligation.

²⁵ Hala Mahmoud Shaker Al-Mallakh, Commitment to Information in Compliance Contracts, Dar Al-Yazuri Scientific Publishing and Distribution, Amman, Jordan , 2024, p. 14

²⁶ Mehret Ghalib Kamel, The Producer's Obligation to Inform Before Contracting in Electronic Contracts, Dar Al-Yazourdi Scientific Publishing and Distribution, Amman, Jordan 2018, p. 38.

²⁷ Ahmed Mohamed Ahmed Al-Beltagy, Basis and Characteristics of the Obligation to Inform Before Contracting, Journal of Legal and Economic Research, Vol. 14, 2024, p. 28

It can also be said that the obligation to inform, in its simplest form, exists in various contracts, as stated in Article 41 of the Algerian Civil Code, which stipulates the nullity of an unspecified place and specifies the forms of specifying the place, thereby requiring notification of the place of the contract, whatever its type. Article 256 of the Algerian Civil Code also stipulates, with regard to sales contracts, that there must be sufficient knowledge of the sale²⁸.

Restoring or achieving equality of knowledge between the parties through the achievement of sound conscious and informed consent, because the disparity generated by scientific, technological, and industrial progress and the resulting spread of modern means of communication, which revealed many types of goods and products led to disparity in knowledge and technical expertise between the contracting parties, Therefore, jurisprudence has confirmed that the consent of the contracting party is not sufficiently informed unless when he has full knowledge of all elements related to the subject of the contract²⁹.

The inadequacy of the theory of defects of consent in achieving protection The protection of consent in the pre-contractual stage was achieved through the theory of defects of consent, but practical application revealed the inadequacy of this theory in achieving the desired protection for the consumer in some cases due to the strict conditions required for its application³⁰.

3.3. .The consumer's right to withdraw from the contract:

According to traditional jurisprudence, the contract is governed in terms of its execution by two fundamental principles that branch out from the principle of the authority of will, namely: the principle of the binding force of the contract and the principle of the relativity of the contract. The first relates to the effects of the contract in terms of its subject matter, while the latter relates to the effects of the contract in terms of persons. As a result of the economic and knowledge gap between the professional and the consumer, which has led to an imbalance in the contractual relationship between them, and as a result of the binding force of the contract, the consumer cannot revoke the contract of his own volition except by agreement with the professional. Therefore, the legislator intervenes to limit the consequences of this principle by mitigating it, by recognizing the consumer's right of withdrawal and intervening to combat the arbitrary conditions in which the consumer is trapped. Furthermore, the principle of the relative effect of the contract, which stipulates that the effects of the contract apply to its parties, the legislator has broadened the restrictions that apply to it by stipulating the interdependence of contracts, particularly in linking consumer or real estate loan contracts to the contract that finances them, and granting consumer protection associations the right to sue anyone involved in the process of developing a consumer product³¹.

There are two forms of contract withdrawal:

First scenario: Pre-contract cooling-off period. In this scenario, the consumer has the right to withdraw from the contract before it is concluded, known as the right of withdrawal. This

²⁸ Sarah Bellamy, The Scope of Freedom of Contract in Light of the Development of Contract Law, *Journal of Contract and Business Law Research*, Issue 5/December 8102, pp. 73/74

²⁹ Zahira Aboub, The Consumer's Right to Information, *Journal of Comparative Legal Studies*, Issue 1, 2015, pp. 134-148, p. 142.

³⁰ Zahira Aboub, same reference, p. 142.

³¹ Yacht Issa, The Impact of Consumer Legislation on the Principles of Traditional Contract Theory, *Academy of Social and Human Sciences, Department of Economics and Law*, Issue 20, June 2018, pp. 110-117, p. 113.

right is valid for a period specified by law, after which the contract is deemed to have been concluded.

Second scenario: Cooling-off period after the contract has been concluded. In this scenario, known as the withdrawal period, the consumer has the right to decide to withdraw from the contract after it has been concluded and is therefore entitled to cancel the contract he has concluded of his own volition.

This right is justified and has its legal basis in the concept of a non-binding contract, whereby the contract, despite being validly concluded, is only enforceable against one of the parties, while the other party, namely the consumer who has this right, is not bound by the contract³².

Conclusion

Finally, it can be inferred from the above that the Algerian legislator sought to remedy the legislative shortcomings that marred the provisions of civil law in the face of the emerging challenges brought about by rapid technological developments in the fields of commercial and economic contracts. This effort was manifested in the adoption of special and separate laws for each sector individually. However, this legislative approach, while aimed at achieving precise regulation and specific suitability for each field, has weakened the central role of general contract law by activating the principle of 'the specific restricts the general'. While these special laws included effective mechanisms for consumer protection within their specific scope, it would have been more appropriate for the legislator to include these mechanisms in the general provisions of contracts in civil law, so that they would apply to all types of contracts in a comprehensive manner.

The specificity of contractual relationships at present has led to the emergence of special legislation, such as competition law and consumer protection law. This trend has been accompanied by a noticeable decline in the status of general contract theory as a legal framework characterized by a comprehensive and abstract view of contractual relationships, due to its consistent general principles applicable to all types of contracts. This theory is essentially based on the assumption of equality and freedom of will (), which grants protection to every contracting party regardless of their status. This trend is contrary to the logic of special legislation, which builds its rules and direction based on the specific status of one of the parties to the contractual relationship without taking the other parties into consideration.

Economic, technical, or legal capacity has clearly established the dominance of the stronger party in the economic market over the weaker party, resulting in the emergence of a debate on the reconciliation of mutual interests in contractual economic relationships, whether between professionals or between professionals and consumers. This has necessitated the search for means to create a balance between these conflicting interests, because the reality of contemporary contractual relationships allows us to say that the assumption that each party is capable of defending its interests does not apply to the reality of economic contractual relationships and does not reflect the actual imbalances between interests.

³² Fatima Ashour, The General Protective System: A Mechanism for Protecting the Weaker Party in a Contract, Journal of Legal and Political Research and Studies - Laboratory of Constitutional Institutions and Political Systems, Issue 7 - June 2019, pp. 9-34, p. 27.

It is clear that the Algerian legislator has worked to make the contract a fundamental concept on which market rules are based, believing that it is a space for special rules in the market created by the will of economic agents, and that its scope of application is limited only by violations of the general economic system. However, the legislator has not worked to strengthen the role of these mechanisms in a way that keeps pace with the dynamics and mobility of the market and its balance. and balance.

We can also conclude that Algerian legislators have continuously sought to achieve a balance between the interests of the various parties in the contractual relationship, even if this meant establishing a protective public system that would undermine established traditional principles such as freedom of contract, the binding force of contracts, the relative effect of the contract, and other principles assumed by the principle of the rule of will.

The new priorities of the Algerian legislator are to create effective equality between the contracting parties and to protect the weaker party, as the will of the parties alone is no longer sufficient to create full and comprehensive obligations, which has led the legislator to impose obligations on the contracting parties that are derived from the law.

-Recommendations

It is necessary to review the articles of the Civil Code by examining how to amend the general theory of contracts through the inclusion of some new concepts, such as how to conclude electronic contracts.

It is necessary to review the way special legislation is dealt with, considering it a source and factor for developing rules, after it was part of the general theory as rigid rules. On the other hand, it is a factor for enriching the content of this theory by accepting the superiority of its special rules, which in turn push the theory to revive its rigid concepts.

We call on Algerian lawmakers to work on establishing contractual protection mechanisms in the field of competition law by increasing the scope of their new roles and strengthening control over them, considering them a tool for regulating the market and creating balance within it, thereby achieving a compromise in the regulation of contractual relations within the specific rules guaranteed by competition law.

It should be noted that the obligation to inform is not a new theory, as it is found in the general rules of the theory of fraud, particularly in the concept of concealment. The specific rules complement the general theory, and their existence in this proposition has only realistic and practical justifications. The specific rules cannot be dispensed with to replace them. Rather, we propose integrating consumer protection rules with general rules, as many advanced legal systems, such as Germany and Quebec, have done.

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