

The Impact of the Evolution of the Public Order

Concept on the Contract

أثر تطور مفهوم النظام العام على العقد

Djeboua Mounira

Faculty of Law - University of Algiers 1

m.djeboua@univ-alger.dz

Date of submission:05/02/2023, Date of final acceptance:02/06/2023, Date of publication: June 2023

Abstract :

The increase in the idea of the general system and the ramification of its branches affected the contract so that it directly affected the traditional guiding principles that govern the contract, considering that these principles became classics that led to the aging of the contract and its inability to keep pace with the lived reality, and the economic system had forced the opening of the contractual circle In front of the state, so that it has become interfering in contracts and imposing many contracts and restrictions on transactions with the aim of establishing the public economic order and achieving the public interest.

keywords : public order; directive; competitive; economic; guiding principles of the contract; evolution; decline.

ملخص:

لقد أدى تزايد فكرة النظام العام وتشعب فروعه إلى التأثير على العقد بحيث أصبح يمس بطريقة مباشرة بالمبادئ التوجيهية التقليدية التي تحكم العقد بإعتبار أن هذه المبادئ أصبحت كلاسيكية أدت إلى شيخوخة العقد وعدم إستعابه لمواكبة الواقع المعاش، كما أن النظام الاقتصادي قد فرض فتح الدائرة التعاقدية أمام الدولة بحيث أصبحت تتدخل في العقود وتفرض العديد من العقود والقيود على التعاملات بهدف كريس النظام العام الاقتصادي وتحقيق المصلحة العامة.

الكلمات المفتاحية: النظام العام؛ التوجيهي؛ التنافسي؛ الاقتصادي؛ المبادئ التوجيهية للعقد؛ تطور تراجع.

Auteur correspondant : Djarboua Mounira

Introduction:

The contract is considered one of the most significant classical theories in civil law, as it has been addressed by legislation as one of the oldest legal systems. The contract has remained rigid for a long time. However, legislations have realized that it is necessary to impose some developments on the contract, a set of transformations resulting from its impact by external elements that affected its organization and philosophy. Besides, the contract is fundamentally based on will, considering it the authority in creating the commitment, determining its effects and scope. Thus, the formation of the contract through this classical logic suited the nature of the economy in the past, where will was formed by offer and acceptance, as the economy was based on the law of supply and demand within narrow limits. In its traditional concept, the contract is built on the principle that everything that is contractual is impartial. However, not everything that is contractual necessarily is impartial, as there remains a mere presumption followed by its acceptance, since an individual is deemed capable of defending his own economic interest. «This assumes equality between the contracting parties, both legally and economically, and due to economic and social changes that allowed the public order to appear in the form of an imposed constraint on contractual relationships, legislation intervened in the economic field to regulate contractual relationships in a way that ensures the safety and general stability of its individuals.

The economic transformations experienced by societies have resulted in numerous profound effects on society in general and on laws in particular, considering that laws are a product of society. This has necessarily had a direct impact on the general theory of contracts, which has somewhat reduced its burden, causing a kind of fatigue and confusion in general texts. Perhaps what confirms this significant decline in contract law is the emergence of deviant legal entities, such as the widespread use of adhesion contracts and the appearance of specialized and professional practitioners. This has rendered classic contractual principles incapable of achieving equality between the parties to the contract, and the antiquated principles governing contractual relationships have become inadequate in providing necessary protection for the contracting party. This has created a crisis that affects the contract.

In the face of this complicated situation, which has created a certain imbalance between the parties to contractual relationships in contracts, traditional principles have proven inadequate to keep up with reality and provide the necessary protection. This has prompted legislators to intervene with a set of laws that aim to protect the weaker party, as all the laws enacted by the legislator have been put under the cover of the public order.

Given its unique characteristics, the public order constitutes a barrier to absolute contractual freedom that governs contractual relations. However, it has undergone successive developments that have led to the emergence of an economic public order that aligns with the ongoing economic developments. This has prompted the state to intervene in all economic activities to overcome the severity of economic and social crises and disturbances. As such, the new form of the public order has reviewed its objectives, which has led to reconsider the minimum stability and change the direction of contractual freedom.

As a result of the development of the public order, what has become known as the economic public order which emerged with two its types: protective and directive. The general aim of the public order is to protect the weaker party in the contract, who usually needs protection, and the second is to achieve an economic and social policy that is imposed by mandatory rules.

The importance of the topic is manifested in its ability to reveal the extent to which the general principles of civil law are affected by modern legislative trends on the one hand, and the sweeping of the rules of the public order in all its branches and their direct impact on the contract on the other hand, which works to reduce the classical contractual principles.

Through what was previously mentioned, we raise the following problem statement: To what extent has the public order been able to effect the general rules of civil law, providing protection to the contracting parties and establishing the concept of public interest and achieving the required contractual justice?

1: The Impact of the Concept of the Public Order on Contracts: Compromising the Guiding Principles in the Contract

The evolution of the concept of public order has directly impacted the general theory of contracts, in such a way that the rigid rules contained within the general theory of contracts have proven unable to respond to the rules imposed by public order. This is particularly evident with the emergence of the directive concept of public order, which has led to the restriction of the principle of contractual freedom at times, and its expansion at other times. As a result, the concept of public order has had an excessive impact on the guiding principles of contracts.

The term 'Directive Public Order' refers to the various legal provisions that enable the state to direct contractual relationships towards achieving social benefit. This has a direct impact on contractual freedom, as the rules of the Directive Public Order lead to the consideration of public interest over the private interests of the contracting parties."¹

1.1: Manifestations of the competitive public order on the contract: a shift in the function of the contract

By addressing the provisions of the Algerian Consumer Protection Law n° 09-03 and the Competition law n° 03-03, we find that the Algerian legislator has established general rules of the directive public order aimed at creating a suitable atmosphere between the contracting parties in the contract, which creates an appropriate environment for the revitalization of contractual freedom in the contractual relationship. These rules also aim to establish and revitalize legitimate competition between the parties, reject all forms of deceptive competition, and promote the principle of legitimate competition within the framework of supply and demand policies.²

The competitive public order aimed at achieving the public interest and protecting economic transactions in the market and transactions sector. It is characterized by a directive order that grants economic actors the freedom to engage in economic transactions and actions within a specific framework of contractual freedom and contractual equality, which are guiding principles in contracts and form a backbone of economic liberalism that the competitive public order seeks to establish.

The competitive public order has made the contract serve a modern function, to the extent that the it has become collective within the scope of market law, considering it a creative mechanism for regulating economic transactions that achieve public benefit within the market. Besides, the contract is no longer limited to its narrow concept as a relationship between two parties only, but it extends to multiple other parties concerned with the proper functioning of supply and demand laws. This highlights the uniqueness of economic law, which imposes the intervention of parties other than creditors and debtors to maintain the freedom of competition, this is what is called the competitive public order.³

The contract shall comply with the rules established by the competitive public order in the competition law, as they are mandatory rules that cannot be breached. In the event of a contract breaching these rules, it shall be considered void. Perhaps this penalty applied to the contract aims to protect the market and public interest, which will lead to the protection of individual rights of economic actors. The specificity of the competitive public order establishes the principles of freedom and equality among the actors as a primary means of achieving an economic public order that aims to serve the public interest.

The aim of the legislator through imposing the competitive public order could be to protect the individual rights of the contracting parties on the one hand, and to protect public interest on the other hand, in addition to establishing regulatory rules for the market from an economic perspective. Thus, the rules of the competitive public order ensure harmony between the public interest of society and the private interest of the consumer.

The competitive public order has been established as a legal mechanism by the legislator, enabling the judge to intervene in contracts in order to address economic changes imposed by the market that affect the contract. The judge cannot intervene to make a contract void because of the high price based on economic principles, but can rely on the general principles of contract theory. On the contrary, the legislator allowed for administrative intervention in contracts as stated in the Law of Free Pricing and Competition, if there is an unjustified increase in prices with regards to goods, products, or regulated services. Perhaps the legislative intervention under the directive public order in the field of contracts aims to achieve economic efficiency⁴, given the insufficiency of traditional rules in civil law to achieve this goal, where the legislator resorted to the competitive public order to give the necessary legal effectiveness to the rule.

1.2 : The impact of protective public order on the contract :

Numerous systems have emerged that affect the contract. In addition to the directive public order that has worked on a direct impact on the directive rules in contracts, another system has appeared that aims to effect contracts, namely the protective order. It seeks to establish a kind of economic balance between the weak and the strong contracting parties, a balance that is absent when contract freedom is lacking as a basis for regulating the contractual relationship⁵. Therefore, the legislator often intervenes imperatively to regulate a number of contracts concluded between parties who are in unequal positions, such as the professional and the consumer, or the employee and the employer.

1.2.1: Restoring the lost equality in contracts

In this way, the Algerian Civil Law has recognized a certain deficiency in enacting laws of a social nature that deal with the weaker classes within society, whose interests conflict with those of the more powerful ones. Perhaps this is what prompted the legislator to set laws such as the Consumer Protection Act 09-03."and The Competition Act 03-03 which carries a social character that is embodied in the mandatory rules described as being part of the protective public order, which protects the weak contracting party and works to balance interests. The goal of the protective public order is to establish contractual balance between two economically unequal parties, one of which is the consumer and the other is a professional with economic and technological power that enables them to impose their strength on the consumer.⁶

The idea behind the principle of protective public order is to address the issue of equality between contracting parties, ensuring all types of disparities are balanced in contractual relationships. Prior to activating the protective public order feature, contractual relationships were

characterized by a kind of inequality where one party in the contract was in a weaker position due to the absence of any negotiation or contractual bargaining compared to the professional party.⁷ Thus, calls were raised for the intervention of both the legislator and the judiciary to ensure the respect of contractual balance.⁸ As intervention is only made under the cover of the protective public order and perhaps that is what the French legislator and some comparative legislations have resorted to, by revising the regulation of a group of private contracts and making them part of the public order, as an attempt to determine the actual contractual balance between the parties.⁹

The consumer protection Law No. 09-03 of February 25, 2009, related to consumer protection and the suppression of fraud, (JORA n° 15 of March 03, 2009), amended by Article 75 of Ordinance No. 15-01 of July 23, 2015, containing the supplementary finance law for the year 2015 (JORA n°. 40 of July 23, /2015) amended and supplemented by Law n° 18-09 of June 10, 2018, (JORA n° 35 of June 13, 2018) .and the Ordinance n°. 03-03 of July 19, 2003, related to competition, (JORA n° 43 of July 20,2003), amended and supplemented by Law n°. 08-12 of June 25, 2008, (JORA n° 36 of July 2,,2008) and by Law n°. 05-10 of August 15, 2010, JORA n°. 46 of August 18, 2010. are laws that have a protective nature aimed at protecting the satisfaction of the weaker party in a contractual relationship. It can be inferred from this idea that the general rules alone are no longer sufficient to protect the contracting party in consumer contracts, as the rules of civil law have become insufficient to achieve contractual balance.

The classical principles of general contract theory have become inadequate to provide the desired protection for the contracting parties, especially the weak party. This was clearly evident in the insufficient application of protection based on the vices of consent theory or based on the theory of subject or cause theory . In order to address this deficiency, the legislator has put in place certain mechanisms to protect the weaker party¹⁰, such as the obligation to inform and educate the consumer, granting time for reflection, or the right of withdrawal. This is because the protective public order ensures that the weaker party is provided with sufficient information and necessary time for thoughtful and informed decision-making, just like the economically stronger party.

The protective public order has carried a set of modern mechanisms aimed at protecting the contracting party in the contractual relationship, which have become clear in special legislation such as the Consumer Protection Act 09-03 and the Competition Law n° 03-03. These mechanisms have a protective character related to the general system, one of the most important mechanisms of the general protective system is perhaps giving the contracting party a period of time for reflection, between the acceptance of the offer and signing the contract, to balance their obligations and compare them with other offers. Furthermore, the protective public order has provided a mechanism that allows the contracting party to withdraw from the contract as a protective measure granted to the consumer, giving them the right to retract the contract even after signing it. This right is based on a clear presumption that the commitment was accepted by the consumer quickly.¹¹

The aim behind the legislature's establishment of these mechanisms could be to set a general protective legal basis that enshrines the public interest of both the community and the contracting party, as well as to make the public good apparent. Legislative intervention remains necessary in accordance with the protective public order, and any breaching of the rules and provisions of the latter entails relative nullity according to the jurisprudential approach¹², because it concerns the protection of the interests of some individuals and not the public good. These individuals still

have the right to file a claim of nullity personally or collectively, contrary to the provisions of breaching the directive public order rules that summons absolute nullity.

1.2.2: The protective public order as an effective means of achieving contractual balance in the contract.

The contractual balance is considered a flexible and vague concept due to the lack of a recognized basis or specific standard in the contract that shows whether there is a contractual balance or not. It is a mechanism that ensures the survival of the contract.¹³ Although civil law aims to achieve the idea of contractual balance through various mechanisms, these rules have often been inadequate in achieving the idea of contractual balance in the contract, as one party remains dominant while the other remains weak. Perhaps this is what prompted the legislator to establish the protective public order in specific legislation and make it an effective mechanism to achieve contractual balance in the contract. This is evident in the Consumer Protection Act 09-03 and the Competition law n° 03-03, through which the legislator endeavoured to achieve contractual balance. One aspect of jurisprudence sees that the protective public order aims to achieve contractual balance in the Consumer Protection Law by emphasizing the contract's terms, unlike the contractual balance aimed by the Competition Law, which represents a comprehensive balance that includes competition as a whole, ensuring a complete and comprehensive contractual balance in the contract.¹⁴

The protective public order emerged as a reaction to the failure of the principle of absolute contractual freedom to achieve equality and protection for the contracting parties in the contract. This failure resulted in inequality in the contract and ultimately led to the exploitation of the weaker party in the contractual relationship and the disruption of the balance within the contract. This led to a decline in the freedom and principles directed in civil law¹⁵ to ensure the achievement of true equality between the contracting parties, which resulted in the emergence of what is known as the protective public order.

If a contract is based on a traditional approach, each party defends their legitimate interests. In modern approach, it has become necessary to adopt new principles that are more appropriate to the needs of the contract and parties, as well as to the economic and social conditions. The most important of these principles are solidarity, brotherhood, and equality among the contracting parties.¹⁶ This last principle poses a real problematic because equality remains absent between two persons who have different wills and objectives.

As the contract is *pacta sunt servanda* in accordance with Article 106 of the Civil Law, it becomes binding between the parties. In the case of an agreement between two unequal parties, it is natural that actual equality between the parties is absent, although the creation of the contract gives both parties the ability to defend their interests.

As parties are unable to achieve this, the legislator intervenes under the protective public order system and introduces principles that affect the traditional principles of contract theory, such as the binding force of the contract and the relative impact.¹⁷ This is an attempt to protect a certain category of contracting parties, it is necessary to restore equality between the parties when implementing the concluded contract so that the technologically and economically weaker party can fully exercise their rights, provided that the contract is executed with knowledge and without abuse by the stronger party.

2 : The Impact of the Economic Public Order on the Contract: Establishment of state intervention in the affairs of contracting parties

The economic fluctuations and technological advancements witnessed at the end of the 19th century and the beginning of the 20th century have led to several crises, which have in turn resulted in the emergence of social inequalities between different classes of society. These inequalities were an inevitable consequence of the adoption of a liberal economic policy by states. This social stratification has directly affected transactions, particularly in the creation of contracts, where all contracts have become characterized by inequality due to the existence of a weak party and a strong party in the contractual relationship¹⁸. Perhaps what prompted the state to intervene in directing the economy and contracts was the need to create contractual balance in contracts and to alleviate the injustice against the weak party. This aligns completely with the capitalist system's policy that believes in the necessity of state intervention in directing the economy. The legislator intervened in contracts to impose contractual solidarity and balance, to propagate the principle of equality in contractual relations, as well as to create a type of equality through the creation of special laws that merge to achieve a duality that harmonizes in a way that allows for the consolidation of contractual equality and the consolidation of the idea of contractual balance.

2.1 : State interference in the contract : The contract is subject to economic developments

The contract is a tool for achieving benefit for both parties and creating obligations. Once the will of the contracting parties coincides, the contract is concluded and becomes binding for both parties as it emanates from the principle of the authority of will. Therefore, it is not permissible to interfere or breach it. However, due to economic and social developments, the contract has undergone a kind of modernization, where it is no longer limited to the contracting parties only. Thus, the legislator intervenes in this relationship by setting regulations to ensure the freedom of contract and the safety of the contracting parties, out of fear of causing harm to the rules of the public system, if the contract is left subject to the absolute freedom of the parties.

In the 20th century, new jurisprudential ideas emerged calling for intervention and direction in the contract, leading to an increased legislative intervention in contractual relationships that were previously confined to the will of the contracting parties, with rare opportunities for legislative intervention. Subsequently, a part of civil jurisprudence focused on the development of the contract, influenced by socialist thought, which calls for preventing the exploitation of the weaker party due to the changes that have occurred in society. Then, jurisprudence turned towards giving contracts a liberal character. The consequence of this intervention and influence of the economic phenomenon is that the contract loses its specific aspect and becomes generalized¹⁹. This is reflected in the private law being imbued with the public law force in a clear way, especially as the restrictions imposed by the state on economic freedom have increased, through the state's regulation of economic forces within the framework of contract generalization. One of the manifestations of the generalization of the contract is the intervention of the state in the agreement of the wills of the parties.²⁰

2.1.1: State Intervention to Direct the Economy: The Economy Governs Contracts

The contract is considered a general framework and legal structure that encompasses all economic transactions and exchanges. Modern economic exchanges have created new economic pressures and competitions that traditional contract rules are unable to accommodate. This has led countries and legislations to search for modern formulas to expand economic transactions and

to establish the principles of transparency, equality, and fair competition between the contracting parties. Therefore, this can only be achieved through state intervention in directing the economy and contracts.

The intervention carried out by the legislator perhaps has led to a certain change in the foundations of the liberal economic system, which is based on the principle of free competition in the market²¹. State or legislative intervention in this context has made the economy directed by the state, to the extent that the state has become directly involved in regulating contracts with the aim of preserving production, distributing funds and services, ensuring price stability, and maintaining a good rate of circulation of economic transactions²². The economic public order imposed by the state is considered a closely-monitored indicator that has a reciprocal relationship with the growth rate, which the state continuously intervenes in to make it consistent with economic transformations and their consequences. As a means of production, distribution, and employment, to stimulate commercial and industrial activity, and to increase the economy's capacity to attract investment and gain access to the global economic system. Due to the phenomenon of economic globalization, advanced countries and those on the path of growth have been compelled to implement a set of economic reforms, including price liberalization and lifting of import barriers, as well as liberalizing foreign direct investment.²³

If there is an increase in production, consequently, consumption is an economic policy issue, then the law, on the other hand, is responsible for determining the legal framework and enhancing the appropriate economic regulation by organizing it precisely. Therefore, it seeks to move at a pace consistent with the speed of economic fluctuations. Besides, the abundance of interventions and legislative measures has led to a point where legal specialists find it difficult to have a complete understanding of all the different rules and details that are constantly changing²⁴. To sum up, all these variations are meant to convey the broad meaning of transformations, which undoubtedly had a clear impact on contracts, prompting the state to intervene once again to direct contracts to ensure that it maintains its sovereignty at all times and does not lose its prestige in the face of ongoing developments.

2.1.2 : The state's intervention to direct the contract : a restriction on contractual relationships

The state has complete authority to set the economic policy of the country, as well as absolute freedom to direct the national economy according to the requirements and needs of individuals. Accordingly, the legislator has intervened in contracts and works to direct them as an effective tool for the exchange of all economic transactions.

However, the intervention of the legislator in directing the contract has created a kind of pressure on the principle of contractual freedom and the autonomy of will principle, so that contractual freedom and the will of the contracting parties are no longer free, but rather directed by the legislator. Thus, the autonomy of will principle has become directed, considering it the essence of the contract and the basis of economic thought²⁵.

The principle of contractual freedom, as a traditional principle that prevailed during the 18th century, provided that the contracting party is free to conclude the contract and assume the obligations with full freedom, and that the obligations imposed by the parties are considered fair because the parties agreed to them with utmost freedom. However, this idea is no longer applicable in the current situation, because adopting it would mean that the legislator remains powerless and unable to regulate contracts such as employment contracts, leaving the matter

subject to the freedom of the employee and the employer, which is exaggerated²⁶. Because we are simply faced with an imbalance in the contractual relationship, parallel to contractual justice, which obliges the legislator to intervene to protect the weak party in the contract against these economic, social, and political developments through mandatory legal rules that bind the parties under penalty of punishment when breaching it.

However, the question raised in this context: is not this a trampling of the autonomy of will principle ? Intervening in directing the contract is considered a trampling of the autonomy of will principle, but this trampling is for the purpose of creating equality between the contracting parties and establishing a form of balance between contractual interests. The contract has therefore become more utilitarian in nature than just a relationship between the two parties. The objective of contracts is currently to generate economic profits and provide assistance to the national economy. This has resulted in many jurists and intellectuals referring to contracts as a fundamental component of the economy. In other words, contracts have evolved into a robust connection that joins the economy and the legal system, prompting the latter to constantly seek ways to enhance the economy. As a complementary association has developed between these two elements, which is essential to guarantee the right to development.²⁷

As a result of the economic transformations of capitalism, civil law has become incapable of encompassing all of these transactions, leading to the imposition of arbitrary conditions on contracts due to technological and economic superiority. Consequently, contractual relationships have frequently become unequal, a trend that is increasingly prevalent in various forms due to modern economic development's shift towards large-scale production methods. This has resulted in the emergence of enormous companies and institutions that have legal or actual monopolies over a commodity or service. They dictate their will and pre-prepared terms to those willing to contract with them, without any competition for these conditions.

In recent times, these types of contracts have started to become more prevalent due to intense competition that has almost entirely eliminated monopolies. This shift is primarily due to the global direction of the economy and the rise of free trade and exchange as a result of globalization. Consequently, these contracts are slowly disappearing while new economic sectors emerge, leading to the development of more advanced contract types and actions that aim to streamline the contracting process and save time and effort. The rise in production and the abundance of professional goods have enabled merchants to purchase goods in large quantities and sell them using standardized contract templates, thereby avoiding time-consuming and effort-intensive negotiations²⁸. However, due to the lack of regulation and organization by the Obligations and Contracts Law, this has led to a contract crisis. It was necessary for the legislator to intervene in order to alleviate the severity of adhesion contracts and regulate the type contract that is made to serve a specific economic phenomenon, in order to protect the customer, the economic actor, and to stimulate the national economy in different ways²⁹. This intervention came as a necessity to attempt to maintain transactional stability in a new way that is in line with activating the economy to win internal and external bets.

2.2: The fate of the contract in light of the development of the idea of the economic public system

The Algerian state has worked on developing several strategies that aim to boost the national economy and drive economic growth by creating a favourable environment to attract investment through preparing the legal framework for this purpose.

The Algerian government has put in efforts to create ways and mechanisms that aim to achieve economic growth as a choice, considering the effects of globalization on the economy and the rise of fierce competition among people. This may have started with the government's move towards adopting the capitalist liberal system instead of the socialist approach, which led the legislator to introduce a range of modern contracts that align with the nature of the capitalist system, including contracting, consumption, partnership, and private labor contracts.³⁰

The contract serves as a legal framework for economic transactions and is a powerful instrument for driving the economy. The contract is not only a relationship between individuals, but also an effective tool that works to achieve both individual and collective interests. Furthermore, the social function of the contract has made it integrated into the nature of society, affecting and being affected by it, thus directly influencing the economic development of the community.

The legislator was obliged to involve himself in contracts and align them with the evolution of the economic public order. This was achieved by enacting specialized laws that are fully in line with the requirements of the economic public order. This is due to the aging of civil law and its inability to regulate all economic concepts and organize them, which has affected the status of contracts, leaving them in a state of instability and vulnerability to the changes imposed by the modern general economic system.³¹

2.2.1: The Stability of Contracts in the Face of Modern Economic Conditions

The contract is considered as the most important means resorted to by legal thought to regulate economic, social, and political transactions. Thus, the contract has become, in contemporary life, in need of keeping up with economic transformations, which requires the contracting parties to act in good faith and honesty, that imposes trust between them in fulfilling their obligations in an atmosphere characterized by truthfulness and cooperation. Because the contract is based on the idea of cooperation, which is referred to as the contractual solidarity, the debtor is bound to fulfill their commitment and the creditor must make a sacrifice, if necessary. Therefore, the contractual obligation shall not be viewed from one contracting party's perspective without the other.

The legislator found himself under pressure imposed by economic conditions, obliging him to develop new types of contracts, technologies, and modern practices in contracting that are in line with modern economic transformations. Among the most important of these are contracting via television and the internet, contracting through social networking sites, commercial credit contracts, and leasing that leads to ownership, which has become applied as a modern form in AADL contracts³².

It can be noted that the Algerian legislator, in the newly established laws and special regulations, has started to use economic terms such as consumption, competition, monopoly, freedom of exchange, investment, tax, international trade, profit, interest rate, loss... This may prove that the legislator has given the contract an economic character. The contract is no longer just a classic relationship between the contracting parties, but has become a tool aimed at achieving benefits. This is what has become known as the economic function of the contract or the beneficial function of the contract.

We find that the Algerian legislator has intervened to regulate many contracts and establish many foundations to ensure the achievement of the public interest, by developing modern patterns in contracting that fully align with the modern economic reality. This intervention by the

legislator is considered a revolution in civil law, given that these contracts were organized outside the framework of civil law, which is a vivid example of the legislator's attempt to integrate contracts and ensure their stability in the face of modern economic developments.³³

The general rules have become classical that are completely incapable of keeping up with economic developments, as the civil law has failed to accommodate and embrace new contracts due to a clear conflict between modern contracts and the classic principles and rules contained in the civil law. In the context of constantly approaching the extent of contract stability in the face of economic conditions, we find that mandatory contracts have emerged, which are imposed on the parties by the force of law³⁴. As is the case in mandatory car insurance contracts, this has led to the decline of civil liability rules and their abandonment, especially in the area of compensating victims or those provisions brought by the law on insurance for work accidents and occupational diseases, which are now imposed by the current circumstances of the development witnessed in Algeria. These are contracts that bind the contracting parties to achieve economic requirements.

The Competition Law and Consumer Protection Law, which were imposed by the legislator, have become mandatory rules of the public order, serving as another evidence of the fragility of the contract under the classical civil law rules. The contract, in its new context, seeks to merge with economic circumstances, such that the contract has been subject to many principles that are consistent with the rules of competition and price freedom. The aim of imbuing contracts with these qualities is perhaps to fully integrate them with contemporary economic circumstances, such that the contract strives to achieve fair competition and cement the protection of interests. The legislator sought to ensure economic order and guarantee the safety of consent, freedom of will, and sound choice in contracting to avoid falling into vices of consent.

What could prove this is that the Algerian legislator has imposed legislative mechanisms in the Consumer Protection Law to confront the difficulties of economic challenges and better frame the relationship between professionals and consumers, responding to the policy of strengthening the domestic market and developing its mechanisms.

Despite the legislator's efforts to incorporate contracts within the realm of economic progress, it is important to acknowledge that it remains inadequate in dealing with certain crucial economic sectors. It still suffers from a lack of keeping up with the rapidly evolving economic life, both present and future³⁵.

2.2.2: The decline of contracts in the face of modern economic conditions

The general economic system is seen as a shield that protects the contract and ensures its stability in light of the economic transformations witnessed by society, which have made the contract a rigid entity that often does not align with the economic reality.

The economic changes have resulted in several outcomes that directly affect the contract. This impact can be positive in some cases, leading to the advancement and development of the contract in specific legislation, as the contract is no longer in its classic form. However, on the other hand, this impact has been negative, where the legislator has imposed a general public order on contracts, based on mandatory rules to regulate contracts in the economic field. These rules are now imposed on the contracting parties to guide the contract, whereas in the past they were limited to setting rules that complemented the will of the contracting parties only.³⁶

Therefore, the role of will in creating obligations and arranging their effects has diminished. As economic thought has led to the creation of standard contracts that are entered into by acceptance, which are entirely contrary to the traditional concept of the contract that is saturated

with the autonomy of will principle, as there is no room for agreement in them, nor is there any existence called the contract experiment. The content of the contract is controlled by one of the contracting parties, and the other party has nothing to do but to comply and join the contract.

In this regard, we note that a contract is the manifestation of the parties' will to create a legal effect, whether it is related to the establishment, amendment, or termination of a right. In light of this, the agreement between the parties is considered the basis for regulating this relationship, given that the contract is *pacta sunt servanda*, meaning that it includes the rules to which its parties are subject. As a result, it is not permissible to terminate or amend the contract except by mutual agreement, according to the Act of 106 of civil law. However, with the advent of the idea of the general public order and the intensification of economic transformations, we find that the contract has been affected by a kind of stagnation and decline due to the increasing search for mechanisms that can serve economic growth, which has made the contract threaten to disappear as it is considered a traditional concept.³⁷

Conclusion :

As previously mentioned, it is evident that the evolution of the concept of the public order has directly affected contracts. This development has led to a revival of contracts in some areas and a crisis in others. The impact of this evolution on the guiding principles that govern contracts is clear which are classical , as they are longer align with reality and the development that has accompanied it. However, if the public order had not imposed these principles, they would have remained rigid and hindered the development of contracts.

The competitive public order has directly affected the contract by transforming its function, so that it now serves to achieve both public and private benefit, whereas in the past it concerned only the contracting parties. Nowadays, the contract has become a fundamental pillar for achieving public benefit.

The protective public order has directly aimed to establish the principle of equality in contracts, after contracts in the past were characterized by inequality among individuals and the presence of a dominant person over the contract.

The economic public order has directly allowed the legislator and the state to intervene in the contractual relationship. Furthermore, the contract is no longer solely the concern of the parties, but has become a fundamental support for reviving the national economy. In light of this, the legislator has sought ways and mechanisms to remove rigidity from the contract, so that it can keep pace with all economic fluctuations and developments.

Based on that, we reach the following results :

- The guiding principles of a contract can be considered as general ones governing the contract, where their role remains in concluding, determining the effects of the contract, and executing it. However, within the boundaries set by the law and the requirements of the public interest that the state desires, and without exaggerating in applying them to all legal aspects and transactions.

- Through examining the public order and mechanisms imposed by the law on contracts, it becomes apparent that the public order aims to rescue contracts from the crisis they face in confronting economic developments.

- The public order has sought to reconcile the deep controversy and conflict between economic interests and the guiding principles of contracts, such that the general system has

worked to reconcile these principles and interests, thereby ensuring the stability of contracts in the face of economic developments.

- The imposition of special legislation by the Algerian legislator is evidence of making the public order a constraint on contracts, and an indication of the legislator's reconsideration of the traditional bases of contracts that are saturated with the autonomy of will principle and individualism. This is only a sign of the legislator's efforts to protect the weaker party in the contractual relationship and achieve a kind of balance between the parties.

It is evident from the foregoing that both the Consumer Protection Law and the Competition Law, under which the Algerian legislator intervenes under the umbrella of the directive, protective, and economic public order, aim to achieve objective contractual fairness rather than subjective once. This highlights a veiled return to the role of the state as a controller in the economic field through specialized institutions and legislative rules of an economic nature aimed at guiding contracts to maintain market stability, its integrity, and consumer protection.

References List:

¹ Modjahdine Khaled, The Concept of Public Order in Contracts, a doctoral dissertation in private law, Faculty of Legal, Economic and Social Sciences, Hassan II University, Casablanca, academic year 2004-2005, p.184

² Mohammed Al-Shelah, Law and Economics from Connection to Separation, Moroccan Journal of Economic Law, No. 2, 2007, p. 16.

³ Moncef Bourouia , Contractual Freedom under the General Economic System, Journal of Research in Contracts and Business Law, Fifth Issue, December 2018, p. 49.

⁴ Lakhdar Hallis, The Status of the Will in light of the Evolution of Contracts, PhD thesis, Faculty of Law and Political Sciences, University of Tlemcen. 2011, p. 281.

⁵ Aliane Adda, The Idea of Public Order and Freedom of Contract in the Light of Algerian Law and Islamic Jurisprudence, PhD thesis, Faculty of Law and Political Science, University of Tlemcen, 2016, p. 81.

⁶ Azzedine Aissaoui, Searching for Public Order, Academic Journal for Legal Research, University of Bejaia, Special Issue, 2015, p. 711.

⁷ Abdel Nasser Belmihoub, Public Order in Private Law, A Changing and Evolving Concept, University of Bejaia, Academic Journal for Legal Research Special Issue, 2015, p. 379.

⁸ Hanane Merini, The General Economic System and its Impact on the Contractual Relationship, memorandum, Master's degree, University of Algiers, 2004, p. 100.

⁹ Khadija Fadel, Contract publicisation, PhD thesis, Faculty of Law, University of Algiers, 2015, p. 35.

¹⁰ Adnane Diffas, Competition Law between Competitive Public Order and the Idea of Legal Security, Academic Journal of Legal Research, University of Bejaia, Special Issue, 2015, p. 561.

¹¹ Tiboussi Mohammed, Competition Rules and Economic Public Order, PhD thesis, Faculty of Law, University of Tlemcen, 2011, p. 55.

¹² Philippe MALAURIE, Public order and the contract (Study of comparative civil law - France, England, U.R.S.S.), Volume I, Reims, Matot-Braine, 1953, p57.

¹³ Mustapha mekki, The General Interest and the contract, contribution to a study of the hierarchy of hierarchies in private law, Edition DELTA, LGDJ, PARIS, 2004, p70.

¹⁴ Jacques Breillat, Public order: Public order or public orders? Public order and Fundamental rights, Public order, social order, political order: what interactions?, Caen conference, 11 and 12 May 2000, Bruylant (Brussels), 2001, p.249.

¹⁵ Op cit, p 251.

¹⁶ Abd al-Rahman al-Sharqawi, Civil Law, a recent study of the general theory of commitment in the light of new concepts of economic law, Dar al-Fikr al-Arabi, Alexandria, 1992, p. 183.

¹⁷ Abdul Qadir Al-Araari, The Myth of Consumer Legal Protection in the Moroccan Legislative System, A Special Point of View in In-depth Civil Law, First Edition, Dar Al-Jadeed, Morocco, 2010, p. 66.

¹⁸ Ibtisam Shekrin, Contractual Freedom and Public Order in Moroccan and Comparative Law, Ph.D. Thesis, Faculty of Legal, Economic and Social Sciences, Casablanca, Morocco, 1999, p. 120.

¹⁹ . Michel Trochu. consumer contract. General Library of Law and Jurisprudence, l.g.d.j, Paris 1974, p81.

²⁰ Hosni Abd al-Basit Jamei: The Effect of Equivalence between the Contracting Parties on the Conditions of the Contract, Dar Al-Nahda Al-Arabiya, Cairo, 1991, p. 14.

²¹ Yves picod.helene davo.consumer law.2nd edition.sirey. 2010 p271.

²² Michel Trochu The Consumer Contract General Library of Law and Jurisprudence Paris 1974 P19

²³ Jean calais-auoy. towards a new consumer law. June 1984. P13

²⁴ Ahmed Abdel Hamid Ashoush. The law of the contract between Tabat certainty and considerations of justice. Alexandria. 1990. p. 27.

²⁵ Sami Badie Mansour. The element of stability and the factor of change in the civil contract. Dar Al fikr Lebanon. p. 112.

²⁶ Abd al-Nour bin Lali, Mounira Jarboua, Current Transformations of the General Theory of the Contract: Renewal of the Contract or Mitigation of Classical Rules, Algerian Journal of Legal and Political Sciences, Volume 58, Issue 05, Year 2021, p. 207.

²⁷ Nawal Rahmouni, Freedom of Prices and Regulation of Competition in Moroccan Law, a thesis for obtaining a doctorate in private law, Faculty of Legal, Economic and Social Sciences, Jeddah, academic year 2008-2009, p. 317.

²⁸ Abdel Nour Ben Laali, The Role of Special Legislations in Weakening the Principles of the General Theory of the Contract, Journal of Legal and Political Thought, Volume Six, Issue One, 2022, p. 421.

²⁹ Chawki Benassi, The Impact of Consumer Legislation on the Classical Principles of Contract, Ph.D. Thesis, University of Algiers, Faculty of Law, Algeria, 2016, p. 355.

³⁰ Amal ben Brih, the extent to which the role of will has declined in the contractual field, Research Journal, University of Algeria 1, Part One, Issue 14, 2020, p. 22

³¹ Abdelnour Bin Laali, The Impact of the Consumer Protection Law on the General Theory of the Contract Exaggerating Consumer Protection at the expense of the Classical Rules, Journal of Legal Studies, Volume 08, Issue 02, 2022, p. 761.

³² Lakhdar Hallis, publicisation and socialization of the contract, Journal of Law, Faculty of Law, University of Medea, Algeria, Issue 3, Volume 4, 2019, p. 19.

³³ Mohammed Imad Eddine Ayad, Transformations of the Contract Theory under the Law of Consumption, Civil Law After Forty Years, Annals of Algeria, University of Algiers, Algeria, Issue 05, 2016, p. 261.

³⁴ Jean calais auloy. towards a new consumer law. June 1984. P13

³⁵ Fatiha Quraiger, Control as a Mechanism for Consumer Protection, Al-Turath Magazine, Zayan Ashour University, Djelfa, Algeria, Issue Nine, 2013, p. 127.

³⁶ Mounira Balourgi, Consumer Protection Movement in Algerian Legislation, Journal of Rights and Freedoms, University of Mohamed Kheidar Biskra, Algeria, Issue 4, April 2017, p. 179.

³⁷ Zain Younes, Hoda Mayouf, Consumer Rights Protection in Algeria, Maarif Magazine, Scientific Refereed Journal, Bouira University, Algeria, Tenth Year, Issue 20, June 2016, p. 437.