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The e-consumer's right to be informed when entering into a contract

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Abstract :

In this article, we try to address the obligation to inform the electronic consumer before contracting, and how the Algerian legislator addressed it through the Civil Code or consumer laws.

نحاول من خلال هذا المقال التطرق للالتزام بإعلام المستهلك الإلكتروني قبل التعاقد، وكيف عالجه المشرع الجزائري من خلال القانون المدني أو القوانين الخاصة بالمستهلك.

Keywords: e-consumer; information; contract; obligation

Introduction:

When a person needs something or a service, he finds himself obliged to contract with the person who provides him with this performance or service. Thus, he is obliged to enter into a contract of consumption or a contract of sale

Like all contracts, the consumption contract is subject to the general rules governing contracts, in terms of formation and effects. In terms of the elements of a consumption contract, the latter is subject to the need for the consent of both parties. By this, we mean that the consumer's consent must be available and not compromised. This paves the way for the introduction of the idea of the consumer's right to information regarding all elements of the sale, starting with the supplier or seller, and ending with the specifications and characteristics of the sale.

With the development of e-commerce, we have come to talk about the electronic consumer, whose definition does not differ from the ordinary or traditional consumer except with regard to the means of concluding the contract and others. The fact is that the conclusion of such contracts raises some legal issues that have been addressed by international and national legislations (with different treatment from one country to another). However, from time to time, some issues arise.

If the right of the ordinary consumer is legally protected, is it really so for the e-consumer, and are we talking about sufficient legal protection, or just a hypothetical protection that does not go beyond what is stipulated in the law. In other words, what are the mechanisms to protect the right of e-consumers in the media ?

THE FIRST TOPIC: THE CONCEPT OF E-CONSUMER

Before we delve into trying to define the e-consumer, it is okay to provide definitions of the traditional consumer, and then go on to define the e-consumer.

First requirement: Meaning of a traditional consumer

The Algerian legislator defined the consumer as "any natural or legal person who acquires goods offered for sale or benefits from services offered without any professional character"¹.

It is clear from this definition that the process of consumption necessarily implies a sale, which is necessarily understood in contradiction to the notion of "acquisition" or purchase, regardless of the consideration that the consumer is

obligated to pay to the person to whom he or she provides the consumer or performs the service, which the general rules governing contracts refer to consensual, that is, to the agreement of the parties.

It is notable that the Algerian legislature has recognized some of the lapses in other legislations, such as excluding the legal person from the concept of consumer and limiting it to the natural person, or narrowing the concept to the idea of professional activity, which excludes every professional from the idea of consumption, even though he concludes many behaviors that fall outside the scope of his professional activity.

This definition is confirmed in other laws that define a consumer as "any natural or legal person who acquires, for a fee or free of charge, a good or service intended for final use in order to satisfy his personal needs or the needs of another person or an animal in his care"².

However, the jurisprudence was divided on the interpretation of the professional nature of consumption. Some of them linked consumption to the nature of the activity practiced by the consumer, on the grounds that the professional has knowledge of what relates to his profession, unlike the ordinary consumer, while others considered that the professional is a consumer whenever he enters into transactions outside his profession, which is what we tend to favor, as the consumer is any person, whether natural or legal, who enters into transactions to meet his needs, as long as they do not fall within his professional activity.

Second requirement: Meaning of an e-consumer

Different legislations did not literally define the e-consumer on the basis that there is no difference between it and the ordinary consumer in terms of origin, nor in terms of behavior, but only in the way this behavior is carried out. Instead of a direct meeting between the consumer and the provider of the service or object, the latter can offer its services and goods through technological media that saves the consumer the trouble of traveling.

However, the Algerian legislator defines the e-consumer as "any natural or legal person who requires for compensation or free of charge a good or service through electronic communications from the electronic supplier for the purpose of final use"³

Thus, the consumer only has to navigate the sites dedicated to what he wants to consume or obtain, to find what he is looking for in terms of information about

the product, its basic characteristics, etc. This makes us understand that the online consumer does not differ from the traditional consumer except in terms of the way he receives the affirmative and then the way he declares his acceptance.

In fact, the means used by the e-consumer may lead us to believe that he may be in a difficult situation, so the formality required in the contract is only a protection for him⁴.

This is why there are those who believe that formality is a source of information, and that it minimizes the risk of imbalance in the terms of the contract, in which the seller is the sole author of the terms.

THE SECOND TOPIC: E-CONSUMER'S RIGHT TO INFORMATION

In order to know what is meant by the e-consumer's right to information, it is necessary to define this right and then determine its place, which we will discuss in the following two sections.

First requirement: Definition of this right

By dropping the well-known economic rule related to the law of supply and demand on our topic, it seems that we will be guided by another law, which is that the abundance of supply will affect the consumer's willingness to order, which means that the conclusion of the consumption contract is somehow linked to the supply, whether in terms of its content or its number, and this is evidenced by the fascination of many of us who visit the markets - regular and electronic - with the huge amount of exhibits, which reflects on the will to buy or consume.

In this way, the consumer finds himself faced with the obligation to inquire and inquire about the characteristics of the thing he wishes to consume or the service he wishes to obtain.

The obligation to inform in general and especially before contracting is a creation of the judiciary, so we have come to talk about the consumer's right to obtain sufficient information that makes him agree to contract or not⁵.

The judiciary's interest in e-consumer protection was motivated by protecting the weaker party in such contracts and addressing the imbalance between those wishing to contract⁶.

The obligation to inform electronically finds its basis in Article 352 of the Civil Code, as well as in Article 17 of Law No. 09-03, which we will address later.

The electronic information obligation can be defined as a legal obligation prior to the conclusion of the electronic contract, whereby one of the contracting parties who possesses material information regarding the contract to be concluded is obligated to provide it by electronic means in a timely, transparent and honest manner to the other party who cannot learn about it by his own means.

Based on the above, the service provider or professional must inform the consumer before contracting of the conditions that ensure the integrity of the contract, whether traditional or electronic, in addition to the fact that electronic contracts require the provider or service provider to provide information electronically to the consumer.

In order to instill confidence in the consumer and make him feel more assured, the provider or service provider must clearly identify himself to the consumer, as this consumer refuses to contract via the Internet due to the lack of sufficient information that clearly reveals the identity of the provider or service provider. In this sense, the e-commerce Algerian law stipulates the conditions related to the need to inform the electronic consumer of the necessary data related to the electronic supplier, the commercial offer (good or service), as well as the electronic contract regarding its validity and termination, which are the basic matters that knowledge of which is sufficient for contracting⁷.

According to some jurisprudence, the producer cannot be exempted from the obligation to inform the consumer even if the latter is aware of all the characteristics of the product, because the source of this obligation is the law⁸.

Second requirement: Object of this right

The object of this right leads us to ask what the customer should know, which is what we mean by the obligation to inform. These things are mainly related to the price.

The identity of the professional or merchant is important in the field of electronic transactions, so all information related to the professional must be provided to the consumer because it provides security for the latter when entering into a contract, and even the personal consideration of the professional may be an essential reason and motivation for contracting⁹.

The law stipulates that the seller shall inform customers of the prices and tariffs of goods and services and the conditions of sale¹⁰. So the idea is to get the

consumer informed about the product and its price. This information must be clear and transparent.

The great scientific development that has affected life, especially in the technological field, has led to the creation of technically complex products that are impossible for the consumer to understand in all their technical aspects, which has increased the size of the disparity in knowledge between the parties dealing with a product, as it is difficult for non-specialists to know the subtleties and secrets of the product, the methods of its use and how to avoid its dangers¹¹.

To make it easier and much more clear, the law stipulates that “The e-consumer must be informed of the prices and tariffs of goods and services by means of marking, labeling, posters or any other appropriate means.

Prices and tariffs must be displayed in a visible and legible manner.

Goods offered for sale, whether by unit or by kilogram, must be counted, weighed or measured in front of the buyer. When such goods are packaged and counted, weighed or measured, the packaging must be marked so that the weight, quantity or number of items corresponding to the declared price can be known.”¹²

Informing the consumer is necessary and mandatory and is done before the contract is concluded. This means that the consumer can argue that they were not informed by the supplier. So, before concluding the sale, the seller is obliged to inform the consumer, in any way and according to the nature of the product, of fair and truthful information regarding the features of this product or service, the conditions of the sale practiced and the expected limits of contractual liability for the sale or service.

This provision, which was announced in article 08, is not enough. the consumer should be just as vigilant and cautious. he could turn to people he trusts for advice or consultation that might be useful to him.

Pursuant to Article 5, fourth paragraph, of the aforementioned Law 04-02, the decree stipulates: “As part of the process of informing the consumer about the applicable prices and tariffs, the economic operator must inform the latter, before completing the transaction, about the nature of the goods and services, the total components of the prices and tariffs to be paid, the method of payment, and, where appropriate, all deductions, reductions or discounts granted and applicable fees.” The decree is in line with Article 5, fourth paragraph, of the aforementioned Law 04-02.

In Europe, it has laid down important detailed rules concerning the need to inform the consumer of all necessary data indicating the identity of the seller or service provider, the essential characteristics of the good or service, the geographical address of the supplying trader, the total price of the goods, the added tax, the payment mechanisms, the supply and execution of the contract and in detail all essential contract terms, even if this leads the consumer to refuse to buy.

Above, we talk essentially about the European Directive 2011-83 of October 25, 2011 (in particular article 6).

Once the purpose of this obligation has been demonstrated, it would be useful to point out how this obligation can be enforced (right for the consumer). In this context, the law shows that Every operator must inform the consumer of all information relating to the product he places for consumption by means of labeling, labeling or any other means.”¹³.

In fact, this article as a general and abstract rule shown how the obligation to inform should be exercised. Therefore, it referred the modalities of its application to the executive decree No. 13-378 establishing the conditions and modalities of consumer information.

And since consumer information can only be provided in a language that is clear and understood, Algerian law requires the use of Arabic and leaves the choice of using other languages open.

The law insists that the labeling, method of use, use guide, product warranty conditions and any other information provided for in the regulations in force must be written mainly in Arabic and, by way of addition, in one or several other languages that are easily understood by consumers, in a visible, legible and indelible manner¹⁴.

This provision, although clear, particularly in the historical context (2009), should be amended to include Tamazight, which was subsequently adopted as the national and official language (constitutional amendment in 2020).

However, it should be noted that the Internet is international in nature, meaning that it is not limited to one country only, but is a global market, which raises two important issues. The first is that most companies offer services and goods through the Internet in multiple languages, and this language should be accompanied by a translation into the national language of each country, in order to ensure that the information is presented in an understandable and clear manner

that is free from ambiguity or ambiguity. The second is the need to inform the consumer that the contract he will enter into is of an international nature so that he is aware of the nature of the relationship to which he is a party and also aware of the law that differs from his legal system, all of which is of course a protection for him.

It is clear from the above definitions that the obligation to inform before traditional or electronic contracting is the same in essence, and that the professional or provider must provide all the information and data related to the services and goods to be contracted, so that the consumer is aware and informed so that he can make the appropriate decision. It should be noted that in electronic contracts, the obligation must be presented in the form of an electronic medium, which makes it impossible for the consumer to inspect the object to be contracted in real life, which makes the obligation to inform in electronic contracts more serious than in ordinary contracts.

Under Law 05-10 of 20 June 2005, amending and supplementing the Civil Code, the Algerian legislature recognized electronic writing as a means of proof¹⁵.

According to this article, Proof by writing results from a sequence of letters, descriptions, numbers, and any signs or symbols with an understandable meaning, regardless of the medium in which they are contained and the methods of transmission.

Thus, e-writing refers to the sequence of letters, descriptions, symbols, numbers, or any sign with an understandable meaning, written on an electronic support, regardless of the methods of transmission.

As a result, information contained in hard and floppy disks or other electronic media is considered electronic writing...

This article is a broad concept, which means that any support that includes writing, whether on paper or various electronic supports such as a hard disk or floppy disk, is admissible to prove legal acts, as is any means by which the writing is transmitted, whether manually or by various electronic methods.

Because electronic writing is subject to alteration and subsequent change, which affects its evidentiary power, the legislature has surrounded it with safeguards. Proof by writing in electronic form shall be considered the same as proof on paper, provided that the identity of the person who issued it can be ascertained and that it is prepared and preserved in conditions that guarantee its integrity.

Through this article¹⁶, the legislator equated electronic writing with ordinary writing, but stipulated two things:

-The possibility of verifying the identity of the person from whom the writing was issued.

-They must be kept in conditions that guarantee their integrity and indicate their credibility and validity for a long time without damage or modification of their content.

Before that, the text of Article 18 of the aforementioned Law No. 09-03 did not limit the concept of language, but rather emphasized its informational function, when it outlined the conditions for fulfilling this role, "...and in a visible, legible and indelible manner." This is something that can also be achieved in electronic writing. So if these conditions are met, it is equivalent to traditional writing.

CONCLUSION:

Despite the Algerian legislature's recognition of electronic writing, which opens the door wide for electronic contracting and, consequently, the increase in electronic consumption. However, it has delayed in enacting a law regulating electronic commercial transactions to protect the consumer from any arbitrariness.

In the absence of a special legal text that protects the consumer, some articles in the scattered legal texts that concern the consumer need to be amended to suit the modern requirements of e-commerce, which are increasing day by day.

The legislator should also adopt international agreements and take advantage of the various European directives that regulate e-consumer protection.

If the legislator is required to protect the e-consumer, the latter must act consciously with modern technology and behave in the manner of a rational economic man who takes care to achieve a beneficial end.

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- ¹³ The article 17, paragraph 1, of the aforementioned Law 09-03 of February 25, 2009 on consumer protection.
- ¹⁴ The article 18 of Law No. 09-03 of February 25, 2009, on consumer protection and the suppression of fraud.
- ¹⁵ The articles 323 bis and 323 bis1 of civil code.
- ¹⁶ The article 323 bis of civil code.