

## Updates of after-sales support in the framework of executive decree No.21-244: ( legal regulations and practical issues)

مستجدات الخدمة ما بعد البيع في اطار المرسوم 21-244:  
(الضوابط القانونية والاشكالات الواقعية)

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### Abstract:

In order to protect the consumer, the legislator was not satisfied with the guarantee established in law 09-03, related to the protection of the consumer and suppression of fraud, amended and supplemented, but rather coupled it with a new measure which is the obligation of providing after-sales support as stipulated in the executive decree No.21-244, defining the conditions and modalities of providing after-sales support. This executive decree is considered as one of the most important protective provisions that embody more effectiveness for the benefit of the consumer, through the interventionist's commitment to implement them, or in cases where the guarantee cannot perform its role, especially in light of what was shown by the practical aspect of this support /support, since its existence and implementation on the ground existed before it was stipulated in clear legal texts.

**Key words:** after-sales support, consumer, intervening party, guarantee, obligation.

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**Introduction:**

The obligation of the intervening party to provide after-sales support is deemed one of the guarantees established by the legislator in Article 16 of the law related to protection of consumer and suppression of fraud, amended and supplemented. This Article stipulates that the manufacturer, importer, or any person to whom this task is assigned, must repair or maintain the product. The legislator has linked the necessity of carrying out this task to two essential conditions; the expiration of the date of guarantee established in the regulation or in cases where the guarantee cannot play its role even if the guarantee period has not expired.

Despite that the legislator has regulated after-sales support in the amendment of the law related to the consumer protection and suppression of fraud in Article 16, it was not until the issuance of Executive Decree No. 21-244, which specifies the terms and methods for providing after-sales support for goods <sup>(1)</sup>, in which the legislator confirmed in Article 15 the granting of a full year for the beginning of the implementation of the provisions of this decree from the date of its issuance, as it is an additional legal obligation on the intervening parties and represents an additional guarantee to the established guarantees. This issue requires an in-depth examination of the legal regulations and provisions governing after-sales support in Algeria, and their effectiveness in protecting the consumer in light of the current economic dynamics?

This issue will be tackled in two sections: the first one relates to the regulations of after-sales support within the framework of Executive Decree 21-244. The second deals with the implementation of after-sales support and the existing problems.

**Firstly: After-sales support regulations under executive decree No. 21-244**

In order to protect the parties of the consumption contractual relationship, the legislator has established a series of legal safeguards that must be complied with after the contracting process, whether it consists in selling goods or providing services. These safeguards are among the most important factors for the success of institutions and their distinction from their competitors, by attracting the attention of new consumers and preserving existing clients through the guarantee of the after-sale support.

After-sales support is an absolute commercial necessity given the complexity and variety of the products<sup>(2)</sup>, it requires a precise explanation of its concept as well as a clarification of its essential conditions.

**1. Meaning of after-sales support**

After-sales support is a widespread slogan among intervening parties to promote their products and to distinguish themselves by establishing specific terms for this guarantee to which the consumer must adhere. Therefore, researchers have sought to provide a definition of after-sales support (1-1), its importance (1-2), and how it differs from the obligation of guarantee (1-3).

### 1.1. Definition of after-sales support

The term after-sales support is a modern concept whose provisions are not clear yet. It has attracted the attention of some jurists (One) as well as legislators (Two).

#### **One- Juristic Definition of after-sales support**

After-sales support is defined as "additional supporting services provided to the customer after the purchase process so as to encourage him to purchase, increase his satisfaction, and build a long-term positive relationship with him." <sup>(3)</sup>

To sum up, after-sales support can be understood as the intervening party's duty to ensure the consumer gains the best benefits from the products, so as to fulfil his desires, needs, and gain his trust and satisfaction.

#### **Two: Legal Definition of After-Sales Support**

From a legal standpoint, and according to Article 16 of the law related to the consumer protection and suppression of fraud: "Within the framework of after-sales support, and after the expiration of the guarantee period established by the regulation, or in cases where the guarantee cannot fulfil its role, the concerned intervening party must ensure the maintenance and repair of the product exposed in the market."

However, after law 09-03 related to consumer protection and suppression of fraud was amended by law 18-09, a final paragraph was added to Article 16: "The conditions and modalities of after-sales support shall be determined by the regulation."

Moreover, technological improvement has facilitated the emergence of e-supports related to commercial activities that can be acquired online, such as banking services and after-sales supports such as maintenance can be carried out when the nature of the product allows for it, such as software programs. <sup>(4)</sup>

As mentioned earlier, the legislator did not provide a definition of after-sales support, and merely considered it as an obligation of the intervening party, whether in regular or electronic sales. The Executive Decree 21-244 defined after-sales support in Article 3, as "a set of services that the intervening party must provide when the goods are offered for consumption, either in exchange of a fee or for free, such as temporary repair supports, repair or maintenance, installation, technical control, transportation, and provision of spare parts."

Thus, it is clear that the legislator provided a broad meaning for after-sales supports, encompassing all supports offered after the conclusion of the sales contract, regardless of the fee for these supports, such as repair, maintenance, installation, control, and the provision of spare parts. In this sense, both legal and contractual guarantees are considered as part of after-sales support s. <sup>(5)</sup>

However, if the consumer pays an additional fee, that is not covered by the sales contract for the repair or maintenance of the sold item, this represents a narrower meaning of after-sales support, even if the latter arise from a separate contract independent of the sales contract, and even if it is related to it. <sup>(6)</sup>

## 1.2. Significance of After-Sales Support

After-sales support is an inevitable necessity, especially with the complexity and variety of products. It has a fundamental impact on building relationships with consumers (One), as it guarantees the continuity of intervening parties' reputation (Two).

### One: For the Consumer

The importance of after-sales support is reflected in its contribution to gaining consumers' trust and encouraging them to purchase products regardless of competitors' offers, even when it comes to price and quality. After-sales service fulfils the purpose of purchasing a product by fully benefiting from it through proper installation, especially when it comes to complex products, including repairing any damage to the product and providing spare parts.

For example, Condor has extended its after-sales supports across the entire country as reflected in its contracts with many consumers for repairing electronic devices both within and outside the guarantee period, in addition to providing spare parts. This contracting began in 2004, the year Condor started manufacturing air conditioners. As for computer devices, Condor began contracting in 2010, the year it started producing computers.<sup>(7)</sup>

These transactions have helped the company gain consumer trust and encourage them to purchase. It should be noted that the products sold by the company are accompanied with a guarantee card and a user guide.

### Two: For the intervening party

The importance of after-sales supports represents a competitive advantage that distinguishes the intervening party's products from those of competitors, and a crucial factor for improving product quality and the company's reputation by, on one hand, ensuring that consumers do not terminate contracts related to these products and, on the other hand, attracting consumers. For instance, Condor Electronics gained a competitive advantage through its after-sales supports due to several reasons:<sup>(8)</sup>

- Putting a free hotline (3075) at the disposal of customers distinguished the company with this support and provided it with a competitive advantage.
- The widespread presence of after-sales supports agencies throughout the country.
- Customer follow-up through a phone call system before and after the purchase.

## 1.3. Difference between After-sales support and guarantee

The legislator stipulated guarantee as a legal obligation in Article 16 of the law of Consumer Protection and suppression of Fraud, amended and completed, "In the framework of after-sales support, and after the expiration of the guarantee period specified by the regulation or in cases where the guarantee cannot play its role, the relevant intervening party must ensure the maintenance and repair of the product exposed in the market."

It is evident that the legislator did not make after-sales support effective only after the expiration of the guarantee or in cases where the guarantee cannot be applied.

This means that consumer protection does not cease after the expiration of the guarantee period but goes beyond to ensure the maximum possible benefit from the product. On one hand, the guarantee obligation is part of the sales contract and one of its effects, and on the other hand, this guarantee is free of charge as it is a principal obligation on the intervening party. However, after-sales support is considered a complementary obligation that occurs after the specified guarantee period or in cases where guarantee terms cannot be applied.<sup>(9)</sup>

It should be noted that the obligation of after-sales support derives from the guarantee obligation for a product. This allows the consumer to benefit from the product for as long as possible so as to achieve his purchase desire. Particularly, the legislator emphasized in Article 14 of Law 09-03 that "any other guarantee provided by the provider, whether for a fee or free of charge, does not supersede the benefit of the legal guarantee provided for in Article 13 above." This means that the consumer should clearly understand that his right is legally established, whether it is related to guarantee or after-sales support. The difference lies in the fact that the financial burden of the guarantee obligation falls on the intervening party, unlike after-sales support, where the financial burden falls on the consumer.

Furthermore, the difference between the two concepts lies in the duration of each obligation; the period for the guarantee obligation is determined according to the ministerial list and varies depending on the nature of goods.<sup>(10)</sup> Besides, it should not be less than six months for new equipment goods that have no specific regulation and at least three months for used products.

## **2. Terms of After-Sales Support**

For the sake of protecting the consumer's interests, the legislator enshrined the obligation of guarantee and adopted the mandatory after-sales support which encompasses a set of terms that can only be applied with the fulfilment of the guarantee terms themselves. These terms can be divided into mandatory terms for the initiation of the support(2-1) and terms related to the execution of the support(2-2).

### **2.1. Terms of the Initiation of After-Sales Support**

According to Executive Decree 21-244, after-sales support is achieved with the fulfilment of two essential conditions; the first one is the impossibility of executing the guarantee (One), and the second one is the absence of circumstance restricting the obligation of the support(Two).

#### **One: The Impossibility of Executing the Guarantee**

After-sales support is linked to the guarantee established for the benefit of the consumer as contained in Article 2 of the Executive Decree 21-244, which stipulates: "The provisions of this decree apply to goods destined to the consumer after the expiration of the guarantee period or in cases where the guarantee cannot be applied."

Expiration of the guarantee period refers to the two cases where the consumer cannot ask the intervening party for the guarantee; the first case is related to the guarantee period as stated in the aforementioned joint ministerial decree, which stipulates that the guarantee ends with the expiration of the legally defined period. However, the parties can exceptionally agree on an additional guarantee.

The second case is where the guarantee fails to fulfil its optimal role; in this case, the intervening party is obligated to repair and maintain the defected product before the expiration of the legal guarantee period, particularly when the defect is caused by the consumer, rendering the guarantee ineffective even within the legal period.

### **Two: Absence of Exceptional circumstance Restricting After-Sales Support**

The law, as stipulated in Article 4/2 of Decree 21-244, requires that "the manufacturer and/or importer must ensure the availability of spare parts for at least five (5) years in the event of cessation of production or import of a specific good, unless a special provision stipulates another period."

### **2.2. Terms for Executing After-Sales Support**

During the execution of the after-sales support, the intervening party must inform the consumer of everything related to the support(One) and ensure it is registered (Two).

#### **One: Informing the Consumer About everything related to the execution of the support**

The legislator requires the provider of after-sales support to inform the consumer about the nature of the defect before repairing he product, the parts that need to be replaced, the type of intervention required, potential risks resulting from the repair, and any other necessary information<sup>(11)</sup>, including the possible success rate and anticipated risks. Moreover, the second paragraph of the same article obligates informing the consumer of the possibility of retaining the replaced parts and elements.

#### **Two: Obligation to provide the customer with an estimation and Receipt**

According to Article 7 of Decree 21-244, estimation is a receipt that specifies the essential elements of the after-sales support contract and provides a detailed statement of the quantity and price for each support and product provided. It particularly includes the following statements:<sup>(12)</sup>

- Receipt number and date of product deposit,
- Name or business address of the support provider,
- Address and, if necessary, phone number and email address of the support provider,
- Name of the customer,
- Nature and brand of the product, and if necessary, its type and serial number,
- Type of the support provided,
- Cost of the support ,

- Potential reservations made by the support provider regarding the condition of the product,
- Amount of compensation for the product entrusted for repair when the value of the product exceeds the maximum amount specified in the compensation table,
- Duration of the product repair and the date of its return,
- Special terms of the after-sales support , if necessary,
- A statement referring to the provisions stated in Article 11 of this decree.

### **Three: Ensuring After-Sales Support is registered**

The legislator, as stated in Article 10 of Executive Decree 21-244, mandates that any after-sales support performed must be registered by issuing, depending on the case, an invoice, a receipt, or a ticket before the payment of the repair costs. This aims to prevent any disputes between the parties and to ensure that the consumer does not confuse the guarantee with the after-sales support.

### **Secondly: Execution of After-Sales Support and Practical issues**

The execution of after-sales support is often provided by public facilities of a commercial or economic nature or by agents with commercial accreditation.<sup>(13)</sup>

The legislator has required producers and/or importers to provide after-sales support for goods offered in the market in a way that covers their entire distribution network. Furthermore, after-sales support can be ensured by another natural or moral person entrusted by the manufacturer and/or importer to perform the after-sales support. In case of negligence by the intervening parties, there will be legal liability for violating after-sales support rules (1). Consequently, the intervening party will be compelled to execute it by force of law (2), while exploring the difficulties that prevented the provision of the support(3).

#### **1. The Seller's Liability in Support Execution**

The legislator's emphasis in various legal articles on the mandatory nature of after-sales support implies that the party responsible for executing it bears legal responsibility if it is established that they failed to perform the required support (1.1), except if there is a mutual agreement between the support provider and the consumer, thereby nullifying the obligation (1.2).

#### **1.1. Establishing the Support Provider's Responsibility**

The legislator stipulated that "every purchaser of any product...or vehicle...benefits from a guarantee by force of law." The after-sales support is established for the benefit of the consumer who purchased the product and the intervening party providing the after-sales support (One), and if imposed, the intervening party faces penalties (Two) and the consumer gets compensation for any damage (Three).

#### **One: Imposing the Provision of After-Sales Support**

Meeting consumer desires and attaining their satisfaction is the primary driver for the success of after-sales support . To achieve this, the legislator obliged intervening parties to provide after-sales support for spare parts, for example, so that the intervening party cannot refuse to commit to a given guarantee or support

obligation under the pretext of non-availability, such as claiming production has ceased or prices have increased, or stating that these products do not have accredited sales points in Algeria, unless they can prove that non-execution is due to reasons beyond their control.

### **Two: Imposing Penalties for Refusal to execute the support**

The refusal of the intervening party in charge of after-sales support to commit to their legal or contractual obligations incurs criminal responsibility, as per Article 14 of Executive Decree 21-244, which refers to the criminal liability provisions stipulated in Article 77 of Law 09-03, if it is established that the intervening party indeed refused to provide the after-sales support .

### **Three: Seller's Responsibility for Damage Compensation**

The legislator stipulated in Article 12 of Executive Decree 21-244 that "in case the customer endures material damage, a written request for compensation or by any suitable means may be submitted to the after-sales support provider."

The second paragraph of the same article emphasizes that "if the after-sales support provider does not provide a compensation for the damage within fifteen (15) days from the date of receipt of the compensation request, the customer may notify them via a registered letter with acknowledgment of receipt. In this case, the after-sales support provider has fifteen (15) days from the date of signing the acknowledgment of receipt to compensate the customer for the endured damage."

This implies the legislator's emphasis on the mandatory execution of after-sales support by intervening parties and their liability for the refusal to provide the support.

### **1.2. Cases of extinction of the After-Sales Support Obligation**

The legislator recognized the possibility of limiting the intervening party's responsibility for fulfilling their obligation if there is an agreement with the consumer to modify the contract terms (One) or if the consumer is satisfied and agrees to limit the intervening party's responsibility. Therefore, this satisfaction nullifies any claim of coercion against the intervening party's activity (Two).

#### **One: The Possibility of Agreement between Contracting Parties to Modify Contract Terms**

By referring to the Civil Code as the general legislation, we find that a contract is considered the law of the contracting parties. It cannot be annulled or amended except by mutual agreement.<sup>(14)</sup>

#### **Two: Consumer Consent Nullifies the Claim of abuse by the Intervening party**

Unilateral modification of the contract by the intervening party is considered an unfair term in contract conclusion. Similarly, unilateral abdication of responsibility is also deemed abusive according to Article 5 of Executive Decree 06-306<sup>(15)</sup>. However, if the other party consents to and agrees to limit the legal responsibility of the intervening party, it is not considered a form of abuse. Thus, consumer consent nullifies the claim of abuse.<sup>(16)</sup>

## **2. Obligating the Seller to commit to the Support Obligation**

To protect the consumer, the legislator established after-sales support and distinguished it with provisions for its execution, given that non-compliance to it is likely<sup>(17)</sup>, through judicial implementation of the obligation (2-1) or threats of fines for non-compliance (2-2).

### **2.1. Judicial implementation of the Obligation**

With the existence of a valid reason for the guarantee, the intervening party is obligated to execute this guarantee according to the Civil Code. Article 170 states that "in an obligation to an activity, if the debtor fails to fulfil his obligation, the creditor may request permission from the judge to fulfil the obligation at the debtor's expense if such fulfilment is possible."

By analogy, the intervening party in after-sales support is obligated to fulfil his obligations in a way that does not evade his legal responsibility, except in cases of force majeure where execution is truly impossible.

### **2.2. Threats of Fines for Non-Compliance**

The legislator emphasized in Article 174 of the Civil Code that "if specific implementation of the obligation is not possible or suitable unless it is carried out by the debtor himself, the creditor may obtain a ruling obliging the debtor to execute it and impose a mandatory fine if he refuses to do so."

The interpretation of this article reveals that the consumer has the right to obtain a ruling obliging the intervening party to execute the obligation through the imposition of a coercive fine. This fine can only be imposed under two conditions:

- The existence of an obligation that can still be implemented.
- The debtor's deliberate refusal to fulfil his obligation, which is established by a judicial officer's minute.

This is confirmed by Article 14 of Executive Decree 21-244, which refers to Article 77 of the law of Consumer Protection and Suppression of Fraud, in which the legislator imposes a fine ranging from fifty thousand Dinars (50,000 DZD) to one million Dinars (1,000,000 DZD) on anyone who violates the mandatory execution of after-sales support . However, in practice, the intervening party often evade the consumer and refuses to fulfil his obligation under the pretext of non-availability of spare parts, their high prices, or cessation of their production.

Article 85 of the Law of Consumer Protection and Suppression of Fraud refers to Article 36 of the Penal Code, granting judges the discretionary power to impose additional financial penalties in cases of repeat offenses or multiple fines attributed to the intervening party. This means that the intervening party can accumulate the prescribed fines in case he fails to fulfil his after-sales support obligations.

## **3. Obstacles to the Implementation of After-Sales Support**

The obstacles that prevent the intervening party from fulfilling his obligations to provide a support that meets the agreed-upon standards prevent consumers from benefiting from their legitimate rights as established in the consumption Law. The main obstacles include:

### 3.1. Unavailability of Original Spare Parts

Providing original spare parts is essential for repairing defects in products as stipulated in Article 38 in which the legislator obligated the agent to guarantee the provision of after-sales support for sold vehicles through qualified and professionally trained personnel. The after-sales support must particularly include the following services:

Regular maintenance covered by the guarantee, care and repair, and selling original or manufacturer-approved spare parts and accessories.<sup>(18)</sup>

However, in practice, intervening parties continuously evade their responsibilities to provide after-sales support under the pretext of cessation of production of such spare parts, their astonishing price hikes, or the non-importation and availability of spare parts at sales points in Algeria. This gives intervening parties an excuse to circumvent the execution of after-sales support .

### 3.2. Lack of Repair shops for After-Sales Support

The lack of repair shops is a significant reason for the decline and absence of after-sales support , especially since vehicle spare parts, for example, have become essential items that individuals cannot dispense with.<sup>(19)</sup>

It should be noted that the majority of Algeria's important public or private institutions involved in trading and selling products are not equipped with these shops, let alone not providing specialists and technicians for assembling and repairing these products. This leaves the consumer facing a support of unknown origin.<sup>(20)</sup> In this situation, the intervening party uses this as an excuse and escapes from fulfilling his obligation.

### 3.3. Difficulty of Determining the Cost of After-Sales Support

The costs of after-sales support are endured by the consumer; this raises the issue of determining the fee for the support provided by the intervening party, who has the authority to determine the fee he deems appropriate, and the consumer is then unable to discuss what is imposed on him due to the concentration of support and spare parts in the intervening party's hands.

Therefore, it is required that the intervening party, before starting the repair, informs the consumer of the origin of the defect, the parts that need to be replaced, the nature of the intervention, the potential errors resulting from the repair, and any other necessary information.<sup>(21)</sup> Hence, the date and deadlines for the execution of the support , as well as the price, will be determined.

### 3.4. Consumer's Ignorance of his Rights and the intervening parties' evasion of Providing After-Sales Support s

The consumer's ignorance of his legal rights regarding after-sales support is one of the main reasons for the inconsistent decline in after-sales support, despite the existence of many legal texts that obligate the intervening party. What makes the situation worse is the increase of evasion opportunities for intervening parties, especially the idea of delaying repairs beyond the required time.

## Conclusion

After highlighting the legislator's specification of the legal regulations governing after-sales support in Executive Decree No. 21-244, we concluded the following:

- After-sales support is focused on a set of regulations and conditions stated in Executive Decree No. 21-244, and divided into conditions for its establishment and others for its implementation.

- After-sales support is deemed a legally established obligation that ushered our day-to-day reality and has become a right for the consumer.

- The object of after-sales support , including installation, maintenance, and follow-up, does not cease with the sale process but rather obligates the intervening party to follow up on the product regardless of the duration.

- The intervening party's fulfilment of his obligation to after-sales support is only achieved by the end of the specified after-sales support period, or when it is impossible to execute it due to an exceptional circumstance beyond his control.

- In case intervening party fails to fulfil his obligation, a penalty is imposed on him in the form of a fine, which is doubled in case of recidivism.

Therefore, to address these shortcomings, the following suggestions are made:

- To develop binding legal texts to determine how the intervening party should execute after-sales support.

- The real activation of after-sales support can only be achieved by raising consumer awareness of his various legally recognized rights.

## Margins:

<sup>(1)</sup> Executive Decree No. 21-244, which specifies the terms and methods for providing after-sales support. Official Journal No.45

<sup>(2)</sup> Houssem Toukel Moussa, The Legal Framework for After-Sales Services in the Egyptian Consumer Protection Law (Analytical Study), 2020, p. 16.

<sup>(3)</sup> Jahida Mloukh, Abdelwahab Remidi, "The Impact of After-Sales Services on Consumer Loyalty to the Condor Brand in Bouira Province," Ma'aref Scientific Journal, Bouira University, Algeria, Issue 21, 2016, p. 176.

<sup>(4)</sup> Fatima Zahra Rabi Tebout, "Product guarantee and Implementation of After-Sales Support for Physical and Virtual Consumers as a Fundamental Right Guaranteed by Law," Journal of Global Policy, Vol. 6, No. 1, 2022, p. 1158

<sup>(5)</sup> Houssem Toukel Moussa, op,cit., p. 14

<sup>(6)</sup> Ibid., p.14

<sup>(7)</sup> Farhat Abbas, "The Importance of After-Sales Services in Industrial Enterprises – Condor Electronics," Journal of Economic Sciences, Management, and Commercial Sciences, University of M'sila, November 2014, p. 164.

<sup>(8)</sup> Ferhat Abbas, Ibid., p.167

<sup>(9)</sup> Mohamed Toufik Kadiri, "After-Sales Support in Light of Executive Decree 21-244," Journal of Legal and Social Sciences, Vol. 6, No. 4, December 2021, p. 1084.

<sup>(10)</sup> Article 2 of the Joint Ministerial Decree dated December 14, 2014, defining the guarantee period according to the nature of goods, Official Journal No. 03.

<sup>(11)</sup> Article six of the executive decree 21-244, op, cit

<sup>(12)</sup> Article eight of the same decree

<sup>(13)</sup> Dalila Maazouz, Op, cit., p. 69.

- <sup>(14)</sup> Article 60 of Order 75-58 dated September 26, 1975, bearing Civil Code, Official Journal No. 78, amended and supplemented.
- <sup>(15)</sup> Executive Decree No. 06-306, determining the essential elements of contracts concluded between economic agents and consumers and the clauses deemed abusive, Official Journal No. 56.
- <sup>(16)</sup> Khaled Dou and Zineb Cheikhi, op, cit., p.494
- <sup>(17)</sup> Maki Fella, "The Mandatory Nature of After-Sales Service in Light of the Law related to Consumer Protection and Suppression of Fraud," Academic Journal of Legal and Political Research, Vol. 6, No. 1, p. 607
- <sup>(18)</sup> Article 38 of the Executive Decree No. 15-58 sets the conditions and methods for practicing the activity of new vehicle agents, Official Gazette No. 05.
- <sup>(19)</sup> Zahia Bechatta, "Effectiveness of the guarantee Obligation in Consumer Contracts," Journal of Research, Vol. 06, No. 2, 2021, p. 194.
- <sup>(20)</sup> Dalila Mazouz, Op, cit., p.70
- <sup>(21)</sup> Article 06 of the Executive Decree 21-244 , op, cit.