The Specificity of the Producer's liability System for Damages Caused by Defective Products in Algerian Law

خصوصية نظام مسؤولية المنتِج عن أضرار منتجاته المعيبة في القانون الجزائري

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Abstract:

Producer liability is a civil liability system introduced by the Algerian legislator in 2005 within the Civil Code under Article 140 bis. This is due to the significant development in the industrial sector and the resulting proliferation of many and varied products in the markets, which often contain defects that make their use dangerous or ineffective. This requires holding the producer civilly liable to the consumer for the damages caused by their defective products to compensate the latter.

Keywords: Producer liability; Defective product; Objective liability

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Introduction

In recent years, Algeria has witnessed significant economic activity, coinciding with its openness to foreign markets and the proliferation of financial projects. This has had a profound impact on the increasing reliance on machinery and advanced technologies in the production sector, based on designs prepared in advance by humans and implemented by machines into a variety of products. While this diversity and abundance of products offered in national markets is likely to enrich consumer choices and meet their needs, a flaw in the concept and design of these products is sufficient to cause significant harm to all those who purchase them.

For the reasons mentioned above, the Algerian legislator took action for the first time in 2005 and enacted Article 140 bis of the Civil Code, under which the producer is liable for damages caused by defective products. Thus, it departed from the general rules for determining civil producer liability. Accordingly, we decided to pose the following question**:** What is the specificity of the newly introduced rules for producer liability for damages caused by defective products under Algerian law?

To answer this question, we relied on an analytical approach to remove the ambiguity surrounding Article 140 bis of the Civil Code, as well as a comparative approach to compare the position of the Algerian legislator with that of the French legislator on certain issues. Therefore, we divided the research paper according to the following plan:

* Section One: Defining the features of producer liability for damages caused by defective products under Algerian law.

* Section Two: The basis of producer liability for damages caused by defective products under Algerian law.

Finally, we concluded this research with a conclusion that includes the most important findings and some suggestions.

Firstly: Defining the Features of Producer Liability for Damages Caused by Defective Products in Algerian Law

Defining the features of producer liability for damages caused by defective products requires, on the one hand, defining its boundaries and clarifying its scope or area (Section One), as well as clarifying the conditions that must be met for this liability to be established (Section Two).

1- The Scope of Producer Liability for Damages Caused by Defective Products

The scope of producer liability is linked to defining its scope by identifying the persons involved in the liability (Section One), as well as its subject matter, which refers to the product that is presumed to be defective for the latter to be established (Section Two).

1-1- The Personal Scope of Producer Liability for Damages Caused by Defective Products

Article 140 bis of the Civil Code defines the scope of producer liability in terms of persons, stating that: "The producer shall be liable for damages resulting from a

defect in his product, even if he is not bound by a contractual relationship with the injured party." From this text, we note that this type of liability is linked to the establishment of two characteristics: the producer (first) and the injured party (second).

A- The Product's Characteristics

The producer is the person responsible for liability for damages caused by their defective products. It should be noted that the Algerian legislator did not define this term, although it did include the term in numerous legal texts.[1] ...which indicates the legislator's tendency to expand the scope of accountability, to provide the necessary protection for those harmed by his bias towards the expanded concept of the idea of the product[2], while the French legislator went to give the quality of the product to the main contributors to the production process, meaning the manufacturer of the final product, the manufacturer of the raw material, the manufacturer of the component part, etc.[3]

B- The status of the injured party

The Algerian legislator has also adopted a broad concept of the person harmed by defective products. This is evident in the text of Article 140 bis of the Civil Code's lack of attention to the importance of the relationship between the producer and the injured party. This, in turn, establishes equality between all those harmed by the defective product and establishes their right to compensation, regardless of whether they are contracting parties with the producer or not, i.e., third parties, those harmed directly or by reversion, consumers, professionals, natural or legal persons.[4]

This expansion of the circle of those harmed by defective products is a unique feature of this new type of liability, which departs from the general rules of civil liability, both contractual and tortious, which always examine the nature of the relationship between the injured party and the person who caused the harm before determining the right to compensation.

1.2. The Objective Scope of Producer Liability for Damage from its Defective Products

The scope of application of the rules of producer liability, in terms of subject matter, is limited to the concept of the product, a term familiar in consumer protection laws and their regulatory texts.[5].However, it was mentioned for the first time in the general rules within the text of Article 140 bis, paragraph 2 of the Civil Code, which stipulates that: "Any movable property, even if attached to real estate, is considered a product, especially agricultural and industrial products, animal husbandry, the food industry, marine fishing, and electrical energy."

This text makes it clear that the product for which the producer is liable for damage is movable property, even if attached to real estate. In this text, the legislator mentioned several types of products, whether they are tangible, such as agricultural and industrial products, animal husbandry, and the food industry etc., or intangible, i.e., physical, such as electricity. Gas also falls under this category.[6]. The drug is excluded from the producer's responsibility because it has special texts regulating it.

2. Conditions for the Establishment of Producer Liability for Damages Caused by Defective Products and Methods for Denying It

Since producer liability is a newly emerging liability, this has had an impact on the conditions for its establishment (the first section), on the one hand, and, conversely, the methods by which the producer can redress it (the second section).

2.1. Conditions for the Establishment of Producer Liability for Damages Caused by Defective Products

Producer liability for damages caused by defective products is unique in its conditions of establishment compared to traditional civil liability, which is based on fault. The producer is liable for damages caused by his products to third parties when they are defective (first), and when they are put into circulation, causing damage to third parties due to the defect (second).

A. Product Defect

The Civil Code does not define the concept of defect. However, by referring to Law 09-03, amended and supplemented by Law 18-09 on Consumer Protection and the Suppression of Fraud, we find that Article 3, Paragraph 11, states: "A sound, fair, and marketable product is: a product free from any hidden defect or deficiency that guarantees no harm to the health and safety of the consumer and/or his material and moral interests."

From this text, it is clear that the product is sound and not defective when it satisfies the legitimate desire of the consumer.[7]Although the latter is not defined in either Algerian or French law, but is linked to two types of provisions: the first is controls related to the physical condition of the product[8], and the second is controls related to the specific safety and security requirements of the product[9].

Here, the French legislator went further than what the Algerian legislator stipulated, when he expressed the physical condition of the product with the legal guarantee of contractual conformity.[10], as he required that the product be suitable for normal use given a similar product, and secondly, the connection of the legitimate desire with the security and safety requirements of the product.

The problem that arises in the issue of the establishment of the new liability of the producer is not only related to the concept of the defect that gives rise to liability, but also to the time of assessing that defect that afflicts the product. Despite the silence of the Algerian legislator in the text of Article 140 bis on this, it is a matter of utmost importance, and perhaps the legislator has realized its importance through Law 18-09 related to consumer protection and the suppression of fraud, when it restricted the consumer's benefit from the legal guarantee in the event of a product defect, to the issue of putting the latter into circulation, as the latter is among the pivotal concepts related to the law on consumer protection and the suppression of fraud.[11], and one of the key words that the legislator defined through this law[12].

The release into circulation is achieved as a condition for the producer's liability for damages caused by his defective products, according to Article 1245-4 of the French Civil Code, with the availability of two conditions. The first is the producer's

voluntary abandonment of the product, and leaving physical possession by actually delivering it to a third party.[13] With his knowledge[14].

The second condition, the single waiver, is an important, logical, and appropriate condition, as the goal is to place responsibility for defective products on the shoulders of whoever took the initiative and risk of placing the product on the market. Accepting the idea of multiple releases would introduce intermediaries into the distribution chain, creating injustice for other stakeholders.

The condition of releasing a product for circulation is fulfilled by placing the product at the consumer's disposal for use, and the producer must inform the consumer of this.[15]. Therefore, the product, for which the producer is liable for damages caused to others, must be defective, i.e., not meet the legitimate desires of the consumer, and must have been released for circulation by voluntarily or intentionally exiting the production phase and entering the marketing phase for the public to use for its intended purpose.

B. Compensable Damages

It is well known that civil liability only arises when there is damage to a third party, and the aim is to remedy this damage through compensation. The question here is: Does the producer's civil liability cover all damages caused by its defective products?

The Algerian legislator has remained silent on the issue of compensable damages. Therefore, it is understood that compensation covers all damages, meaning material, i.e., bodily, damages. This is confirmed by Article 9 of Law 18-09, which requires that products intended for consumption be guaranteed and safe, given their expected legitimate use, and that they do not harm the health, safety, or interests of the consumer. The legislator's use of the phrase "consumer health and safety" refers to the physical aspect.[16].

Moral damages also fall within the scope of compensable damages, as stated in the latest amendment to Law 09-03, as amended and supplemented by Law 18-09, when Article 19 stipulated that the product offered to the consumer must not prejudice their material interests or cause them moral harm.

Therefore, it can be said that the producer's civil liability entails compensating the injured party for defects caused by its defective products placed in circulation, regardless of whether the damages are material or moral.

2.2. Special Methods for Denying a Producer's Liability for Damage from Defective Products

A producer can deny civil liability if they present defenses that deny the causal relationship between the product defect and the resulting damage. It is well known that civil liability can be denied using traditional defenses stipulated in general rules, primarily foreign causes in all their forms, including force majeure, sudden accident, the victim's fault, and the fault of a third party. However, in this study, we will limit ourselves to special exemption reasons because they are specific to producer liability,

unlike French law, despite their lack of provision in Algerian law. We will address them below:

A- The defense related to the idea of putting the product into circulation

Article 1386/11 of the French Civil Code stipulates this defense, which enables the producer to deny liability if he proves that he did not put the product into circulation, i.e., by proving that it was put into circulation against his will, or by proving that the product was put into circulation but not for profit or to engage in a professional activity, such as if the purpose of putting the product into circulation was to conduct experiments on it. Here, the defendant is held liable based on personal fault, as is known in general rules, and not based on the rules. The new one.[17]

The producer can also claim that the products were not defective before they were put into circulation, meaning that the causal relationship between the defect and the damage can be negated by proving that the product was free of defects at the time it was put into circulation and that the defect arose after it was put into circulation.[18].

B- Refutation of Liability by the Producer's Non-Violation of Mandatory Rules

This defense means that the producer can absolve himself of liability if he proves that the product's defect is due to his adherence to mandatory rules, which are known to be inviolable. In this context, this means conformity to the legal specifications and standards governed and regulated by Law 16-04 of June 19, 2016, amending and supplementing Law 04-04 on Standardization. Conformity to legal specifications refers to the technical features contained in products and services that distinguish them from others.[19]. Conformity expresses the characteristics and features required of a product, whether a good or service, to achieve a specific purpose that the producer must adhere to from the start of the production process until it is released for consumption. Given their importance, the legislator has made the rules related to them mandatory. Therefore[20]The producer can absolve himself of liability based on his adherence to these mandatory rules if they are the cause of the product's defect.

3. The Defense Related to the Impossibility of Predicting the Risks of Scientific Development

In legal jurisprudence, the term development risk refers to the inability of the producer to discover or avoid a defect in the product based on objective and possible scientific and technical data at the time the product is put into circulation. Development risk links the event to the defect, as damages result from risks inherent in the product itself. The risk is inherent in the product itself.[21].

This defense assumes that the product has a defect that harms its user, but the producer did not discover it after exerting their efforts within the limits of available scientific and technical data. In this case, he is exempt from liability because the defect is a development risk.[22].

The French legislator, in Article 1386/2 of the Civil Code, has established that development risks are not an absolute basis for exemption from liability. Therefore,

the producer cannot invoke this defense when he fails to take the necessary measures to prevent harmful effects in the face of any defects discovered within ten years following the date of the product's release.[23].

Secondly: The Basis of Producer Liability for Damage from Defective Products

The basis of civil liability under general rules is fault, which obligates the person who commits it to compensate the injured party. However, the situation is different regarding the emerging liability of producers, imposed by the industrial and technological developments witnessed by the world and the accompanying diversity of products and, inevitably, damages resulting from defective products. Accordingly, we will address the basis of producer liability according to traditional rules (the first section), then the basis of producer liability according to the emerging rules (the second section).

1. The Basis of Producer Liability According to Traditional Rules

Traditional liability for damages caused by defective products fluctuates according to general rules, sometimes based on the notion of fault (first section), and sometimes based on the notion of liability (second section).

1.1. Fault as the Basis of Producer Liability for Damage from Defective Products

Relying on fault as the basis for producer liability stems from the fact that the producer, as a professional, is presumed to have exercised a certain degree of care to place a safe product on the market, to a level exceeding that of the average person. Indeed[24]The care and diligence exercised by the producer are the reason for confidently purchasing his products. Therefore, the introduction of a defective product by the producer demonstrates a breach of his obligation to provide a sound and fair product, and is therefore considered a mistake, regardless of the potential damage.

According to Article 140 bis, the legislator requires the producer to prove the absence of fault on his part to be exempt from liability. This means that the producer is presumed to have made a mistake. Conversely, the injured party is not required to prove fault on the part of the producer; rather, it is sufficient that he was harmed by the defective product that the producer put into circulation.

However, this is considered to reinforce the assumption of personal negligence, whereas the objective of establishing liability for damages resulting from defective products is entirely different:[25] to protect as many injured parties as possible and prevent them from being left without compensation

1.2. Bearing the Liability Basis for Producer Liability for Damage from Defective Products

The concept of bearing the liability, or what is known as bearing the risk, is based on two foundations. The first is that any activity that can cause harm is liable for it—the "loss is gain" principle. This concept is linked to the economic return without regard to the behavior of the person causing the harm. The second foundation

is the created risk[26], which is considered more consistent with the prevalence and diversity of accidents[27].

It states that anyone who creates a risk for others is obligated to compensate for the resulting damage, even if their behavior was not deviant or error-related. This is why it is known as the objective foundation or the objective-objective theory, which aims solely to remedy the damage by compensating the person harmed by defective products in circulation.[28]

In this context, some argue that the Algerian legislator, through Article 140 bis, has established absolute objective liability for the producer, as it does not require the injured party to prove the defect in the product, in contrast to what the French legislator has adopted through Article 1386-9 of the Civil Code.[29]

However, this objective basis for product liability is subject to many criticisms, the most important of which is that it leads to the cessation of individual initiative and paralyzes creativity and technological development for fear of being held liable without fault. It is a liability devoid of its moral content as long as it is based on the idea of risks[30]far from fault.

2. Transcending the Traditional Basis of Liability and Its Implications

Since producer liability is special, combining civil liability, both contractual and tortious, with objective liability, which extends beyond error as its element. It arises whenever a person is harmed by defects in the products the producer puts into circulation, it nevertheless remains objective, non-absolute liability. Section 1. This, on the one hand, is the implication of adopting the special objective basis. Section 2.

2.1. The Objective Basis of Producer Liability

The newly created producer liability arises, as previously mentioned, only upon the existence of harm caused by the release of the defective product into circulation, without the need for the producer to deviate from his conduct, i.e., without the need to prove his fault. This justifies the establishment of this type of liability based on the harm caused. Not only that, but it must also be taken into account that the cause of the harm is the defect in the product put into circulation. This removes it from the purely objective basis, which takes the concept of harm only, and shifts it to the special objective basis, which combines the two elements of the defect that creates the harm, which is what It adapts the producer's liability for damages caused by its defective products as a special objective liability.[31]

Considering that product liability is a special objective liability, the burden of proving the causal link between the product defect and the resulting damage falls on the injured party, by the general rules of proof. This comes in light of the Algerian legislator's silence regarding the burden of proof for this type of liability. Thus, the Algerian legislator has established the special objective liability of the producer as a legal basis for adopting the latter's liability, and has fulfilled the hope of a wide segment of product victims for compensation.

2.2. Implications of Adopting the Objective Basis of Liability

The assertion that a producer's liability for damages resulting from defects in its products offered for sale is an objective liability related to public order, and that no agreement may be made to exempt or mitigate it[32]. This entails implications regarding the issue of proving causality. The special nature of this liability requires the injured party to prove that the damage was caused by a defect in the product offered for sale. Although the Algerian legislator has been silent on the issue of determining the burden of proof in this type of liability, it has also not addressed the presumptions that facilitate the process of proof. This necessitates recourse to general rules. Consequently, the injured party is responsible for proving a causal relationship between the defect and the subsequent damage, without the need to prove fault.[33]

Although the task of proof is facilitated for the injured party, it remains insufficient to demonstrate the defectiveness of the product that caused the damage and creates liability due to the advanced techniques of manufacturing processes on the one hand, as well as the multiplicity and overlap of these processes on the other hand. This requires the assistance of an expert to inspect the product, commissioned by the judge, to resolve the dispute. The Algerian legislator has stipulated such a procedure when it specified the persons qualified to carry out this process in Articles 43 to 52 of Law 18-09 relating to consumer protection and the suppression of fraud.[34].

The legislator did not stop at establishing the basis upon which this responsibility is based, but rather expanded the scope of protection, as he placed the burden of compensating for bodily harm resulting from defective products on the state, through the text of Article 140 bis of the Civil Code, which stipulates that: If the person responsible for bodily harm is absent and the injured party had no hand in it, the state shall undertake to compensate for this harm.

Conclusion:

Through this research paper, we have seen that producer liability for damages caused by defective products is a newly emerging liability, enacted to provide the greatest degree of protection for those harmed by defective industrial products in circulation. This comes after traditional rules proved incapable of providing the required protection. Accordingly, we conclude the following:

The specificity of producer liability lies in its scope of application, both personal, in that it applies only to the producer and the person harmed by the introduction of a defective product into circulation, and objective, which is the defective product introduced to the exclusion of other products.

The conditions for establishing this type of liability are also special and unfamiliar to the general rules of civil liability. They include defect, damage, and the causal relationship between them. Furthermore, innovative methods for negating liability, although not specifically provided for by the Algerian legislature, are considered defenses that the producer can invoke to negate their liability. Their specificity lies in their relation to the newly emerging liability of the producer alone.

Producer liability is based on an objective foundation that goes beyond the traditional basis of liability known in general rules, which is based on personal fault. This is intended to protect those harmed from the risks of defective products.

Article 140 bis of the Civil Code is the only text that includes the newly created liability of the producer for damages resulting from its defective products. This is insufficient to clarify its provisions, which are sometimes ambiguous and sometimes complex. In light of these findings, we propose:

- Enacting additional legal texts to complement Article 140 bis, clarify its ambiguity, and establish a clear legal system for producer liability.
- Define the basic concepts related to this topic, given their impact on the liability system and their role as key terms for study, particularly: the producer, the injured party, the liability-inducing defect (different from the latent defect), the damages covered by protection, etc.
- Expanding the scope of liability from the producer to any person who falls within their jurisdiction, such as the importer, given that Algeria imports various products from foreign markets without manufacturing them.
- Clearly defining the burden of proof and departing from general rules, as well as reducing it for the benefit of injured parties, so that this liability fulfills the purpose for which it was enacted.
- Stipulating new defenses, following the example of the French legislator

Margins :

[1] Article 3, paragraph 1 of Law No. 04-02 of Jumada I 5, 1425, corresponding to June 23, 2004, defining the rules applicable to commercial practices, as amended and supplemented by Law 10-06 of August 15, 2010.

Algerian law does not provide a specific definition of the product, but it does mention it in Article 5 of Law 89/02 of February 7, 1989, concerning the general rules for consumer protection (repealed). The term "manufacturer" was also used in Article 5 of Executive Decree 97-494 of December 21, 1997, concerning the prevention of risks arising from the use of toys. Meanwhile, Article 2 of Executive Decree No. 90/266 of September 15, 1990, concerning the guarantee of products and services (repealed) addressed the term "professional" in the broad sense, defining it as: "the producer or manufacturer...", in addition to using this term in the text of Article 5. 4 of Executive Decree 92/284 of July 6, 1992 relating to medical and scientific information regarding pharmaceutical products used in human medicine

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