

Legal and Judicial Protection of Consumer in the Context of Investment and Trade Liberalization

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Abstract:

Consumer protection is a significant public concern that has received considerable attention from the Algerian legislature, particularly with the opening of opportunities for investment and trade freedom. The principle of freedom of industry and commerce is constitutionally enshrined within the Algerian legal framework, particularly in Article 37 of the 1996 Constitution. The 2016 Constitution subsequently reformulated and renamed this principle the freedom of investment and trade, which promotes prosperity, competition, and the prevention of monopolies. Consumer protection arises from the consumer's weaker position in such relationships. On the one hand, investors are granted privileges that positively contribute to diversifying services and meeting consumers' needs. On the other hand, economic liberalization poses risks that threaten the safety and security of consumers.

Keywords:

Freedom of investment and trade, consumer protection, legal liability, judicial protection, legal sanctions.

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الحماية القانونية والقضائية للمستهلك في سياق تحرير الاستثمار والتجارة

الملخص:

يعتبر موضوع حماية المستهلك من المواضيع العامة التي أولى لها المشرع الجزائري مجموعة من النصوص القانونية خاصة عند فتح مجالات الاستثمار وحرية التجارة الذي تم من خلاله تكريس مبدأ حرية الصناعة والتجارة دستوريا في الترسنة القانونية الجزائرية، وكان ذلك في نص المادة 37 من دستور 1996، ليأتي بعدها دستور 2016 حيث أعاد صياغته وتسمية مبدأ حرية التجارة والصناعة إلى مبدأ حرية الاستثمار والتجارة الذي يشجع على الازدهار والمنافسة ومنع الاحتكار. ويعود السبب في حماية المستهلك باعتباره في مثل هذه العلاقة الطرف الضعيف، فمن جهة هناك امتيازات تمنح للمستثمر وما له من ايجابيات على تنويع الخدمات والحاجات للمستهلك، ومن جهة ثانية هناك مخاطر تهدده وتهدد سلامته وأمنه نتيجة الانفتاح الاقتصادي.

الكلمات المفتاحية:

حرية الاستثمار والتجارة، حماية المستهلك، المسؤولية القانونية، الحماية القضائية، العقوبات القانونية.

Protection juridique et judiciaire du consommateur dans le contexte de la libéralisation des investissements et du commerce **Résumé :**

La protection des consommateurs est un sujet général auquel le législateur algérien a consacré un ensemble de textes juridiques, surtout avec l'ouverture des opportunités d'investissement et du libre-échange, par lequel le principe de la liberté d'industrie et du commerce a été inscrit constitutionnellement dans l'arsenal juridique algérien, comme le stipule l'article 37 de la constitution de 1996, puis vint la constitution de 2016, qui reformula et renomma le principe de libre-échange et d'industrie en principe de libre-investissement et de libre-échange, promouvant la prospérité, la concurrence et la prévention des monopoles. L'objectif était de protéger le consommateur, considéré comme la partie la plus vulnérable dans ce type de relations. D'une part, il ya les privilèges accordés a l'investisseur et les aspects positifs liés a la diversification des services et des besoins des consommateurs, et d'autre part, il y a les risques qui le menacent et mettent en péril sa sécurité en raison de l'ouverture économique.

Mots clés :

Liberté d'investissement et du commerce, Protection du consommateur, Responsabilité juridique, Protection judiciaire, Sanctions légales.

Introduction

The Algerian legislature has relied upon various constitutional and legal provisions to enshrine the principle of investment and trade freedom, establishing it in a clear and unequivocal manner and reinforcing it through guarantees to ensure effective implementation. The most recent of these guarantees is found in Law No. 22/18, dated 24 July 2022, pertaining to investment¹, as well as in Law No. 23/17, dated 15 November 2023, which sets forth the conditions and procedures for granting economic real estate belonging to state property for the realisation of investment projects². Furthermore, Executive Decree No. 23/486, dated 28 December 2023, specifies the components of economic real estate belonging to the private domain of the state, intended for investment projects and eligible for concessions³. Nevertheless, these developments have not precluded the Algerian legislature from imposing certain restrictions, which were introduced by virtue of the supplementary finance laws of 2009 and 2010 and even the Finance Law of 2014.

In light of the legal entrenchment of the principle of investment and trade freedom, along with the legal guarantees and privileges afforded to investors, which enable them to operate and invest with considerable assurance, questions

¹ Law No. 22/18 of 24 July 2022, concerning investment, Official Gazette No. 50 of 2022.

² Law No. 23/17 of 15 November 2023, specifying the conditions and procedures for granting state-owned economic real estate designated for investment projects, Official Gazette No. 73 of 2023.

³ Executive Decree No. 23/486 of 28 December 2023, specifying the components of state-owned private economic real estate designated for investment projects and eligible for concession, Official Gazette No. 85 of 2023.

naturally arise regarding the status of the consumer and the position he occupies within the framework of these incentives and privileges granted to investors.

Accordingly, it is necessary to examine the nature of the protection afforded to the consumer under laws that enshrine the principles of freedom of investment and trade.

To address this issue, the present study is divided into two main sections: the first examines the legal protection of the consumer, and the second addresses the judicial protection.

Chapter One: Legal Protection of the Consumer

The Algerian legislature has criminalised all forms and acts of fraud and deception pursuant to Articles 429, 430, 432, 433, and 434 of the Algerian Penal Code, these provisions define all acts constituting the material element of any offence that harms the consumer. This is intended to protect the consumer from behaviours likely to compromise the safety of products or services acquired to meet daily needs.

Thus, the concept of legal protection of the consumer will first be examined (Subsection One), followed by an analysis of the legal means of consumer protection within the framework of the principle of investment and trade freedoms (Subsection Two).

Section One: Concept of Legal Protection

The issue of consumer protection is a matter of significant public concern that has received considerable legislative attention from the Algerian legislature, particularly in the context of the liberalisation of investment and trade. In such relationships, the consumer is deemed the weaker party; on the one hand,

investors are granted privileges that positively contribute to the diversification of services and the fulfilment of consumer needs; on the other hand, economic openness entails risks that may threaten the safety and security of the consumer.

Accordingly, this section will attempt to elucidate the meaning of the term "consumer" (Section One), followed by a discussion of the concept of consumer protection (Section Two).

Subsection One: Definition of the Consumer

The Algerian legislature defines the consumer in Article 03/01 of Law No. 09/03 concerning consumer protection and the suppression of fraud as follows:

“A consumer is any natural or legal person who, in exchange for payment or free of charge, acquires a good or service intended for final use, whether to meet his own needs, those of another person, or an animal in his care”⁴. This is the same definition provided in Article 03/2 of Law No. 04/02 concerning the rules applicable to commercial practices, which stipulates: “A consumer is deemed to be any natural or legal person who acquires goods offered for sale or benefits from services offered, devoid of any professional character”⁵.

It may be deduced from these two definitions that the Algerian legislature has adopted a narrow conception of the consumer, restricting the term to those who acquire goods or services for the purpose of satisfying personal desires, with the goods thus acquired intended for final consumption. Goods acquired for

⁴ Law No. 09/03 of 8 March 2009, concerning consumer protection and the suppression of fraud, Official Gazette No. of 2009.

⁵ Law No. 04/02 of 23 June 2004, determining the rules applicable to commercial practices (as amended and supplemented), Official Gazette No. 41 of 2004.

the purposes of remanufacturing or investment are therefore excluded from the purview of these articles.

However, reference to the provisions of Executive Decree No. 90/39 concerning quality control and the suppression of fraud in particular Article 02 reveals a broader definition of the consumer:

“A consumer is any person who acquires, for consideration or gratuitously, a product or service intended for intermediate or final use, in order to satisfy his own needs, the needs of another person, or the needs of an animal in his care”⁶.

This latter definition thus expands the notion of the consumer, recognising as a consumer any individual who acquires a good or service to satisfy his own needs, the needs of an animal under his care, or the needs of another person who is not a party to the consumption contract “sometimes referred to as the beneficiary consumer.”

On the basis of these legal definitions, certain criteria can be relied upon to determine consumer status, including the following:

- The contracting party enters into the agreement to satisfy personal or family needs;
- The consumer may be a natural or legal person;
- The consumer may acquire the good or service either gratuitously or for consideration;
- The consumer is not a specialist in the relevant field of the transaction in question.

⁶ Executive Decree No. 90/39 of 30 January 1990, concerning quality control and the suppression of fraud, Official Gazette No. 05 of 1990.

Subsection Two: Concept of Consumer Protection

The notion of consumer protection bears considerable resemblance to that of the protection of human rights. This is evident from the fact that the safeguarding of human rights is a principle enshrined in all constitutions worldwide; and it is recognised by all global and regional organisations and has long been acknowledged in history.

The commitment to this principle inherently encompasses the concept of consumer protection, which is realised by ensuring a safe and secure life for consumer and for all members of society. This protection is manifested in safeguarding the individual's person and property and by guaranteeing access to goods and services at the most affordable prices.

Proceeding from this premise, it is evident that the Algerian legislature has given significant attention to the principle of consumer protection in relation to all parties involved in the provision of services, thereby establishing consumer protection as a constitutionally fundamental right. This is enshrined in Article 43/03 of Constitutional Amendment No. 16/01, dated 6 March 2016, the text of which provides the following:

“The state shall ensure the regulation of the market and the law shall protect the rights of consumers”⁷.

Moreover, the Algerian Constitution of 30 December 2020 also reaffirms consumer rights in Article 62, which provides:

“The public authorities shall act to protect consumers in a manner that ensures their security, safety, health, and economic rights”⁸.

⁷ Law No. 16/01 of 6 March 2016, containing the constitutional amendment, Official Gazette No. 46 of 2016.

This reflects the Algerian legislature's strong commitment to the principle of consumer protection, as well as the importance accorded to the status of the consumer as the weaker party in contractual relationships, a party that must be afforded by special legal protection within the framework of specific provisions, distinct from general rules that fail to provide adequate protection.

The concept of legal protection for the consumer is reflected in two main aspects:

- **Legislative protection:** This encompasses all legislative and regulatory instruments issued by the legislative authority and other relevant bodies with the aim of ensuring consumer protection.
- **Practical protection:** This is achieved through the efforts of all administrative authorities to ensure the effective implementation of legal provisions designed to protect the consumer. This includes the enforcement of controls on goods and services, the supervision of foodstuffs, quality control and monitoring, and ensuring compliance with laws. Furthermore, these authorities bear responsibility for enforcing the law in practice and may be held accountable for any failure to discharge these duties.

Section Two: Legal Means of Protecting Consumer Rights

The primary aim of establishing a special legal framework for consumer protection is to ensure comprehensive protection of the weaker party namely the consumer, thereby promoting justice, safeguarding the autonomy of transactions, and protecting consumer rights.

⁸ Presidential Decree No. 20/442 of 30 December 2020, concerning the promulgation of the constitutional amendment approved by the referendum of 1 November 2020, Official Gazette No. 82 of 2020.

Accordingly, this section addresses consumer rights (Section One), followed by an examination of the protective mechanisms for these rights in the context of economic liberalisation (Section Two).

Subsection One: Consumer Rights

The concept of consumer rights protection can be traced back to President John F. Kennedy, who, on 15 March 1962, delivered his famous landmark address before Congress, stating:

“The word ‘consumer’ by definition includes us all. They represent the largest economic group and are impacted by almost every public and private economic decision. Yet they remain the only significant group whose views are often overlooked”⁹.

This speech articulated four fundamental rights, to which the United Nations added a further four in 1985, resulting the total to eight principal rights, the most notable of which are as follows:

- **The right to information:** This entails providing individuals with the facts they need to make informed choices about products and services.
- **The right to choose:** this refers to the consumer’s freedom to select products and services according to their preferences, at reasonable prices while ensuring quality is maintained.

⁹ Quoted in Basil Youssef Muhammad Al-Shaer, Preventive and Legislative Measures for Consumer Protection in Islamic Jurisprudence: A Comparative Study, (PhD diss., University of Jordan, 2004, p. 54.

- **The right to safety:** This is a constitutionally enshrined right; protecting human life from harm arising from products and production processes that may endanger to personal safety¹⁰.
- **The right to the fulfilment of basic needs:** this includes access to food, clothing, housing, healthcare, education, and other essential goods and services.
- **The right to be heard:** This entails enabling individuals to express their opinions freely and to choose the goods and services they wish to obtain.
- **The right to redress.**
- **The right to live in a healthy environment,** that is, to reside in surroundings that ensure an environment free from pollution.
- **The right to boycott,** for example, the ability to refrain from purchasing products originating from a particular country, company, or organisation.

All these rights and others provide consumers with the adequate and sufficient information to make well-informed decisions. Through the consolidation of consumer protection, the legislature seeks to reach a stage where the consumer is capable of protecting his or her own interests.

Subsection Two: Protective Mechanisms for the Consumer in the Context of Economic Liberalisation

Consumer protection in Algeria has become a matter of particular concern and priority. This is evidenced by the policies adopted in Algeria, which have led to the enactment of a body of legal and regulatory instruments aimed at

¹⁰ Hussein Shahin, "The Protection of Arab Consumer Rights: Reality and Mechanisms for the Application of Law," paper presented at the Scientific Symposium on the Protection of the Arab Consumer Between Reality and Mechanisms for the Application of Law, Legal and Judicial Research Centre, League of Arab States, 2–4 June 2014, pp. 2–3.

protecting and safeguarding consumers, an issue addressed in this section, which is divided into two main areas:

- Protection of the consumer from the producer or investor under the consumer protection law.
- Protection of the consumer from the producer or investor under other laws.

First: Protection of the consumer from the producer or investor under the Consumer Protection Law

The development of consumer protection began in 1989, following Algeria's transition of a market economy, which resulted in the promulgation of Law No. 89/02 concerning the general rules for consumer protection¹¹.

This law gave rise to the following rights:

- The right to protection from risks to the health, safety, and material interests of the consumer;
- The right to obtain products or services that comply with legal specifications;
- The right to legal guarantees and services and the right to test products;
- The right to representation and solidarity through consumer protection associations as well as other related rights.

Furthermore, Law No. 90/31, which seeks to involve civil society in consumer protection through the participation of consumer protection

¹¹ Law No. 89/02 concerning the general rules for consumer protection. Ibid.

associations¹², was subsequently enacted. This was followed by several executive decrees, the most notable of which are as follows:

- **Executive Decree No. 90/39:** This decree sets out and regulate the conditions governing quality control and the suppression of fraud are carried out, in accordance with the provisions of Law No. 89/02 mentioned above¹³.
- **Executive Decree No. 91/53:** According to Article 01, this decree aims to specify the working conditions to be observed in relation to health regulations during the presentation of foodstuffs for consumption¹⁴.
- **Executive Decree No. 96/355¹⁵:**

Subsequently, specifically in the field of consumer protection, Law No. 90/03 was promulgated with the aim of safeguarding the consumer and encompassing all elements relevant to his protection. Among its most significant provisions are as follows:

- Defining the rules applicable to consumer protection and the suppression of fraud;
- Defining the concept of the consumer;
- Mandating post sale guarantees;
- Requiring the sanitary safety of foodstuffs and the cleanliness of the premises where they are displayed;

¹² Law No. 90/31 of 4 December 1990, concerning associations, Official Gazette No. 53 of 1990.

¹³ Executive Decree No. 90/39 of 30 January 1990, concerning quality control and the suppression of fraud, Official Gazette No. 05 of 1990.

¹⁴ Executive Decree No. 91/53 of 23 February 1991, Official Gazette No. 09 of 1991.

¹⁵ Executive Decree No. 96/355 of 19 October 1996, concerning the establishment, organisation, and operation of laboratories for testing and quality analysis, Official Gazette No. 62 of 1996.

- Mandating the obligation to provide information to the consumer; among other provisions.

This law was followed by Executive Decree No. 13--378, issued pursuant to Article 17 of Law No. 09/03, which specifies the conditions and procedures governing consumer information¹⁶.

Additionally, Executive Decree No. 15/114, concerning the terms and conditions applicable to offers in the field of consumer credit, was also issued¹⁷.

Moreover, various obligations have been imposed on investors and producers to safeguard the consumer. The most important of these obligations, which also constitute rights for consumers, include the following:

- The obligation to provide guarantees;
- The obligation to inform;
- The obligation to label products in order to inform the consumer;
- The obligation to ensure safety;
- The obligation to ensure conformity.

Second: Protection of the consumer from producers or investor under other laws

In addition to consumer protection law, several other laws that contribute to consumer protection, the most important of which include:

¹⁶ Executive Decree No. 13/378 of 9 November 2013, specifying the conditions and procedures relating to consumer information, Official Gazette No. 41 of 2013.

¹⁷ Executive Decree No. 15/114 of 12 May 2015, concerning the terms and conditions of offers in the field of consumer credit, Official Gazette No. 24 of 2015.

- **The Penal Code¹⁸**: This code is provides for the imposition of sanctions on anyone who infringes upon human dignity or safety or causes harm.
- **Law No. 79/07, the Customs Code¹⁹**: This law explicitly prohibits goods that infringe intellectual property rights, including all goods and symbols associated with trademarks, as well as packaging bearing counterfeit marks. This measure protects consumer from harmful imported goods, a position further reinforced by Article 42 of the Finance Law of 2008.
- **Law No. 04-02²⁰**, which sets out the rules governing commercial practices: This law enshrines legal ensuring transparency and fairness in commercial practices undertaker by economic operators and investors. It also protects consumers from false advertising and ensures compliance with international standards in the manufacture and presentation of goods. This law was amended in 2010 by Law No. 10-06²¹.

Furthermore, the process of obtaining product information must comply with Article 09 of Organic Law No. 12/05 concerning information²².

¹⁸ Ordinance No. 75/47 of 17 June 1975, amending Ordinance No. 66/156 of 2 June 1966 establishing the Penal Code (added Chapter Four to the Penal Code under the title: "Fraud in the Sale of Goods and Deception in Food and Medical Substances"), Official Gazette No. 53 of 1975.

¹⁹ Ordinance No. 79/07 of 21 July 1979, establishing the Customs Code, Official Gazette No. 30 of 1979 (as amended and supplemented).

²⁰ Law No. 04/02 of 2 June 2004, determining the rules applicable to commercial practices (as amended and supplemented), Official Gazette No. 41 of 2004.

²¹ Law No. 10/06 of 15 August 2010, amending and supplementing Law No. 04/02 of 2 June 2004, determining the rules applicable to commercial practices, Official Gazette No. 46 of 2010.

²² Organic Law No. 12/05 of 12 January 2012, concerning information, Official Gazette No. 02 of 2012.

Chapter Two: Judicial Protection of the Consumer in the Context of Investment and Trade Liberalisation

The judiciary's role in consumer protection is evident in all procedures undertaken, whether in investigations relating to violations of consumer rights or in the imposition of sanctions on violators as an essential safeguarding for protecting both the material and moral interests and rights of the consumer.

From this perspective, this section aims to clarify the role of judicial bodies in consumer protection (Subsection One) and then examines the extension of liability within consumer relations for the benefit of the consumer (Subsection Two).

Section One: Role of Judicial Bodies in Enforcing Consumer Protection

The right of recourse to the judiciary is a right enshrined in the constitution. Procedural protection for consumers is reflected in their ability to initiate legal proceedings to defend their rights and interests, thereby ensuring access to judicial remedies. Such protection may be afforded either through collective actions brought by consumer protection associations (Section One) or through public actions initiated by the public prosecutor *ex officio* in cases where consumer interests are at risk (Section Two).

Subsection One: Role of Consumer Protection Associations in Litigation of Behalf of the Consumer

The Algerian legislature has recognised the right of public associations to bring legal action and to defend consumer rights, as established by both Article

12/2²³ of Law No. 89/02 (now repealed) and Article 17 of Law No. 12/06²⁴ concerning associations. One consequence of acquisition legal personality is the right of associations to exercise all the rights granted to civil parties in court.

The Competition Law²⁵ also affirms, in Article 96, the right of consumer protection associations and professional associations to bring actions before the courts against any economic agent who has violated the provisions of this ordinance, acting as a civil party to seek compensation for damages suffered.

A review of the majority of legal texts shows that the Algerian legislature has clearly and unequivocally affirmed the right of these bodies to litigate to defend consumer rights and interests. This is further supported by Article 23 of Law No. 09/03 concerning consumer protection and the suppression of fraud²⁶.

However, while the legislator has granted this right to these associations, a fundamental condition applies, and its absence removes their right to bring an action. In cases where proceedings are initiated on benefit of a specific individual consumer, the action must be brought in the name of that individual, not in the name of the association; otherwise the court will dismiss the action for lack of standing.

In contrast, in cases concerning the collective interests of consumers, rather than individual interests, the association may bring the action in its own name.

²³ See the provisions of Article 12/02 of Law No. 89/02 concerning the general rules for consumer protection. Ibid.

²⁴ Law No. 12/06 of 12 January 2012, concerning associations, Official Gazette No. 02 of 2012.

²⁵ Law No. 03/03 of 19 July 2003, concerning competition, Official Gazette No. 43 of 2003 (as amended and supplemented).

²⁶ See the provisions of Article 23 of Law No. 09/03 concerning consumer protection and the suppression of fraud. Ibid.

Moreover, a consumer's lack of objection does not prevent the association from exercising its rights as a civil party.

The role played by public associations may be summarised as follows:

- The Initiating legal proceedings to defend consumers' collective interests;
- The association joining proceedings brought by the consumer, as stipulated in Article 194 of the Code of Civil and Administrative Procedure;²⁷
- The Institution of legal actions by consumer protection association to defend the individual interests of a consumer or of a group of consumers is provided for in Article 23 of the Consumer Protection Law. However, two conditions must be satisfied in this case:
 1. The harm suffered must be attributable to the same party;
 2. The damage must be personal in nature.

Despite the recognition of such rights for consumer protection associations, they are criticised for their limited social engagement. Compared with Western countries, these associations are less effective, primarily because of limited resources that hinder the continuity of their activities.

Subsection Two: Role of the Judiciary in Consumer Protection

The Algerian legislature grants every natural or legal person whose rights have been infringed the right to initiate legal proceedings to assert their rights and seek compensation for damage. A public action may be brought by the victim or by associations specialising in consumer protection, as previously indicated. In addition, the public prosecutor may also initiate such actions in

²⁷ Law No. 08/09 of 25 February 2008, containing the Code of Civil and Administrative Procedures, Official Gazette No. 12 of 2008 (as amended and supplemented).

cases where an infringement of consumer interests constitutes a criminal offence²⁸.

The intervention of the public prosecutor in the protection of the consumer is consistent with its designated role, nor does not imply interference in investors' affaires. Rather, whenever there is an infringement of the security and safety of individuals, the prosecutor has the right to intervene.

Such intervention may be carried out by any representative of the public prosecution, such as the public prosecutor, who, as the head of the judicial police, represents society before the courts and ensures the enforcement of the law.

-The Role of the Public Prosecutor General in Consumer Protection:

The law empowers the Public Prosecutor General, who represents the judiciary at the level of the council and operates under the supervision of the Indictment Chamber, to request that the Indictment Chamber to examine any matter that may constitute an offence or a shortcoming in the performance of duties. The Public Prosecutor General may delegate these powers to members of the public prosecution within the limits of their local jurisdiction.

-The Role of the Court in Consumer Protection:

The court plays a central role in adjudicating all violations committed against consumers or other weaker party in any contractual relationship. The case may be brought before the court by the public prosecutor or may be referred by an investigating judge or the Indictment Chamber, depending on the nature and specific circumstances of the offence.

²⁸ Mohamed Boudali, *Consumer Protection in Comparative Law: A Comparative Study in French Law*, p. 673.

Furthermore, the court has the authority to issue rulings ordering the seizure and destruction of products involved in the offence or to render interlocutory judgments ordering expert evaluation.

However, it should be noted that recourse to the judiciary, procedural complexities, and other obstacles faced by consumer make such protection difficult to obtain, except in very limited circumstances, particularly in developing countries such as Algeria. This often leads consumers to refrain from pursuing judicial redress, thereby relinquishing their rights and undermining the deterrent effect against offenders.

Section Two: Expanding the Scope of Liability for Consumer Protection

In an effort to provide greater protection to the consumer, the legislature has sought to broaden the range of persons who may be held liable in cases of harm to the consumer. While the general principle is that the relative effect of any contract is limited to its parties alone, excluding third parties, the legislator has, for consumer protection purposes, extended this scope. Thus, under the provisions of consumer protection law, the Algerian legislature has granted the consumer the right to take direct action against any party involved in supplying a product for consumption, holding such parties liable, whether as producers, importers, transporters, distributors, or warehouse operators, among others. This can be inferred from Articles 02 and 03 of Law No. 09/03 concerning consumption.

Accordingly, this section addresses the liability of the participant for breach of the mandatory guarantee (Section One), as well as the expansion of judicial powers in favors of the consumer (Section Two).

Subsection One: Liability of the Participant for Breach of the Mandatory Guarantee

According to Article 03 of Law No. 09/03, a participant is defined as follows:

“Any natural or legal person involved in the process of making products available for consumption.”

Moreover, this article defines the process of offering products for consumption as follows:

“All stages of production, importation, storage, transport, and distribution, whether wholesale or retail”²⁹.

Thus, all such participants are bound to the consumer, since the participant’s status forms the basis for the applying of the provisions of this law.

A similar point is made in Article 140 bis, which considers the producer liable for damage caused by product defect, even in the absence of a contractual relationship with the injured party. It should be noted, however, that this provision applies specifically to the producer and excluding other participants.

With reference to the provisions on guarantees under consumer protection law, Articles 13 and 14 of Law No. 09/03 concerning consumer protection and the suppression of fraud, as well as Executive Decree No. 13/327, which determines the conditions and procedures for the implementation of guarantees on goods and services, establish comprehensive guarantee provisions. These do not require the conditions stipulated under general rules, such as latent defects, product age, or consequential effects.

²⁹ For further details, see the provisions of Articles 02 and 03 of Law No. 09/03, Ibid.

Even after delivery, if a new defect arises in the product during the guarantee period, the product must be replaced, refunded, or repaired at the expense of the seller or producer³⁰.

The participant is also required to ensure the maintenance and repair of products offered on the market, in accordance with the obligation to provide after-sales service for goods, as stipulated by Executive Decree No. 21/244, which determines the conditions and procedures for delivering after-sales service³¹.

Furthermore, the duration of the guarantee shall be less than six months, as established by Article 16 of Executive Decree No. 13/327. This period may be extended to up to twenty-four months for certain electronic devices, as stipulated by the joint ministerial order dated 14 December 2014, which determines the duration of the guarantee depending on the nature of the product.

In light of this, the liability of the participant is triggered immediately upon the purchaser's notification of the defect in the purchased product within a reasonable period, thereby incurring civil liability. In addition to this civil liability, there is also criminal liability, as stipulated in Article 75 of the Law on Consumer Protection and the Suppression of Fraud, which states:

“A fine ranging from 100,000 to 500,000 Algerian Dinars shall be imposed on anyone who the guarantee obligation or fails to honour the product guarantee as set forth in Article 13 of this law”³².

³⁰ See the provisions of Article 13 of Executive Decree No. 13/327, Ibid.

³¹ Executive Decree No. 21/244 of 31 May 2021, specifying the conditions and procedures for providing after-sales service for goods, Official Gazette No. 45 of 2021.

³² See the provisions of Article 75 of Law No. 09/03 concerning consumer protection, Ibid.

Moreover, an additional guarantee may be offered, as stipulated by Article 03/02 of Executive Decree No. 13/237, as well as Article 19 of the same decree.

Subsection Two: Expanding the Powers Granted to the Judge in Favour of the Consumer

There are certain differences and consequences that hinder the judge's role, sometimes compelling the judge to rely on general legal principles to interpret provisions or establish a broader conception of the relevant interest. Despite some divergences between general rules and the provisions of the Consumer Law or the Consumer Protection Law, judges may rely upon the former to address certain deficiencies that impede their function, particularly in light of modern techniques that are complex to interpret and that can be interpreted only through recourse to general principles³³.

With reference to the powers granted to the judge, it is evident that, in applying the provisions of Articles 111 and 112 of the Algerian Civil Code, the judge is afforded broad authority to interpret the terms of a contract. If any ambiguity is found, the judge has the right to review, examine, and attempt to construe the contract; however, this is on the condition that the terms and clauses of the contract are not clear, as stipulated in Article 111/1 of the Algerian Civil Code, which provides the following:

“If the terms of the contract are clear, it is not permissible to deviate from them by interpretation in order to ascertain the intent of the contracting parties.”

From an analysis of this provision, it is clear that the Algerian legislature has conferred the judge broad authority to interpret the terms of a contract when

³³ Mohamed Boudali, "The Crisis of Law in Light of the Expansion of Consumer Protection Law", *Annales de l'Université d'Alger*, vol. 30, no. 3, 2016, p.240.

there is ambiguity in its language, thereby enabling the judge to determine the genuine intent of the parties rather than the literal wording intent when the contract clauses are ambiguous.

The stipulations in Article 111/02³⁴ of the same code, in a manner that safeguards the interests of the adhering party, as well as the provisions of Article 112/02, are as follows:

“However, ambiguous terms in adhesion contracts must not be interpreted to the detriment of the adhering party”.

This article further adds the phrase “Any doubt shall be resolved in favour of the debtor,” meaning that, in cases of doubt, interpretation should favour the debtor.

Nevertheless, this process is placed under the oversight of the Supreme Court, although it is not a court of first instance; its role is limited to oversight regarding the correct application of the law. In such cases, the judge is subject to review in cases of non-compliance with the relevant provisions.

In the context of adhesion contracts, the judge is subject to the supervision of the Supreme Court in two respects:

- The principle prohibiting the interpretation of clear terms;
- The principle that any doubt must be resolved in favour of the weaker party.

³⁴ See the provisions of Article 111/02 of the Algerian Civil Code.

Conclusion

In truth, the legislative and regulatory texts governing consumer protection are in place, as are the judicial authorities charged with their application. Nevertheless, these provisions encompass ambiguous principles, particularly when they conflict with the incentives and privileges granted to investors; in such circumstances, the consumer may face court proceedings without effective legal protection.

As previously noted in this scholarly paper, the legal provisions intended to protect the consumer, such as the right to information, the right to safety, and the right to choice, among others, is rights enshrined under Law No. 09/03. However, the bodies tasked with enforcing this protection, such as associations, play an almost negligible role because of the lack of legal awareness in this area and the paucity of financial resources.

With respect to the role of the judiciary in consumer protection, despite its significant and effective contribution to investigating infringements of consumer rights or imposing sanctions on violators as a fundamental guarantee for the protection of both the material and moral interests and rights of the consumer, this role is undermined by lengthy judicial procedures, the absence of specialised sections for addressing consumer disputes (which are usually subsumed under the commercial division), and the high costs of litigation. All these factors constitute barriers and obstacles that prevent the consumer from obtaining his rights through judicial means.