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The Legal protection for the electronic consumer in the Algerian Legislation

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Abstract:

In light of the growth of contracts concluded through electronic means, the danger and threat of the consumer in the face of the professional has grown.

Due to the latter's knowledge and technical expertise. Therefore, the legislator finds himself obliged to provide the necessary protection to the electronic consumer, as he is a weak party in this contractual relationship.

In addition to the legal protection provided by the texts of traditional laws to the uninitiated, the legislator seeks to provide more protection through special texts. The Algerian legislator has embodied this through the provisions of Law 15-04 related to electronic signature and certification as a mechanism to protect the electronic consumer.

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Key words

e-contract, e-commerce, e-consumer, consumer's right, product, sevice, electronic certification, electronic signature

الملخص:

في ظل تنامي العقود المبرمة بالوسائل الإلكترونية ، ازداد خطر وتهديد المستهلك في مواجهة المحترف .

نظرا لمعرفة هذا الأخير وخبراته الفنية. لذلك يجد المشرع نفسه ملزماً بتوفير الحماية اللازمة للمستهلك الإلكتروني ، فهو طرف ضعيف في هذه العلاقة التعاقدية.

فبالإضافة الى الحماية القانونية التي توفرها نصوص القوانين التقليدية للمستهلة، فإن المشرع يسعى لتوفير حماية أكثر من خلال النصوص الخاصة. وقد جسد المشرع الجزائي ذلك من خلال نصوص القانون 04-15 المتعلق بالتوقيع والتصديق الإلكترونيين كآلية لمان حماية المستهلك الإلكتروني.

الكلمات المفتاحية:

العقد الإلكتروني، المستهلك الإلكتروني ، المنتج، حقوق للمستهلك، الخدمة، التصديق الإلكتروني، التوقيع الإلكتروني.

INTRODUCTION.

Proceeding from the concept of the electronic contract, we say that the law intervenes either to protect the electronic. Or to ensure the professional's implementation of the content of the contract. and the law intervenes with special legislation to protect the electronic consumer in the face of the professional and others. Because the electronic contract is concluded through an electronic network, it is exposed to the danger of electronic credit, especially the distortion, sabotage or piracy of electronic information.

The special nature of the electronic contract requires special protection for the consumer. However, this does not mean that traditional legal rules do not interfere with the protection of the electronic consumer, the question that arises in this research is: w

hat protection does the Algerian legislator provides for the electronic consumer?

We deal the subject through an analytical study according to a systematic plan in which we divide the research into three sections. In the first section, we discuss some concepts. In the second, we address the legal protection of the electronic consumer at the stage of contract formation. We dedicate the third to consumer protection during the implementation of the contract.

I- Important Concepts:

Here we introduce a number of impotent terms that are commonly used in the economic field of dealt with consumer, especially as electronic consumer.

1- Electronic consumer;

He is the person who concludes various electronic contracts of purchase and rent and loans, usufructs and others, in order to provide what he needs in terms of goods and services to satisfy his personal needs or family business without intending to re-market them and without having the technical expertise to deal with these things and repair them. (Abderrahman Khalfi, 2013, p. 02)

2- Definition of an electronic contract.

Jurisprudence defines an electronic contract as "an agreement in which the offer and acceptance converge on an international network for communication, by an audible and visual means, thanks to the interaction between the offeror and the acceptor. (Manssour Mohamed Hussin, 2003, p. 18)

It is also known as "a contract concluded by a totally or partially electronic means, originally and on behalf of.

3- Characteristics of the electronic contract.

An electronic contract has characteristics that distinguish it from a regular contract, which we explain as follows;

A / The electronic contract is made without the physical presence of the parties of the contract; The two contractors bring them together a judgmental contract board via electronic means of communication, where the negotiation takes place and then the offer and acceptance are exchanged via the Internet, this is what gave the contract the character of negotiation between absentees.

However, there are those who believe that an electronic contract is absent if it is there a period of time between sending the offer and receiving the acceptance via the Internet, and if the consumer receives it the offer is immediate, so we are in front of a contract between those present. (Al-Agoli, Ahmed Khaled., 2002, p. 90)

However, time is not the only element that distinguishes contracting between absentees from contracting between present contractors, but there are other elements such as location and preoccupation with the affairs of the contract.

B / The electronic contract belongs to the group of contracts that are executed remotely, and is intended to be those contracts which is concluded between two far-flung parties using a means of remote communication.

The second article from European Directive No. 97-07 of 20 May 1997 related to consumer protection in the United States defined it as “every contract related to goods and services remotely, organized by the supplier who uses one or more remote communication technology to conclude or implement the contract. (2nd art. European directive No.97-07, 1997)

C / The electronic contract is made by electronic means, and this method is what gives it this characteristic. However, the subject matter of the contract does not differ from all other contracts, as it can be contained in all goods and services that may be transacted in it. (Manssour Mohamed Hussin, 2003, p. 19)

D / The electronic contract has a commercial and consumer nature at the same time, so it is called an electronic trade contract. The commercial character is the implementation of some or all commercial transactions in goods and services that take place between a commercial project and another or between a merchant and an electronic consumer. The commercial sale represents the largest part of all contracts concluded over the Internet. As for the consumer nature, because it is often between a merchant and a consumer and from there it is considered a consumption contract, and is consequently subject to the rules for consumer protection. (Khaled, Mamdouh Ibrahim., 2000, p. 3)

E / The electronic contract is proven through the electronic document, and it is the reference to find out the agreement of the

contracting parties and determine their legal obligations, unlike the paper backing that embodies the physical existence of the traditional contract. (Shams El-Din, Ashraf Tawfik, 2002, p. 42)

The electronic document stands on a functional equal footing with the traditional document. The e-commerce law model developed by the International United Nations Commission on Trade Law in a way called functional equality adopted this. This expression is meant to look at the traditional document that relies on paper writing and analysis of its characteristics. And an indication of the extent of availability in the electronic document. The result of the similarity of the two traditional documents and the electronic one in these characteristics and qualities is the determination of equality between them in functions. (Abderrahman Khalfi, 2013, p. 5)

II- Electronic consumer protection during the formation of the contract

A- Protecting the balance between the two parties to the contract.

1- The right to electronic media.

The consumer's right to information means his right to know the product in a comprehensive manner, especially in facing a professional trader, with extensive knowledge, accumulated long experience in the field of transactions.

The matter which entails there is a grave imbalance in the knowledge between these two sides that are coming to the fore contract. (Mani Abdelhak, 2009, p. 41)

The right to information is one of the most important legal mechanisms in consumer protection, and it is required more in

the field of electronic contract, because this type of contract is done using electronic means without a physical meeting between its parties, and in this way many risks impact on consumer satisfaction.

Therefore, the keenness of modern legislation on the necessity of informing the electronic consumer on a certain way differs from the right to be informed in normal cases, and we try through this section to clarify the meaning of the right to electronic media with a statement of its justifications, and then study the place of the right to media

What do electronic media mean?

The trade man shall informs the consumer with all the data he has relating to the contract until he will be enlightened. In addition, all information must be given as long as it is of importance in the contract (Ben Ali Ehsan, 2016, p. 7). Moreover, the Algerian legislator clearly stated in Article 17 of the Consumer Protection Law that it is mandatory to inform him, but this is in ordinary or traditional contracts without reference to electronic contracts, unlike the French legislator who included what is known as consumer protection in the field of contracting from far away in the Consumer Law.

Electronic transactions are among them, but it was clearer when this law was amended by order 2005 and decided that the provisions of remote contracting related to the right No. 648 dated on 06 / 06/2005.

The notifications mentioned in Article 121-18 apply to electronic contracts, whether they include product or service.

2- The right to retract.

The Algerian legislator does not consider the idea of the right to rescind the contract, although it is consistent with the idea brought by modern jurisprudence, which states that the will is not the basis of the binding force of the contract, but rather the law that gives the consumer the right to relinquish. Because there are no personal rights unless the positive right allows its existence. Moreover, the right of reversal is an exception to the general rule and cannot be compared to an exception.)Sami Badi Mansour(90 صفحة ،1987 ،

B- Protecting the electronic consumer from arbitrary conditions.

We address here the legislative protection guaranteed by laws to the electronic consumer on the one hand. And to the judicial protection carried out by the judicial authorities on the other hand.

1- Legislative protection.

It is worth noting that the legislator may intervene in the contractual bond in order to impose and specify the obligations that fall on the two parties, without the need to wait for any consensual agreement regarding them. There is no doubt that this legislative interference within the scope of the contract represents a retreat from the principle of consensuality and what it requires from the agreement of two or more wills with the intention of causing legal effects.

This reversal finds its justification in the legislative policy that tends to interfere in contractual relations more and more in

order to determine the corresponding obligations between the parties. (Ibrahim Abdel Aziz Daoud, 2014, p. 45)

The Algerian legislator issued Law No04-02 Specifying the applicable rules on commercial practices, and on that, he presented what he called arbitrary practices contracting. He also went on to define the arbitrary condition and the contract of submission.

In addition, in Article 29 of it, he specified a list of conditions that are considered arbitrary by the force of law. (Mohamed, Boudali, 2007, p. 90)

2- Judicial protection

Basing on the Article 110 of the Algerian Civil Code, the consumer may resort to the judiciary to demand the amendment of the abusive conditions contained in a contract. Or to exempt him from it completely, as required by justice, as long as the law is granted.

The judge has a powerful tool that protects the consumer from the arbitrary conditions imposed on him by monopoly companies and professionals.)Art.N. 110 of Order N.75-58 (1975

According to the previous text, it is not permissible for the judge to respond on his own in amending the arbitrary conditions included in the contract of submission or exemption from them. Except at the request of the observing party or the consumer, pursuant to the principle of the civil judge's impartiality

III- Electronic consumer protection during contract execution.

The law intervenes to protect the electronic consumer during the implementation of the contract, either through traditional legal rules or through specific legislation of electronic transactions.

1- Electronic consumer protection under the provisions of the civil law.

Here it is about the professional's obligation to guarantee the hidden defect. In addition, the interpretation of the contract in the interest of the consumer as the weak party in the contract.

a- Professional commitment to guarantee the hidden defect.

The hidden defect is the defect that is unknown to the buyer, who was not able to discover it by examining the sale with the care of the ordinary person. Yet it -the hidden defect- should be guaranteed by the seller. (Mohamed, Boudali, 2007, p. 59)

The Algerian legislator did not determine the necessitating defect of the guarantee, but merely specified its conditions. As we find in Article 379 of the Algerian Civil Code which states: (The seller is obligated to guarantee the hidden defect if the thing sold did not include the characteristics he pledged to have at the time of delivery. Or if the thing sold has a defect that reduces its value or its use, according to its purpose as stated in the contract of sale or as it appears from its nature.

However, the seller is not liable for defects that the buyer was aware of at the time of the sale. Or he could have seen it if he had examined the thing sold as a normal careful man can do. Unless the buyer proves that the seller assures him that the thing

sold is free of defects or that he hid it deceitfully from him). (Article N. 379 of OrderN 75-58, 1975)

b- Interpreting ambiguous terms for the benefit of the consumer.

Referring to the text of Articles 111 and 112 of the Algerian Civil Code, it becomes clear that a distinction must be made with regard to the interpretation of the contract between three cases. In case of clarity of the text phrase, then it is not permissible to deviate from this clear phrase by interpretation. In the case of ambiguity of the text phrase, it is necessary to resort to interpretation, guided by the nature of dealing, honesty, trust, and custom of dealing.

Finally, in case of doubt about recognizing the common will of the contracting parties, here it is necessary that the interpretation of doubt should be in the interest of the debtor (Mohamed, Boudali, 2007, p. 71).

2- Electronic consumer protection under special legislation

The electronic contract is concluded via the Internet, or modern means of communication that make it characterized by the speed of circulation between people in different places or different countries. Given the technical nature of these contracts, they are exposed to several risks, especially changing or destroying the content of the bond, and because two people in two different places issue the electronic bond, the authenticity of the electronic bond is in doubt. Therefore, the various related legislations have set Electronic Certification and signature of the electronic document with several controls in order to preserve its integrity and its legal validity.

a- Saving the electronic document.

The electronic document must be kept with the person responsible for the electronic record. The consumer collects all documents electronically after signing it, and sends this package by electronic way to the responsible for keeping the electronic document. The custodian shall prepare an electronic archive, which includes all the electronic documents that he is obligated to preserve. The assessment of the validity of the saved data (electronic document) is subject to the discretion of the subject judge.

The law requires that the authority concerned with preservation be a trusted party. This is understood from Article 5 of Law 15-04 related to electronic signature and ratification, which states: (Should exist on the national territory all data and information of a personal nature collected from the party performing the electronic certification services, or the trusted third party, or the electronic certification authorities. As well as the databases, they contain, and they cannot be transferred outside the national territory except in the cases provided for by the legislation in force. (Art.N.5 of Law N.15-04, 2015)

b- Authenticity of the electronic signature described before the courts.

Article 8 of Law No. 15-04 gives the authenticated electronic signature the authority of the written signature, as it states (the electronic described signature alone is considered identical to the written signature, whether the person is a natural or Moral person). (Article 8 of Law No. 15-04, 2015) In this case, the consumer possesses a material support through which he can prove the electronic contract in front of the judiciary in the case of a professional denial.

CONCLUSION:

The electronic consumer is exposed to several risks, including those related to electronic means, and those related to the professional contractor who is in a position of economic superiority in the face of the electronic consumer with little knowledge and awareness of the specifics of the product.

Which requires the intervention of the legislator to give special protection to the electronic consumer. Whether in the face of the risks arising from the contract via the electronic network itself. Or in the face of the abuse of the professional, who is in an economic position that entitles him to impose the conditions of the contract on the electronic consumer who accepts these conditions without discussing it or rejecting them in full.

Like the traditional consumer, the electronic consumer is subject to the traditional rules of consumer protection. But taking into account the specificity of the electronic contracting method, the legislator intervenes with legislation related to electronic transactions to protect the electronic consumer from the risks of contracting over the electronic network.

Among these legislations is Law 15-04 related to the rules of electronic signature and certification, which came with rules that protect the electronic consumer from the risks of contracting in an abstract world via an electronic network. The contracting parties are required to transfer the contract from the abstract world to the physical world and to authenticate the contract from a third party specified by law.

This is in addition to the protection established in advance in the traditional legal rules. The question that arises in this

research is: What is the protection provided by special laws to protect the electronic consumer in light of the challenges offered by the nature of the electronic contract?

We deal with the subject with an analytical study according to a systematic plan by dividing the research into three sections. The first aims to defining some concepts. The second section deals with the legal protection of the electronic consumer at the stage of contract formation. In the last section, we address the electronic consumer protection in the phase of contract implementation.

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