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Legal protection of Consumer(comparative study)

الحماية القانونية للمستهلك (دراسة مقارنة)

Bouamra Assia¹

¹ Lecturer at Faculty of Law, Said HAMDIN (Algeria)

a.bouamra@univAlger.dz

Abstract:

Our contemporary world knows a development in commercial transactions locally and internationally, which allowed the circulation of capital between many countries and changed the centers of the parties in contracts, which made one of them outperform the other by virtue of the hegemony and economic control of him, which imposed on the Algerian legislator compulsory to find mechanisms and create devices for each according Its scope to achieve legal protection for the consumer, by restoring the contractual balance.

Keywords: civil protection, consumer, contractual balance, Algerian legislator, professional.

المخلص:

إن عالمنا المعاصر يعرف تطورا في المعاملات التجارية محليا ودوليا، وهو ما سمح بتداول رؤوس الاموال بين عديد البلدان، فتغيرت مراكز الأطراف في العقود مما جعل أحدهم يتفوق على الآخر، بحكم الهيمنة والسيطرة الاقتصادية له وهو ما فرض على المشرع الجزائري الزامية إيجاد اليات واستحداث أجهزة كل حسب مجاله للوصول الى تحقيق حماية قانونية للمستهلك، وذلك بإعادة التوازن العقدي.

الكلمات المفتاحية: حماية مدنية، المستهلك، التوازن العقدي، المشرع الجزائري، المهني.

Corresponding author: Bouamra, mail: assiabouamra@yahoo.fr

INTRODUCTION

Contractual obligation is not a legitimate and always just commitment, hence the freedom of contract based on the principle of will often results in excesses that put the weaker party in the contract, due to his lack of knowledge and his ignorance of contracts he concludes with the professional, under the weight of professionals who have such economic strength and financial solvency what could put them in a stronger position to control centers of power and impose their conditions. The Algerian legislator has taken care to immunize⁽¹⁾ the consumer with all the legal means available to make him in the most suitable position when contracting, especially during concluding the contract, in order to protect him from any excesses which may affect him⁽²⁾ from other contractor's methods, especially since this stage is the most important before concluding the final contract.

Yet, what civil protection for consumers is standing for? And are the rules guaranteed by the Algerian legislator to the consumer in order to face abusive conditions, as well as those related to the protection of consumer satisfaction, sufficient to achieve the expected protection of the consumer as a weak party in the contractual relationship?

We relayed on the analytical method of legal texts regulating consumer protection in Algerian legislation sometimes and the

comparative approach at other times, as well as the descriptive approach, which is omnipresent in all other researches.

To study that topic, it is necessary to divide this research sheet in two subjects. In the first one, we will learn about consumer protection from abusive conditions including the definition of conceptual framework, which refers to the meaning of abusive condition, then the mechanisms for controlling and combating it. As for the second subject, we will sort out consumer satisfaction protection from will defects as well as its protection in adhesion contracts.

First main title: Consumer, between consensual and abusive conditions

Consumer, as the weaker party in consumer contracts, is often subject to abusive conditions affecting his rights, which creates a breach in the contractual balance between the rights and the obligations of the two parties, therefore the Algerian legislator sought to protect him from these conditions, hence we will discuss below the concept of abusive conditions (the first subtitle), then the control means and mechanisms that prevent these practices (second subtitle).

First subtitle: Concept of abusive conditions

We will look at the definition of an abusive condition to distinguish it from other conditions in the first section, and then review the criteria to set abuse in the second section.

First section: Definition of abusive condition

Abusive condition has a jurisprudential definition (firstly) as well as a legislative one (secondly).

Firstly: Jurisprudential definition

It is referring to every condition that is frequently mentioned in consumer contracts, imposed by one of the contracting parties, called the professional, who uses his economic authority and inflicting harms to the second party, which is the consumer, in

order to take unfair advantage. Others define abusive condition as a condition that arises because of abusiveness and allows to occur abusiveness.

Some define abusive condition jurisprudentially as that condition set a priori by the strong contractor under which he can reap an immoral benefit(3).

Abusive conditions are prepared in advance by specialists enjoying economic superiority and technical competence. Following the general rules, these conditions seem normal and do not compromise the integrity of consent, but in reality, they are unfair and unjust, burdening the contractor, which leads to difficulty when setting them and monitoring their various manifestations(4).

Some others define abusive condition as every condition that results in harm to the consumer due to the apparent imbalance between the rights and obligations of both professional and consumer.

Another aspect of the jurisprudence defines it as *“that condition which the professional introduces in his contract with the consumer, and whose implementation leads to an outrageous imbalance between the rights and the obligations of the two parties.*

It is estimated at the time of contract concluding by referring to its circumstances, its subject matter and the situation of its two parties, in accordance with the requirements of justice, which recognizes the judge's discretionary authority to determine the abusive nature(5)”.

The abusiveness appears in the anticipation of the professional, who is the holder of the strongest position in the contract, to enact the terms of the contract away from oversight, entailing unfair conditions for the weak party in the contractual relationship, which is the consumer.

Secondly: Legislative definition

Civil Codes in most of global legislations did not contain the definition of an abusive condition. Rather, this definition came under laws for consumer protection, among which the European Legislative Directive No. 13 issued on April 15th 1993 regarding abusive conditions in contracts concluded with consumers. Accordingly, the first paragraph of Article 3 of the aforementioned directive stipulates that the abusive condition is: *“The condition that is included in the contract and involves a clear discrepancy, contrary to what good faith requires and is against the interest of the consumer as it states the rights and obligations of both parties at the expense of the consumer(6)”*. We should highlight hereafter that the provisions of this legislative directive apply only to contracts that do not accept bargaining and negotiation.

We can find as well that the French legislator has defined the abusive condition following the provisions of Article 35 of Law No. 78-23 dated January 10th 1978 related to protecting and informing consumers about goods and services, as it stipulates that *“contracts concluded between professionals and non-professionals or consumers may be prohibited, restricted or regulated. ... when it appears that these conditions are imposed on non-professionals or consumers by using the economic influence of the other party, which gives it an outrageous advantage”*.

Article 2 of the French decree issued on March 24th 1978 states: *“In sale contracts concluded between professionals and consumers, are considered prohibited under abusive conditions conditionals whose place and effect are to abolish or reduce the consumer's right to compensation in case of professional breaches one of his commitments”*.

With the promulgation of the Consumer Law No. 95-96 issued on February 1st 1995(7), the French legislator amended the text of the article ?? by the first paragraph of Article 132, which states that are considered abusive in the contracts concluded between professionals and non-professionals or consumers, the conditions whose subject matter and effects cause harm to non-professionals or consumers and create an apparent imbalance between rights and obligations of the contract parties.

Similar to other legislations, the Algerian legislator did not address the definition of abusive conditions in the provisions of the Civil Code, but dealt with them first in paragraph 5 of Article 3 of Law No. 04-02 dated June 23, 2004, which defines the rules applicable to the aforementioned business practices, in which it was mentioned the following:

“An abusive condition is every clause or condition, alone or combined with one clause or several other clauses or conditions that would clearly breach the balance between the rights and duties of the contract parties(8)”.

Consequently, we should conclude that the clauses of the contract must be considered in their entirety when assessing abusiveness, because of a condition alone may not lead to imbalance, which is the object of the second section.

Second section: Criteria for determining an abusive condition

Moreover, it is necessary to define the criteria following which the condition is recognized as abusive or not, first of them is the professional's use of his economic influence, the second one is a legal criterion related to the impact entailed from the first criterion, which creates apparent disruption in the contractual balance due to the outrageous advantage(9) obtained by the professional at the expense of the consumer.

It is recognized that the criterion of abusiveness in the use of economic authority (firstly) and the criterion of apparent disruption of the contractual balance (secondly) are inseparable and dependent to each other as cause and effect dependence.

Firstly: Abusive use of economic authority criterion

We speak about abusive use of economic authority(10) when the approved setting which is used to determine the abusiveness nature of one of the contractual conditions is its violation or non-violation level affecting the contractual balance, such an apparent violation between the rights and obligations of the two parties(11), such as if the professional uses his economic influence over the consumer.

The French legislator through the law promulgated on January 10, 1978 including the protection and information of consumers, which was raised in the text of its Article 35 mentioned above:

“In the contracts concluded between professionals and non-professionals or consumers, may be prohibited, restricted or regulated every condition related to... in case of these conditions seem to be imposed on non-professionals or consumers by the abusiveness of the economic influence of the other side and by the way; confer it an outrageous advantage”. The criterion of economic authority is considered as a personal criterion; indeed Article 35 of the aforementioned Law of 1978 stipulates that the condition should be applied upon non-professionals, or consumers, due to the abusiveness of the professional shown by using his economic influence. Thus, jurisprudential dispute has intensified about what abuse is standing for: Is it the right abusiveness or the position abusiveness which allows one of the parties to impose its conditions on the other party by using means to exploit weakness of the other party(12).

The most correct opinion herein is that abusiveness is related to position, because of appropriation of intervener to set the terms

of the contract is not a personal right, but rather an exercise of de facto authority, hence in light of the changes and developments it couldn't explain prevention of abusive conditions and combat them as a mere application of the theory of abuse in the use of right.

Secondly: Apparent disruption of contractual balance criterion

The criterion of apparent disruption of contractual balance(13) refers to that unfair advantage which results from the exploitation of influence and economic authority leading to a discrepancy between the rights and obligations of the contract parties.

It is necessary to take into account the contract in its entirety and the sum of its terms and effects and not to stop only at a specific condition in particular, in addition to the necessity to rely on a personal criterion, and considering the consumer and the circumstances of the conclusion of the contract(14) It should be noted that it is necessary for the contractual balance violation to be clearly apparent and not just a simple imbalance.

The Algerian legislator has defined the nature of the abusive conditions and the criteria that must be met to consider them as such, he considered as well, the criterion of the apparent disruption of the contractual balance(15).

Second subtitle: Oversight mechanisms over abusive conditions

The means and mechanisms for imposing consumer protection over abusive conditions differ, however their goal remains similar and is to achieve contractual balance. Among these mechanisms what is legislative, referring to what is guaranteed by the legislator in terms of protection through legal legislations which is the content of the first section, some of them are

administrative, practiced by advisory bodies and some are judicial practiced by courts.

First section: Legislative oversight mechanisms over abusive conditions

The Algerian legislator has set number of means in order to protect consumer from professional's abusiveness, through Articles N. 29 and 30 of Law N. 04-02 amended and supplemented. It is referring to by legislative oversight, the lists established according to the legal texts of consumer protection, which aim to define the conditions that are considered as abusive and that arouse the imposition of control. Accordingly, Article 29 of Law No. 04-02 amended and supplemented provides a non-exhaustive indicative list, which provides better protection for the consumer by opening ways for courts to judge the conditions that were not defined in the list as abusive. The aforementioned article has numbered as well the abusive conditions by stating: *"Are considered as abusive clauses or conditions in the contracts between consumer and seller, each term and condition that grant seller the following:*

- 1. Taking rights and / or privileges that do not match recognized similar rights and / or privileges of consumer side.*
- 2. Imposing immediate and final obligations on the consumer in contracts, while he contracts with conditions that he can set whenever he wants.*
- 3. Getting the right to amend the basic contract elements or the delivered product features or provided service without the consumer consent.*

Moreover, Executive Decree No. 306-306 dated September 10th 2006 was issued, which defines the basic elements of contracts concluded between professionals and consumers and the clauses deemed abusive(16), it contains 18 articles devoted to confront abusive conditions. Among the

mechanisms brought thanks to this article is to oblige professional to include certain data and conditions in the contract concluded with consumer, such as the requirement to reduce or exempt consumer from responsibility(17). However, these legislative means are insufficient, which raises necessity to strengthen them with mechanisms of administrative nature, as explained below.

Second section: Administrative oversight mechanisms over abusive conditions

The Algerian legislator has set up a committee(18) named as Committee for Abusive Clauses, within the Ministry in charge of Trade, of advisory nature headed by a representative of the Trade Minister. According to the text of Article 7 of Executive Decree No. 06-306, this committee was organized under the provisions of Articles 06 to 18 of the aforementioned Executive Decree No. 06-306, amended and supplemented by Executive Decree No. 08-44 dated February 10, 2008, and is in charge of the following tasks:

- *"It examines all contracts applied by economic agents upon consumers and terms of abusive nature. It also drafts recommendations that are communicated to the minister in charge of trade and the concerned institutions,*

- *It is able to carry out any study or expertise related to how contracts are applied upon consumers,*

The Algerian legislator has ensured as well to form it of members specialized in law and commercial practices, thus it stipulated that the representative of the Trade Minister should be specialized in commercial practices, although the representative of the Justice Minister should be specialized in contract law, a member from the Competition Council and two economic dealers who are members of the Algerian Chamber of Trade and Industry, qualified in business law and contracts, as well as

representatives of consumer protection associations of a national character, who are qualified in business law and contracts. The Algerian legislator also left the door open for the committee to seek assistance of anyone who can help it in its scope(19).

In addition to the administrative mechanisms, it is necessary to study the judicial mechanisms to oversee abusive conditions.

Third section: Juridical oversight mechanisms over abusive conditions

Laws have provided comprehensive protection for the consumer against abusive conditions; thus, consumer protection laws have enshrined the authority of the judge in the interpretation of the contract, the amendment or even the exclusion of abusive conditions altogether. Recognizing the judge's power to nullify the abusive condition serves to restore balance within the contractual process. Likewise, there should be no fear of this authority given to the judge, who considers the application of justice between the conflicting parties among his roles. In support of this concept, the Algerian legislator has provided a criminal and civil protection for the consumer to face the professional's abusive practices affecting his interest, as a result of his weakness and limited knowledge of the matters in which he contracts with the professional. We will review both types of protection below.

Firstly: Criminal judiciary jurisdiction to deter abusive practices

A- Deterring abusive commercial practices

The Ministry of Commerce has a role in stopping the practices and abuses carried out by the professional within the consumer market, through its authority to impose fines, conduct reconciliation and propose temporary closure of commercial stores, however it can neither protect completely nor ensure the integrity of commercial practice.

Article 60 of Law No. 04-02 states in its first paragraph that *"Violations of this law are subject to the jurisdiction of the judicial authorities."* The criminal court is inherently competent in adjudicating cases of abusive commercial practices. The aforementioned Article 60 expressly states in its last paragraph that *"When the recorded violation is within the limits of a fine exceeding three million of dinars (3.000,000 DZD), then the report prepared by qualified employees should be sent directly by the state officer in charge of trade to the competent local public prosecutor for judicial follow-up purposes".*

According to aforementioned texts, it becomes clear that the inherent jurisdiction to adjudicate abusive commercial practice violations belongs to the ordinary court.

B- Mobilization of public action

The Public Prosecution proceeds the public action after sending the reports from the Trade Ministry legally qualified employees or after submitting a complaint against the intervener by the persons mentioned within Article 65 of Law No. 04-02, namely: consumer protection associations, professional associations established according to the law, as well as every natural or legal person who has interest doing so.

After the trial comes the imposition of a tangible material penalty over the violating intervener, yet it should be noted herein that if the violating professional agrees, according to the provisions of Law No. 04-02, on the reconciliation suggested by the administration in charge of trade, this reconciliation ends all judicial follow-up in accordance with the fifth paragraph of Article 61 of Law No. 04-02 which states that reconciliation ends judicial proceedings.

Secondly: Civil court jurisdiction to redress abusive practices

Arguably the legislator has left ample room for the judge in assessing the abusive condition, as is the case in the text of Article 110 of the Civil Code, which stipulates that the judge may intervene to amend these conditions or exempt the compliant party from them, according to justice requirements, therefore the text of the article 29 in its general and comprehensive nature, constitutes a powerful tool in the hand of the judge to protect the consumer from abusive conditions.

Second main title: Protecting consumer satisfaction from abusive conditions

In addition to the legal texts issued to impose consumer protection, the legislator has regulated and framed competition in the markets, and worked to define the rights and duties of everyone who practices an economic activity and worked to ensure that each party could enjoy the same advantages(20). Did the rules related to consumer satisfaction protection achieved an effective and anticipated protection for the consumer against will defects (the first subtitle) as well as in adhesion contracts (the second subtitle)?

First subtitle: Protecting consumer from will defects

The consumer's need to contract in order to obtain goods and services, on the one hand, and his weakness and lack of experience, on the other hand, makes him resort to the satisfaction defects saying that his consent was not sound until he can annul the contract which includes an abusive condition, it is referring herein to the defects of error, fraud, exploitation and coercion, which we are going to review in the two following sections.

First section: Error and fraud defects

Firstly: The error: Jurisprudence(21) has defined error as *"A false illusion that is generated in the mind of a person or in a state affecting the soul making it perceive the matter in such a*

way that is not its reality, a non-reality perception, hence falling into error means that the person has a contrary belief of the truth(22)".

The error is known as well, as an illusion in the person's mind, portraying the matter to him differently from its truth and pushing him to contract.

Among the protection from error manifestations, what is referred to by the text of Article 81 of the Algerian Civil Code, "The contractor who made a fundamental error when concluding the contract, may request its annulment".

The Algerian legislator has undertaken the modern theory of error, meaning that the error should be fundamental, as the motive for contracting.

The success of using the action of contract nullifying due to error remains tributary to eventuality due to the difficulty of proving the previous conditions. Accordingly, the aspects of this protection are manifested in the permissibility of requesting the contract to be nullified, as we see whoever buys a candlestick believing that it was made of silver, while it was made of silver-coated copper(23).

Therefore, the traditional theory of error remains a limited means needed by consumer to provide its necessary protection, given the restrictions that govern the consumer's adherence to nullify the contract due to his error, furthermore; the error in the fundamental characteristics related to the place of the contract is no longer only a mean for evaluating contractual satisfaction, but it has also become a way to restore balance to Contracts by re-evaluating behavior of professional and introducing goodwill in the responsibility balance(24).

Error and fraud are two defects that are similar in concept and effect.

Second section: Exploitation and coercion

Firstly: The exploitation: Article 90 of the ACC defines exploitation as one of the causes nullifying the contract, thus it leads to unbalance between the obligations of the two contracting parties.

The Egyptian Civil Code also stipulated it through Article 129 by stating “If the obligations of one of the contracting parties are not in any way equal to the benefit obtained by this contractor within the contract or with the obligations of the other contractor, and it is found that the contractor did not conclude the contract except because the other contractor had used a clear recklessness or an unbridled whim, it is permissible for the judge, based on the demand of the aggrieved contractor, to nullify the contract or reduce the obligations of this contractor”.

In other words, exploitation is represented in cases where one of the contracting parties exploits a state of weakness in the other party, as well as this weakness conceals the balancing faculty of a contractor, so the other contractor seizes this opportunity and draws him to conclude an act that results in aggrieving him, which would not have taken place unless of this exploitation(25).

One of the aspects of consumer protection from exploitation is that consumer is a psychological matter, although unfairness is a material manifestation of him, as it is clear from the text of Article 90 of the ACC that exploitation requires the availability of two elements, one of which is the imbalance between the contracting parties and the second is that there is exploitation of the contractor’s position due to his strong desire to acquire things(26). However, the Algerian legislator did not adopt the material theory of unfairness which means imbalance between the mutual performances absolutely, within the contract, but rather limited the effect of unfairness to certain cases, such as

the seller's right(27) to request the supplement of the price if he was able to prove that the property was sold unfairly for more than one-fifth. The Algerian legislator has also adopted the personal theory that considers the difference in the values of things according to the circumstances of each case separately. Indeed, the unbalance between the mutual obligations within the contract extends to all types of exploitation, even if the matter is not related to the progress of performance compare to another performance that is not equal in value, to include the exploitation of psychological weakness, such as clear recklessness, unbridled whims and lack of experience, pushing the aggrieved party to conclude a contract that harms its interest(28), hence the penalty has a special nature that makes it compatible with the desired protection elements for the consumer within the consumption contract, thus, the aggrieved party has the right to request the contract annulment or his obligations reduction if it falls into its benefit according to the text of Article 90 of the ACC.

Secondly: The coercion

The consumer may be subject to pressure that creates a fear in himself leading him to contract, this act is called coercion, it gathers the means of severity and intimidation that a person practices against another person, to compel him to contract and that generate in himself a fear leading him to contract fearing harm²⁹. It is also known as an unlawful pressure on the will of a person that generates in himself a fear pushing him to contract, in order to avoid the consequences of the threat facing him, precluding him to have the complete freedom to conclude the contract(30).

Through our reading of will defects, it becomes clear that they really affect the consumer's will, as the real influences that push the consumer to contract appear within a situation in which the

balance of contractual obligations tends to achieve the interest of the professional more than the interest of the consumer(31). So, what about consumer protection within adhesion contracts?

Second subtitle: Consumer satisfaction protection within adhesion contracts.

First section: Adhesion contract and its characteristics

It is a contract consisting of the two parties' consent; however, acceptance is characterized by merely adhering with what the offeror dictates. It was called as so because of such expression push to feel compelled to accept, thus this name has become common in the legal language of jurisprudence and judgment.

Second section: Consumer protection aspects within adhesion contracts

The Algerian legislator followed the same path that Arab legislations followed, especially the Egyptian legislator, as he dealt with the adhesion theory and its provisions in the Algerian Civil Code texts confer the judge the authority to amend or cancel abusive conditions within adhesion contract, which is considered as violation of the general principle according to which "The contract is the law of its contractors", and the judge has no involvement in amending or canceling what the contracting parties have directed towards; through Article 7 of Executive Decree No. 306-306: "Acceptance in the adhesion contract takes place upon the submission to stipulated conditions set by the offeror which don't accept debate(32)".

As stated in the text of Article 110: "If the contract has been set by means of adhesion, and included abusive conditions, the judge may amend these conditions or exempt the adhering party from them, in accordance with what justice requires, hence every contrary agreement shall be nullified and voided." According to Article 112: "The doubt shall devolve in the debtor interest. However, the interpretation of ambiguous expressions

in adhesion contracts shall not be detrimental to the interest of the adhering party."

It turns out that jurisprudence has required contract to be linked to a necessary good or service which are under offeror's legal or actual monopoly, or for offer to be oriented to public and for an unlimited period, what led to the expansion of adhesion contracts(33)to many modern contracts such as the sale contract at a specified price in major supermarkets and car dealerships.

Most of the private law jurists considered the adhesion contract as a true contract which is concluded by the consensus of two wills, and is subject to the same rules as contracts. Because they believe that the will of the offeror alone cannot establish the contract unless it is accompanied by the will of the party accepting it, and that the equality required within the contract is the legal equality not the economic one, and that this disparity which is characteristic of the adhesion contract is just a kind of economic pressure that has no effect on consensus validity, so the adhering party enjoys a degree of freedom in undertaking the contract or not, even if that would lead to depriving him of the good or service.

As for the position of the Algerian legislator, we find that he has spoken about a contract in the text of Article 70 of the Civil Code: "Acceptance in the adhesion contract takes place as soon as the conditions prescribed by the offeror are adhered to and which are not subject to debate." Through this text, it becomes clear that the Algerian legislator does not dispute the contractual nature, but gives it the characteristic of "prescribed conditions" by the offeror. The legislator aims, behind using this term, to remind with the administrative authority and its operational methods, as it issues its decisions without the need of the concerned parties. It appears that the reason for choosing this term by the legislator consists to highlight the power that the

offeror has when imposing his conditions, during which he may be abusive. "Furthermore, these conditions remain undebatable". Thus, the offeree cannot suggest any amendment whatever his nature, either he accepts them or rejects the contract as a whole. This is what highlights offeror control and power compare to adhering party.

Acceptance in the adhesion contract is merely "adhering", thus the legislator with this term wanted to highlight the weakness of the adhering party, and the economic and social disparity that exists between adherence contract parties, and thus the absence of an aspect of consumer protection.

Conclusion:

From the aforementioned, we conclude that the legal means guaranteeing the achievement of contractual balance resulting from the unequal relationship between professionals and consumers does not ensure any effective consumer protection, due to the abusive contractual conditions and practices imposed by professionals against consumers.

It is noteworthy that professionals cannot uphold the principle of the authority of the will as well as the rule of the contract is the law of its contractors in order to legitimize abusive or unfair conditions against consumers.

References:

(1)The consumer is the person who seeks to obtain his basic and luxury requirements from the various goods and services that help him with the requirements of life and that he obtains from the markets on the basis of dealing with merchants and the owners of different professions, refer to Hadi MUSLIM YUNUS AL-BASHKANI, Legal Regulation of Electronic Commerce, a Comparative Study, Legal Book House, 2009, p. 303. Others define it as every person who contracts with the intent to satisfy his personal or family needs, and accordingly, does not acquire the status of consumer

who contracts for his profession or project purposes, refer to Al-Sayed Muhammad AL-SAYED OMRAN: Consumer Protection During Contract Formation, University House for Printing and Publishing 2002.

(2) AL-AWAMRI Walid, Abusive Conditions and Mechanisms to Address them in Algerian Law, an Article published in the Journal of Sharia and Economics, Volume 3, Issue 5, pg. 256.

(3) AL-SADIQ Abd El-Kader, Consumer Protection in Abusive Conditions, a Comparative Study, an Article published in Scientific Horizons Journal, Volume 11, Issue 1, Year 2019, pg.40.

(4) In this context, we find Article 24 of the Moroccan consumer law.

(5) This is what was mentioned in the text of Article 110 of the Civil Code issued pursuant to Ordinance No. 75/58 of 09/25/1975 containing the Civil Code, Official Gazette Issue 78 of 1975, amended and supplemented. Refer also to Law No. 10/86 of Ramadan 5th 1431, corresponding to August 5th 2010, amending and completing Law No. 04/02 that defines the rules applicable to commercial practices, Official Gazette Issue 46 dated Ramadan 8th 1430 corresponding to August 18th 2010.

(6) AL-AWAMRI Walid, already mentioned, pg. 259. Refer to: Council Directive No. 93/13 / EEC of April 5th 1993 regarding abusive conditions in contracts concluded with consumers.

(7) Law n ° 95-96 of February 1, 1995, art. 1, annex, Official Gazette of February 2, 1995, Article L 132-1: In contracts concluded between professionals and non-professionals or consumers, are abusive conditions which have the object or the effect of creating, to the detriment of the non-professional or the consumer, a significant imbalance between the rights and obligations of the contract parties.

(8) Law No. 04-02 of June 23, 2004 amending and supplementing Law 10-06 setting the rules applicable to business practices, Official Gazette No. 46.

(9) Art. 35 of Law No. 78-23 dated January 10, 1978 related to the protection and information of goods and services consumption c. scrivener. O.G. Senate session dated December 18, 1977, pg. 4217.

(10) AL-SADIQ Abd El-Kader, already mentioned, pg. 45.

(11) Nadia MUHAMMAD AWAD, Exemption Conditions in Trade and Consumer Contracts, Arabic Renaissance House, 2001, pg. 18.

(12) AL-AWAMRI Walid, previous reference, pg. 271.

(13) Ahmed SHAWKI ABDEL-RAHIM, Contractual Liability of the Professional Debtor, Foundation of Knowledge, 2003, pg. 111, and it should be highlighted that the Algerian legislator has adopted this standard according to Law No. 04/02 aforementioned.

(14) AL-SADIQ Abd El-Kader, already mentioned, pg. 45.

(15) Mohamed BOUDALY, Contract Abusive Conditions in the Algerian Law, A Comparative Study with the French, German and Egyptian Laws,

House of HUMA for Publishing and Distribution, Second Edition, 2010, pg. 18.

(16) Executive Decree No. 06-306 signed on September 10, 2006, defining the basic elements of contracts concluded between economic agents and consumers and the terms deemed abusive., Official Gazette No. 56 dated September 11, 2006, pg. 16.

(17) Al-AWAMRI Walid, previous reference, pg. 280.

(18) The Algerian legislator follows the French legislator, who, according to the provisions of Article 35 of the law promulgated on January 23, 1978, has established a committee to oversee abusive conditions.

(19) However, the Algerian legislator has amended the provisions of Article 08 of Executive Decree No. 06-306 according to Executive Decree No. 08-44, thus the content of the amendment affected only the committee members, as it becomes formed by five permanent members and five successors issued from the same ministries and institutions that have been listed in Decree No. 306-306 aforementioned.

(20) Laila KARACH, Protecting Consumer Satisfaction Under the Rules of Consumer Protection, Annals of the University of Algiers 1, Issue 31, Part 4, pg. 97.

(21) Among them, Abd Al-Razzaq AL-SANHOURI, Hussam Al-Din AL-AHWANI, referred to by Omar ABD AL-BAQI, Consumer Contractual Protection, AL MA'ARIF Foundation Alexandria, First Edition 2004, pg. 366.

(22) Mohamed Said DJAAFOUR, The Theory of Will Defects in the Algerian Civil Law and Islamic Jurisprudence, House of HUMA for Publishing and Distribution, Algeria, pg. 14, without edition and publication year.

(23) Abdel-Moneim MUSA IBRAHIM, Consumer Protection, AL-HALABI Legal Publications, 1st Edition, Beirut, 2007, pg. 55.

(24) Abdel Moneim MUSA IBRAHIM, previous reference, pg. 56.

(25) Muhammad Saeed DJAAFUR, previous reference, pg. 91.

(26) BIN DAWOOD Ibrahim, Consumer Protection Law, Dar AL-KITAB AL-HADITH, (without edition, without a year of publication), Algeria, pg. 65.

(27) Muhammad BOUDALI, Combating Abusive Conditions, Dar AL-FAJR for Publishing and Distribution, First Edition, Cairo, Egypt, 2007, pg. 61.

(28) Omar ABDEL-BAQI, Consumer Contractual Protection, AL MA'ARIF Foundation, Alexandria, First Edition 2004, pg. 505.

(29) Muhammad Saeed, previous reference, pg. 67.

(30) BIN DAWOOD Ibrahim, previous reference, pg. 64.

(31) The coercion to which consumers are subject to by professional is more sensitive, yet it was not taken into account by the drafters of the Civil Code. As economic coercion (the need to contract) and coercion resulting from lack

of ability and experience do not entitle the annulment of contract according to the Civil Code.

(32) SI TAYYIB Muhammad al-Amin, Abusive Conditions within Consumer Contracts - A Comparative Study -, Memorandum for a Master's Degree in Private Law, Faculty of Law, Abu Bakr BELKAID University of Tlemcen, 1112, pg. 32.