

LEGAL PROTECTION AS A MECHANISM TO RATIONALIZE E-CONSUMER BEHAVIOR

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Abstract:

This paper aims to highlight the legal framework, which includes e-consumer protection. Algerian legislation explicitly stipulates a number of legal provisions that protect the consumer in general and the electronic consumer in particular. Such as law no. 09/03 which includes the protection of the consumer and the suppression of fraud, and law no. 04/02 on business practices, as well as law no. 18/05 on electronic commerce.

This study concluded that the law on electronic commerce no. 18/05 did not provide adequate consumer protection. Although this law contains some new legal texts concerning the content of the obligation to inform and the conditions of electronic publicity, in addition to specifying the obligations incurred by the electronic supplier, it has also established penalties for violating the provisions of this law. However, the most appropriate law for the protection of the electronic consumer is Law No. 09/03, especially since the latter contained sanctions of a deterrent nature other than those prescribed by law no. 18/05 which is represented only in financial fines.

Keywords: legal protection; consumer; electronic contract; repression of fraud; obligation of information; products and services.

INTRODUCTION:

Electronic consumption contract is concluded between two parties: consumer and supplier.

“ the electronic consumer is any natural or moral person who acquires, or free of charge, a commodity or service through electronic communications from the electronic supplier for the purpose of end use ”.

And it means the electronic supplier: “ any natural or moral person marketing or proposing the provision of goods or services through electronic communications ”. The consumer is considered to be a weak party, because of its lack of knowledge of economic issues and its obligation to accept unfair terms imposed by the supplier. So the Algerian legislature intervened to protect rights and interests of all parties and maintain the market order, requiring all electronic suppliers to fulfill their obligations to protect consumer’s rights and interests as well as personal information.

Study significance:

Studying the topic of electronic consumer protection is of great importance in ensuring the continuity of e-business transactions between consumers and electronic suppliers, thereby stimulating consumers to use electronic media to conclude their legal actions without fear.

Study aim:

The study aims to demonstrate the effectiveness of legal texts in protecting electronic consumer at various stages of electronic contract.

Study problem:

What are the consumer protection mechanisms in the context of electronic commerce?, and What is the role of these mechanisms in rationalizing their behavior?

To answer this question, we suggested a plan:

First section: holding the market as a legal mechanism for protecting electronic consumer

Article 08 of law no.18/05 ¹ defines the conditions for electronic commerce practice; it stipulates that the electronic business activity must be recorded in the commercial registry or in the register



of traditional and artisanal industries and published on a website or web page hosted in Algeria at an extension com.dz:

1_Registration in the trade register or in the Traditional and Crafts Industries Registry

The supplier must register its electronic commercial activity in the commercial registry, the latter is considered as an official bond which confirms the legitimacy and integrity of that activity, but for craftsman whether natural or moral, who practices an electronic business, he is also obliged to register its activity but in private register called the register of traditional and crafts industries.

2_ Publishing e-commerce activities on websites

The supplier cannot practice an electronic business until the name of the domain has been deposited with the national center for commercial register; this deposit leads to the protection of electronic commerce from various forms of unfair competition.

After the domain name is deposited, the National Register of Commerce Center prepares a national card that includes electronic suppliers registered in the Register of Commerce or in the Register of Traditional and Crafts Industries to be disseminated through electronic communications in order to be accessible to consumers.

The supplier's adherence to the conditions for the practice of electronic commerce, on the one hand, facilitates the monitoring of e-business activity by oversight bodies, on the other hand, protecting the consumer and enabling him to identify the person he is dealing with.

Second section: Consumer protection in the pre-contract phase.

Algerian legislation has approved a number of mechanisms aimed at protecting consumers in the period prior to the conclusion of the contract:

1_ Supplier's obligation to inform the consumer

Electronic business transactions are required to be preceded by an electronic business offer. These transactions are documented under an electronic contract ratified by the consumer.

The offer is required to include clear statements and easy to read.

The electronic offer must also include a set of data and information that enables the consumer to know the content of the electronic consumption contract.

The consumer must be informed of:

- _The fiscal identification number.
- _The physical and electronic supplier's address and telephone number.
- _ Commercial registration number, or professional craftsman's card number.
- _ the basic characteristics of the goods and services and their prices.
- _ delivery modalities and deadlines. If delivery requires the consumer to bear the expenses of transporting the commodity, he must be informed of transportation expenses.
- _ the supplier is also committed to inform the consumer adequately about all stages of the contract and how to pay the price before the deadline.
- _ inform the consumer that he has the right of retraction from the contract, conditions, and time limits.
- _ To inform the consumer of the general conditions of sale, in particular the conditions relating to the protection of personal data, commercial warranty conditions, and after-sales service, whether the good or service is available or not, order confirmation, payment qualifications and procedures, the validity of the offer, and the terms of avoidance of the contract.
- _to describe the stages of the electronic consumption contract and determine the way the product is returned, replaced, or compensated, and how to calculate the price in case it is not predetermined.

_ Consumer information is required in Arabic as well as in other languages, and the consumer must be informed of these data before concluding the electronic consumption contract.

2_ Supplier's obligation to take into account the requirements of the legality of electronic commercial advertising

Electronic commercial advertising must be clearly defined in order to avoid the ambiguity into which the consumer may fall. Publicity is clearly intended to contain a set of data and adequate



information on the goods or services provided that would form a consumer's conscious and informed will.

The legality of publicity requires:

- _ clearly identify the advertiser.
- _ Determine whether an electronic trade offer may include a reduction, bonuses, or gifts in the event that such an offer is commercial, competitive, or promotional.
- _ Electronic commercial advertising must not include unreal and ambiguous data that exposes consumers to deception.
- _ The direct questionnaire is also prohibited on the basis of sending messages through electronic communications using the information of a natural person, in any way that has not given prior consent to receive questionnaires directly through electronic communication.
- _ Commercial publicity is required not to contravene public order and morals. It is also prohibited to publish any advertising of products and services prohibited from marketing through the use of electronic means.

Third section: The protection of consumer in Contract formation phase

In this section, we are going to address the protection of the electronic consumer from arbitrary conditions, as well as the protection of his personal data.

1_ How to protect consumer from arbitrary conditions?

Often, the supplier sets a set of conditions so that the consumer can only bargain and ultimately accept or reject these conditions altogether. On this basis, an Algerian legislator intervened to protect the consumer as the weak party to the contract. Article 29 of Act No. 04/02² and Article 05 of Executive Decree No. 06/306³ stipulate a list of unfair terms for the consumer to be aware of.

The Algerian legislator gave the judge discretion to amend the arbitrary clauses or exempt the defendant from them. The legislator also gave him discretion in determining whether the conditions before him were arbitrary or not.

Article 38 of Act No. 04/02 also stipulates the penalty for the inclusion of arbitrary clauses in the consumption contract, whereby the supplier is liable to a fine of 50,000 to 50,000,000 dinars.

2_ Personal Data protection

Personal data means: "A set of symbols, facts, concepts or instructions that are suitable for exchange, communication, interpretation, interpretation or processing by individuals or systems and are flexible so that they can be transferred, fragmented, collected or transmitted by different means"⁴. The supplier is committed to preserving the consumer's personal data consumer and its security and preventing their leakage, as stipulated in article 26 of the electronic commerce Law No 18/05 " The supplier... must ensure the security of information and the confidentiality of data ". The supplier or any processing officer must take all necessary measures and procedures to achieve the principle of data confidentiality and security, whether technical, administrative, or organizational, so that the rules of access are established within the limits of what is necessary. These rules apply even to therapists, so they are allowed access only in the circumstances that require and are supposed to use special programs to prevent hacking and passwords to prevent unauthorized access to any file. In the event that the supplier or processing officer fails to take such technical action, either negligently or as a result of its error, legal liability is incurred.

Fourth section: E-consumer protection in the contract implementation phase

The right of retraction considered one of the most important means created by modern legislation in order to protect the consumer at the stage of contract execution. This option is particularly important in electronic consumption contracts, where the consumer usually rushes to conclude the contract in an atmosphere where the producer incites him to buy under the influence of advertising means⁵. The product provided to the consumer must not affect his material benefit and not cause him moral harm. The retraction is the consumer's right to withdraw the purchase of a product without reason. The consumer has the right to refrain from acquiring a product with respect to the contracting conditions and without paying additional expenses. Where conditions and modalities for



exercising the right to refrain, as well as the deadlines and list of the products concerned, are regulated by regulation ⁶.

the Algerian legislature has not set the time limit for the exercise of the right of return when the supplier breaches its obligation to inform the consumer of this right. This is what the French legislator is well aware of when setting a full seven days for the exercise of the consumer's right to renounce the contract as a public asset. and if the supplier breaches its obligation to foresee this right, the period extends to 3 months instead of 7 days⁷.

the electronic supplier must recover his goods in the event of delivery of a purpose that does not conform to the order or in the event that the product is defective the electronic consumer must re-send the commodity in its original packaging within a maximum period of 04 working days starting from the date of actual delivery of the product with an indication of a reason Rejection and re-transmission costs are the responsibility of the electronic supplier, and the electronic supplier is obligated with the following:

- New delivery approved for the order, repairing the defective product, replacing the product with a similar one, cancelling the order and returning the sums paid without prejudice to the possibility of requiring the electronic consumer to compensate in the event of damage 24 .
- The sums paid must be returned within 15 days of receiving the product.
- Through the foregoing, we find that the Algerian legislator mentioned a set of obligations that fall on the electronic supplier, including penalties for violating it, whether civil or criminal sanctions ⁸.

Conclusion:

Finally, given the legal arsenal established by Algerian legislation for the protection of the electronic consumer, however, it did not provide him with adequate legal protection, especially since the Electronic Commerce Act No. 18/05 was more aimed at regulating the electronic market and not at protecting the consumer.

Law 18/05 regulated many issues: the obligation to inform, the protection of the consumer against electronic commercial advertising that is false and misleading, its determination of the obligations of the electronic supplier, as well as the protection of the consumer's personal data, and granting the consumer the right to renounce the contract, but it referred us to Law 09/03, the latter containing legal texts consistent with a traditional rather than an electronic environment.

The law on electronic commerce is not of a deterrent nature. All the penalties prescribed for violating the provisions of this law are financial penalties and, mainly, a fine. Therefore, Algerian legislators were obliged to impose severe penalties, such as imprisonment.

The Algerian legislator has commissioned private wire agents from the departments responsible for trade. On the ground, we note that these agents have not been able to monitor shops for several reasons, including the proliferation of shops. It is inconceivable that these agents should also be assigned the task of censoring websites. The latter requires special agents who master modern and electronic technologies; these agents presuppose continuous censorship in view of the proliferation of websites that do not comply with the conditions for the practice of electronic commerce.

¹ Law No. 18-05 on electronic commerce, dated on 10 May 2018, Official Gazette No. 28 dated on 16/05/2018.

² Law No. 04-02 of 23 June 2004, establishing the rules applicable to business practices, Official Gazette No. 41 of 27 June 2004, amended and supplemented.

³ Executive Decree No. 306/06 dated on 10 September 2006, establishing the basic elements of contracts between economic and consumer agents and items considered arbitrary, Official Gazette dated on 11 september 2006, No. 56, amended and supplemented.

⁴ Franziska Boehm, information sharing and Data protection in the Area of freedom Security and Justice, springer Verlag Berlin Heidelberg , 2012, p12.



⁵ Zakaria MOULAY, Karim KHDIM, Protection of Consumer in E-commerce - Comparison Study between Algeria and European Legislations -, The Algerian and Comparative Public Law Journal, Vol. 06, N 02/ December 2020, p 14.

⁶ Article 18 of Law 09/03 on Consumer Protection and Suppression of Fraud, Amended and Supplemented.

⁷ Olivier D'auzon, le droit du commerce électronique, éditions du puits fleuri, p 53.

⁸ Article 22-23 of Law 18/05.