

THE JUDGE AND UNFAIR TERMS: AN OVERVIEW OF ALGERIAN AND FRENCH LAW

YEKHLEF ABDELKADER¹, MERAH AHMED²

Faculty of Law and Political Sciences, Laboratory of Law and Societal Development, Ammar Telidji University
Laghounat, (Algeria) ¹

Faculty of Law and Political Sciences, Laboratory of Legal Instruments for Real Estate Policy, Mostafa Stambouli
University Mascara, (Algeria) ²

a.yekhlef@lagh-univ.dz¹

merah.ahmed@univ-mascara.dz²

Abstract - A contract is primarily controlled by the Biding Force of contract which states that a contract cannot be canceled or modified unless the parties to the contract agree in writing, thus the contract is primarily protected against external interference. Nevertheless, Algerian and French lawmakers have entrusted the judiciary with broad discretionary powers to protect the weaker contracting party through the regulation of unfair contract terms, a means of promoting contractual balance and protecting parties in a vulnerable position in a contractual relationship. This judicial authority derives from civil law principles and legislative statutes giving the judges the discretion to revise or declare unconscionable those clauses that are demonstrated to create a manifest imbalance in contractual obligations.

The efficacy of this judicial intervention, nonetheless, depends considerably on the lucidity of statutory provisions outlining the scope and standards of judicial supervision. In certain cases, uncertainties in the legal system may create conflicting judicial interpretations, thus lowering the degree of protection for the aggrieved party. As a result, the need for legislative reform has grown clearer, calling for the creation of objective and specific legal standards that delineate the limits of judicial power while protecting contractual justice without derogating from the principle of transactional stability..

Keywords: Abusive Clauses; Discretionary authority; Contractual balance; Judicial intervention.

INTRODUCTION

Contractual relations hitherto have been typified by an intrinsic inequality that stems primarily from superiority by one of the parties either economically, militarily, or scientifically and further augmented by man's natural proclivity towards selfishness; hence, in the era of individualist philosophy the stronger contracting party did not lie dormant but instead capitalized on its position of superiority to impose contractual terms unilaterally and hence created a new model referred to as the contract of adhesion or standard-form contract in which terms are imposed and not negotiated.

In addition, such contracts have become more prevalent in modern consumer-professional relations where firms impose conditions that are typically regarded as unfair and this practice has been the subject of long-standing criticism by jurists since Saleilles' times

The attorney "Starck" argued that the degradation of the freedom of contract principle results from the abuse of contractual freedom in a socio-economic context where the strong exploited the weak, while the scholar "Berlioz" also underlined the need for a balance mechanism between the opposing interests of the parties.

On this basis the Algerian legislator has tried to protect the weaker party to contractual relations in the interest of preserving contractual balance; in reaction to this protection is obtained by granting judges the authority to assess the unfairness of a term and, if necessary, to act to combat such unfair terms.

Moreover, the significance of this topic is two-pronged: firstly it addresses the theoretical scope of judicial discretion in assessing unfair terms—i.e. whether such discretion is absolute or restricted—and secondly it examines the practical impact of judicial interference on contract performance, i.e. in determining whether unfair terms have to be enforced as written or modified or revoked by judges.

Additionally, this study confines itself to the civil law tradition and excludes any criminal implication and analyzes both the ambit of judicial discretion in identification of unfair terms as well as the judiciary's role in protection of the weaker party in securing contractual equilibrium.

Accordingly this research answers the following question: to what extent does the judge possess the authority to oversee unfair terms and what limitations exist on judicial intervention when reconciling contractual freedom with contractual justice?

In order to tackle this issue we have adopted a deductive approach that involves analyzing legal texts to ascertain the judge's role in assessing unfair terms in Chapter One while also examining the judicial mechanisms employed to combat such terms and restore contractual balance in Chapter Two.

Chapter One: The Judge's Authority In Assessing Unfair Terms

In this chapter I explain the degree of the judge's discretion in deciding the unfairness of contractual terms with regard to the broad exercise of this discretion and the legal limits inherent in it; I first explain the unrestricted use of judicial discretion as illustrated in both Algerian and French cases and then proceed to analyze the circumstances under which the power is curtailed in the decision on unfair contractual terms.

Section One: Unrestricted Evaluation of Unfair Terms

In this chapter I explain the degree of the judge's discretion in deciding the unfairness of contractual terms with regard to the broad exercise of this discretion and the legal limits inherent in it; I first explain the unrestricted use of judicial discretion as illustrated in both Algerian and French cases and then proceed to analyze the circumstances under which the power is curtailed in the decision on unfair contractual terms.

In this study I begin by examining the extent of the French judge's discretion in assessing the unfair nature of contractual terms given that France has played a pioneering role in empowering judges with the freedom to evaluate such unfairness;

indeed the French judiciary has evolved through two distinct phases whereby initially judicial discretion was restricted and later expanded, and following this I will explore the level of freedom granted to the Algerian judge in determining whether a term is unfair.

Furthermore with respect to the French legislator prior to the enactment of the Law of January 10, 1978 the judiciary relied on general civil law principles to invalidate or mitigate the impact of certain unfair terms¹ whereas subsequent to that law Article 35 expressly provides that the prohibition of unfair terms is effected through decrees issued by the executive authority after consulting the committee on unfair terms, thereby underscoring the shift towards a more structured approach to contractual fairness².

The very same article had also imposed some conditions that were held to be unjust in French law and jurisprudence. Thus, the judge was obligated under the conditions framed by this article and could only invalidate those conditions that were expressed, and not extend beyond this and nullify conditions that were not specifically mentioned, although they were unjust.

Trying to get around this restriction, it was ruled by the French Court of Cassation on July 16, 1987, that "in the absence of a law allowing the judge to impose sanctions, the judge may still impose sanctions in contracts by having recourse to the provisions of Article 1134 of the Civil Code³."

¹ Fatima Zahra Zitouni, *The Role of the Judge in Contract Execution in Civil Matters*, Master's Thesis, Specialization in Contracts and Liability, Faculty of Law, Abou Bekr Belkaid University of Tlemcen, 2008-2009, p. 72.

² Law No. 78-23 of January 10, 1978, on the protection and information of consumers regarding products and services. Published on the website : <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000518102>

³ J. Mestre, *Twenty Years of Fighting Against Unfair Terms, The Future of Law, Collection in Honor of François Terré*, D, Paris, 1999, p.109.

Similarly, the French Court of Cassation issued another decision on May 26, 1993, holding that "it is the judge, not the law, which declares the unfairness of a clause, and in so doing, the judge's decision is reviewable as a matter of law⁴".

Furthermore, in a decision of January 16, 1994, the French Court of Cassation maintained that the judge has the power to classify a clause as unfair regardless of the terms set out in Article 132 of the Consumer Law and without needing to refer to express decrees.

Lastly, the passing of Law No. 95-56 on February 1, 1995, which modified the French Consumer Law, greatly widened the judge's discretion in the determination of unfair clauses. This discretion could be exercised either by invoking the executive decrees after prior examination by the Unfair Terms Committee or by invoking the enumerative list in Article 132, Paragraph 1 of the French Consumer Law. Apart from this, the law gave the judge the authority to invoke Articles 1115 to 1161, and also Articles 1163 and 1164 of the French Civil Code, in an attempt to consider the unfair character of a particular clause.

About the Algerian judge's evaluation generally speaking the judge has complete and unfettered power to determine unreasonable terms; this is demonstrated in Article 29 of Law No. 04-02 which provides the rules governing commercial practices in Chapter Five entitled 'Unfair Contractual Practices', which goes on to explain that the situations described are presented in a non-exhaustive manner as shown by the words 'notably the clauses' that are used.

For example the article states that clauses and terms shall be deemed unjust in contracts of a sale between a consumer and a seller especially those which confer on the seller rights and/or privileges without equivalent rights and/or privileges being offered to the consumer and those which create an obligation on the part of the consumer which is immediate and absolute while the seller is permitted to fulfill his obligations at his convenience.⁵

This wording shows that a judge is not bound to deal with listed cases only but is empowered to assess whether there are other unfair terms which are not expressly stated in the law. The fact that a legislator provides instances of unfair terms and not a list of them is greatly underscored by the existence of residual clauses provided in Article 5 of Chapter II of Executive Decree No. 06-306 which contains both the constituent elements of contracts between economic agents and consumers and the clauses deemed unfair. Further, it is also important to observe that while Article 29 of Law No. 04-02 restricts the scope of unfair terms to contracts between sellers and consumers, Article 5 of Decree No. 06-306 applies to all acts done by professionals whether they are in the nature of sale or service contracts. This provision lists a total of twelve unfair terms which reflect a more adequate protection of consumers against abusive contractual conditions⁶.

Conclude therefore that the legislator has granted broad discretionary powers to judges to decide unfair terms; in addition, Article 29, as it is general and encompassing in its scope, is a useful instrument in the hands of the judiciary to protect consumers from abusive contractual terms, thereby guaranteeing that such protection is well implemented under the law.⁷

A judge's independence in defining unreasonable stipulations in negative agreements is supported by Article 70 of the Algerian Civil Code, which explains adhesion agreements as those in which the accepting party only needs to comply with the conditions stipulated by the offerer without the possibility of negotiation. The article does not explain what the conditions might be, but stresses that they are not open to debate, which gives judges a lot of power when determining the reasonableness of such agreements.

⁴ Ahmed Hadilala, The Judge's Authority in Modifying Contractual Obligations and Adapting the Contract, Master's Thesis in Professional Liability, Faculty of Law, University of Tlemcen, 2012-2013, pp. 109-110.

⁵ Article 29 of Law 04-02 dated February 23, 2004, defines the rules applicable to commercial practices - Official Journal No. 41, issued on June 27, 2004.

⁶ Article 05 of Executive Decree No. 06-306 dated September 10, 2006, defines the essential elements of contracts concluded between economic agents and consumers, as well as the terms considered as unfair - Official Journal No. 56, issued on September 11, 2006.

⁷ Nawal Khemouch, Consumer Protection within the Framework of Commercial Practices Law, Master's Thesis in Private Law, Faculty of Law, University of Algiers, 2010-2011, p. 67.

Furthermore, legal expert Abdelhamid Fouda has confirmed that it is within the jurisdiction of the trial courts to determine unreasonable stipulations, therefore the judge has control over whether or not a given stipulation in the contract is unreasonable, so if an unreasonable stipulation is found in the adhesion contract the judge has the discretion to change it so it does not have an abusive impact, or completely void it, thus relieving the subscribing party from the impacts of the contract⁸.

Nevertheless, the limitations imposed by the Civil Code mandate that any judicial action must be strictly maintained in accordance with the principles of justice. Moreover, the ascertainment of unfair terms has been construed to be a question of fact, with the Supreme Court refraining from reviewing the discretion of the trial court in this regard. This approach, therefore, ensures that judicial discretion is exercised in strict accordance with the principles of justice while simultaneously maintaining respect for the factual nature of ascertaining unfair terms⁹.

Section Two: Restricted and Limited Assessment of Unfair Terms

Sharing an unfair judgment pertaining to the clauses of a contract is not within the Algerian legislator's jurisdiction in certain default contracts because the legislator has literally pulled out unfair clauses in an exhaustive manner which effectively renders a blacklist. Additionally, the judicial control in other contexts of contracting where a judge can exercise the discretion of determining unfairness is not unlimited but bound by the following obligatory conditions that must be taken into consideration: whether or not the term in deadline meets essential, particular effects or is put in the context and time frame in which it was created. In addition, when the legislator bounds judicial discretion by delimiting certain contracts with default terms, the judge's power to intervene is only available when those terms are included, but the judge has no prerogative to any of the excluded terms.

For instance, Article 622 of the Algerian Civil Code provides for provisions that are considered unfair in insurance contracts. This entails a clause that imposes the renunciation of the right to compensation for non-compliance with laws or regulations. It also entails a condition that imposes the loss of the insured's rights due to delays in reporting the insured event or the submission of documents required, subject to the absence of reasonable grounds for the delays. Additionally, any standard clause that is unjustified and pertains to circumstances giving rise to nullity or forfeiture is included. Furthermore, an arbitration clause that is included in the general printed conditions, as opposed to being set out as a distinct special agreement, is included under this definition, along with any other abusive clause whose breach is determined to have had no effect on the occurrence of the insured event¹⁰.

If a party to a contract wants to contest these terms, it would be enough that they refer to the provision outlawing such terms, which would empower the judiciary to nullify them; thus, this necessarily means that the judicial discretion is limited solely to these particular terms, i.e., without them, the judge would not have the authority to nullify any other contractual terms¹¹.

In that sense, it is possible to argue that defining the situations when terms are considered to be unfair gives a powerful tool in the protection of consumers, especially since it encompasses the possibility of compensation and works to strengthen judicial review of contracts between professionals and consumers.

In relation to the boundaries of judicial discretion in finding unfair terms in substitute contracts, there is a requirement for the court to consider—particularly where the legislature has not exhaustively defined unfair terms—some boundaries which are essential in the contract. If such boundaries are satisfied, the clause can be deemed unfair.

⁸ Abdel Hakam Fouda, *Interpretation of the Contract in Egyptian and Comparative Law*, Monshaat El Maaref, Alexandria, 1st ed., 2000, p. 436.

⁹ Assia Yasmine Mendi, *Public Order and Contracts*, Master's Thesis in Contracts and Liability, Faculty of Law, University of Youssef Ben Khedda, Algeria, 2008-2009, pp. 107-110.

¹⁰ Ordinance No. 75-58 of Ramadan 20, 1394 AH, corresponding to September 26, 1975, containing the Civil Code, as amended and supplemented by Law No. 05-10 of Jumada al-Awwal 13, 1426 AH, corresponding to June 20, 2005, Official Gazette No. 44, Year 2005.

¹¹ Mohamed Boudali, *Unfair Terms in Contracts in Algerian Law (Comparative Study with the Laws of France, Germany, and Egypt)*, Dar Houma, Algeria, 2007, p. 77.



For instance, an unfair term has to go beyond the original terms of the contract and change its impact; moreover, it is not restricted to consumer or adhesion contracts, but can be extended to any contract in which there is an imbalance and justice is absent between the contracting parties.

Furthermore, the requirement has to be imposed by a single party unilaterally, thereby not leaving the other party any alternative but to act in compliance, and the medium of imposition is irrelevant provided the conditions required to be met are satisfied, whether the requirement is oral or in writing;

Moreover, it is required that the contract be written, with the word "written" being interpreted widely to cover not just formal agreements but also standard contractual terms contained in documents distributed by the economic or professional entity, including purchase orders, invoices, warranties, or receipts.

Besides, the presence of an unfair term must have certain effects, as suggested by Article 132, Paragraph 1 of the French Consumer Law, that unfair terms in contracts between professionals and non-professionals or consumers are to be determined in terms of subject matter or effects that cause an imbalance between the parties' rights and obligations.

In the same way, the directive of the European Union on the unfair terms in consumer contracts—released on 21 April 1993—mentions under Article 03, Paragraph 01 that a term which contributes to a significant imbalance to the detriment of the consumer shall be regarded as unfair.

In adherence to this directive, the French legislature passed Law No. 95-96 on February 1, 1995, as amended by Law No. 26 on July 26, 1995, relating to consumer protection; Article 132-1 provides that unfair terms are those which have the purpose or effect of resulting in prejudicial consequences to a non-professional or consumer by establishing a significant imbalance between the rights and obligations of the contracting parties. Moreover, in a seminal ruling, the French Court of Cassation declared that the operation of an unfair term is such that it automatically nullifies or diminishes the consumer's right to damages in the event that the professional fails to comply with any of its obligations.

Consequently, unfair terms inevitably produce a significant imbalance in the parties' rights and obligations under the contract; furthermore, Article 03, Paragraph 05 of Law 04-02 highlights this issue by providing that, in assessing if a term or condition is unfair, it matters whether it imposes a significant imbalance on the contractual rights and obligations of the parties. Moreover, this imbalance frequently takes the form of an excessive or unreasonable advantage being granted to one party to the detriment of the other. Consequently, the Algerian lawmaker opted for the same standard as the one expressed in Article 132-1 of the French Consumer Code, under which it is necessary to assess whether an unfair term is likely to cause a significant imbalance between the rights and obligations of the contracting parties. Furthermore, this method reinforces the protection of consumers by only allowing stipulations that do not disturb contractual equilibrium to be maintained.

The judge is required to take into account both the temporal and the situational factor in assessing an unfair term, which implies that the test should encompass not only the time when the contract was formed but also the context and the other terms of the contract;

Also, where the validity or invalidity of one contract is legally tied to that of another, it is required that the judge consider the terms of the associated contract as well. As asserted by Professor Mohamed Boudali, an unfair provision needs to be screened at the moment of the conclusion of the contract in light of its context, subject matter, and the general conditions of the contracting parties, pursuant to the principles of equity¹².

The judge is required to examine an unfair clause in its entirety, as provided for by Article 03, Paragraph 05 of the Algerian law on commercial practices. According to this provision, the clause should be assessed either independently or alongside other contractual elements in order to have a proper understanding of how it affects the general equilibrium of the contract¹³.

It is one of the customary reproaches addressed to the Algerian legislator that the legal provision seems to have been inappropriately inspired by Article 132-1/5 of the French Consumer Law. It is therefore

¹² Mohamed Boudali, *Op. cit.*, p. 60.

¹³ Fatima Zahra Zitoune, *Op. cit.*, p. 75.

reasonable to say that a contractual term ought not to be analyzed separately, as a provision cannot be considered unfair solely because it bestows advantages on one party when another provision in the contract can potentially restore balance by bestowing compensatory advantages. Moreover, the majority of legal authors uphold the position of considering the contract as a whole and assessing the overall obligations to decide whether or not a given term is unfair¹⁴.

Chapter Two: The Judge's Authority to Intervene in Unfair Terms

Based on the principle of freedom of will - that is, the notion that the contract is the law of the parties - the contract itself is the parties' governing framework and typically restricts judicial intrusion into its analysis, especially when its conditions do not violate public policy or moral standards; in fact, according to established precedent, the judge's function is more or less confined to interpreting the contract.

Yet, the profound economic and social changes observed across the globe have evidently affected contractual relationships. In derogation from the traditional rule, the Algerian lawmaker has instituted a protective measure in favor of the weaker adhering party, along with an equalizing tool to restore symmetry among parties when economic and social circumstances create imbalance.

In this case, Article 110 of the Civil Code stipulates that when a contract is made by adhesion and the contract has unfair terms, then the judge may alter such terms or release the subordinate party from their undertaking based on grounds of justice, and any waiver thereof shall be null and void.

To this end, this article empowers the judge to act to restore balance to the contract by correcting unequal terms by amending them or deleting them.

Section One: Intervention by Modifying the Unfair Term

Modifying a term by the judge means leaving the term within the contract but eliminating the elements of unfairness it contains by the means the judge deems appropriate; moreover, these elements of unfairness may vary depending on the specific clauses and conditions imposed on the submissive party in the contract. For example, the following could be such items as terms that specify the counterparty demanded of the lower-ranking party in exchange for services under a contract of employment, the purchase price under a sale contract, or the leasing price under a leasing contract, all of which are considered constitutive of the contract and consequently difficult to expunge without reforming the scheme of the contract; accordingly modifying these terms is the most appropriate means to efface unfairness and prevent damage to the party to the contract.

Besides, such elements can also:

- Methods of performance or the duration of the contract wherein the modification may be an increase or decrease of the term in order to eliminate its unfairness while achieving the legislator's objective of keeping the parties' mutual obligations balanced;

- Appear as a process of exploitation or material inequality so that the judge lessens or expands it according to circumstances in order to eliminate that inequality, and the judge at this point is not subject to strict legal directives of amendment solely in the light of charges of exploitation but is guided by the script of law granting jurisdictional interference.

- If the questioned term is in the form of an excessively punitive penalty clause then the authority of the judge to modify it or relieve the submissive party arises from the conclusion that it is unjust¹⁵.

Section Two: Intervention by Cancelling the Unfair Term

Judicial power under this type of intervention is exercised in a more interventionist manner than that of simple review of amendment and is a useful weapon for the judiciary; therefore, if the judge thinks that a term is unfair he can rescind it thereby releasing the weaker party from its burden even though this action is against the well-known principle enshrined in Article 106 of the Algerian Civil Code to the effect that the contract is the law of the parties. Further, Algerian law more explicitly promises coverage under Article 13 of Law No. 09-03 by using words that it utters to the effect that a producer of a product

¹⁴ Khemouch, Op. cit., p. 70.

¹⁵ Article 110 of Ordinance 75-85 on the Civil Code.



whether it is a machine device or tool has the benefit of the guarantee under the law but the consumer is entitled to the realization of the guarantee without any additional burden and any rule that contravenes article is null and void;

Likewise, Article 10 of Executive Decree No. 90-266 concerning the warranty of goods and services stipulates that any provision attempting to exclude the warranty will be null and ineffective with a non-warranty clause being any provision that limits or excludes the professional's legal responsibilities¹⁶.

Article 622 of the Algerian Civil Code also offers provisions for invalidity of conditions in an insurance contract document, including:

- A state which results in the loss of the right to compensation due to a breach of law or regulation, other than a felony or wilful misdemeanor.
- An exception to the loss of the policyholder's right that occurs because of the delay by the policyholder in reporting the occurrence of the insured event to the authorities or presenting the documents, if it is proven from the circumstances that the delay occurred because of a reasonable excuse.
- Any written term which is not manifestly supported and relates to a situation giving rise to nullity or lapse. Arbitration conditions, where there are included as part of the general printed terms of the document, and not as a special agreement distinct from the general ones.
- Any other words that are considered unfair and are not discovered to have any impact on the incidence of the insured event.

The Algerian legislator has also proclaimed in Article 625 of the Civil Code that any contract contrary to the provisions included in this chapter is null and void, save in so far as it is to the interest of the policyholder or the beneficiary¹⁷.

Instances of such intervention by the courts are terms that exempt the maker or the single party accountable for the contract from contractual or legal warranties such as the warranty of ownership or the warranty against latent defects as typically extended to installment sale contracts of goods; similarly, provisions that excuse or minimize liability in case of non-performance, delayed performance, or even part or defective performance—as seen in contracts of travel and tourism agencies—also attest to the degree of such intervention¹⁸.

Therefore, the judge can exclude unfair terms from adhesion contracts, provided that the contract itself is an adhesion contract and the term is unfair. But if the contract is not an adhesion contract, the judge cannot exclude such terms¹⁹.

Thereafter it can be said that the legislator, according to Article 110 of the Civil Code, sanctions the judicial intervention so that it makes a change to usurious conditions of contract or excludes the perpetrating party from them as long as such amendments harmonize with what justice prescribes; also, this disposition of judicial prerogative is construed as an integral part of public order and hence can't be waived through contract which in its turn marks an exception from the general principle limiting the intervention of the judge to interpretation and from the relative effects of contracts doctrine.

Apart from that is the clear deviation of legal doctrine in which there are scholars opposing judicial intervention arguing that to grant the power to review contract terms over adhesion contracts under a particular system brings hidden risks and disrupts contractual balance through discretionary authority while others support such intervention arguing that even before judicial intervention, there is inequality in a contract and that precisely this is what the judge has to do in order to achieve equilibrium through eradicating unfairness; Besides, the stability of economic relations is not only based on legal provisions but also on moral principles such as good faith and justice which are to guide parties towards balance

¹⁶ Fouda, A. H. (2000). Interpretation of the contract in Egyptian and comparative law (1st ed.). Monshaat El Maaref, p. 438.

¹⁷ Article 110 of Ordinance 75-85 on the Civil Code..

¹⁸ Ahmed Hadilala Op. cit, p.115.

¹⁹ Zahia Sreim, "The Clause Modifying Contractual Liability in Algerian Civil Law," Master's Thesis, Specialization in Contracts and Liability, Faculty of Law, University of Boumerdes, 2011-2012, p. 110.

and in relation to arbitrariness the supervision of the Court of Cassation by proper reasoning is seen as a safeguard against extreme measures.

Interestingly enough, the Algerian legislator established a Committee for Unfair Terms through Executive Decree No. 06-306 as per Article 06 of the aforementioned decree, which comes under the Ministry of Trade and has consultative capacity aimed at unburdening the judiciary with the task of cleansing the economy of unfair terms by analyzing all contracts entered into by economic operators with consumers and singling out clauses which are unfair; hence the committee's recommendations are advisory and its overall impact is rather narrow.

CONCLUSION

The Algerian legislator has taken the same path as the French legislator in granting judges discretionary authority to decide on the unfairness of contractual terms in most areas, pursuant to Article 110 of the Civil Code and Article 29 of Law 04-02 that regulates commercial conduct; but by way of exception, it takes away this authority by requiring judges to adhere to a set list of terms held to be unfair in insurance contracts pursuant to Article 622 of the Civil Code. In addition, the role of the judge in this case is not only to ascertain whether a term is unfair but also to ensure contractual balance by dealing with such terms, and that can either be done by amending or rescinding them.

Based on these findings, we recommend the following:

- The need to revise and enhance the legal provisions in Algerian civil law concerning unfair terms, through developing more accurate criteria for distinguishing between unfair terms.
- Strengthening the judge's power to regulate consumer contracts, by enabling him or her to render automatically unfair terms null and void without the need to make a request by the aggrieved party.
- Encouraging the use of mediation and arbitration as effective means for settling unfair terms disputes in a quicker and less costly manner.

ACKNOWLEDGEMENT

I extend my sincere gratitude to everyone involved in the journal, including the reviewers and editorial members, with special appreciation to the Editor-in-Chief.

REFERENCES

1. Legal Texts:


- Ordinance No. 75-58 of Ramadan 20, 1394 AH, corresponding to September 26, 1975, containing the Civil Code, as amended and supplemented by Law No. 05-10 of Jumada al-Awwal 13, 1426 AH, corresponding to June 20, 2005, Official Gazette No. 44, Year 2005.
- Law No. 78-23 of January 10, 1978, on the protection and information of consumers regarding
- Law 04-02 dated February 23, 2004, defines the rules applicable to commercial practices Official Journal No. 41, issued on June 27, 2004.
- Decree No. 06-306 dated September 10, 2006, defines the essential elements of contracts concluded between economic agents and consumers, as well as the terms considered as unfair - Official Journal No. 56, issued on September 11, 2006.

2. Books:

- Abdel Hakam Fouda, Interpretation of the Contract in Egyptian and Comparative Law, Monshaat El Maaref, Alexandria, 1st ed., 2000.
- Mohamed Boudali, Unfair Terms in Contracts in Algerian Law (Comparative Study with the Laws of France, Germany, and Egypt), Dar Houma, Algeria, 2007.

3. Memory:

- Ahmed Hadilala, The Judge's Authority in Modifying Contractual Obligations and Adapting the Contract, Master's Thesis in Professional Liability, Faculty of Law, University of Tlemcen, 2012-2013.
- Assia Yasmine Mendi, Public Order and Contracts, Master's Thesis in Contracts and Liability, Faculty of Law, University of Youssef Ben Khedda, Algeria, 2008-2009.
- Ben Kouider Zoubiri, The Protection of Consumers Against Unlawful Commercial Practices, Magister Thesis in Private Law, Faculty of Law, Tlemcen, 2005-2006.

- 
- Fatima Zahra Zitouni, The Role of the Judge in Contract Execution in Civil Matters, Master's Thesis, Specialization in Contracts and Liability, Faculty of Law, Abou Bekr Belkaid University of Tlemcen, 2008-2009.
 - Mohamed Boukmaach, The Authority of the Judge in Modifying Contracts in Algerian Civil Law and Islamic Jurisprudence, PhD Thesis in Islamic Sciences, Specialization in Sharia and Law, Faculty of Humanities, Social and Islamic Sciences, Department of Islamic Sciences, Larbi Ben M'hidi University, Batna, 2011-2012.
 - Nawal Khemouch, Consumer Protection within the Framework of Commercial Practices Law, Master's Thesis in Private Law, Faculty of Law, University of Algiers, 2010-2011.
 - Shaheeda Kada, La responsabilité civile du producteur (Étude comparative), Thèse de doctorat en droit privé, Faculté de droit, Université Abou Bakr Belkaid, Tlemcen, 2004-2005.
 - Zahia Sreim, The Clause Modifying Contractual Liability in Algerian Civil Law, Master's Thesis, Specialization in Contracts and Liability, Faculty of Law, University of Boumerdes, 2011-2012.
- 4. Articles:**
5. J. Mestre, Twenty Years of Fighting Against Unfair Terms, The Future of Law, Collection in Honor of François Terré, D, Paris, 1999.