



## ROLE OF REGULATORY COMMITTEES IN PROTECTING THE INSURED AGAINST UNFAIR INSURANCE TERMS -INSURANCE SUPERVISORY COMMITTEE AND UNFAIR CLAUSES COMMITTEE "CASE STUDY"

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### Abstract:

*The modern public policy system plays a positive role in contracts, where the legislator seeks to intervene and regulate various economic and social areas to achieve significant interests for the state. Through this intervention, we will explore the manifestations of this modern public policy in insurance contracts, a vital economic sector in the contemporary era.*

*To safeguard collective and economic interests, the legislator has required both natural and legal persons to engage in insurance contracts (such as liability insurance). The legislator has not limited itself to this requirement but has also introduced a mandatory legislative framework aimed at regulating insurance activities. Additionally, the legislator has imposed obligations and conditions within the insurance contract to ensure a contractual balance between the two parties involved in the insurance agreement.*

*However, Despite the strength of Algerian legislation, the insurance contracts offered in the market contain unfair terms that undermine the content of the insurance contract and prevent the spread of an insurance culture. The work of the Insurance Supervisory Committee and the Committee on Unfair Terms should evolve from mere licensing bodies and financial oversight entities for insurance companies to bodies that scrutinize contract terms, annul unfair clauses, and protect the interests of the policyholder as well as the economic interests of the country.*

**Keywords:** Insurance; Regulation; Unfair Clauses; Supervisory Committee; Control.

### 1- INTRODUCTION

Various insurance texts have been considered complementary rules, allowing both parties to the contract to agree on their violation. This has led insurance companies to evade the provisions of insurance texts by setting terms tailored to their interests, which are included in standard contracts presented to the public. The only option for the public was to comply, due to the absence of legal protection. Consequently, the legislator granted mandatory legal status to the regulation of the insurance contract, as an exception to the principle of contractual freedom.

This was affirmed in Article 625 of the Algerian Civil Code,<sup>1</sup> which stipulates that it is not permissible to agree on the non-application of the provisions in the section dedicated to insurance contracts, unless it benefits the policyholder or the beneficiary, as applicable. This clearly indicates that the rules governing the insurance contract predominantly belong to what is referred to in modern legal theory as the "economic and social public order for the protection of the weaker party".<sup>2</sup>

Thus, the insurance contract derives its binding force from the will of the legislator rather than the will of the parties. While individuals may aim to achieve personal interests and adhere to contractual freedom, economic and social requirements call for state intervention to eliminate any abuse within the contractual

1- Article 625 of the Algerian Civil Code stipulates, "Any agreement that contradicts the provisions of this chapter shall be void, unless it is for the benefit of the insured or the beneficiary." The Algerian Civil Code, issued by Order 75-58, dated September 26, 1975, as amended and supplemented.

2- Mohamed Al-Hayni, *Legal and Judicial Protection of the Insured*, Dar Al-Omniah for Publishing, 2nd ed., West, 2010, p. 32. See also Essam Anwar Suleim, *Principles of Insurance Contracts*, Manshahat Al-Ma'arif, Egypt, 2008, p. 202.

sphere. The legislator intervened with imperative provisions that prioritize public interest over individual selfishness, giving the insurance contract a social and economic character.<sup>3</sup>

The political or traditional negative public order, which only prohibits but does not intervene, differs from the modern public order. The latter plays a positive role in contracts, with the legislator intervening to regulate various economic and social fields to achieve important national interests in line with the state's economic directions and goals. The manifestations of this modern public order in the insurance contract, as a crucial economic domain in the modern era, are evident.<sup>4</sup>

The legislator has intervened directly in insurance contracts to protect the policyholder, both in terms of form and substance. This includes requiring the contract to be in writing and to include mandatory data, as well as stipulating that certain conditions be clearly written in conspicuous letters, such as the conditions related to expiration and duration. Additionally, the legislator has established various penalties to prevent the insurer from abusing their power, aiming to achieve balance in the obligations of both parties in the insurance contract.

Furthermore, before entering into certain contracts in specific fields, the legislator has mandated the obtaining of opinions, approvals, and permits, as well as the fulfillment of certain notifications. This is reflected in the law regulating insurance activities, particularly in the Insurance Law under Order 95-07, as amended and supplemented, which dedicates a whole section to the organization and supervision of the insurance sector. Article 204 stipulates, "Insurance companies may only operate after obtaining the approval of the Minister in charge of finance..." and Article 209 states, "An Insurance Supervisory Committee is established... its objective is to protect the interests of policyholders and beneficiaries of insurance contracts."

Additionally, among the committees involved in the substance of contracts in general and insurance contracts specifically, there is the Committee on Unfair Terms, created by Executive Decree 06-306. This decree defines the essential elements of contracts between economic agents and consumers, and identifies terms considered unfair. The decree was amended by Decree 08-44, which modified the composition and responsibilities of the committee, which operates under the Ministry of Trade.

Thus, we question the effectiveness and performance of these committees in monitoring insurance contracts, protecting the insured from abuse, and whether there is overlap in their duties. Based on the foregoing, this paper will address the effectiveness of administrative protection methods as a preventive and preemptive means to protect the insured and the beneficiary from falling into abuse. It will examine various mechanisms and methods of regulating insurance contracts and preventing the inclusion of abusive clauses, through the committees mentioned above. The structure is as follows:

(First) The Role of the Insurance Supervision Committee in Monitoring Insurance Contracts

(Second) Mechanisms of the Abusive Clauses Committee in Ensuring Balance Between Insurance Parties

3- The concept of sociality arises only when there is inequality among the members of society. It can therefore be employed as a corrective technique or means to address the inequality existing among individuals in society, as well as a method to correct the imbalance in contractual relationships. Consequently, it has become established that the economic and social goals of a contract should not be sacrificed to satisfy individual selfishness. This has allowed the contract to become a vessel that accommodates all the social and economic values the legislator aims to achieve through the legal system, including the public interest and social justice. Whenever the public interest is involved, the legislator intervenes directly, determining the content of the contract. The entities granted the authority to draft contracts represent various parties, thereby establishing a balance aimed at achieving justice. The legislator places the principle of freedom of contract on one side and the principle of balancing the interests of the conflicting parties or the public interest on the other. See Mohamed Mohy El-Din Ibrahim Suleim, *Economic Domination and Its Impact on Contractual Balance*, Dar Al-Matbouat Al-Jam'iyya, Egypt, 2007, p. 11. See also Nsaakh Fatima, *The Social Function of the Contract*, PhD Thesis, University of Algiers, 2012, p. 7 and onwards.

4- Ali Filaali, *Theoretical Obligations of the General Contract*, Mofam for Publishing, Algeria, 2010, p. 281. See also Jacques Ghestant, *Civil Law Treatise, Formation of the Contract*, translated by Mansour Al-Qadi, University Foundation for Studies, Publishing, and Distribution, 2nd ed., Lebanon, 2008, p. 483.

## 2- THE ROLE OF THE INSURANCE SUPERVISION COMMITTEE IN MONITORING INSURANCE CONTRACTS

Given the high financial value of the insurance market and the strength of insurance companies, coupled with the complexity of its sector as a vast economic activity, various countries have recognized the importance of insurance operations in economic development. Consequently, they have reinforced the presence of national companies in the market, while also opening the door for foreign investment, under conditions tailored by each country according to its national interest. Insurance also plays a role no less significant than that of banks in financial financing and providing loans directed towards investment, with a complementary relationship between them. This is because insurance companies are obligated to invest their returns with banks to provide assets that guarantee their ability to meet their obligations. This sector has compelled countries to establish legal and administrative regulatory authorities over all matters related to the insurance activity and its participants, ensuring that there are solid guarantees enabling insurance companies to compensate the affected parties, such as various technical reserves.<sup>5</sup>

The necessity of regulation arises from the role of insurance companies in collecting premiums from policyholders and paying compensation when the insured risk materializes, which may occur long after the contract has been concluded. Additionally, insurance is a crucial sector in the lives of citizens. Since these individuals are customers rather than shareholders, insurance companies have a strong desire to make profits, necessitating state intervention to protect insurance consumers. This protection ensures they are not subject to abuse or exploitation by these companies through monitoring the insurance contracts. This includes auditing the foundations of premium calculations and the terms of insurance policies to prevent excessive premium determination or abusive conditions, which could undermine free and fair competition among operators and tarnish the image of the insurance sector in the eyes of consumers.<sup>6</sup>

The Algerian Insurance Law assigns the role of monitoring abusive clauses in insurance contracts to the Insurance Supervisory Committee, which acts as a regulatory authority through the Insurance Directorate at the Ministry of Finance. Monitoring insurance contracts is one of the many regulatory tasks granted to the committee. This committee was established under Article 209 of the Algerian Insurance Law and was tasked with overseeing the state's regulation of insurance and reinsurance activities. Its objectives include:

- Protecting the interests of the insured and beneficiaries of the insurance contract by ensuring the legitimacy of the insurance process and overseeing the conduct of insurance companies.
- Promoting and cleansing the national insurance market to integrate it into the economic and social activity.

Through these objectives, we observe the Algerian legislator's commitment in the first objective to safeguarding the private interests of the insured, being aware of their vulnerability in the face of the power and potential abuse of insurance companies, as well as their urgent need for insurance. Therefore, the term "legitimacy" is defined to refer to justice and balance between the interests of both parties to the insurance contract.

Article 209 bis and 209 bis 1 indicate that the committee consists of five members, including the president, chosen for their expertise in insurance, law, and finance. The president of the committee is appointed by presidential decree based on a proposal from the Minister of Finance. Additionally, the legislator added Article 209 bis 2, which complements Article 58 of Ordinance 09-02, which includes the Supplementary Finance Law of 2008: The list of members of the Insurance Supervision Committee is determined by a presidential decree upon the proposal of the Minister of Finance. The committee is composed of:

5- Claude J. Berr and Hubert Groutel, *Droit des Assurances*, Dalloz Edition, 1990, p. 4.

Jean Bigot, *Traité de Droit des Assurances*, vol. 3, Contrat d'Assurance, Delta Edition, Paris, 2002, p. 13.

See Saadallah Amal, *Supervision of the Insurance Sector in Algerian Legislation, Political and Legal Notebooks Journal*, University of Ouargla, Issue 15, June 2016, p. 585. See also Babaami Haj Ahmed, *The Impact of Legal Regulation on Freedom of Contract in the Field of Insurance: A Study Based on Algerian Insurance Laws*, *Oases Journal of Research and Studies*, University of Ghardaïa, Vol. 13, 2020, p. 1056. The article can be accessed from the following website:

<https://www.asjp.cerist.dz/en/article/120054>.

6- Fayez Ahmed Abdel Rahman, *Guarantees of the Rights of the Insured with Insurance Companies*, Dar Al-Nahda Al-Arabiya for Publishing, Egypt, 2006, p. 142.



- Two judges proposed by the Supreme Court
- A representative of the Minister of Finance
- An expert in the field of insurance proposed by the Minister of Finance

It is evident that the legislator has clearly included judges in the committee, requiring them to be proposed by the Supreme Court. This is an important balance within the committee, as the presence of experienced judicial advisers will give the committee a significant role in regulating and guiding the insurance sector and enhancing its role in the national economy. However, regarding the committee's independence, keeping the presidency under the executive authority, namely the Ministry of Finance, represents a drawback that should be addressed.

Article 210 clarifies the main tasks of the committee as follows:

- Ensuring that licensed insurance companies and intermediaries comply with legislative and regulatory provisions related to insurance and reinsurance.
- Ensuring that these companies fulfill their obligations towards policyholders and are still capable of meeting them.
- Verifying the information concerning the source of funds used to establish or increase the capital of an insurance company.

Regarding the second objective, the issue lies not in the performance of insurance companies' obligations, but in the presence of unfair contractual terms that exempt insurance companies from fulfilling their obligations or reduce them. These terms are not known to policyholders and were not negotiated with them, rendering the insurance contract void of its essence and diminishing its role and contribution to the national economy. The practical reality reveals how complicated and difficult it is for policyholders to obtain their compensation, all due to unfair terms and the lack of awareness among policyholders.

Regarding the supervision of insurance policy terms, Law 95-07, which regulates insurance and has been amended and supplemented, established very important preemptive and post-transaction supervisory procedures. These aim to compel insurance companies to respect integrity, protect the interests of the insured, and prevent the imposition of unjust terms that diminish the rights of the insured parties. Article 227 grants the Insurance Supervision Committee two main tasks:

- Submitting the general terms of insurance policies, or any document serving as a substitute, for approval before they are offered on the national market.
- Empowering the regulatory authority to enforce the use of standard terms.
- Continuously monitoring the various documents offered in the market and requesting amendments at any time if deemed necessary.

Article 227 states the following: "The general terms of an insurance policy, or any other document serving as a substitute, are subject to the approval of the regulatory authority, which can impose the use of standard terms."

The article restricts the approval of insurance documents to a 45-day period from the receipt of the documents for approval. Once this period expires, the approval is considered granted.

This timeline serves as a loophole that allows insurance companies to bypass abusive terms. The legislator was unable to strike a balance between not hindering economic activity and protecting the interests of the insured parties. However, continuous oversight by the committee may help identify abusive practices.<sup>7</sup> Yet, considering the remainder of Article 277, which does not declare contracts void if they have not been presented to the regulatory authority, as well as its stipulation regarding the approval process (where if the insurance document does not receive approval within 45 days, the approval is deemed granted), this implies that the administration's silence is considered consent. Therefore, this procedure undermines the freedom of contract without adequate scrutiny or review of the terms.

The legislator has also protected the interests of policyholders against collective insurance agreements and conglomerates. It is evident that insurance models are standardized with terms that do not vary significantly despite the different types of insurance, often containing numerous abusive conditions. To alleviate this, Article 288 of the Insurance Law mandates that the supervisory authority be notified of any

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7- Article 227/2 stipulates: "The supervisory authority shall issue the endorsement mentioned in the first paragraph above within 45 days from the date of receipt. After this period, the endorsement is considered granted."

collective agreement related to tariffs or the general and special terms of contracts, professional organization, or financial management carried out by insurance companies before implementation, under penalty of invalidity.<sup>8</sup>

The legislator has tied this requirement to the guiding and protective economic public order, meaning that any standard terms, whether general or special, not communicated to the Supervisory Committee are considered invalid until notification and approval are obtained.

In this regard, Executive Decree No. 08-113 was issued, which clarifies the responsibilities of the Insurance Supervisory Committee. Concerning the monitoring of insurance contracts, Articles 4 and 5 of this decree emphasize the necessity of continuous supervision of insurance and reinsurance operations and their legality. Article 5 defines insurance and reinsurance operations as those arising from the underwriting and management of insurance contracts and reinsurance treaties.<sup>9</sup>

It is clear that the legislator emphasizes the term "legality" in the context of insurance contracts, referring to their compliance with legal and regulatory procedures, including the approval of standard contract terms and ensuring the removal of any abusive clauses that may harm the interests of policyholders.

We also note the existence of another body concerned with the insurance sector, which plays a role in protecting the insured: the National Insurance Council. This is an advisory body for insurance,<sup>10</sup> chaired by the Minister of Finance. The council's tasks are purely advisory, providing consultations on matters related to insurance, its regulation, and its development. The council also submits preliminary draft texts for legislative or regulatory provisions within its area of competence.<sup>11</sup>

The council serves as the platform that ensures consultation and communication among the various parties involved in the insurance process: insurers, insurance brokers, the insured, public authorities, and employees in the insurance sector. In the context of our research, which focuses on abusive terms, the council, among its tasks,<sup>12</sup> works to ensure a balance between the rights and obligations of both parties to

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8- Article 228 stipulates the following: "When insurance companies conclude any agreement concerning tariffs, general and specific contract terms, professional regulations, competition, or financial management, the signatories of the agreement must notify the supervisory authority in advance before implementing it, under penalty of nullity."

9- Executive Decree No. 08-113, dated April 9, 2008, clarifying the tasks of the Insurance Oversight Committee, Official Gazette No. 20, p. 4.

10- Article 274: "An advisory body called the National Insurance Council is established, and this council is chaired by the minister responsible for finance."

11- The tasks of the council are organized by Executive Decree No. 95-339, issued on October 30, 1995, concerning the functions and organization of the National Insurance Council.

12- Objectives of the National Insurance Council

Based on its missions, the objectives of the CNA can be summarized as follows:

1. Improve the operational conditions of insurance and reinsurance companies to ensure the solvency of insurance firms and thus protect the interests of policyholders and contract beneficiaries. To achieve this, the National Insurance Council must oversee the implementation of regulations by these companies and consider improvements, in perfect complementarity with the Directorate of Insurance. It can contribute to qualitative work based on in-depth control, involving experts in the field.
2. Ensure the promotion and development of the insurance market to facilitate its integration into the economic and social process of the country. In this regard, the National Insurance Council must consider the best ways and means to promote:
  - The protection of production tools and businesses;
  - A greater and more effective participation of insurance companies in risk prevention;
  - The creation of jobs and a more advantageous orientation of savings provided by insurers;
  - A greater involvement of insurance companies in investment, either directly (real estate investments) or indirectly (equity participation in companies, purchasing stocks, etc.).
- Encourage insurance companies to adopt more professionalism in managing safety through the development of preventive policies capable of avoiding the occurrence of claims. To this end, the National Insurance Council must work towards a greater involvement of insurers in financing rigorous and effective preventive policies by applying pricing incentives and studied profit-sharing mechanisms. The National Insurance Council must encourage the widespread adoption of preventive and protective measures for all types of insured risks (fire, construction, theft, accidents, etc.).



the insurance contract. This is especially important as the insured is the weaker party entering into insurance contracts without negotiation, in contrast to the insurer, who is strong due to their professional company. Therefore, it is the council's duty to review or propose any measures related to the general terms of contracts.<sup>13</sup>

In France, the Insurance Supervisory Committee was established based on Article 310-1 of the French Insurance Code, with the law of December 31, 1989, officially creating the committee. This committee includes judges at the rank of advisor and has been granted wide-ranging powers to investigate and impose corrective sanctions. These powers are similar to those granted to the Banking Supervisory Committee.

Article 310-8 of the French Insurance Code grants the committee the authority to supervise all insurance documents intended for the public, regardless of how they are presented. These documents must be submitted to the Insurance Directorate for oversight, whether they are in the form of contracts or advertising materials.<sup>14</sup>

Additionally, Article 310-6 requires insurance companies to notify the supervisory body of all the general terms and conditions of their insurance contracts, insurance offers, or underwriting publications before they are launched in the market. The administration has the right to impose modifications and adjustments according to applicable laws, and these documents are reviewed in light of French national legislation. Furthermore, Article 310-7 grants the administration the authority to impose model contract terms in the insurance sector. Regarding price regulation, the law of December 31, 1989, removed the administration's power to set minimum and maximum insurance prices, leaving it only with the responsibility to establish the actuarial calculation mechanisms for life insurance and savings insurance.<sup>15</sup>

In this regard, we highlight the commendable procedure established by the Egyptian legislator for the accreditation of insurance companies. This procedure requires the applicant company to submit samples of the insurance policies it issues as part of the accreditation file. This applies to each branch of insurance for which the company seeks authorization, along with a statement of the benefits that the insured parties will receive, the prices, the terms of premium payments, the payment schedules, and the penalties resulting from the contract. This is to ensure that the regulatory authority can verify the protection of the rights of the insured and prevent exploitation by insurance companies. Additionally, the regulatory authority has the right to impose amendments to insurance contracts if abusive terms are discovered, either when granting the license or during the validity of the insurance contract.<sup>16</sup>

From the above, it is clear that the Algerian legislator has distinguished itself in organizing various mechanisms to combat abuse in insurance contracts through its bodies and committees. However, in practice, there are difficulties in the application and the performance of these bodies in carrying out their duties. As for the role of the Insurance Supervision Committee, it has remained purely technical, focusing primarily on monitoring the solvency of insurance companies and expediting compensation procedures. Regarding the contracts, there has been no in-depth focus on the issue of abusive terms or contractual balance. The committee's role remains procedural, with contracts being directly approved as standardized and familiar terms, which are commonly applied by various insurance companies. To date, there has been no thorough scrutiny of the numerous abusive terms included in most insurance contracts, due to the lack

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- Collaborate with other institutions in the country to develop regulations establishing the regulatory standards governing all means and methods used for risk prevention and protection, and encourage investment in those that yield the best results.
  - Ensure the balance of rights and obligations between the parties in an insurance contract, where the insured and the beneficiaries are in a position of weakness relative to the insurer and its organization. In this regard, the National Insurance Council must reflect on and propose all measures related to the general terms of contracts.

Source (Accessed 1/11/2017).

13- The council was established, and its members were appointed by the decision of the Minister of Finance No. 22, issued on March 30, 2014.

14- Claude J. Berr and Hubert Groutel, *op. cit.*, p. 36.

15- *Ibid.*, p. 37.

16- Fayez Ahmed Abdel Rahman, *Guarantees of the Rights of the Insured with Insurance Companies*, *op. cit.*, p. 156.

of judicial applications and the weakness of consumer protection bodies. The insured parties, in many cases, comply without negotiation or discussion, with their primary goal being to obtain compensation within a reasonable time due to the complexity and length of the compensation procedures.<sup>17</sup>

### 3- MECHANISMS OF THE COMMITTEE ON ABUSIVE CLAUSES IN ENSURING BALANCE BETWEEN THE PARTIES TO AN INSURANCE CONTRACT

This body was established under Executive Decree 06-306, which defines the essential elements of contracts between economic agents and consumers, as well as the clauses considered abusive, and amended by Decree 08-44. It states that "an advisory committee called the 'Abusive Clauses Committee' is established under the authority of the Minister responsible for trade, with its chair being a representative of the minister. The committee prepares its internal regulations, which are approved by a decision from the Minister responsible for trade."<sup>18</sup>

It is worth noting that these decrees were established based on Article 30 of Law 04-02, which defines the rules applicable to commercial practices, issued on June 23, 2004. Article 30 of this law stipulates, "In order to protect the interests and rights of consumers, the essential elements of contracts may be defined by regulation, as well as the prohibition of certain conditions considered abusive in various types of contracts."<sup>19</sup>

As for its tasks, which aim to protect the insured and combat abusive terms, Article 7 stipulates the following:

- It examines all contracts applied by economic agents to consumers and the clauses with an abusive nature, and formulates recommendations to be communicated to the minister in charge of trade and the relevant institutions.
- It can conduct any studies or expertise related to how contracts are applied to consumers.
- It can undertake any other action within its area of competence.

It is observed that the primary task of the committee is to monitor the various contracts between economic agents and consumers and to identify any abusive clauses in these contracts. The legislator made an error by limiting the contracts to be monitored to those between consumers and economic agents, even though the definition of a contract in Article 3/4 of Law 04-02 does not specify the contracting parties but rather states that the subject of the contract is any agreement made in advance aimed at selling goods or providing services, thus allowing for the possibility of abuse and coercion among economic agents.

Thus, defining the committee's task as discovering only the abuse between consumers and economic agents excludes the "inexperienced" professional from protection. This clearly reflects the Algerian legislator's stance, specifically excluding them from protection, particularly in the insurance sector, which is both complex and vast. All economic agents are required to insure their economic activities. For a single economic activity, multiple insurance contracts—both mandatory and optional—are required. In the event of accidents and disasters, one might question whether the economic participants will receive the compensation expected to restart their economic activities.

Additionally, the final task defined in Article 7 of the Executive Decree is phrased flexibly, providing the committee with a broad scope for intervention. It can organize awareness and informational campaigns in the field of consumer protection, possibly draft model contracts to recommend for circulation in the

17- Babaami Haj Ahmed, *The Limits of Legislative Intervention in the Content of the Insurance Contract: The Algerian Insurance Policy as a Model*, *Ijtihad Journal of Legal and Economic Studies*, Vol. 10, Issue 3, No. 2, p. 17. The article can be accessed from the following website: <https://www.asjp.cerist.dz/en/article/167458>.

18- Executive Decree No. 06-306, dated 17 Sha'ban 1427, corresponding to September 10, 2006, which defines the essential elements of contracts concluded between economic agents and consumers, and the terms considered abusive, *Official Gazette*, No. 56, issued on September 11, 2006, p. 16.

19- Executive Decree No. 08-44, dated 26 Muharram 1429, corresponding to February 3, 2008, amending and supplementing Executive Decree No. 06-306, dated 17 Sha'ban 1427, corresponding to September 10, 2006, which defines the essential elements of contracts concluded between economic agents and consumers, and the terms considered abusive, *Official Gazette*, No. 7, issued on February 10, 2008, p. 17.

market, notify consumer associations to file lawsuits, and advise the use of a specific contract model free of unfair terms.

Article 12 added to the committee's responsibilities the task of disseminating its recommendations through all available means, in addition to submitting an annual report to the Minister of Commerce, with the option to publish a summary of it. These duties aim to foster discussion and interaction within the economic market regarding various contracts and the potential abuse contained within them. This leads to pressure on economic agents, making them more likely to safeguard their reputation by removing abusive terms and refraining from including them in contracts.

Moreover, this approach increases consumer awareness and helps uncover abuses that have long been considered normal contractual terms. The advisory role also provides a preventive solution to resorting to legal action in cases of disputes between consumers and economic operators, which may escalate to arbitration. In this way, the committee exerts moral influence, acting as a deterrent and a barrier against abusive economic agents. In response to criticism regarding the lack of binding power of the Abusive Clauses Committee, one French legal scholar praised the effectiveness of its tasks and recommendations, stating, "Although these recommendations are not considered legally binding, they are regarded as practical law."<sup>20</sup>

Such tasks contribute to improving and amending the legislative system and advancing various consumer protection laws. It would be beneficial if the legislator explicitly added the task of providing opinions on draft legal texts related to abusive clauses, similar to French legislation, which considers this type of work one of the main responsibilities of the Committee on Abusive Clauses (Article 132-1/2). Furthermore, the recommendations issued by the committee regarding abusive clauses are considered "gray lists," which are useful for judges in enhancing their discretion in evaluating abusive conditions in contracts. It would be advantageous if the legislator included a provision allowing judges to consult the committee regarding the existence of abusive clauses in any contract under dispute before the court.<sup>21</sup>

It would be preferable for this committee to focus on studying various insurance contracts and identifying any abusive terms within them, and then submitting its work to the Insurance Supervision Committee. This would result in specialized grey lists in several areas such as leasing, loans, contracting, transportation, etc. This is similar to the work of the French Committee on Abusive Clauses, which issued recent recommendations regarding abusive terms in contracts for internet or telephone services, as well as car purchase contracts. The latter is a particularly fertile ground for abuse and manipulation of the interests of the weak consumer.

Regarding the members of the committee prior to the amendment, it consisted of 7 permanent members, most of whom held purely administrative roles, including the president, and none of whom were judges. Article 8 specified the following members:

- A representative of the Minister in charge of trade, specializing in commercial practices.

20- L. Leveneur, *The Commission on Abusive Clauses and the Renewal of the Sources of Contract Law*, referenced in Ayman Saad Slim, *Abusive Clauses in Contracts*, Dar Al-Nahda Al-Arabiya, Egypt, 2011, p.

21- This procedure was introduced in France by Decree No. 314-93 in 1993, whereby the judge handling the dispute may request the commission to provide an opinion on whether the disputed contract contains any abusive clauses, under Article 132-6. Since the commission is an expert on abusive clauses, the judge may allow the commission a period of up to three months to issue its opinion. The commission may also recommend the removal or modification of clauses that could be considered abusive, according to Article 132-1 of the French Consumer Law, Article 132-4. This task is part of its supervisory role to examine contract models. These recommendations are not legally binding, and the commission may also draft projects for administrative decisions aimed at regulating and limiting abusive clauses in contracts presented to consumers. Regarding procedures, the government can only issue a decree after a recommendation from the commission on abusive clauses. However, it is noted that successive governments in France have not widely used this procedure, as evidenced by the fact that only two decrees have been issued so far. This is due to the political will to leave the matter to the judiciary, whose role includes overseeing the legality of contracts.

See Ismail Al-Mahqari, *Legal Protection for the Inexperienced from Abusive Clauses: A Doctrinal and Judicial Comparative Study*, *Kuwaiti Journal of Law*, Issue 4, 2006, p. 331. See also Shawqi Benasi, *Addressing Abusive Clauses in Contracts*, *Algerian Journal of Legal, Economic, and Political Sciences*, Issue 2, 2009, p. 173.



- A representative of the Minister of Justice, specializing in contract law.
- A member from the Competition Council
- Two economic operators who are members of the Algerian Chamber of Commerce and Industry, qualified in business law and contracts
- Representatives from national consumer protection associations, qualified in business law and contracts

Article 8, amended by Decree 08-44, was introduced to modify and improve the composition, which now consists of 5 permanent members and 5 substitutes, distributed as follows:

- Two representatives from the Minister in charge of Trade, specializing in commercial practices
- Two representatives from the Minister of Justice, specializing in contract law
- Two representatives from the Competition Council
- Two economic operators representing the Algerian Chamber of Commerce and Industry, qualified in business law and contracts
- Representatives of consumer protection associations, qualified in the field of business law and contracts.
- The committee may seek assistance from any other person who can contribute to its work.

The first observation is that the legislator maintained the executive authority, specifically the Ministry of Commerce, as the chair of the committee. This impacts the committee's independence and neutrality. It is also unclear who the two representatives of the Minister of Justice are, and whether they are judges, or if the composition might lack judges altogether. As for the economic operators and consumers, the legislator has limited their representation by requiring specialization in business law and contracts. There may be economists with competence and experience but not specialized in contracts, which is an undesirable restriction. It would be better to allow the committee the flexibility to consult any individual who could benefit its work, such as doctors or university researchers in the fields of contracts and law.

It would be preferable for the legislator to explicitly state the inclusion of judges with the rank of advisors from the Supreme Court, as is the case in the Insurance Supervisory Committee. This approach is evident in France, where the composition of the Committee on Abusive Clauses is balanced, including judges, legal professionals, economic operators, and consumers. Its members are characterized by their specialization and expertise. This balance is lacking in the composition of the Algerian Committee on Abusive Clauses, where even the presidency of the committee in France is given to a judge from the ordinary courts, working alongside two other judges from ordinary or administrative courts or the Council of State, one of whom is appointed as the vice-president. Additionally, two legal experts are included, along with representatives of consumers and economic operators, who are appointed by a decision of the Minister of Consumer Affairs (Article 132-1)<sup>22</sup>.

It is worth noting that the Abusive Clauses Committee in Algeria was established on February 10, 2018, through a publication issued by the Ministry of Trade under a decision by the Minister of Trade on November 27, 2017.<sup>23</sup> However, no significant activity or publications from this committee have been observed. Notably, the establishment decision added a member—the president of the committee, who represents the Minister of Trade—bringing the total number of members to 11, with three representatives of the Minister of Trade. It remains unclear whether there are any judges in the committee, indicating a failure to properly implement the legal decrees. Why is a third representative of the Minister of Trade added when the decree specifies that the committee should have ten members?

Additionally, the Ministry of Trade's publication mentioned that a website would be dedicated to the committee to provide media coverage and disseminate its work. This committee is expected to play a

22- Ayman Saad Slim, *op. cit.*, p. 87. It is worth noting that the French Commission on Abusive Clauses recently lost its independence in French legislation, as it was integrated into the National Institute of Consumption under Law No. 2010/737, dated July 1, 2010. The intention of the French legislator behind this amendment is unclear, despite the commission's active and productive role.

23- Decision dated 8 Rabi' al-Awwal 1439, corresponding to November 27, 2017, defining the list of members of the Abusive Clauses Committee, *Official Gazette*, No. 75, p. 29.

crucial role in monitoring the market in the area of contracts by identifying contract clauses that may be considered abusive in order to protect the legitimate rights of consumers.

However, since then, the website has not been launched, despite the committee providing an email through which it can be contacted and notified.<sup>24</sup>

Regarding insurance contracts, the Committee on Unfair Terms in France has played a leading role in combating unfair terms in various insurance contracts. Among the recent recommendations is Recommendation No. 2004/85 concerning insurance contracts for various housing risks, where the committee made the following recommendations:

- The insurance contract should be accessible to the policyholder and include all guarantees provided to them under the contract.
- The risks excluded from the insurance should be listed in a single, clear, and understandable list.
- Any terms that would limit the policyholder's right to sue the insurance company or impose conditions that reduce their right to legal defense should be eliminated.
- A policyholder's honest mistake in fulfilling their obligations should not exempt the insurer from paying compensation after a disaster, and the policyholder should not be penalized by any reduction in compensation due to the expiration of the contract if no fault is proven.
- The insurer should not have the right to terminate the insurance after a disaster has occurred.
- The contract must be written in clear and simple language.<sup>25</sup>

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24- The process of notifying the committee can be done via email at [commissioncamc@gmail.com](mailto:commissioncamc@gmail.com) or by submitting the notification to the committee's secretariat at the central administration of the Ministry of Commerce, Directorate of Competition (8th floor), or by sending it via mail to the following address: Secretariat of the Abusive Clauses Committee, Ministry of Commerce, Three Towers, Mokhtar Zerhouni District (formerly Haï El-Mouz), Mohammadia, Algiers. Additionally, all economic actors, particularly consumer protection associations, are invited to submit any proposals and/or complaints that may be useful in this area. See the website:

<https://www.commerce.gov.dz/fr/avis/installation-de-la-commission-des-clauses-abusives>.

25- The Committee on Unfair Terms has an old but very important recommendation (04-85) that has significantly contributed to the exclusion of many unfair terms in insurance contracts. This recommendation also inspired the legislator to make important amendments to the French Insurance Law, which has given the recommendations a binding and public-order character, thus enhancing the protection of policyholders. Additionally, this recommendation has played a role in guiding judges in understanding and assessing unfair terms in insurance. Therefore, we will present some key elements of this recommendation:

The following terms should be removed from insurance contracts as they lead to:

- Imposing a notice period exceeding two months when the policyholder decides not to renew the contract.
- Granting the insurer the right to compensation, without fault on the part of the policyholder, due to the exercise of a legal or contractual right, such as termination.
- Preventing the policyholder from terminating the contract each year, except when the latter explicitly requests it and accepts that the original term extends to three years, thus making the exercise of this right possible only after the expiration of that period.
- Concealing the policyholder's right to terminate the contract by defining the contract duration with vague and misleading terms such as "company duration" or "agreement duration."
- Including terms in the definition of the main conditions of the contract that would lead to the indirect limitation or exclusion of coverage or risks.
- Granting the insurer the right to terminate the contract before its expiration or renewal date.
- Unilaterally granting the insurer the right to raise premiums for technical reasons or for any other reasons, excluding the worsening of the risk, except in the case of contract renewal and provided that the policyholder is informed one month before the contract's expiration.
- Imposing very short deadlines for reporting the occurrence of a risk.
- Referring to conditions found in an appendix or instruction.
- Imposing general, undefined conditions on the policyholder with the threat of depriving them of compensation, such as "taking all necessary precautionary measures to ensure the safety of the property."



#### 4. CONCLUSION

From the above, we can see that the Insurance Supervisory Committee operates in a specialized field with a compact composition, as it is solely focused on the insurance sector. It is balanced between judges, administrators, and insurance specialists, although the committee's presidency is monopolized by the Ministry of Finance, which gives the executive authority a dominant role within the committee. To ensure independence, we propose that the legislator introduce a system of election and rotation for the presidency of the committee.

Regarding the committee's role in monitoring abusive clauses in insurance contracts, it remains purely technical and administrative. Its efforts are focused solely on monitoring the financial soundness of insurance companies and the methods for expediting compensation. As for the content of insurance contracts, there has been no in-depth analysis of abusive clauses or the issue of contractual balance. Therefore, the committee's role has remained procedural.

- Insurance contracts are adopted directly as standardized and familiar terms, and it has become customary for various insurance companies to apply them. However, we have not yet reached the point where there is a need to scrutinize many of the abusive terms embedded in most insurance contracts. This is due to the lack of judicial applications and the weakness of consumer protection bodies, as well as the insured's acquiescence without negotiation or discussion, whether they are consumers or professionals.
- Although the Algerian legislator subjected the insurance document to the committee's approval and granted the authority to enforce insurance conditions set by the committee, tying this to a deadline and considering its expiration as approval opens the door to collusion and silence regarding the various abusive terms widespread in insurance contracts. This makes the committee's role insufficient in developing the national economy, as many abusive terms strip the insurance contract of its substance and complicate or prevent the insured from receiving their compensation.
- Regarding the Committee on Unfair Terms, its scope covers all types of contracts. However, to avoid overlapping competencies, we recommend the need for coordination between the various committees. The Committee on Unfair Terms should notify the Insurance Supervisory Committee of all its actions in combating unfair practices in the insurance sector.
- Regarding the legislator's amendment to the composition of the Committee on Unfair Terms, one of its strengths is the diversity of its members and the balance between permanent and substitute members. However, the lack of explicit mention of judges reduces the committee's effectiveness, as most of its members are affiliated with the executive authority, including the presidency of the committee, which affects its independence.
- Despite the establishment of the committee in 2018, we have yet to witness significant intervention and effectiveness in addressing the widespread unfair terms in various contracts, particularly in the insurance sector. Therefore, we recommend accelerating the launch of a website where the committee's work can be published, and where reporting and interaction regarding unfair terms can be made easier.

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#### Legal Codes:

1. Algerian Civil Code, Ordinance 75-58, dated September 26, 1975, as amended and supplemented.
2. Algerian Law 02/04, dated 5th Jumada I, 1425 (June 23, 2004), establishing rules applicable to commercial practices, Official Gazette No. 41.

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– This obligation is broad and vague without specification. Had it been limited, for example, to requiring the installation of surveillance cameras, windows, or an alarm system, it would have been a valid condition.

– Suspending coverage for theft for a specific period merely due to the non-use of the insured premises.

This list was detailed by Professor Mohamed Al-Haini, previous reference, p. 220. In the same context, see - for further details, Mona Hamoud, Legal Protection of the Policyholder Against Unfair Terms, Master's thesis, University of Beirut Arab, 2012, p. 66.

3. Algerian Law No. 09-03, dated February 25, 2009, concerning consumer protection and the suppression of fraud, amended by Law 18-09 dated June 2018.
4. Algerian Law 06-04, dated February 20, 2006, amending and supplementing Ordinance No. 95-07 concerning insurance, Official Gazette No. 5.
5. Executive Decree 06-306, dated September 10, 2006, specifying the essential elements of contracts between economic agents and consumers and the clauses considered unfair, Official Gazette No. 56.
6. French Law No. 2014-344, dated March 17, 2014, on consumption.
7. French Insurance Code - Last modification on January 31, 2022.

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