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The Associational Contribution to Consumer Protection in Algerian Law: Between the Legal Framework and Effective Practice

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Abstract:
The consumer is considered an essential element to move the market, but he is the weak party in his contractual relationship with the professional, considering that consumption contracts are classified as acquiescence contracts, so the Algerian legislature has granted him special protection through some bodies that ensure the protection of his economic interest.
Consumer protection associations are one of the most prominent bodies that seek consumer protection through the preventive role they play in practicing this tribal protection, in addition to their defensive role represented in the dimensional protection that these associations provide to consumers in order to protect them from the arbitrariness of some professionals.

Keywords: Consumer, Associations, Boycott, Counter-Advertising, Arbitrary, Professional, Protection

Introduction:

Consumer protection associations are an organization that cannot be overlooked due to the effective role they play in protecting consumer rights, and balancing the latter and economic agents as the weak party in this contractual relationship. Although there are several bodies in charge of consumer protection, they do not meet the desired purpose, which makes the consumer unable to defend his interest on his own due to his ignorance of his legal rights, especially when it comes to prohibited commercial practices.

The Algerian legislature regulates the provisions of associations under Law No. 12-06 on the formation of associations, (1) and touches on consumer protection associations in Law No. 09-03 on consumer protection and the suppression of fraud, (2) of which article 21 defines in its first paragraph as "any association established in accordance with the law, which aims to ensure the protection of the consumer by informing, sensitizing, directing and representing him."

The importance of this study is reflected in the efforts made by consumer protection associations in spreading awareness among consumers about the products and services offered to them, but the consumer remains ignorant of the actual and effective role of these associations in protecting his interest. The subject of consumer protection associations has not been the focus of the attention of lawyers and economists in the past, but recently some studies have appeared on this subject due to its importance, especially at the present time with the spread of modern technology.

This study aims to identify consumer protection associations and explain their role and legal powers in consumer protection, and in this context, the following problem is raised: What is the prior and post-protection enshrined by the consumer protection association?

In order to answer this problem, we will conduct an analytical study in which we will address the role of consumer protection associations in achieving this protection, and differentiate in this context between their preventive role of consumer protection, which we will address in the first section of this study, which is represented in the intervention of these associations before the issuance of a behavior harmful to the health and safety of the consumer, by informing and sensitizing him through various means such as the media or social media sites, or conducting seminars and awareness forums, in addition to following up on the markets by monitoring the quality and prices of the products offered by professionals. It also shows its defensive role, or what some call the remedial role, which we will address in the second section, which is represented in the deterrent and defensive mechanisms that these associations resort to after the harm has been done to consumers, such as counter-advertising, calling for boycott, as well as representing the consumer before the judicial authorities.

Finally, we will conclude some hypotheses about the prospects of consumer protection associations and the extent to which they have achieved the desired protection of consumers.

I- The Preventive Role of Consumer Protection Associations:

The preventive role of consumer protection associations is manifested in the tribal protection provided by these associations before compromising the interest of the consumer, and not only to spread awareness among consumers about the products and services offered to them by raising awareness and informing them, but also to the monitoring of the prices and quality of these products and services(3).

1- Raising awareness and informing consumers:

The Algerian legislature has defined consumer protection associations in the aforementioned Law No. 09-03 on consumer protection and the suppression of fraud, pursuant to article 21 thereof in its first paragraph, which states: "Every association established in accordance with the law aims to ensure the protection of the consumer by informing, sensitizing, directing and representing him."

Social media has become the most effective means of sensitizing consumers due to the rapid circulation of information. Consumer protection associations are committed to informing consumers and educating them about all risks caused by products or services that harm their safety and security.

This protection is manifested by informing consumers of various means and making them aware of the need to avoid the acquisition of food in places that lack hygiene, as well as to refrain from buying products of unknown origin that do not contain the label, the date and place of manufacture, or counterfeit products, through the use of media such as television and radio, or even through social media sites (4) Article 24 of the aforementioned Law No. 12-06 on the formation of associations stipulates that: "Associations may issue publications, magazines, media documents and brochures related to their purpose."

Consumer protection associations can also organize seminars and awareness forums in the presence of marketing specialists, and these seminars and forums are open to all groups in order to spread the benefit, but this mechanism is not an effective means of informing consumers due to their ignorance of some of them. One of the consumer protection associations of the governorate of Bordj Bou Arreridj recently organized an awareness study day on the prevention of food poisoning in schools in coordination with the Directorate of Trade. (5)

In 2011, the Association for the Protection of Consumers of the Governorate of Constantine organized an awareness campaign on the need to educate consumers about the need to respect certain preventive conditions, such as how to store food and the need to pay attention to its expiry date of any kind. (6)

The media practiced by consumer protection associations differs from the information that the economic aid is obligated to do under article 17 of Law No. 09-03 (aforementioned) on consumer protection and the suppression of fraud, as the information provided by the economic aid is to inform the consumer only of all information and data related to the product or service, while these associations evaluate the products and services offered in the market and ensure their conformity with legal specifications, and inform consumers of their risks and damages, if any. Therefore, the protection provided for by the media practiced by consumer protection associations is broader than the protection provided by the information to which the professional is committed. (7)

2- Monitoring the prices and quality of products and services:

Consumer protection associations work to assist the official state agencies in monitoring the prices and quality of products and services offered to consumers, and to cleanse the market of any products that do not conform to legal specifications. (8)

We point out that consumer protection associations do not have the authority to set the prices of products or services because it is the competence of the state, but they monitor price increases, especially in some seasons such as the month of Ramadan, holidays , economic crises, or in the case of some economic agents carrying out prohibited commercial practices with the aim of excluding their competitors, which are often manifested in the ceiling of the prices of certain products, which negatively affects the interest of consumers. Consumer protection associations monitor the prices offered in the market by professionals, and the legislator has empowered them to notify the Competition Council in the event that they devise actions that may affect the interest of consumers, especially those related to capping the prices of certain products or arbitrarily monopolizing them(9).

Consumer protection associations aim to preserve the purchasing power of consumers, so they try to combat the excessive prices of some products or services, especially for basic products such as milk and bread. They also monitor the extent to which economic agents respect their commitment to announcing prices so that consumers can choose the product based on its price. (10)

These associations also monitor the quality of products and their conformity with legal specifications, in addition to inspecting industrial products by making sure that they contain labels, the date and place of manufacture, and other necessary data. Consumer protection associations may conduct some analyses on some products, and in case they are proven to be unfit for consumption, they publish the results of the analysis in magazines and social networking sites so that consumers can see them. The Algerian legislature did not explicitly address the right of consumer protection associations to carry out analyses and publish their results, as stipulated in the repealed Law No. 89-02(11) in Article 23 thereof, which stipulates that: "Consumer protection associations may carry out studies and conduct experiments related to consumption at their own expense and under their responsibility, and they may publish this under the same conditions", but this right can be derived from the broad meaning of the text of article 21 of Law No. 09-03 on consumer protection and the suppression of fraud.

Recently, a consumer protection association published the results of the analysis of a juice powder for drinking on social media and warned against its consumption due to its presence in a narcotic substance, and its post resonated with the consumer public, which led them to boycott this product. (12)

The President of the Association for the Protection and Environment of the Province of Oran also revealed the results of the analysis of the milk of the bags, after receiving several complaints from consumers about the quality and smell of the milk, and it was found in the analyses that the nutritional value of the product was due to the low percentage of dry matter compared to the percentage of water(13).

II- The Defensive Role of Consumer Protection Associations:

The defensive role of consumer protection associations is represented in the legal means taken by these associations in order to defend the interest of consumers after they have been exposed to damages caused by the actions of some professionals, as the defensive role played by consumer protection associations is considered as a dimensional protection for them.

The means adopted by consumer protection associations are varied, as the latter can use the method of boycott or counter-advertising to confront the illegal actions of some of the intervenors, and the law also authorizes them to represent consumers before the judicial authorities to protect their interests.

1- Boycott and counter-advertising:

Boycotts and counter-publicity are legal means that consumer protection associations can resort to after their preventive role fails, and these associations aim to put pressure on professionals.

Boycotts are meant to urge consumers to refrain from buying certain products or using certain services because they are harmful to their interests. Boycotts are considered the most important means that can pressure professionals to retract their behavior that is harmful to consumers, especially related to the excessive price of certain products or services, thus appearing as a threatening means of confronting the arbitrary behavior of some professionals. (14)

We note that the Algerian legislature, like some legislations, did not provide for a boycott as a means that consumer protection associations could resort to, but most jurisprudential opinions support this method, provided that it is not used arbitrarily against professionals, and there is a legitimate justification for its practice. (15) In 2013, consumer protection associations urged citizens to boycott the purchase of bananas after their price rose exaggerated in the Algerian market, and it became easier for these associations to use this measure by urging citizens on social media. (16)

These associations can also urge consumers to refrain from paying in order to put pressure on professionals, and this method is often used in the field of services, where consumers refrain from paying the electricity or water bill, for example, in the event of a high price (17). This has happened recently in the Tizi Ouzou region, where all the residents of the region have agreed not to pay the electricity bill after the increase in the prices of this service. Therefore, the success of the boycott depends on the extent to which consumers respond to it. (18)

Consumer protection associations can also use another means, which is counter-advertising. Professionals may resort to commercial advertising in order to promote their products and services, and advertising is considered the most important pre-contracting step because it affects the consumer's satisfaction and pushes him to contract by attracting him to the product, which is a legitimate means that any professional can resort (19). The Algerian legislature has referred to commercial advertising as advertising in article 3, paragraph 3, of Law No. 04-02, which specifies the rules applicable to commercial practices (20), and defined it as: "any advertisement that aims directly or indirectly at promoting the sale of goods or services, regardless of the place or means of communication used."

However, the consumer may be the victim of misleading advertising that does not match the factual specifications of the product or service in order to mislead the consumer, and misleading advertising means any false representation by a professional that aims to mislead the consumer about the truth, nature or quality of the product or service offered (21) as defined by some as "advertising that would or could lead to the deception of the consumer". (22)

The Algerian legislature has prohibited in articles 56 and 60 of Executive Decree No. 13-378 specifying the conditions and modalities of consumer information (23). The Algerian legislature has prohibited misleading advertising that may create confusion in the mind of the consumer. The legislature also provided legal protection to the consumer against misleading advertising under Article 28 of Law No. 04-02, which specifies the rules applicable to commercial practices, which prohibits advertising that contains statements, statements or formations that may lead to misleading in the definition of the product or service(24), or contain elements that may lead to confusion with another seller or with his products, services or activity(25), and also prohibits any offer of goods or services of which the economic aid is unable to provide sufficient stock. (26)

The Algerian legislature has classified misleading advertising as a dishonest commercial practice, for which a fine of fifty thousand dinars (50,000 DZD) has been set aside, and this is explicitly stipulated in Article 38 of Law No. 04-02 on the Rules Applicable to Commercial Practices, and Law No. 09-03 on Consumer Protection and the Suppression of Fraud includes severe penalties in the field of misleading advertising. Article 69 of the Constitution stipulates that: "The penalties stipulated in Article 68 (27) above shall be increased to five (5) years imprisonment and a fine of five hundred thousand dinars (500,000 DZD) if the deception or attempted deception is committed either by: ...

- Fraudulent references or allegations,
- Brochures, leaflets, leaflets, hangers, advertisements, cards, or any other instructions.

Article 82 of Law No. 09-03 on Consumer Protection and the Suppression of Fraud also stipulates supplementary penalties in the field of false advertising, namely the confiscation of products and the means used to commit such violations, while articles 39 to 48 of Law No. 04-02, which specifies the rules applicable to commercial practices, stipulates other supplementary penalties prescribed for the crime of misleading advertising: seizure, confiscation, administrative closure of shops, and publication of the conviction.

Therefore, consumer protection associations carry out counter-propaganda campaigns to reveal the truth of the product or service offered to consumers, by directing some criticism of these products or services, especially products bearing counterfeit trademarks, provided that the counter-propaganda is based on correct information and without arbitrarily criticizing.

2- _The Defensive Role of Consumer Protection Associations before the Judiciary:

The law generally grants all associations the right to exercise the rights of a civil party before the judiciary and to take all legal proceedings in the event of an injury to their interests (29). In view of the risks and damages that a consumer may suffer as a result of the products or services offered by a professional, the Algerian legislature allows consumer protection associations to represent him before the judiciary in order to protect him, in accordance with article 21 of Law No. 09-03 on consumer protection and the suppression of fraud, as well as under article 17 of Law No. 12-06 on associations. These associations may represent consumers before the courts in order to seek compensation for the material or moral damage caused to them by the actions of certain professionals, and the discretion of the judge remains to estimate the amount of compensation, which must be proportional to the extent of the subsequent damage.

The legislature has already empowered consumer protection associations to file a lawsuit under Law No. 04-02, which specifies the rules applicable to commercial practices in article 65 thereof, which stipulates that: "Without prejudice to the provisions of article 02 of the Code of Criminal Procedure, consumer protection associations and professional associations established in accordance with the law, as well as any natural or legal person with an interest, may file a lawsuit before justice against any economic aide who violates the provisions of this law."

If the individual damages of several consumers are caused by the same intervenor, then the consumer protection association may be established as a civil party, as understood by article 23 of Law No. 09-03 on consumer protection and the suppression of fraud, which states: "When one or more consumers suffer individual damages caused by the same intervenor and of common origin, consumer protection associations may be established as a civil party.».

It is understood from this article that in order for an association to represent consumers before the courts, it is necessary that a consumer or a group of consumers be exposed to individual damages resulting from the same intervenor and of a common origin, such as food poisoning resulting from a particular restaurant. The act committed must also be of a penal nature, i.e., the act must be punishable by penalties.

Since the aim of the consumer protection association in this case is to repair an individual damage, the damages awarded by the judiciary are not intended for the association as in the case of a lawsuit filed in the common interest of consumers, but rather for the affected persons represented by the association (30). The Algerian legislature has introduced article140 bis by virtue of Law No. 05-10 amending and supplementing the Civil Code (31) which establishes the liability of the producer in the event of injury to others even in the absence of a contractual relationship. It is understood from the text of the article that both contractual and tort liability are taken into account, and since the Algerian legislature has not determined the minimum and maximum amount of compensation for damage caused to the consumer, it is left to the discretion of the judge to estimate the damage and determine the amount of compensation, provided that the latter is proportional to the extent of the damage.

These associations can also represent consumers before the courts in order to request the annulment of arbitrary clauses that some professionals may include in contracts, such as the clause of not benefiting from the after-sales service and other arbitrary clauses that affect the interest of the consumer. (32)

We would like to point out that in the past, the defensive role of consumer protection associations was not effective due to the high costs of filing a lawsuit, which led the Algerian legislature to grant these associations the right to benefit from legal aid under Law No. 09-03 on consumer protection and the suppression of fraud in article 22 thereof, which stipulates that: "... Consumer protection associations recognized as a public benefit can benefit from legal aid."

There is no doubt that the use of the aforementioned means of defence by consumer protection associations may harm the interest of professionals and their commercial reputation in the market, which may lead them to file a lawsuit against them in order to obtain compensation for the material or moral damage resulting from their conduct, especially when these associations use the method of boycott or counter- propaganda, which is not stipulated by the legislator.

However, the right of consumer protection associations to resort to these means of defence remains in place, in view of their protection of the weak party in the contractual relationship, namely the consumer.

Some jurisprudence (33) believe that certain conditions must be met so that consumer protection associations do not take responsibility for their actions, and these conditions are represented in the lack of other legal means or their ineffectiveness in protecting consumers. These associations must also inform the professional before resorting to the means of defense, and that the means of defense should be proportionate to the desired goal of protecting the interest of consumers.

Conclusion:

Through this study, we have observed the role played by consumer protection associations in protecting this vulnerable group in the face of professionals who seek to achieve their economic interests in various ways, and this protection is manifested in a set of legal means used by consumer protection associations to achieve pre- and post-consumer protection.

The success of these means depends on the extent to which consumers respond to them, but the legislature has not provided for some of these means, such as boycotts and counter-propaganda, which reduces their effectiveness on the ground, as professionals may file a liability lawsuit against these associations based on the lack of a legal provision that allows them to use these means.

Despite the efforts made by consumer protection associations to raise awareness among citizens, their role may clash with the lack of effective implementation of the legal texts related to the control of products that invade the Algerian market, especially Chinese products.

On the basis of the above, it is advisable for the Algerian legislature to include boycotts and counter-publicity in legal texts as two means that consumer protection associations can use to defend the interests of consumers, in order to achieve their defensive role more effectively.

It would also be preferable to emphasize the control of products that invade the Algerian market by intensifying the efforts of the bodies in charge of this control, and ensuring their quality, especially food products, so that these bodies have a preventive role in order to protect the interest of consumers.

As for the role of consumer protection associations in representing consumers before the courts, we believe that it is more likely that these associations will be granted the right to sue for any harm to the common interest of consumers, and that their role is not limited to establishing as a civil party for individual harm to one or more consumers for a criminally prohibited act.

Finally, we would like to point out that social media has recently contributed to enhancing the preventive and defensive role of consumer protection associations, due to the rapid circulation of information among citizens, which enhances their effectiveness, but in order to enhance the protective role of these associations, the state must provide them with adequate financial support, and not rely only on financial donations only.

Footnotes:

1. Dated 1 December 2012, G.R. issued on 15 January 2012, p. 02.

2Dated 25 February 2009, G.R. of 08 March 2009, p. 1 amended and supplemented by Law No. 18-09 of 10 June 2018, .G.R. Al-Sarah of 13 June 2018, p. 35

3- Jean Calais AULOY, Droit de la consommation, 9th ed., Dalloz, Paris, France, 1980, p. 98.

4.Faten Hussein Hawa, Al-Wajeez in the Consumer Protection Law, Al-Halabi Publications, Beirut, 2010, p. 56 -

5- The newspaper of eastern Algeria EL ACIL, n° 5562, July 09, 2011, p. 03.

6- Ibid.

7 - Faten Hussein Hawa, op. cit., p. 59.

8- Article 17 ofExecutive Decree No. 12-203 of 06 May 2012 G.R. of 09 May 2012, p. 28 specifies exclusively the official organs of the State by stating: "The Minister in charge of Consumer Protection and the Suppression of Fraud shall establish an early warning network, which is responsible for monitoring products that pose a threat to the health and security of consumers ».

9- D. FERRIER, Consumer protection, Dalloz, Paris, France, 1996, p. 123.

10- See Article 44 of Competition Ordinance No. 03-03 of July 19, 2013, G.R. of July 20, 2013, p. 43, as amended and supplemented.

11- Dated 07 February 1989 concerning the General Rules for Consumer Protection, G.R. issued on 09 February 1989, p. 154.

12- Al-Shorouk Al-Youmi, published on November 12, 2010, issue 3113, p. 16.

13- Ibid

14- D. FILALI, A. BOUCENDA, Competition and consumer protection in the food sector in Algeria, IDARA review, n° 1, 1988, p.63

15- Linda ARCELIN, Competition Law: Anticompetitive Practices in Internal and Community Law, Presses Universitaires de RENNES, France, 2009, p. 149.

16-This is what Algerian news bulletins broadcast in 201 .

17- D. FILALI, A. BOUCENDA, op. cit. p. 67.

[18] Theofficial page of the Algerian Organization for Consumer Protection via Qaisbook, where in 2013 the organization published an advertisement urging citizens to boycott the purchase of bananas due to their exaggerated price at the time.
[19] Anne-Marie MOREL, Consumer protection law, ed. Librairie de l'Université de Montréal, 1981, p. 124.
[20] Dated 23 June 2004, G.R. of 27 June 2004, p. 41, amended and supplemented by Law No. 10-06 of 15 August 2010, G.R. of 18 August 2010, p. 46.
[21] Badra Laouar, Mechanisms for Combating Commercial Practices Crimes in Algerian Legislation, Ph.D. Thesis in Business Law, Faculty of Law and Political Science, Mohamed Khidir University, Sakra, Algeria, 2015-2016, p. 286.
[22] Al-Zaqrad Ahmed Said, Civil Protection and False and Misleading Commercial Advertising, New University Press, 2008, Alexandria, Egypt, p. 225.
[23] Dated 9 November 2013, G.R. issued on 18 November 2013, p. 58.
[24] Such as advertising that falsely states that the product protects against a certain disease.
[25] Such as advertisements related to laundry powders, through which the economic aid compares its products with the product of its competitors.
[26] For example, the economic aid claims that the product is available in a limited quantity to encourage consumers to flock to it.
[27] Article 68 of this Code refers to Article 429 of the Penal Code, which stipulates that: *"Anyone who deceives or attempts* to deceive the contractor shall be punished by imprisonment from two months to three years and a fine of 20,000 to 100,000 DZD, or by one of these two penalties only:
- Whether in nature, in the essential qualities, in the composition, or in the proportion of the necessary components for all these goods,
- Whether in its type or source,
- Whether in the quantity of the delivered objects or in their identity.
In all cases, the offender must return the profits he has received illegally."
[28] Article 16 of Law No. 90-31 on Associations of December 4, 1990, G.R. of December 7, 1990, p. 53.
[29] See article 17, paragraph 03, of Law No. 12-06 on associations
[30] Jean Calais AULOY and Frank STEINMETS, Consumer law, 4th edition, Gaétammoin, France, 1979, p. 476.
[31] Dated 20 June 2005, G.R. of 26 June 2005, p. 44, amending and supplementing Order No. 75-58 of 26 September 1975 containing the Civil Code, G.R. of 30 September 1975, p. 78.
[32] OmarAbdel Baqi, Contractual Protection of the Consumer (A Comparative Study between Sharia and Law), Ma'arif Foundation, Alexandria, Egypt, 2004, p. 143.
[33] Jean Calais AULOY and Frank STEINMETS, op. cit., p. 586.

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- Decree No. 03-03 on Competition, amended and supplemented of 19 July 2003, Official Gazette of 20 July 2003, No. 43, Algiers.
- Law No. 04-02 defining the rules applicable to commercial practices, of 23 June 2004, Official Gazette of 27 June 2004, No. 41, Algiers, amended and supplemented by Law No. 10-06 of 15 August 2010, Official Gazette of 18 August 2010, No. 46, Algiers.
- Law No. 05-10 of 20 June 2005, Official Gazette of 26 June 2005, No. 44, amending and supplementing Ordinance No. 75-58 of 26 September 1975 containing the Civil Code, Official Gazette of 30 September 1975, No. 78.

- Law No. 09-03 on Consumer Protection and the Suppression of Fraud, of 25 February 2009, Official Gazette of 08 March 2009, No. 15, Algiers, amended and supplemented by Law No. 18-09 of 10 June 2018, Official Gazette of 13 June 2018, No. 35, Algeria.
- Law No. 12-06 on the formation of associations, of 01 December 2012, Official Gazette of 15 January 2012, No. 02, Algeria.
- Executive Decree No. 12-203 on the Rules Applicable in the Field of Product Security of 06 May 2012, Official Gazette of 09 May 2012, No. 28, Algiers.