

University of Jijel
Faculty of Law and Political Sciences
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First year: Master
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Text n°01: the guarantees of the accused according to the Algerian penal procedures' code

الضمانات المكفولة للمتهم حسب قانون الاجراءات الجزائية"

The term "**accused**" is applied to a person who is arrested or put into police custody or in prison for **transgressing** the stipulations of the penal code, and whose trial is not undertaken yet.

And owing to the seriousness of the position of accusation, many **guarantees** have been established in the Islamic legislation, in international conventions, and in national laws.

The Algerian Legislator has set numerous guarantees to protect the accused from **arbitrary treatment** and **torture**, and supply him with every condition of just and fair trial, among them:

*** The enforcement of the rule of non-retroactivity of the penal laws:**

This rule is considered as a necessary result of the principle of legality of crimes and penalties. The penal law is applied with a direct effect to the crimes, and it cannot be made retroactive unless it is beneficial to the accused and before the verdict is reached, this is what is stated in article 2 of the Penal Code: «The Penal Code takes no effect from a past date save for what is of less intense (punishment) ».

The enforcement of the principle of dealing with the offences and penalties according to the laws: therefore, no incrimination or penalty but with a legal text.

The constitution issued on November 28, 1996 expresses this principle on the following article:

- Article 45: « Every individual is considered innocent, until a regular judicial authority proves his conviction, with all the guarantees required by the law».

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Text n°02:

The Judicial Power

The Algerian constitution provides that judicial power is independent. Procedure law organizes the judicial power:

1. Jurisdictions of the 1st degree: the Courts

In fact, jurisdictions of common right are qualified for all the litigation relating to civil proceedings, commercial or social. They are the court of first resort in the following matters:

- all the movable and real actions whose amount does not exceed 2000 A.D.
- all the actions relating to rights whose amount does not exceed 300 A.D.
- Infringements of the transportation system

2. The Jurisdictions of the 2nd degree: the Courts of Appeals

There are 48 courts of appeals in the Algerian territory. They are courts of jurisdiction for all the calls formed against the judgments given in all matters by the courts in the first resort. In the same way, they know, in last spring, of the demands for payment of judges, when the conflict relates to two jurisdictions within the competence of the same court and the requests for challenge directed against the courts of their spring. The courts are qualified, in the first resort, for any litigation relating to the State (or one of its districts).

3. Supreme Court

The Supreme Court has the highest jurisdiction. The appeals in cassation can be introduced to the Supreme Court only for the following:

Incompetence or abuse of power

- Basic lack of legal merit
- Violation or omission of the substantial forms of the rules of procedure
- Defect, insufficiency or contradictions of reasons
- Violation or distortions to application of the internal law or foreign one relating to the personal statute
- Contradicting decisions of different courts and returned in last spring.

4. The Administrative Jurisdictions

The Administrative Courts are qualified jurisdictions of common right for administrative disputes.

5. The State Council

The creation of the State Council is very recent. Organic law of May 30, 1998 instituted this jurisdiction. The state Council is regarded as a regulating body of the administrative jurisdiction activity. It concerns the judicial power and ensures unification of administrative jurisprudence through the country and takes care of the respect of the law. It has two kinds of competence of the jurisdictions: The state council is qualified for the recourse in first and the last arises for:

- actions in cancellation formed against the lawful or individual decisions returned by the central administrative authorities, of the national public institutions and the national professional organizations
- actions in interpretation and appreciation of the legality of the acts which concern the administrative dispute.

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Text n ° 03: Compliance with the principle of proportionality when requesting information under Algerian competition law and European law

احترام مبدأ التناسب عند طلب المعلومات في قانون المنافسة الجزائري والقانون الأوروبي

Abstract

The principle of proportionality is considered to be one of the most important principles aimed at providing justice, being one of the important guarantees for the institution when the competent authority conducts investigation procedures into practices that violate competition rules, in particular when the Competition Council exercises its powers when requesting information. Thus, one of the reasons for applying the principle of proportionality is the idea of not abusing criminalisation in an excessive manner or avoiding imposing restrictions for no overriding need to protect economic public policy.

The rights and freedoms of individuals should only be infringed to the extent necessary to ensure the protection of the public interest through compliance by the competent authority in charge of the investigation with legal controls when requesting information. This allows to make a balance between protecting competitive public policy and protecting the private interests of the institution.

Key words:

The principle of proportionality, competition council, request for information, establishment, competitive public order.

الملخص:

يُعد مبدأ التناسب من أهم المبادئ التي تهدف إلى تحقيق العدالة، نظرا لاعتباره إحدى الضمانات الهامة للمؤسسة عند مباشرة الجهة المختصة لإجراءات التحقيق في الممارسات المخالفة لقواعد المنافسة، خاصة عند ممارسة مجلس المنافسة لصلاحياته عند طلب المعلومات، فمن دواعي تطبيق مبدأ التناسب فكرة عدم الإفراط في التجريم، أو تجنب وضع قيود لغير ضرورة ملحة لحماية للنظام العام الاقتصادي.

إنّ المساس بالحقوق والحريات للأشخاص ينبغي ألا يكون إلا بالقدر اللازم الذي يكفل تحقيق الحماية للمصلحة العامة، ويكون ذلك من خلال احترام الجهة المختصة بالتحقيق لضوابط قانونية عند طلبها للمعلومات، هذا ما يسمح بتحقيق توازن بين حماية النظام العام التنافسي وحماية المصلحة الخاصة للمؤسسة.

الكلمات المفتاحية:

مبدأ التناسب، مجلس المنافسة، طلب المعلومات، المؤسسة، النظام العام التنافسي.

Titre : Respect du principe de proportionnalité lors de la demande d'informations en droit algérien de la concurrence et droit européen

Résumé

Le principe de proportionnalité est considéré comme l'un des principes les plus importants visant à offrir la justice étant l'une des garanties importantes pour l'institution lorsque l'autorité compétente mène des procédures d'enquête sur des pratiques qui violent les règles de la concurrence, en particulier lorsque le conseil de la concurrence exerce ses attributions lors de la demande d'informations. Ainsi, l'une des raisons d'appliquer le principe de proportionnalité est l'idée de ne pas abuser la criminalisation d'une manière excessive ou d'éviter d'imposer des restrictions pour non nécessité impérieuse en protection de l'ordre public économique.

L'atteinte aux droits et libertés des personnes ne devrait être que dans la mesure nécessaire pour assurer la protection de l'intérêt général à travers le respect par l'autorité compétente chargée de l'enquête en respectant les contrôles juridiques lors de la demande d'informations. Cela permet d'atteindre un équilibre entre la protection de l'ordre public concurrentiel et protéger les intérêts privés de l'établissement.

Mots-clés:

Le principe de proportionnalité, conseil de la concurrence, demande d'information, établissement, ordre public concurrentiel.

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Text n ° 04: Legal Protection of Consumer Purchasing Power in Light of Rising Prices".

Abstract

"Legal Protection of Consumer Purchasing Power in Light of Rising Prices"

The issue of protecting consumer purchasing power has received significant attention, especially following the exorbitant rise in prices. This protection emerges through state intervention to restrict the principle of price freedom, which is based on the freedom of economic agents to determine the prices of goods and services in the market. The state, with its powers, can intervene to restrict prices through mechanisms such as setting profit margins, capping, and certification, with the aim of combating price manipulation and preserving purchasing power. Furthermore, it can limit illegal speculation by adopting national strategies and working to regulate the market by providing widely consumed goods, in addition to allocating authorized points of sale under state supervision and oversight. It can also impose severe penalties against all perpetrators of any illegal price increases or practices or actions that undermine market stability and create a scarcity of essential goods, potentially undermining the state's food security and, consequently, the citizen's purchasing power.

Keywords: prices freedom, price transparency, profit margin determination mechanism, capping, certification, purchasing power, illegal speculation, tightening penalties.

الملخص:

" الحماية القانونية للقدرة الشرائية للمستهلك في ظل ارتفاع الأسعار "

يعتبر موضوع حماية القدرة الشرائية للمستهلك من المواضيع التي حظيت باهتمام كبير خاصة بعد الارتفاع الفاحش للأسعار، حيث تبرز هذه الحماية من خلال تدخل الدولة لتقييد مبدأ حرية الأسعار الذي يقوم على حرية الأعوان الاقتصاديين بتحديد أسعار السلع والخدمات في السوق، إذ يمكن لدولة بما تملك من سلطات التدخل لتقييد الأسعار عن طريق آلية تحديد هوامش الربح، التسقيف، التصديق، بهدف مجابهة التلاعب بالأسعار للحفاظ على القدرة الشرائية، ضف لذلك الحد من المضاربة غير المشروعة بتبنيها استراتيجيات وطنية وعملها على ضبط السوق بتوفير المواد واسعة الاستهلاك إلى جانب تخصيص نقاط بيع معتمدة تحت إشراف ورقابة الدولة، وتوقيع عقوبات تمتاز بالشدة ضد كل مرتكبي أي زيادة غير شرعية للأسعار أو ممارسة أو فعل يمس باستقرار السوق ويخلق الندرة في المواد الضرورية التي من شأنها المساس بالأمن الغذائي للدولة ومن ثم القدرة الشرائية للمواطن.

الكلمات المفتاحية: حرية الأسعار، شفافية الأسعار، آلية تحديد هوامش الربح، التسقيف، التصديق، القدرة الشرائية، المضاربة غير المشروعة، تشديد العقوبات.

Résumé

« Protection juridique du pouvoir d'achat des consommateurs face à la hausse des prix »

La protection du pouvoir d'achat des consommateurs est un sujet qui a suscité une attention particulière, notamment après la flambée exorbitante des prix. Cette protection se manifeste par l'intervention de l'État visant à restreindre le principe de liberté des prix, fondé sur la liberté des agents économiques de déterminer les prix des biens et services sur le marché. L'État, fort de ses pouvoirs, peut intervenir pour restreindre les prix par le biais de mécanismes de fixation des marges bénéficiaires, de plafonds et de certifications, afin de lutter contre la manipulation des prix et de préserver le pouvoir d'achat. De plus, il peut limiter la spéculation illégale en adoptant des stratégies nationales et en s'efforçant de contrôler le marché en fournissant des biens de grande consommation, en attribuant des points de vente agréés sous la supervision et le contrôle de l'État, et en imposant de lourdes sanctions à tous les auteurs de toute augmentation illégale des prix, pratique ou action affectant la stabilité du marché et créant une pénurie de biens essentiels susceptible de compromettre la sécurité alimentaire de l'État et, par conséquent, le pouvoir d'achat des citoyens.

Les mots clés : liberté des prix, transparence des prix, mécanisme de détermination de la marge bénéficiaire, plafonnement, certification, pouvoir d'achat, spéculation illégale, durcissement des sanctions.

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Text n°05: Filiation **النسب**

The provisions regarding **filiation** are contained in Chapter V Articles 40-46 of the Family Code. Filiation is established by birth within a valid marriage, an **irregular marriage** or a marriage annulled after **consummation**, the father's recognition of paternity and other proof. The code is silent on what constitutes proof but under Islamic law this usually means the **testimony** of two respected witnesses.

According to Article 42 the minimum period of **pregnancy** is six months and the maximum is ten months. A child born outside of marriage is **illegitimate** but if the father recognizes the child, the child will take his name, thereby establishing a legal relationship between the child and the father's family. If the father does not recognize the child as his, the child will take the mother's name and the child will not have the right to inherit or receive maintenance from his father, nor will the father be responsible for the guardianship of the child.

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Text n ° 06: control of constitutionality: مراقبة الدستورية

The history of the control of constitutionality in Algeria is closely related to that of its constitutional history. It evolved in a discontinuous process marked first by an "aborted" experience then a long absence and finally a sudden but still promising reemergence. The control of constitutionality is apparently being fully instilled in the political and institutional spectrum of the country.

What is the origin of this system of control? What are its characteristics? How is the institution in charge of carrying out this control organized, what are its prerogatives and how does it operate?

Algeria's constitutional history shows that the process which led to the adoption of the present form of control of constitutionality went through four stages:

First, it was in 1963, following the elaboration of the country's first constitution, after independence that a constitutional Council entrusted in accordance with articles 63 and 64 of the Constitution: "with ruling on the constitutionality of legislative laws and ordinances" was set up.

However, this Council failed to carry out its constitutional prerogatives due to the political situation which prevailed then. As a consequence, the constitution was "shelved" less than one month after its promulgation.

The constitution of November 26, 1976 does not refer explicitly to control although it stipulates in its article 186 that "political control vested in leading organs of the Party and the State shall be carried out in conformity with the national Charter and with the provisions of the Constitution".

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