The balance between the parties in Law N° 2015/018 of December 21, 2015 governing the commercial activity in Cameroon

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Abstract

On the 21st of December 2015, the Cameroonian legislature adopted Law N° 2015/018 with the aim of modernizing the mechanisms put in place for the supervision of the commercial activity in this State. This modernization results in the establishment of tools aimed at eliminating situations which are detrimental to the contractual balance. The idea behind these provisions is to reinforce the clarity and integrity of consent when concluding the contract, while at the same time eliminating the abuses that have endured during the conclusion. However, the assessment of these measures reveals a diminished efficiency. These shortcomings are due to two reasons: the discrimination against the protection of victims of the imbalance according to the "consumer / professional" distinction made and the lack of instruments to restore the balance in the contractual relationship of the parties.

Keywords: *Contractual Balance - Weaker Party - Significant imbalance - Unfair terms - Evidence.*

JEL Classification: K2, K12, K42

1. Introduction

"Justice is about, not things and forces, but relations between human"[2]. Trade is the environment par excellence of human interactions in a State. Hence the imperative of security that promotes the OHADA[3]. By adopting Law No. 2015/018 of 21 December 2015[4], the Cameroonian legislator has

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[2] R. Guardini, Le Seigneur, t. I, Alsatia, 1946, p. 341 ; see also Editions ALSATIA 1962, in-8 broché de 350 pages + 288 pages, méditations sur la personne et la vie de Jésus-Christ, traduit par R. P. LORSON S. J.

[3] "The Contracting Parties to the Treaty on the Harmonization of Business Law in Africa, [...] aware that it is essential that this right be applied expeditiously, under conditions ensuring the legal certainty of economic activities, in order to To promote their development and to encourage investment. "Preamble to the Treaty on the Harmonization of Business Law in Africa (OHADA), done at Port Louis on 17 October 1993, as amended by the Treaty Of Quebec City October 17, 2008.

[4] Law No. 2015/018 of December 21, 2015 governing the commercial activity in Cameroon designated thereafter "Law of December 21, 2015". See S. Nandjip Moneyang, «Le nouveau visage de l'activité commerciale au Cameroun : le clair-obsur de la loi n° 2015/018 du 21 décembre 2015 régissant l'activité commerciale au Cameroun », *Lenemro Revue trimestrielle de droit économique*, N° 2016/1, p. 4.

materialized its commitment to modernize fiscal and legal framework of commercial activity. This modernization emerges from the substantial difference between the new version and the old Law No. 90/031 of 10 August 1990 specifying the conditions to carry a commercial activity in Cameroon[5]. What about balance in contracts?

The word *balance* means "The harmonious proportion, the correct ratio between two opposite elements, the fair distribution of parts of a whole"[6]. Law No. 2015/018 of 21 December 2015 advocates two mechanisms of protection against contractual imbalance: the classical protection proposed by the autonomy of the will and the intervention of the State. In 2011, the legislature passed the Framework Law No. 2011/012 concerning consumer protection in Cameroon[7] in order to fight against unfair terms imposed by a supplier or service provider who benefit from an unreasonable or excessive superiority. The law of December 21, 2015 abounds in the same direction, and reminds the merchant imperatively not to take advantage of his economic abilities and skills to disadvantage the consumer odiously. As drafted, the content of Law No. 2015/018 of 21 December 2015 governing commercial activity in Cameroon seems to protect the consumer against the Professional[8] , and give little importance to the latter, when confronted with a stronger counterparty who abuses his power. It is reasonable to ask whether it is appropriate to repeat as many provisions for the benefit of the consumer, whereas it is up to consumer law to organize trade between the person who uses the products to satisfy his own needs and not for resale, process or use them as part of his profession[9].

The answer is yes for three reasons. First the Law n° 2011/012 of May 6, 2011 concerning consumer protection in Cameroon is a framework law; therefore it is too general, and sparse[10]. For this reason then it does not identify the crucial issues of consumer law[11]. It refers only to restrictive business practices[12] , and

[5] Article 4 of the law of December 21, 2015 facilitates the understanding of the provisions through the definitions of notions and words specific to the national and local commercial landscape, as a distributor wholesaler, mall, wholesale, business, consumer, professional, Distribution, secondhand trade, non-sedentary trade, act of commerce by nature, commercial activity, entrepreneur, submission to regional accounting standards.

[6] Dictionary *Le Nouveau Petit Robert*, p. 914.

[7] Designated thereafter "2011 Framework Law". See F. Biboum Bikay, *Droit camerounais de la consommation*, éd. Presses Universitaires Libres, 2016.

[8] The consumer is also referred to in the law of December 21, 2015. The legislator expressly cites it twenty-eight times in the provisions relating to the protection of the weaker party.

[9] Article 2 of the 2011Framework Law and article 4 de Law of December 21, 2015. See F. Biboum Bikay, *Droit camerounais de la consommation*, op. cit., p. 13.

[10] The Framework Law No. 2011/012 of 06 May 2011 on consumer protection in Cameroon contains only 39 articles. In foreign legislation, Codes are intended for consumer law.

[11] Such as aggressive sales, fraudulent maneuvering, fraudulent reticence, illegal practices, subordination of contracts to game conditions, lottery, or other product subscription, refusal to sell from the trader, price terms And the characteristics of the goods or services sought.

[12] Art. 2 of the 2011 Framework Law: "Restrictive business practice: any commercial practice that requires the consumer to purchase, lease or procure any technology, good or service as a condition or prerequisite to purchase, lease or acquire any other technology, good or service".

unfair business practices[13], focusing on repairing the damage suffered by the consumer and criminal sanctions against the professional. Finally, it can be assumed that the consumer is mentioned in the new law governing commercial activity because he is the final recipient of the goods and services of the merchant. It is for this reason that the importance of his protection is reminded to the professional. What about the weak professional?

The weakness means a lack of strength, resistance or solidity, inability to defend himself[14]. In the contractual relationship, it refers to the ignorance, impotence, inferiority and inexperience of a party to the contract. The weakness is not only about the consumer. Mrs. Marcel Fontaine distinguishes two forms of it: an inherent weakness[15] arising from the personal situation of the contractors, and a relatively weakness[16] resulting from the position of the parties in the contract. The inherent weakness is that relating to inferiority, ignorance or inequality of knowledge[17]. It relates to the person of the contractor and only disappears after a personal improvement of his situation or his competences. This is the case for the consumer or the employee. Conversely, relative weakness is neither static nor personal. It evolves according to contracts. It is moving and variable. This form of weakness distorts relations between professionals. In the case of a commercial partnership, it often happens that a person who obtains, for example, the right to exploit a common trade name or a common sign, is in a weaker economic position and does not have the means equivalent to those of he who grants the right"[18]. It is recommended to distinguish between two types of professionals[19] : either the professional signs a contract in its specialty and will be dominant vis-a-vis non-specialized contractor or on a par with other specialized professional; Or the professional who does not occupy that dominant position when acting outside its sphere of competence.

Despite the overabundance of articles devoted to the consumer, the law of 21 December 2015 is full of provisions regulating the contractual imbalance between professionals. Certainly the wording on the protection of the weak

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[13] Art. 2 of the 2011 Framework Law: "Unfair business practice: any business practice that, in promoting the sale, use or supply of a good, service or technology, adopts a methodology, including Oral statement, written statement or visual representation, that affects fairness in a transaction ".

[14] Dictionary *Le petit Robert*, p. 1002.

[15] "The weakness of the contracting partner, whose mental state of development, or the level of knowledge in the contract, is insufficient to make an informed judgment on the scope of the respective commitments" (M. Fontaine, «Rapport de synthèse»), In J. Ghestin et M. Fontaine (dir), *La protection de la partie faible dans les rapports contractuels*. Comparaison franco-belges, Paris, LGDJ. 1996, p. 616.

[16] This weakness most often results "from the economic power of the partner, from its dominance in the market that allows it to dictate the terms of the contract" (M. Fontaine, «Rapport de synthèse»), *op. cit.*, p. 616.

[17] G. Couturier, « Les relations entre employeurs et salariés en droit français », In J. Ghestin et M. Fontaine (dir), *op. cit.,* p. 149, n°6.

[18] Doc., parl., Ch. repr. Belgique sess. ord. 2004-2005, n°1687/001, p.3.

[19] M. Fontaine, « Rapport de synthèse », *op. cit.*, p. 620.

professional does not seem as express as the provisions aimed at the consumer. But to exist, the weakness of a party should not necessarily be affirmed expressly and systematic[20]. So even in the silence of the law, the policyholder is a small part, regardless of whether his commitment is of a civil or commercial nature[21].

In the old thought, the contract managed by itself for justice[22]. The contract continues to help parties to achieve a desired justice[23]. Interventionism is not inherent in the contract. It is simply necessary. It comes to the rescue of the parties in order to correct a situation of domination or unequal obligations arising from a balance of power. Two ideas emerge: one endogenous to the contract, the other exogenous to the contract. The first idea is that, from the conclusion to the consumption of the contract, the parties themselves can implement forms of negotiation or modalities of exchange leading to reciprocity and the proportionality of the expected benefits. The second idea is that external solutions are available to soften the balance of power that emerges from the individual wills and the social considerations of the parties. The search for balance between the parties in the Cameroonian law of December 21, 2015 presupposes a contractual process that takes into account the mutual concerns of the contractors on the one hand and provides solutions to the contractual relationship on the other hand. The fact that this law insists on the contractual conditions demonstrates a reinforcement of the contractual process which contributes to the reduction of the imbalance (2). Conversely, the means mobilized to correct the points of imbalances revealed by the contractual relationship of the parties remain insufficient (3).

2. Balance in the contractual process: congratulations

The wording contractual process refers to the "phase of talks or concluding the contract, execution and termination of benefits"[24]. During the contractual process, the Cameroonian Law of December 21, 2015 governing commercial activity provides weak professionals and consumers with preventive instruments aimed at reinforcing their consent (2.1.), while at the same time introducing remedies against abuses of weakness (2.2.).

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[20] "The supplier and the reseller can not afford advantages that would be unbalanced in relation to their commitments", see J.-P. Charié, « Rapport fait au nom de la commission des affaires économiques, de l'environnement et du territoire sur le projet de loi de modernisation de l'économie », *Assemblée nationale*, XIIIe législature, n° 908, 22 mai 2008, p. 115.

[21] H. Jacquemin, *Le formalisme contractuel : mécanisme de protection de la partie faible*, thèse, Larcier, 2010, p. 53.

[22] Selon l'adage de Fouillée « Qui dit contractuel dit juste ».

[23] Gh. de Monteynard, « La recherche d'un équilibre contractuel au travers de la jurisprudence de la Chambre commerciale de la Cour de cassation », *Etudes sur le thème de la protection des personnes*, Rapport 2000, https://www.courdecassation.fr/publications_26/rapport_annuel_36/rapport_2000_98/deuxieme_partie_tudes_documents_100/tudes_theme_protection_personne_102/contractuel_travers_5860.html.

[24] Gh. Tabi Tabi, *Les nouveaux instruments de gestion du processus contractuel*, Doctorat thesis, Univ. Laval, 2011, p. 15.

2.1 Strengthening the consent of the weaker party when signing the contract

The Law of December 21, 2015 strengthens the consent of the weaker party through two elements. The first concerns the consistency of the contractual information received from the dominant professional, not only for the mere conclusion of the contract, but for the contractual operation taken as a whole (2.1.1.). The second element promoted by the aforementioned text relates to the evidence of the consent of the weak party. The search for balance extends the period pre to post-contract period[25]. Such a broad temporal space can only be assured by adequate means of proof. We can therefore be proud of the legal establishment of the traceability of the transaction (2.1.2.) for probative purposes.

2.1.1 The enrichment of the contractual obligation to provide information

"My people are destroyed for lack of knowledge"[26]. "Can we put on equal footing those who know and those who do not know? "[27]. Knowledge enables the contractor without a favorable economic position to distinguish the right from the wrong[28], on the basis of the information he receives from his counterpart. This information has the fundamental characteristic of generating a feeling of confidence[29] or that of mistrust in the buyer. In order to enable him to decide objectively, the Cameroonian legislature has required the seller to supply the purchaser with not only quantitative (a), qualitative (b) information but also information extended to the entire transaction (c).

a. The content of information

The classic thought on contract Law requires that upon conclusion, the offering party shall communicate the essential elements[30], namely the object and

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[25] The contract may be unbalanced by the unilateral and non-reciprocal conditions of termination or resolution at the sole initiative of the dominant co-contracting party.

[26] From the Holy Bible, Osée, ch.4.v.6.

[27] *From the Coran, sourate XXXIX, verset 12.*

[28] J. Boucher de Perthes, *De la Création*, t. 3, 1838-41, p. 61.

[29] E. Brousseau, « Confiance ou Contrat, Confiance et Contrat », in F. Aubert & J.-P. Sylvestre, *Confiance et Rationalité*, INRA Edition, 2000. The author tries to demonstrate that trust is not in itself a legal concept that can influence contract law. Contra, M. Naccarato, *Partie I : la juridicité de la confiance dans le contexte des contrats de services de conseils financiers et de gestion de portefeuille*, *Revue générale de droit*, vol. 39, n° 2, 2009, p. 457-521. If trust is challenged as a legal concept, it nevertheless appears in its subjective dimension as a series of social expectations shared by those involved in economic exchange. "There are two types of trust: natural trust and subjective trust. Natural trust refers to the natural tendency of an individual to believe other people and which it varies according to his attitudes, personality and past experiences. It is independent of a specific situation; It varies from one individual to another and can change over time. Subjective trust depends on a particular set of circumstances and a specific economic partner. It is therefore a function of natural confidence and of conjunctural factors ". See, É. Simon, « La confiance dans tous ses états », *Revue française de gestion*, 2007/6 (n° 175), p. 85.

[30] F. Terré, Ph. Simler et Y. Lequette, *Droit civil. Les obligations*, 10ème éd. 2009, Précis Dalloz, n°103.

the price[31], to the accepting party. This principle is reflected by Article 241 of the Revised Uniform Act on General commercial Law[32], and Article 14 of the Vienna Convention on the International Sale of Goods[33]. On the content, the Cameroonian law of December 21, 2015 enriches the information with four mentions: the essential information accompanying the object and the price, the identification of the merchant, the general conditions of sale and finally the conditions of physical transfer of the object.

Regarding the price, and the additional information that accompanies it, the text imposes on the merchant the mentions and the manner of displaying the price to the purchaser, irrespective of whether he is a consumer or a professional. Thus, Article 46 (1) of the new Law stipulates that "every salesperson or service provider is obliged to inform customers about the prices, tariffs and conditions of sale of goods and services". If the display modes are specified for the consumer[34], the clarity of the price does not take into account the quality of the purchaser. Information on prices requires an unequivocal communication, easily visible and easily legible[35]. It must be followed by precisions on weight, quantity, and the number of items corresponding to the price[36], when the goods are prepackaged. Between professionals, Article 41 requires that such information be specified in the terms of sale, which the transmission to the purchaser is fundamental when it so requests[37]. The wording of Article 41 is very curious. How can the general conditions of sale be the basis for commercial negotiation if one of the professionals is required to make a request? Should it be understood that the other party can avoid trade negotiations by using its assets and its dominant position in such a way as to prevent the weak professional from applying for

[31] In particular for an immovable property: "Does not constitute an offer, a proposal for the sale of immovable property containing neither the price nor the means of determining it" (C.S. Arrêt n° 62/C du 2 février 1981, *RCD serie,* N°s 21 & 22, p. 209-213).

[32] Article 241 of the Revised Uniform Act on General Commercial Law: "an offer shall be sufficiently precise when it designates the goods and, expressly or implicitly, fix the quantity and the price or give the particulars by which it can be determined".

[33] Article 14 of the Vienna Convention on the International Sale of Goods: "A proposal shall be sufficiently precise when it refers to the goods and, expressly or implicitly, fixes the quantity and price or gives indications for determining them".

[34] Article 4 (2) of the Law of December 21, 2015 states that "information on the prices and tariffs of goods and services by the seller or service provider must be provided by means of marking, labeling, Display or by any appropriate means".

[35] Article 4 (3) of the Law of December 21, 2015 states that "prices and tariffs on the national market must be stated in a clear easily visible and easily legible manner".

[36] Article 43 of the Law of December 21, 2015: "goods offered for sale by unit, weight or measure shall be counted, weighed or measured in the presence of the purchaser. However, if the goods are prepackaged, the references affixed to the packaging must make it possible to identify the weight, the quantity or the number of articles corresponding to the displayed price. ».

[37] Article 41 of the law of December 21, 2015: "in the relations between traders, any producer, service provider, wholesaler or importer is obliged to communicate to the customer who so requests, his general conditions of sale. These constitute the basis of commercial negotiation. They shall include, in particular: conditions of sale, the scale of unit prices, price reductions and any discounts, settlement conditions".

general conditions of sale? Excluding negotiations does not necessarily lead to discrimination on the part of the weak counterparty. Membership contracts are valid. What is important in the pursuit of contractual equilibrium is not only the moment of formation of the contract, but the existence and proportionality of the counterparts. The quest for balance is global. It is not split according to the timeline of the contract. The general conditions of sale may be communicated by incorporation by reference. It is sufficient that the reference clause is formally precise. The law is much more picky for the consumer. In the list of contractual documents, it adds descriptions and qualifications made in the declarations of commercial guarantee, documents and advertising means[38].

The information relating to the identification of the seller is imperative. Although it is information that revolves around the contract, the identification of the seller or service provider guarantees the legal origin of the product. This is a preventive measure for acts of counterfeiting or illicit supply. Article 28 of the Law requires every trader, with the exception of the Entreprenant[39] and peddlers, to put his sign on the front of all his establishments on his website, taking care to mention his trade name, Activity and full address. These requirements are not insignificant. They allow the buyer to find the merchant, in order to proceed with the claim of the guarantee, or to any other kind of complaint relating to the contractual operation. Also provided, the information must be of a qualitative character which testifies to the good faith of the merchant.

b. The quality of information

The law of December 21, 2015 assesses the quality of contractual information according to two criteria: utility and sincerity. In terms of usefulness, qualitative information is that which is adequate, relevant, and that is not encumbered with incongruous and overabundant information. It is appropriate information[40]. In Article 82 (5), the new law lists the information it deems substantial[41]. The question then arises whether as substantial as they are, this

[38] Article 42 (2) of the Law of December 21, 2015: "any description of the characteristics and qualities of a good or service made in documents and means of advertising, as well as any statement of commercial Or communicated to the consumer, shall be deemed to be an integral part of the contract relating to that good or service ".

[39] The "Entreprenant" is a new professional actor in the African legal landscape. It was introduced by the reform of the OHADA Uniform Act relating to general commercial law which occurred in December 2010. Article 30 of this Uniform Act defines it as "An individual entrepreneur, natural person who, upon declaration (...), carries a civil, commercial, industrial or agricultural professional business." See Paul-Gérard Pougoue et Sylvain Sorel Kuate tameghe, *L'entreprenant Ohada*, PUA, 2013 ; Michel Gonomy, « Le statut de l'entreprenant dans l'AUDCG révisé : entre le passé et l'avenir », *Revue de l'ERSUMA*, N° 04, Septembre 2014, pp. 204-214 ; Denis Roger Soh Fogno, « L'entreprenant dans l'espace OHADA : une mauvaise solution face à un réel problème », *Revue de droit des affaires OHADA*, N° 02 Juillet-Décembre 2012, pp. 202-238.

[40] "As the guarantor, the client of an investment service provider is entitled to specific information on the financial market". See A. Sunkam Kamdem, *La transparence des opérations bancaires et financières dans la CEMAC*, Ph.D thesis, Univ. Douala, 2014, p. 40.

[41] Article 82 (5) of the Law of December 21, 2015 states that "at the time of an invitation to purchase, the following shall be deemed to be substantial: the main characteristics of the product, taking into

information is useful, adequate and above all sufficient for any type of transaction. The legislature may list in a non-exhaustive manner a series of details to illustrate the types of information desired. But it should avoid completely removing the ability of the parties to choose the information to be disclosed. Indeed, contractual information cannot be comprehensively identified. Each operation has features that influence the nature and content of the information. This is the case for high-tech products, which require information oriented towards the specific complexity of the object. For products of this nature, the purchaser cannot be informed on the basis of the main characteristics of the product.

The second qualitative nature of the contractual information listed by the law of December 21, 2015 is the sincerity between traders involved in an operation stipulating exclusivity of exploitation[42]. Sincerity means the integrity consisting of spontaneous revelation, by which is usually known only to him, a decisive fact or at least significant for those who do not know[43]. In the OHADA law, sincerity is most used in the accounting field[44]. In contract, sincerity can draw its sources in the duty of good faith[45]. Good faith presupposes loyalty requirement[46]. Loyalty refers to the contractual sincerity in the formation of the contract or contractual good faith in the execution of the contract[47]. Although Article 42 of the Law of December 21, 2015[48] seems to limit the consumer loyalty is a required obligation and verified even among professionals. It is binding on all parties including among professionals[49].

account the means of communication used and the product concerned; The geographical address and identity of the trader and, where applicable, the geographical address and identity of the trader on whose behalf he is acting; The price including all taxes, or the manner in which the price is calculated, as well as the additional transport, delivery and postal costs, or where such costs cannot reasonably be calculated in advance, that such costs may be The burden of the consumer; The methods of payment, delivery, execution and processing of claims, if they differ from the requirements of professional diligence ".

[42] Article 26 (1) of the Law of 21 December 2015: "any person who places at the disposal of another a trade name, a trade mark or a sign, by requiring him to be bound by exclusivity or quasi-exclusivity Is obliged, prior to the signature of any contract concluded in the common interest of the two parties, to furnish to the other documents giving sincere information ".

[43] Association H. Capitant, G. Cornu, *Vocabulaire juridique*, Puf, 7ème éd. 2010, p. 854.

[44] Article 3 of the Uniform Act on the organization of the accounts of undertakings: "Accounting must satisfy, in accordance with the rule of prudence, the obligations of regularity, sincerity and transparency inherent in the holding, supervision, And the communication of the information it has processed ".

[45] "Attitude of integrity, honesty, fair conduct required to fulfill an obligation" See Association H. Capitant, G. Cornu, *Vocabulaire juridique*, op. ci, p. 117.

[46] B. Jaluzot, *La bonne foi dans les contrats, Etude comparative de droit français, allemand et japonais*, th., Lyon 3, Dalloz, 2001, n°28, p. 11 ; F. Moutil, *La théorie générale du contrat à l'aune de la justice contractuelle*, Ph.D thesis Univ. Douala, 2015, p. 104.

[47] Association H. Capitant, G. Cornu, op. cit., p. 553.

[48] Article 42 (1) of the Law of 21 December 2015 states that "before the conclusion of the sale or the provision of services, the trader is required to provide the consumer with fair and honest information concerning the essential characteristics of good or service he proposes".

[49] "It is possible to negotiate the general conditions of sale, on the express condition that this negotiation does not obey the law of the jungle, but rests on loyalty, conformity to good economic

From the loyalty of the trader who communicates sincere information, derives the requirement of the absence of deceit provided for in article 80 of the Law of December 21, 2015. Deception is a consequence of bad faith. The prohibition of deception is enshrined in that Article 80 of the Law. This provision applies "in all circumstances" to the professional and the consumer, exceptions made to paragraphs[50] that specifically target it. It prohibits the merchant: the display without authorization of a quality label, the false claim to offer approved products in the absence of authorization, the declaration of a false cessation of imminent activity, posing as a consumer or to remain silent on the quality of trader. Thus, a decision of July 4, 2008 of the Financial Market Commission of Cameroon condemned the company CUD Finance for having provided false information with the aim of deceiving the commission and the public on the result of the placement of a bond raised by the Council of the urban Community of Douala[51]. The silence about deceptive practices is not limited to the disguise of merchant quality. The willful concealment is also prohibited, but especially with regard to the consumer[52]. But with case developments, French law extends it to the weaker professional[53] ; hence the value of extending the scope of contractual information.

c. The extend of information

The scope of the information covers its area. The contractual process is chronological. It begins with the formation and ends with the extinction of the contract. The contractual information established by Cameroonian law of 21st December 2015 is present in all these stages[54]. It enlightens and informs the weaker

sense, and reciprocal commitments (Rapp. J-P. Charié, 22 mai 2008, done on behalf of The Commission des affaires économiques, de l'environnement et du territoire sur le projet de loi de modernisation de l'économie en France, n°842, p.309.

50 Article 80 (c) paragraph one, (d), (f), (g), (h), (l), (n), (p) of the Law of 21 December 2015.

51 Dec. CMF, aff. CMF c/ MM. Edouard Etonde Ekoto and Lamine Mbassa, july 04, 2008, www.cmf.cm; "The project proponents knowingly communicated false information ... It is a well-regulated mechanism in which CMF plays a fundamental role: to ensure that the public requested, the market in general, will not be deceived in this business". See R. Nemeudeu, « L'affaire « Commission des marchés financiers (CMF) c/ Edouard Etonde Ekoto, François Ekam-Dick, Lamine Mbassa » ou l'urgente maîtrise des exigences du mécanise du marché financier camerounais », *Juris Périodique*, N° 85, janvier-mars 2011, p. 56 et 57.

52 Article 82 of the Law of December 21, 2015: "In addition, misleading omissions are deemed to be deceptive commercial practices. A commercial practice is considered to be a misleading omission when it omits substantial information that the consumer needs in order to make an informed business decision and, therefore, induces or is likely to cause it to make a commercial decision that he would not have taken. It is also considered to be a misleading omission, a business practice whereby a professional conceals substantive information or provides it in an unclear, unintelligible, ambiguous or inappropriate manner, or when it does not indicate its true commercial intent, and Consumer is thus led to take or is likely to be led to take a commercial decision which he would not have taken".

53 D. Chauchis, « La protection de l'acquéreur d'un bien dans le droit interne de la vente », *Bull. info*. Nov. 2010, p. 7 et 10.

54 "The chronology of operations is irrelevant: whether the information obligation originates before the signing of the contract or during execution, it must necessarily enter the contractual field to

party, the consumer or professional, every step of the transaction[55]. Between professionals involved in exclusive exploitation as selective distribution, it must be prospective, that is to say, it must inform the weaker party of the past of the other party and its business forecasts[56]. Thus judicial decisions[57] have sanctioned the lack of information on the issue of the property sold. In clear terms, it is not enough to make possession possible. The issuance of the object sold must be accompanied by an obligation to inform[58]. This information is required in commercial matters by Cameroonian judge, even in relations between the bank and its surety[59]. Even if the seller and the buyer are professionals, as soon as a lack of essential knowledge as to the characteristics of the thing is discovered to the detriment of the buyer, whether professional or not, the obligation to Information from the vendor remains[60]. The transmission of some of this information should guarantee the traceability of the consent, without violating professional secrecy[61].

2.1.2 The traceability of the consent of the parties

Traceability presupposes the possibility of going back to the whole contractual process, which goes from talks to extinction, to the execution of the contract. In the spirit of Cameroon's new law on commercial activity, the agreement of the parties must be traceable. Traceability has implications for the validity of consent[62]. She also has the protection of the weaker party[63]. In this

allow the rebalancing of benefits". See M. Fabre-Magnan, *De l'obligation d'information dans les contrats, Essai d'une théorie,* LGDJ. 1992, n°276 et s.

[55] J.-P. Chazal, « Les nouveaux devoirs des contractants : est-on allé trop loin ? », In *La nouvelle crise du contrat.* Actes du colloque du 14 mai 2001, organisé par le centre René Demogue de l'Université de Lille II (Broché), Chr. Jamin, Collectif, D. Mazeaud (dir.), 2003, p. 99.

[56] Article 26 (1) and (2) of the Law of December 21, 2015: "any person placing at the disposal of another a trade name, trademark or sign, by requiring him to engage in exclusivity or Of quasi-exclusivity is required [...] to provide the other with documents giving sincere information ... On the seniority and experience of the company, the state and prospects of market development, the size of the operating network and its duration ".

[57] 1ère Civ., 25 juin 1996, pourvoi no 94-16.702, Bull. 1996, I, no 274 ; Com., 1er décembre 1992, pourvoi no 90-18.238, Bull. 1992, IV, no 391

[58] For Example : Article 1112-1 of the French civil Code state clearly that**,** "That of the parties which knows information the importance of which is decisive for the consent of the other party must inform the latter of the fact that, legitimately, the latter ignores that information or trusts his co-contracting party. (...) ".

[59] "The security cannot be required beyond its commitments to guarantee the repayment of an overdraft of 3 million francs, without having been ordered in advance" (CA Centre, arrêt n°139/Civ./06/07, aff. Kegne Pokam Emmanuel c/ Liquidation Crédit agricole (SRC), du 07 févr. 2007, *Juris Périodique*, N°84, oct.-nov.-déc. 2010, p. 86).

[60] Com., 21 novembre 2006, pourvoi no 05-11.002 ; D. Chauchis, « La protection de l'acquéreur d'un bien dans le droit interne de la vente », *Bulletins d'informations, Communication,* 1er nov. 2010, p. 8.

[61] CA Littoral, arrêt n°290/c, aff. Tobbo Eyoum c/ SCB-Crédit lyonnais, non published ; see A. Sunkam Kamdem, thèse, *op. cit*., p. 151.

[62] G. Raymond, « De la valeur du formalisme exigé par les articles L. 341-2 et L. 341-3 du Code de la consommation », *Contrats Concurrence Consommation* N° 5, Mai 2013, comm. p. 124.

context, the law of December 21, 2015 requires the delivery of contractual documents to the purchaser (a) and reduces the burden of proof of the contract to the weaker party (b).

a. Documents provided to the buyer

Contract law in force in francophone countries is strongly imbued with the doctrine of consent[64], formalism is the exception[65]. It is within the framework of the exceptions that the contract between the seller and the buyer appears to be in place. In the commercial cooperation agreements, written formalization of the requirement is not new[66]. In order to materialize the agreement of the wills, the legislator of Cameroon imposes the transmission of documents of the contract to the purchaser. It should be noted that the law grants this measure both to the professional and the consumer[67]. The quality and quantity of the documents presented by the seller are a true precision[68]. These documents materialize the rights of the purchaser as from the conclusion of the contract. These rights supplement the information of the purchaser on the use of the property, and the modalities of implementation of the claims related to its defect. These legal requirements are balanced in that they avoid reducing the liability of the seller.

One may question the confusion that the law makes between the professional purchaser and the consumer purchaser. Cameroonian law requires submission of written documents both to the consumer and the professional,

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[63] "The revival of formalism revealed by a significant multiplication of forms aims at protecting the weaker party in the contractual relationship" (H. Jacquemin, thèse, op. cit, p. 41).

[64] Article 240 of the Revised Uniform Act on General Commercial Law: "The commercial contract of sale may be written or verbal; It is not subject to any condition of form "; Article 11 of the 1980 Vienna International Convention on the International Sale of Goods: "The contract of sale shall not be concluded or evidenced in writing and shall not be subject to any other formal requirements. It may be proved by any means, including by witnesses "; Article 1 / 3.1 of the Preliminary Draft Uniform Act on Contract Law: "This Uniform Act only requires the contract, declaration or other act to be concluded in a particular form".

[65] Article 14 of the Uniform Act on the Law of Securities: "A surety-bond shall not be presumed no matter the nature of the secured debt. It shall be proved by a deed signed by the surety and the creditor... "; Article 41 of the Uniform Act on securities: "The existence of the autonomous guarantee contract and the autonomous counter guarantee contract shall not be presumed. Under the pain of nullity, they should be in writing…"; Article 127 of same Uniform Act: "Under pain of nullity, the pledge of a debt shall be in a written document…"; Article 7 of the CIMA Insurance Code: "The insurance contract shall be in writing".

[66] L. Attuel-Mendes et J.-F. Notebaert, « Les pratiques de négociation à l'épreuve du droit », *Management et Avenir*, 2011/4 (n°44), p. 276.

[67] Article 52 (1) of the Law of December 21, 2015: "any sale in good condition of durable consumer goods, whether for professional use or not, shall cause the issuance to the purchaser at the time of the delivery of the following documents, written in French and / or English ".

[68] Article 52 (1) of the Law of 21 December 2015: "a delivery note specifying the quantity, quality or references of the goods; A notice describing the essential characteristics and technical specifications necessary for the use of the property and its maintenance, and reminding the provisions relating to the legal guarantee of hidden defects; A certificate specifying the extent and duration of the guarantee ".

despite the freedom granted by the regional provisions of Ohada[69]. The conflict between an internal law and the rules of the Ohada will certainly go in favor of the latter. What is important to note here is the imperative of issuing contractual documents to the consumer and the professional purchaser. This favorable measure, which was not perceptible in the conflicting relations between professionals before the law of December 21, 2015, contributes to the easing of the proof formalism for the benefit of the weak party.

b. The reduction of the burden of proof of the contract for the weaker party

Proof of contract generally weighs on the parties who rely on it. The provisions of the law of December 21, 2015 do not contradict this principle. However regardless of the principle of freedom of evidence[70] Article 37 of the new law requires the issuance of an invoice containing the mandatory mentions[71]. The easing of the evidence in favor of the weaker party is due to the fact that the invoice, as drafted by the abovementioned Article 37, must facilitate the identification of the parties by registering their full names and addresses, the taxpayer numbers and the seller's commercial and credit register, the date of sale, the terms of payment and the characteristics of the item. A five-year retention obligation for this invoice is imposed on the seller, who must at all time produce it in the event of dispute arise by the purchaser. All these measures relieve the buyer of the material impossibility of producing proof of the contract in case of dispute. The weaker party is protected against probation requirements. But the law of December 21, 2015 does not limit its action to the formation of the contract. It organizes modalities for healing imbalance during execution.

2.2 The healing of the imbalance during the execution of the contract

The contract "The formation of the contract ends by its execution" [72]. Even during contract performance, economic forces are unequal[73]. Once one of the contractors was not able to freely and rationally defend its interest, the contract has

[69] Article 240 of the Revised Uniform Act on General Commercial Law: "The commercial contract of sale may be written or verbal; it is not subject to any condition of form ". Article 239 of the Revised Uniform Act on General Commercial Law: "The parties are bound by the uses to which they have consented and by the practices which have been established in their commercial relations".

[70] Article 240 of the Revised Uniform Act on General Commercial Law: "[The commercial contract of sale] is proved by all means".

[71] Article 37 of the law of December 21, 2015: "all sales of goods and services for a professional activity must be invoiced".

[72] G. Rouhette, « Droit de la consommation et théorie générale du contrat », in *Mélanges, Etudes offertes à René Rodière*, Dalloz, 1981, 247 à 272 ; J-P. CHAZAL, *Les nouveaux devoirs contractuels*, *op. cit.*,www.sciencespo.fr/ecole-de-droit/sites/sciencespo.fr.ecole-dedroit/files/chazal_les_devoirs_contractuels.pdf.

[73] J. Carbonnier, *Flexible droit*, LGDJ. 7ème éd. 1992, p.288 et 289.

more reason to be intangible[74]. Legislative intervention in a perspective of socialization of the contract is therefore justified[75]. In this sense, the law of December 21, 2015 governing commercial activity in Cameroon provides for two types of curative measures of contractual imbalance: measures initiated by the parties (2.2.1.) and measures of legal origin (2.2.2).

2.2.1 Remedial measures at the initiative of the parties

The contractual relationship is experiencing vicissitudes and tumults. To cope with the difficulties, the parties are the primary actors involved in healing the contract[76]. Each party intends to normally make a gain from the contract[77]. According to this expectation, the law of 21 December 2015 grants the parties: the possibility of correcting their relations by satisfying the weak party (a), or failing to extinguish the contract (b).

a. The survival of the contract by the satisfaction of the weaker party

Where the parties' performance is disproportionate, disputes may arise. But the most important is "the realization of that for which the contractors have agreed to sign the contract"[78]. The provisions of the text grant contractors the possibility of ensuring the satisfaction of the weak party by contributing to the survival of the contract. Two means are recommended: the guarantee of peaceful possession and after-sales service. The trader is obliged to guarantee the peaceful and helpful possession, and the actual use of the item sold[79], during a period of six months for new goods and three months for used goods[80] after delivery. From this obligation stems that of the implementation of a customer service[81], provided by the trader or by a third party.

Doubts raised the question about the contractual origin of these measures, given that the liability for defects of the thing has a dual legal aspect and a conventional second[82]. The French case law strictly interprets the will, since "any manufacturer should know the defects of the item made"[83]. It does not allow an exemption clause to that obligation, whether with regard to the consumer or in

[74] J. Rochfeld, *Les grandes notions du droit privé*, Thémis droit, Puf, 2ème éd. 2013, p. 426.

[75] J. Rochfeld, op. cit., p. 430 à 435.

[76] E. Mackaay, « L'efficacité du contrat – une perspective d'analyse économique du droit », in *L'efficacité du contrat*, G. Lardeux (dir.), Dalloz, 2011, p. 31.

[77] Ibid.

[78] Gh. Tabi Tabi, *Les nouveaux instruments de gestion du processus contractuel*, thèse, Univ. Laval Québec, 2011, p. 56.

[79] Article 51 of the Law of December 21, 2015.

[80] Article 58 (1) of the Law of December 21, 2015.

[81] Article 62 of the Law of December 21, 2015.

[82] G. Raymond, « Ventes ou prestations de services au consommateur », *JCl. Commercial*, 2005, Fasc.914, n°71. Article L. 211-1 du Code de la consommation français dispose que « les règles relatives à la garantie des vices cachés dans les contrats de consommation sont fixées par les articles 1641 à 1648, premier alinéa, du Code civil (...) ».

[83] Cass. com., 27 avril, 1971: JCP G 1972, II, 17280.

respect of the professional. The fact that the legal guarantee is imposed on the parties does not remove the possibility for the contractors to improve the arrangements. The time limits and conditions laid down in Articles 51 et seq. Of the Law of 21 December 2015 are minimum thresholds to be complied with by the parties. It is up to them to make them more flexible and advantageous for them. The trader can grant the buyer a more advantageous contractual warranty[84]. Conversely, when the purchaser is not satisfied, he may use the unilateral right of breach of the contract.

b. Unilateral power to terminate the contract

In contract, there is unilateralism "when a contract clause comes assert the prerogative of one contractor"[85]. In case of difficulty of execution of the contract, the conventional solution recommended is the forced execution of the obligation in kind. This option, which presupposes the intervention of the judge, is onerous, slow and procedural. It involves additional delays and is often ineffective in the face of the urgent need of the creditor. When, despite the imbalance, the acquirer does not find satisfaction by conventional means, it can logically proceed to the termination of the contract. The unilateral termination is proposed as an easy, fast, sure and inexpensive to implement[86].

Unilateralism in the resolution of the contract was introduced in the Law of December 21, 2015 only for the consumer[87]. Perhaps is it simply a precision that the legislature has made, since professionals can use the uses of business, in accordance with Article 239 of the revised Uniform Act on general commercial law[88]. In all cases, the right of unilateral termination in contracts between professionals is appropriate. It is even provided for by Article 281 of the Uniform Act referred to above, provided that a notice is given to the other party, to avoid any abuse[89]. The fear of a unilateral power of resolution on the initiative of the professional only makes sense in the context of an abuse against the consumer. Apart from this hypothesis, the professional has the right to use this prerogative when he is in a situation of weakness, in an unbalanced contractual relationship. The Preliminary Draft Uniform Act on Contracts ensures unilateral cancellation of the contract in Articles 7/13 to 7/18, subject to notification of prior notice. Prior notice of the notified becomes a means "opportunity to control and

[84] J. Huet, « Vente, – Garantie légale contre les vices cachés – Clauses relatives à la garantie », *JCl. Commercial,* Fasc. 60, n°35.

[85] M. Behar-Touchais, « Les remèdes unilatéraux à l'inexécution dans les contrats de distribution », *in* G. Lardeux (dir.), *L'efficacité du contrat*, Dalloz, 2011, p. 21.

[86] G. Lardeux, « Droit positif et droit prospectif de l'unilatéralisme dans le contrat », in G. Lardeux (dir.), *L'efficacité du contrat*, op. cit., p. 3.

[87] Article 42 (2) of the Law of December 21, 2015.

[88] Article 239 of the revised Uniform Act on General commercial Law.

[89] Article 239 of the revised Uniform Act on General commercial Law.

loyalty of the use of unilateral powers"[90]. This faculty does not obscure the legal curative measures of imbalance.

2.2.2 Curative legal measures

The legal remedies proposed by the Law of December 21, 2015 to cure the contractual imbalance are of two types: administrative penalties (a) and penal sanctions (b).

a. Administrative sanctions

The emergence of administrative sanctions corresponds to the advent of the Regulatory State, in which a number of administrative authorities have been given law enforcement powers, in particular to regulate specific fields of economic activity and protect certain freedoms[91]. The development of independent administrative authorities led to entrust that power to public entities other than those who traditionally hold it, as the tax authorities, the authorities detaining the economic police powers or disciplinary power in the administrations[92]. As part of the organization of relations with consumers and between traders, the law of 21 December 2015 devoted various penalties in Articles 90 to 96. It provides for penalties such as the suspension[93] to a maximum of six (06) months, the affixing of seals leading to the temporary cessation of the activity without tax exemption[94], fines[95], and the seizure of products prohibited to consumption or not in conformity with the standards.

Under the imbalance, only the first two are relevant sanctions, seizure applying to illicit activities due to the hazardous nature of the products. These sanctions are imposed by the Minister in charge of trade, upon reasoned and notified notice which has been disregarded for a period of thirty days[96]. The law envisages penalties in a very broad way against the professional who benefits from a contractual imbalance to the detriment of the consumer. Thus, the penalties provided for are compounded in Article 91 (1) [97] by Article 91 (2).

[90] A. A. Ngwanza, « L'équilibre contractuel dans l'avant-projet d'Acte uniforme sur le droit des contrats », *Actes du Colloque sur l'harmonisation du droit OHADA des contrats, Ouagadougou 2007*, ULR. 2008, p. 500.

[91] J-M. Sauvé, « La sanction : regards croisés du Conseil d'État et de la Cour de cassation », Intervention lors du colloque *La sanction: regards croisés du Conseil d'État et de la Cour de cassation*, 13 décembre 2013, http://www.conseil-etat.fr/Actualites/Discours-Interventions/La-sanction-regards-croises-du-Conseil-d-Etat-et-de-la-Cour-de-cassation.

[92] Ibid.

[93] Article 90 (2) of the Law of December 21, 2015.

[94] Article 90 (2) of the Law of December 21, 2015.

[95] Article 91 (1) of the Law of December 21, 2015: "Infringements of the provisions of this Law shall be punishable by a monetary penalty of 5% of annual turnover ... with a minimum charge of 30,000 CFAF for natural persons and 100,000 CFA francs For legal persons ".

[96] Article 90 (1) of the Law of December 21, 2015.

[97] Article 91 (2) de la loi du 25 décembre 2015 : "infringements of the provisions of Article 21 et seq. On the terms and conditions for the distribution of goods and services; The refusal of any

b. Penal sanctions

The solicitation of the criminal court in the organization of commercial activity is provided by the law of December 21, 2015 under Articles 97 et seq. The penal judge intervenes thus for the sanction of offenses of various orders. It is within this broad intervention that the contractual imbalance is criminally punishable in relations between professionals. This is true of Article 98 (1) (c) of the new law, which applies sanctions of Article 256 of the Penal Code[98], to the one that "violates the provisions regarding guarantees for goods and services." This is such a broad provision that can apply for exemption clauses to the detriment of weaker professional. Conversely, the imbalance to the detriment of the consumer benefits from the attention of the criminal courts. According to Article 98 (1) (c) referred to above, will be punished with the penalties of Article 256 above, the one who violates the provisions regarding guarantees for goods and services, fails to organize commits an aggressive or deceptive practice with respect to the consumer.

Despite the measures that the contracting process can provide to balance relationships, through information, formalism and punishment, the balance may persist because of the nature of the relationships that exist between the contractors. As Stoffel-Munck points out, "if trading lucid does not exclude the qualification of abuse, it is that the balance that should be introduced is not the one that the will of the parties may determine"[99]. The fact that the Law of December 21, 2015 addresses the balance only in the perspective of the contracting process, maintains the imbalance in the relationship that the parties maintain.

3. The balance in the contractual relationship: regret

The contractual relationship refers to the conflicting nature or not, fair or uneven, the between the parties[100]. The measures advocated by the law of December 21, 2015 draw most of their relevance in the contracting process. The imbalance is nourished by the struggle of the selfish wills of the parties[101]. Mechanisms are set by law, but they remain inadequate[102]. In the end, the

producer, importer or wholesaler to communicate to a reseller who so requests, his structure, price schedule and general conditions of sale; Infringement of the provisions relating to guarantees of goods and services shall be punishable by a monetary penalty of 10% of the turnover achieved by the merchant or the professional".

[98] Article 256 of the Cameroonian Penal Code stipulates that: "A prison sentence of two months to two years and a fine of 400,000 to 20 million francs shall be imposed on any person who, by any fraudulent means, causes the artificial increase or decrease of the price of Goods or public or private securities. The penalty shall be doubled if the goods are foodstuffs or are covered by the texts relating to packaging. The court may also declare the disqualifications of Article 30 (1) and (2) and order the publication of its decision ".

[99] Ph. Stoffel-Munck, *L'abus dans le contrat – Essai d'une théorie*, LGDJ, coll. Bibliothèque de droit privé, t. 337, 2000, nos 364 s.

[100] J. Issa-Sayegh, *La liberté contractuelle dans le droit des sûretés OHADA*, Penant, n°851, avril-juin 2005, p. 150 ; Terré, Simler et Lequette, *Les obligations,* Précis Dalloz 11ème éd. 2013, n° 40-1.

[101] G. Ripert, *La règle morale dans les obligations civiles*, LGDJ. 4ème éd. 1949, n° 40.

arrangements put in place do not guarantee equal respect of contractual relations (3.1.). This shortcoming is a consequence of failure to systematize the concept of weakness (3.2.).

3.1 The persistence of the imbalance in the contractual relationship

The distinction between professional and consumer is proper in the market legal framework. The strictly implementation of this categorization in the fight against the contractual inequality, leads to partial understanding of the imbalance between the parties. The law of December 21, 2015 is facing this difficulty. It introduced the innovative concept of "undue influence" to eliminate the abuse of a position of strength in the contract. Unfortunately this notion is only beneficial to the consumer. Then, and this is the most important argument, undue influence is not intended to restore the balance in the contractual relationship. As formulated by law, rather, it aims to safeguard the integrity of the consent of the consumer (3.1.1.). While for its part, the professional must be content with a residual protection provided by the peripheral notion of contractual imbalance (3.1.2).

3.1.1 Unjustified influence: a notion diverted to safeguard the integrity of consumer consent

Under Article 4 of the Law of December 21, 2015, the undue or unjustified influence is the use of a position of force vis-à-vis the consumer in such a way as to put pressure on him, even without resorting to physical force or threatening to do so, in such a way that his ability to make a decision In full knowledge of the facts, is significantly limited. The undue influence approaches the weakness of the victim, who can no longer make an informed judgment on its commitments[103]. Should undue influence be considered as a complementary element of the classical theory of defects in consent? The proposed draft Uniform Act on contract law seems to say yes. By using the term "unjustified threat" that appears in this context as a synonym of undue influence, Article 3/9 of the proposed draft advocates the invalidity of such practices. But the lethargy of this text, the adoption of which remains uncertain, does not allow a conclusion so quickly. With limiting undue influence in preserving the consumer's consent, Cameroonian law makes the autonomy of the will the main weapon against the abuse of power and strength.

It is true that weakness was seemingly seen as a new defect in consent in[104]. According to the Cameroonian thought, as the abuse of power does not aim to

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[102] ''Whether during or after the formation of the contract, "the good performance of the contract guaranteeing the balance of the contract can be paralyzed by factors totally outside the will of the parties" (See F. Moutil, *La théorie générale du contrat à l'aune de la justice contractuelle*, *op. cit.*, p. 11.

[103] M. Fontaine, « Rapport de synthèse», op. cit., p. 620.

[104] C. Ouerdane-Aubert de Vincelle, *Altération du consentement et efficacité des sanctions contractuelles*, Paris, Dalloz, 2002, p. 342 et s.

significantly affect the consumer's ability to make a decision knowingly, then the contractual balance would be saved. The absence of undue influence does not necessarily guarantee the equivalence of obligations. A contract may disadvantage the proportionality of obligations without undermining the integrity of consent. One can wonder about the curious fidelity of the Cameroonian legislator, to seek balance only in the principle of autonomy[105], regardless of the position of the stronger party.

The strong position is the position of one who is not in "position of economic technical or social dependence"[106] vis-à-vis the other, which conversely suffers abuse from the first. While stress affects the consent, the strong position of abuse does not apply to contractual freedom, but reciprocity and equivalence of benefits. It is in this sense that modern texts evolve by focusing on reciprocity, quality and quantity of contractual commitments[107]. Contractual balance or imbalance is not assessed through the integrity or clarity of consent. Did the weaker party have the opportunity to negotiate? If not, the adhesion contract is even not canceled. Only the intensity of individual obligations of the parties remains the measure of balance in the contractual relationship. With regard to the professional, there are peripheral measures proposed by the Law.

3.1.2 The residual protection of the weak professional by peripheral measures

The socialization of the contract has introduced new terms in agreements[108]. The Act of 21 December 2015 joined this movement by introducing measures such as the requirement of an actual consideration[109], the need to justify the imposition of price[110], limiting the duration of the clause exclusive[111]. Do these innovations lead to the restoration of equality between the strong and the weaker contractor?

The reality of the counterparts implies reciprocal obligations. Yet it is not enough that the obligations are real to be of equal value. The text speaks of real counterparts; that is to say in compliance with fair and honest business practice. Of course loyalty is often used as a weapon against the author of the imbalance. The judge could deduce the imbalance clauses from this legal standard. As far as the

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[105] Z. Mrabet, op. cit., p. 448.

[106] *F. Zenati-Castaing et Th. Revet, Cours de droit civil. Contrats. Théorie générale – Quasi-contrats, Puf, 2014, spéc. n° 4, p. 36.*

[107] See for example Article 1143 of the French civil Code; Article 1437 of the Civil Code of Quebec ; Article L. 442-6 I 2 of the French Commercial Code.

[108] These are for example: contractual solidarity, duty of cooperation, duty of collaboration.

[109] Article 77 of the Law of December 21, 2015.

[110] Article 77 of the Law of December 21, 2015: "The following practices shall be prohibited: ... sale at a price unjustifiably imposed by the producer, industrialist, wholesaler or importer".

[111] Article 25 of the Law of December 21, 2015: "The period of validity of any exclusivity clause by which the buyer, assignee or lessee of personal property commits himself to Its seller, assignor or lessor, not to use similar or complementary goods from another supplier, shall be limited to a maximum of five (05) years".

good faith, loyalty is a concept too elastic, with a so large content, that it does not allow the Cameroonian judge to conduct reflections on the imbalance between professionals. But from another perspective, it is regrettable that the Cameroonian legislator missed the opportunity to be clear and specific[112] with regard to professionals. Abandoning the interpretation of good faith to the judges in the fight against the contractual imbalance exposes litigants to inconsistent decisions. The proportionality of the obligations seems more appropriate than the reality of the consent[113]. The same is true of the price imposed.

As stipulated in article 77 of the Cameroonian law, the price imposed is forbidden unless justified by the one who prescribes it. Justification, of course! But how? The imbalance in the rights and obligations of the parties may result from the price fixed by the parties or, more specifically, from the constituent elements of that price[114]. If the fixing of a maximum price does not give rise to any particular problem under competition Law, the opposite is synonymous with contractual abuse[115]. The justifications for the imposition of the price must be provided to the other party. The recipient of the justification elements must certainly be a reseller or an authorized member of a distribution network.

But the law remains silent as to the nature of the justifications to be produced. Article 41 of the Law[116] simply states the requirement to disclose certain elements to the contracting party who so requests. It can be assumed that the justification feature of the elements provided by the person who fix the price derives from the reseller's conviction, which accepts or disputes them. If it does not request additional clarification, it is logical to understand that he accepted the imposed prices. Balance is not, however, achieved. Except for mandatory legal provisions relating to the supervision of the market, the fact of agreeing to a price imposed by another trader reflects the weakness of the dealer or member.

It is not by subjecting the justifications for this price to the acquiescence of the weaker professional, that his vulnerability will be eradicated. He may well accept a price which, from the perspective of the overall analysis of the contract, causes an imbalance. We must track down the evil at its source. One solution is to seek the intervention of the judge in case of discord on the resale price. The lack of

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[112] See S. Nandjip Moneyang, «Le nouveau visage de l'activité commerciale au Cameroun : le clair-obsur de la loi n° 2015/018 du 21 décembre 2015 régissant l'activité commerciale au Cameroun », op. cit., p. 4.

[113] The Paris Court of Appeal was particularly indignant at the fact that "an economic operator imposes on a business partner commercial conditions such that the latter receives only a consideration whose value is disproportionately large than what it gives (CA Paris, 23 mai 2013, Ikea Supply, n° 12/01166).

[114] N. Laznef, « Le déséquilibre significatif dans les contrats d'affaires : cinq ans après. Bilan de l'application judiciaire de l'article L. 442-6, I, 2 du code de commerce », *RCL 2553,* N° 39, avril-juin 2014, p.173.

[115] Z. Mrabet, *Les comportements opportunistes du franchiseur : étude du droit civil et du droit international uniforme*, op. cit., p. 460.

[116] Article 41 of the Law of December 21, 2015: "in the relations between traders, any producer, service provider, wholesaler or importer shall be obliged to communicate to the person making the request ... the terms of sale, the price schedule".

justification and the disproportionate nature of a sale price as the dealer are issues which must be clarified by the trial judges when they are entered in[117]. Otherwise, the low professional suffers and engages in asphyxiation. He suffers because of the silence imposed prices. That is why the second option is to give a third party the opportunity to bring the matter before the judge in view of the fear of the weak to lose business opportunities.

Faced with this difficulty, the Cameroonian legislator has proposed a peripheral solution. Instead of addressing the imbalance node, Article 25 of the Law of December 21, 2015 calls for the limitation of the duration of the exclusivity clause to five years in cases where the buyer, transferee or lessee of movable goods undertakes vis-à-vis its seller, transferor or lessor not to use similar or complementary objects from another supplier. During this contractual period, the weak professional lays the heavy burden of his vulnerability and the constraint of the obligations for which he is engaged. For both the professional and the consumer, the contract landscape suffers from a lack of systematization of the situation of weakness.

3.2 The lack of systematization of the imbalance in the contractual relationship

The systematization of the imbalance implies the construction of a set of concepts, definitions and procedures for the clash of parties' wills to dominate and govern the contractual relationship[118]. This approach involves the globalization of the concept of imbalance, followed by a specific treatment according to whether the relationship involves the consumer or the professionals between them. Unfortunately, the new Cameroonian law does not concern the imbalance of the contractual relationship in a global way (3.2.1). It thus lays down inadequacies in dealing with the peculiarities of unbalanced situations (3.2.2).

3.2.1 The absence of a global vision of the imbalance in the contractual relationship

The dominance behaviors that exist in trade negotiations between certain professionals are similar to those of the professional towards the consumer[119]. This

[117] "In a judgment of 23rd May 2013 the Paris Court of Appeal stated that it is nevertheless for the court to examine whether the prices fixed between the contracting parties create or have created an imbalance between them and whether this imbalance Is of sufficient importance to qualify as significant". See M. Chagny, «L'essor jurisprudentiel de la règle sur le déséquilibre significatif cinq ans après ?, », *RTD com.* 2013, p. 500 ; CA Paris, pôle 5, ch. 5, 23 mai 2013, n° RG : 12/01166.

[118] S. Grac, *Les relations juridiques entre franchiseur et franchisé : coopération et conflit*, Ph.D thesis, University of Nice – Sophia Antipolis, 1999, footnote 25, p. 65 ; G. Ripert, *La règle morale dans les obligations civiles*, Paris, L.G.D.J., 1949, p. 98.

[119] CA Paris, 1er oct. 2014, n° 13/16336, spéc. M. Behar-Touchais, « Le mythe de Sisyphe, revu et corrigé par le déséquilibre significatif », *Rev. des contrats,* mars 2015, p. 67 ; Cass., com, 3 mars

argument seems not appear to be favorably received by the Cameroonian legislature. Two reasons explain sufficiently this. First, the Law of December 21, 2015 perpetuates the legislature's unwillingness to extend the unfair term to the weak professional (a). Moreover, the new text ignores the emergence of a contemporary concept adapted to the fight against the disproportion of obligations: the significant imbalance (b).

a. The reluctance to recognize the abusive clause for the benefit of the weak professional

According to Article 2 of Framework Law No. 2011/012 of 6 May 2011 on consumer protection in Cameroon, the abusive clause refers to "any clause which is or appears to be imposed on the consumer by a supplier or service provider who has an unreasonable or excessive superiority, on the second."[120] The Law of December 21, 2015 makes no reference to the unfair term. But in the provisions of Article 81 (d), the text condemns the clauses that appear to be imposed on the consumer by a service provider or service provider. It is still unclear why the abusive clause has not been extended to the weak professional, while arguments have already established the need to introduce unfair clauses between professionals[121].

The argument of good faith between traders also militates in favor of such an extension. The requirement of good faith between traders naturally presupposes the absence of an abusive clause. Good faith implies two meanings. In the first sense, good faith is the erroneous belief in the existence of a regular legal situation[122] or non-faulty ignorance of a legal defect[123]. In a second sense, good faith relates to the objective standard of behavior imposing to act according to an attitude of honesty and integrity[124]. Mrs. Stoffel-Munck speaks of a duality between a state of mistaken belief (I am in good faith) and a normative status (I act as good faith control)[125]. At the Ohada level, Article 1/6 of the Proposed Draft Uniform Act on Contract Law states that "the parties are bound to comply with the requirements of good faith". This requirement is recalled by Article 237 of the

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2015, Eurauchan c/Ministre, n° 13-27.525, D. actualité, 2016, n. L. Constantin, http://www.dalloz-actualite.fr ; Cass. com, 3 mars 2015, Provera c/ Ministre, n° 14-10.907, Juris-Data n° 2015-004113 ; Cass. com., 27 mai 2015, Galec c/ Ministre, n° 14-11.387, Juris-Data n° 2015-012555.

[120] F. Biboum Bikay, *Droit camerounais de la consommation*, *op. cit.*, p. 35.

[121] R. G. Tsomevou, « Retour sur le rétablissement de l'équilibre dans le contrat d'assurance. L'état d'une inertie du juge face à des clauses disproportionnées de délimitation de risque de garantie », *Juridis Périodique*, N° 98, avril-mai-juin 2014, p. 29.

[122] Association H. Capitant, *Vocabulaire juridique*, 7ème éd. PUF, 116 à 117

[123] P. Engel, « La porte de la clause générale de la bonne foi (art.2 CC) dans la jurisprudence», in *Abus de droit et bonne foi*, (dir.) Wilmer et Cottier, ed. Univ. Fribourg, 1994, 125

[124] Association Henri Capitant, *Vocabulaire juridique*, *op. cit.,* 117

[125] Association Henri Capitant, *Vocabulaire juridique*, *op. cit.* , 117

Revised Uniform Act on General Commercial Law[126]. Under Article 1437 (2) of the Civil Code of Quebec "is unreasonable, any provisions that disadvantage the consumer or adhering to an excessive and unreasonable manner and in contravention of good faith." The professional may also be subject to a contract of adhesion. Good faith is required in relations between professionals, especially when integrated into a distribution network. The good faith has motivated the sanction of unfair terms between traders in foreign cases[127]. Often considered as "a general rule inaccurate content whose role is to bring together a number of rules"[128], good faith can be used for the eradication of unfair terms between professionals. This contribution of good faith is better perceived through the notion of significant imbalance ignored by the Cameroonian legislator.

b. The ignorance of a notion adapted to the disproportion of obligations: the significant imbalance

The notion of significant imbalance does not yet have a legal definition. It was introduced in the French legislative landscape by Article L 132-1 of its Consumer Code to protect the consumer, and by article L 442-6.1 of its Commercial Code. The french law professionals usually practice significant imbalance of trade relations[129]. The imbalance is significant when it creates an intolerable difference, a real difference between the rights and obligations of the contracting parties[130]. A French Court decision defined the significant imbalance as "non-reciprocal practices, unrequited and significantly adverse [...] who do not respect the spirit of the economy modernization (…)"[131]. According to the Paris appeal court, "The imbalance becomes significant by the presence in the single contract of unjustified obligations borne by the supplier which are harmful to the economy (and to the consumer) ... it does not matter whether or not these obligations are fulfilled, Since the law is aimed at obtaining or attempting to obtain any advantage and it is also of little consequence whether the actual effects of the disequilibrium are not measured "[132]. The indifference of this notion to the

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[126] Article 237 of the Revised Uniform Act on General Commercial Law: "The parties are bound to comply with the requirements of good faith. They cannot exclude this obligation, nor limit its scope ".

[127] In a Canadian case Quebec inc. Pizza v/ Pizza Canada inc, the judge stressed that the franchisor must be animated by good faith in its dealings with franchisees: J.E. 95-1568 (C.S.), Québec inc. Pizza v/ Pizza Canada inc. ; "In the case under review, the analysis of the evidence convinced us that Provigo had abused his rights, that it was not always in good faith", [1995] R.J.Q. 464 (C.S.), Supermarket A.R.G. Inc. v/ Provigo Distribution Inc.; "It may be admitted that there may be cases in which the refusal to renew a fixed-term franchise contract may be deemed to be unreasonable by reason of the economic relations required and maintained by both parties", JE 93-284 (CA) , Simard v. Provi-Soir inc.

[128] B. Lefebvre, « La bonne foi : notion protéiforme », (1996) 26 *R.D.U.S.* 321, 321.

[129] F. Kutscher-Puis, « Les enseignements allemands sur le déséquilibre significatif en droit des contrats commerciaux », *Contr. conc. consomm*. N°6, juin 2015, étude 7, n°1.

[130] *Droit du contrat*, Lamy, coll. « civ. et pén. », 2007, n° 255-28.

[131] T. com. Lille, 6 janv. 2010, n°2009/05184, Castorama, RG *n° 2009-05184.*

[132] CA Paris 11 sept. 2013, n° 11/17941, Eurauchan.

distinction "consumer / professional" makes it a suitable weapon for the eradication of the dictatorship between the parties. It encourages the globalization of the fight against the contractual imbalance. It encourages the globalization of the fight against the contractual imbalance.

The significant imbalance encompasses various forms of abuse between the parties[133]. This scope stems from the fact that the significant imbalance falls within the category of legal standards[134], just as "public order and good morals, good faith, the good father, the best interests of the child, partners "[135]. This global and unique vision avoids brutality in trade negotiations. Otherwise, they could result in a direct discussion of prices, with no possibility of obtaining real services or revealing a totally unbalanced balance of power between the parties[136]. The fact that Cameroon's law of 21 December 2015 has obscured this notion complicates the unified view of unbalanced situations and the treatment of the peculiarities which remain in each type of situation.

3.2.2 The inadequacies in the treatment of the peculiarities of the imbalance

The causes of imbalance are not fixed. They are dynamic and situation-specific. The classical approach advocates classifying these situations according to whether they involve the consumer or the professionals among themselves. Perhaps it is not its material competence, but the Cameroonian law of December 21, 2015 has devoted so many provisions to the consumer, that one is entitled to reproach him for its vagueness on the clauses imposing the imbalance to this contractor (at). Similarly, this text remains silent on the conditions of imbalance prejudicing the professional (b).

a. The vagueness of the clauses imposing the imbalance on the consumer

Cameroon law is vague on the contractual clauses generating imbalance. It is characterized by either a reduced perimeter, either by very broad formulas. Article 5 of the Framework Law of May 6, 2011 concerning consumer protection is characterized by the general formulas[137]. While the law of 21

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[133] CEPC (Commission d'examen des pratiques commerciales en France), *Les abus dans les relations commerciales*, avis mis à jour le 10 juillet 2010.

[134] J.-L. Bergel, « Avant-Propos », *Les standards dans les divers systèmes juridiques*, Rev. rech. jur. dr. prosp.1988-4, Cahiers de méthodologie juridique n° 3, dossier, p. 806.

[135] C.-M. Peglion-Zika, *La notion de clause abusive, au sens de l'article L. 132-1 du Code de la consommation*, Ph.D, Univ. Paris Panthéon-Assas, p. 231 à 232.

[136] M.-D. Hagelsteen, «La réforme de la négociabilité des conditions générales de vente et des prix : pourquoi et comment ?», *Revue juridique de l'économie publique*, N° 660, janvier 2009, p. 5.

[137] Article 5 (1) of the Framework Law on Consumer protection of May 6, 2011: "Contractual clauses which: exempt, exclude, reduce or limit the liability of suppliers or services for defects, deficiencies or Inequalities of all kinds in the technology, the good provided or the service rendered; Imply the loss or restriction of the rights and freedoms guaranteed to the consumer; Create unfair, unreasonable, unfair, repressive or unwarranted contractual terms or conditions that

December 2015 is illustrated by such punctilious provisions that their effectiveness is reduced. Articles 81 (d) and 84 (2) refer only to the unilateral amendment of delivery or performance periods[138] and to the unilateral right of termination of the consumer[139]. Uncertainties remain on all other aspects of unbalanced situations imposed on the consumer. In a case La Société Nouvelle d'Assurances du Cameroun v/ Nganso Robert Guy, The Appeals Judge acted in favor of a waiver clause in the event of the insured being robbed, who had surprisingly taken out a policy covering the disappearance or deterioration of the vehicle, A robbery committed or threatened with bodily injury[140].

Two basic types of clauses are evaded: clauses on reciprocity and unilateral powers of the professional. A comparative study shows that the French consumer Code made these requirements, a crucial point for the preservation of consumer rights. On reciprocity, this code forbids the professional from encroaching consumer rights without counterpart[141]. Regarding the unilateral powers of the professional French law addresses any unilateral modification of the essential clauses[142] and the modification of certain clauses without notice of reasonable duration[143]. Failing to carry out an inventory of the imbalance clauses to the detriment of the consumer, the Cameroonian legislator could entrust this task to a national body or commission[144]. The work of this committee would benefit from a legislative validation followed by a procedure of legal promulgation to the effect of making them sensitive to all. The same idea could be applied to inter-professional relations in which the legislator is silent.

b. Silence on the conditions of imbalance between professionals

Situations of imbalance between professionals seem so numerous that they could apprehend all of a sudden. But globalizing these situations under the significant imbalance coat, unifying conditions imbalance between professionals

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return to the consumer's responsibility for defects, deficiencies or inequalities not immediately apparent; Impose a unilateral arbitration clause ".

[138] Article 81 (d) of the Law of December 21, 2015: "Any misleading commercial advertising shall be deemed to be misleading commercial advertising, in particular that which unilaterally alters the time of delivery of a product or the period of performance of a service ".

[139] Article 84 (2) of the Law of December 21, 2015: "In order to determine whether a practice involves harassment, coercion or undue influence, the following factors shall be taken into account: ... any non-contractual or disproportionate obstacles imposed by the trader when the consumer wishes to assert his contractual rights, and in particular the right to terminate the contract or to change the product or supplier ".

[140] CA Littoral, Arrêt n°106/C, SNAC c/ Nganso Robert Guy, 16 fév. 2007, *Juridis Périodique*, N° 98, avril-mai-juin 2014, p. 21.

[141] Article L. 132-1 of the French Consumer Code.

[142] Article R. 132-1 of the French Consumer Code.

[143] Article R. 132-2 c. of the French Consumer Code.

[144] En France par exemple, la Commission des clauses abusives examine les modèles de conventions habituellement proposés par les professionnels et recommande la suppression ou la modification des clauses qui ont pour objet ou pour effet de créer, au détriment du non-professionnel ou du consommateur, un déséquilibre significatif entre les droits et obligations des parties au contrat, http://www.clauses-abusives.fr/.

can be identified. Thanks to the significant imbalance, the consumer is protected through professional[145]. The conditions of the imbalance, which Cameroonian law of December 21, 2015 should elucidate, are those that cause a significant disparity between the obligations of professionals. The experience of Article L 132-1 of the French consumer Code allows us to identify three types of conditions. The first is that professionals must be involved in a continuous and lasting relationship. The unbalanced relationship is not instantaneous like that engages the consumer. The second condition is the submission, or attempted submission of the weak professional. It is the will of the author of the imbalance that is judged by the judge, not the result of his action[146], it does not matter in the end whether there is disproportion or not of the respective obligations of the contracting parties. The submission in question "does not identify with an irresistible constraint"[147]. It refers to a situation at the end of which a registered professional or attempts to enter clauses likely to create an imbalance in his favor. The third condition concerns the lack of reciprocity and the disproportion between the obligations of the parties[148].

To go further in the protection, measures must be taken to eradicate the fear of victims to go to court. Two mechanisms can be put in place. One is to make a third party may denounce the unbalanced situations[149]. The other is to avoid fanciful qualifications of the significant imbalance, for an overall assessment of the contract[150], not an isolated consideration of the clauses, as is the case with unfair terms. French judges reminded that the appreciation of the significant imbalance is made in light of all the clauses of the contract[151], as it can be demonstrated that other clauses restore the balance that was lacking in a specific clause[152].

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[145] « L'adoption d'une notion commune avec le droit de la consommation traduit une unité fondamentale de la relation fournisseur - distributeur - consommateur. L'idée est que si l'on maltraite le fournisseur ou le distributeur, le consommateur est également victime », M. Malaurie-Vignal, *Le nouvel article L. 442-6 du Code de commerce apporte-t-il de nouvelles limites à la négociation contractuelle ?*, Revue Contrats Concurrence Consommation, n°11, Novembre 2008, page 8, note 9.

[146] En réalité, la preuve serait difficile à rapporter. C'est notamment pour cette raison que l'abus de puissance économique a été remplacé en droit français par le déséquilibre significatif. V. M. Behar-Touchais, *Première sanction du déséquilibre significatif dans les contrats entre professionnels : l'article L. 442 – 6, I, 2° du code de commerce va-t-il devenir une machine à hacher le droit ?*, Revue Lamy de la concurrence avril/juin 2010 ; S. Le Gac-Pech, *L'établissement des relations de distribution : entre classicisme et modernité*, Revue Contrats Concurrence Consommation n° 11, Novembre 2009, étude 12.

[147] CA Paris, 29 octobre 2014, n° 13/11059, D. 2015, 943, obs. D. Ferrier.

[148] Ibid.

[149] "A reform of the negotiating philosophy has taken place, and the Minister of the Economy in France has replaced since the LME vote even more widely than before the suppliers who are afraid of dereferencing to take legal action" (L. Attuel-Mendes et J.-F. Notebaert, *op. cit.*, p. 275).

[150] G. Chantepie, « Le déséquilibre significatif au miroir de la Cour de cassation », *AJCA*, 2015, p. 218.

[151] Cass. com, 3 mars 2015, n° 13-27.525, Eurauchan c/ Ministre, D. actualité, 2016, n. L. Constantin, http://www.dalloz-actualite.fr ; Cass. com, 3 mars 2015, n° 14-10.907, Provera c/ Ministre, ibid.

[152] Cass. com, 27 mai 2015, n° 14-11.387, Galec c/ Ministre, Juris-Data n° 2015-012555 ; TC Paris, 7 mai 2015, n° 2015000040, Ministre c/ Expédia, *www.legalis.net/spip.php?page=jurisprudence-*

4. Conclusion

In the classical theory of the contract, the contractual balance was the result of negotiations which led to a convergence between the opposing views of the parties. It emerged from the consent of the contracting parties[153]. But "such a vision takes for real virtual tie because the contractors rarely have the same impregnation of the object of the contract"[154]. After the effervescence which accompanied the individualist philosophy advocated by the principle of the autonomy of the will, the inequality of the contracting parties gave rise to a doctrinal current which sought contractual justice outside the parties[155]. In the presence of a vulnerable contractor, the principle of the autonomy of the will must give way to the imperative of the contractual balance[156]. The previous developments have shown that, despite certain shortcomings inherent in the contractual relationship, Law No. 2015/118 of 21 December 2015 governing commercial activity in Cameroon introduces preventive and curative measures against the imbalance in the contractual process, with less regard as to whether they are consumers or professionals. According to Denis Mazeaud, "Contractual inequality and injustice, the source and effect of abusive clauses, must constitute the criteria for the application of protection and not merely the abstract label of a consumer or a professional"[157] . Regardless of the status of professional, it is necessary to assess "the particular situation of the parties, their power relations and their reciprocal obligations". The revolt of the Cameroonian legislation against the imbalance wanted by the strong contractors is engaged. The internal legislator will have to deploy its arsenal towards the treatment of the balance of power between the parties and to break the distinction between consumer and professional in the fight against the exploitation of contractual weakness.

decision&id_article=4629 ; CA Paris, 1er oct. 2014, n° 13/16336, spéc. M. Behar-Touchais, « Le mythe de Sisyphe, revu et corrigé par le déséquilibre significatif », op. cit., p. 67.

[153] Gh. de Monteynard, « La recherche d'un équilibre contractuel au travers de la jurisprudence de la Chambre commerciale de la Cour de cassation », *Etudes sur le thème de la protection des personnes*, Rapport 2000 ,https://www.courdecassation.fr/publications_26/rapport_annuel_36/rapport_2000_98/deuxieme_partie_tudes_documents_100/tudes_theme_protection_personne_102/contractuel_travers_5860.html.

[154] A. A. Ngwanza, « L'équilibre contractuel dans l'avant-projet d'Acte uniforme sur le droit des contrats », op. cit, p. 497.

[155] E.-M. Charpentier, L'équilibre des prestations : une condition de reconnaissance de la force obligatoire ?, thèse, Université Mc Gill, 2011, p.8.

[156] L. Fin-Langer, *L'équilibre contractuel*, coll. « Bibliothèque de droit privé », t. 366, Paris, L.G.D.J., 2002, p. 131-142.

[157] D. Mazeaud, « Validité des clauses abusives entre professionnels », *D.*, 1995, p. 95.

Bibliography

Works

1. Boucher de Perthes (J.), De la Création, t. 3, 1838-41, p. 61.
2. Carbonnier (J.), Flexible droit, LGDJ. 7ème éd. 1992, 422 p.
3. Guardini (R.), Le Seigneur, t. I, éd. ALSATIA 1962, 350 pages + 288 pages, méditations sur la personne et la vie de Jésus-Christ, traduit par R. P. LORSON S. J.
4. Ripert (G.), La règle morale dans les obligations civiles, LGDJ. 4ème éd. 1949, 429 p.
5. Rochfeld (J.), Les grandes notions du droit privé, Thémis droit, Puf, 2ème éd. 2013, 562 p.
6. Terré, Simler et Lequette, Droit civil. Les obligations, 5ème éd. Précis Dalloz, n°103.

Collective works, reports and symposia

1. Charié (J.-P.), Rapport fait au nom de la commission des affaires économiques, de l'environnement et du territoire sur le projet de loi de modernisation de l'économie, Assemblée nationale, XIIIe législature, n° 908, 22 mai 2008, http://www.assemblee-nationale.fr/13/pdf/rapports/r0908.pdf, 803 p.
2. Ghestin (J.) et Fontaine(M.), (dir.), La protection de la partie faible dans les rapports contractuels. Comparaison franco-belges, Paris, L.G.D.J., 1996, 676 p.
3. Lardeux (G.), (dir.), L'efficacité du contrat, Dalloz, 2011, 95 p.
4. Ouerdane-Aubert de Vincelle (C.), Altération du consentement et efficacité des sanctions contractuelles, Paris, Dalloz, 2002, 570 p.
5. *Zenati-Castaing (F.) et Revet (Th.), Cours de droit civil. Contrats. Théorie générale – Quasi-contrats, PUF, 2014, 484 p.*

Theses

1. Charpentier (E.M.), L'équilibre des prestations : une condition de reconnaissance de la force obligatoire ?, thèse, Université Mc Gill, 2011, 395 p.
2. Fabre-Magnan (M.), De l'obligation d'information dans les contrats, Essai d'une théorie, LGDJ. 1992, 596 p.
3. Fin-Langer (L.), L'équilibre contractuel, coll. « Bibliothèque de droit privé », t. 366, Paris, L.G.D.J., 2002, 644 p.
4. Grac (S.), Les relations juridiques entre franchiseur et franchisé : coopération et conflit, thèse de doctorat, Université de Nice – Sophia Antipolis, 1999, note 25, 286 p.
5. Jacquemin (H.), Le formalisme contractuel : mécanisme de protection de la partie faible, thèse, Larcier, 2010, 592 p.
6. Jaluzot (B.), La bonne foi dans les contrats, Etude comparative de droit français, allemand et japonais, th., Lyon 3, Dalloz, 2001, n°28, 605 p.
7. Moutil (F.), La théorie générale du contrat à l'aune de la justice contractuelle, th. Univ. Douala, 2015, 399 p.
8. Peglion-Zika (C.-M.), La notion de clause abusive, au sens de l'article L. 132-1 du Code de la consommation, thèse, Univ. Paris Panthéon-Assas, 485 p.
9. Stoffel-Munck (Ph.), L'abus dans le contrat – Essai d'une théorie, LGDJ, coll. Bibliothèque de droit privé, t. 337, 2000, 651 p.
10. Sunkam Kamdem (A.), La transparence des opérations bancaires et financières dans la CEMAC, thèse, Univ. Douala, 2014, 435 p.

11. Tabi Tabi (Gh.), Les nouveaux instruments de gestion du processus contractuel, thèse, Univ. Laval, 2011, 422 p.

Articles

1. Attuel-Mendes (L.) et Notebaert (J.-F.), « Les pratiques de négociation à l'épreuve du droit », Management et Avenir, 2011/4 (n°44), p. 273-288.
2. Behar-Touchais (M.), Le mythe de Sisyphe, revu et corrigé par le déséquilibre significatif, Rev. des contrats, trim. mars 2015, p. 67 à 69.
3. Behar-Touchais (M.), Première sanction du déséquilibre significatif dans les contrats entre professionnels : l'article L. 442 – 6, I, 2° du code de commerce va-t-il devenir une machine à hacher le droit ?, Revue Lamy de la concurrence avril/juin 2010.
4. Bergel (J.-L.), « Avant-Propos », Les standards dans les divers systèmes juridiques, Rev. rech. jur. dr. prosp.1988-4, Cahiers de méthodologie juridique n° 3, dossier, p. 806.
5. Chagny (M.), L'essor jurisprudentiel de la règle sur le déséquilibre significatif cinq ans après ?, RTD com. 2013, p. 500
6. Chantepie (G.), Le déséquilibre significatif au miroir de la Cour de cassation, AJCA, 2015, p. 218.
7. Chauchis (D.), La protection de l'acquéreur d'un bien dans le droit interne de la vente, Bull. info. Nov. 2010, p. 6-21.
8. Chazal (J.-P.), « Les nouveaux devoirs des contractants : est-on allé trop loin ? », La nouvelle crise du contrat. Actes du colloque du 14 mai 2001, organisé par le centre René Demogue de l'Université de Lille II (Broché), Chr. Jamin, Collectif, D. Mazeaud (dir.), 2003, p. 99 et s., http://www.sciencespo.fr/ecolededroit/sites/sciencespo.fr.ecolededroit/files/chazal_les_devoirs_contractuels.pdf.
9. De Monteynard (Gh.), « La recherche d'un équilibre contractuel au travers de la jurisprudence de la Chambre commerciale de la Cour de cassation », Etudes sur le thème de la protection des personnes, Rapport 2000, https://www.courdecassation.fr/publications_26/rapport_annuel_36/rapport_2000_98/deuxieme_partie_tudes_documents_100/tudes_theme_protection_personne_102/contractuel_travers_5860.html.
10. E. Brousseau, « Confiance ou Contrat, Confiance et Contrat », in F. Aubert & J.-P. Sylvestre, Confiance et Rationalité, INRA Edition, 2000, http://brousseau.info/pdf/EBConfINRA.pdf.
11. Hagelsteen (M.-D.), La réforme de la négociabilité des conditions générales de vente et des prix : pourquoi et comment ?, Revue juridique de l'économie publique, n° 660, janvier 2009, http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000079.pdf.
12. Huet (J.), Vente, – Garantie légale contre les vices cachés – Clauses relatives à la garantie, JCl. Commercial, Fasc. 60.
13. Issa-Sayegh (J.), La liberté contractuelle dans le droit des sûretés OHADA, Penant, n°851, avril-juin 2005, p. 150- 173
14. Kutscher-Puis (F.), Les enseignements allemands sur le déséquilibre significatif en droit des contrats commerciaux, Contr. conc. consomm. N°6, juin 2015, étude 7, n°1.
15. Laznef (N.), Le déséquilibre significatif dans les contrats d'affaires : cinq ans après. Bilan de l'application judiciaire de l'article L. 442-6, I, 2 du code de commerce, RCL 2553, n°39, avril-juin 2014, p.171-177.

16. Le Gac-Pech (S.), L'établissement des relations de distribution : entre classicisme et modernité, Revue Contrats Concurrence Consommation n° 11, Novembre 2009, étude 12, p. 10- 19.
17. Lefebvre (B.), « La bonne foi : notion protéiforme», (1996) 26 R.D.U.S. p.321-354.
18. Malaurie-Vignal (M.), Le nouvel article L. 442-6 du Code de commerce apporte-t-il de nouvelles limites à la négociation contractuelle ?, Revue Contrats Concurrence Consommation, n°11, Novembre 2008, page 8, note 9.
19. Mrabet (Z.), Les comportements opportunistes du franchiseur : étude du droit civil et du droit international uniforme, (2007) 41 R.J.T, p. 429 -492.
20. Naccarato (M.), Partie I : la juridicité de la confiance dans le contexte des contrats de services de conseils financiers et de gestion de portefeuille, Revue générale de droit, vol. 39, n° 2, 2009, p. 457-521.
21. Nemeudeu (R.), L'affaire « Commission des marchés financiers (CMF) c/ Edouard Etonde Ekoto, François Ekam-Dick, Lamine Mbassa » ou l'urgente maîtrise des exigences du mécanise du marché financier camerounais, Juris Périodique, n°85, janv.-fév.-mars 2011, p. 51 et 58.
22. Ngwanza (A. A.), « L'équilibre contractuel dans l'avant-projet d'Acte uniforme sur le droit des contrats », Actes du Colloque sur l'harmonisation du droit OHADA des contrats, Ouagadougou 2007, Unif. L. Rev. 2008, p. 497-501.
23. Raymond (G.), De la valeur du formalisme exigé par les articles L. 341-2 et L. 341-3 du Code de la consommation, Contrats Concurrence Consommation n° 5, Mai 2013, comm. p. 124 et s.
24. Raymond (G.), Ventes ou prestations de services au consommateur, JCl. Commercial, 2005, Fasc.914.
25. Rouhette (G.), « Droit de la consommation et théorie générale du contrat », in Mélanges, Etudes offertes à René Rodière, Dalloz, 1981, 247 à 272.
26. Sauvé (J-M.), La sanction : regards croisés du Conseil d'État et de la Cour de cassation, Intervention lors du colloque « La sanction: regards croisés du Conseil d'État et de la Cour de cassation », 13 décembre 2013, http://www.conseil-etat.fr/Actualites/Discours-Interventions/La-sanction-regards-croises-du-Conseil-d-Etat-et-de-la-Cour-de-cassation.
27. Simon (É.), « La confiance dans tous ses états », Revue française de gestion, 2007/6 (n° 175), p. 83 à 94.
28. Tsomevou (R. G.), Retour sur le rétablissement de l'équilibre dans le contrat d'assurance. L'état d'une inertie du juge face à des clauses disproportionnées de délimitation de risque de garantie, Juris Périodique, n°98, avril-mai-juin 2014, p. 22-32.