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The Role of the Directorate of Commerce in Consumer Protection

Dr. Ayoub Toumi Lahreche [1]
Laboratory of Law and Political Sciences
Amar Telidji University, Laghouat, Algeria
a.lahreche@lagh-univ.dz
Prof. Oumelkheir Goug [2]
Laboratory of Law and Political Sciences
Amar Telidji University, Laghouat, Algeria
o.goug@lagh-univ.dz
Dr. Mohammed Ghouireg [3]
Laboratory of Economic Sciences and Management
Amar Telidji University, Laghouat, Algeria
med.ghouireg@lagh-univ.dz

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Abstract:

This study has enabled us to identify the multiple diverse competences vested in the Wilaya Directorate of Commerce. On the one hand, it monitors the purely commercial practices undertaken by producers; on the other hand, it oversees practices related to the quality and characteristics of products. Collectively, these interventions aim to provide the best possible protection for consumers against the risk of harm from defective products.

Keywords: consumer; Directorate of Commerce; protection.

Introduction:

The economic liberalisation that Algeria began implementing in the late 1980s prompted it to encourage industrial production and open the field to investors, with the goal of building a national industry and achieving self-sufficiency. This, however, generated a form of production characterised by quantity rather than quality, in which consumer safety requirements were often absent. For this reason, the Algerian legislature intervened after observing the multiplicity of risks and the increase in harm.

The Algerian legislature, drawing inspiration from numerous comparative laws, foremost French law, sought to surround the consumer with a strict legal framework that protects his or her rights and shields him or her from all potential risks. In implementing this approach, the legislature relied on a set of legal mechanisms to ensure the attainment of the desired protection in the required manner.

ISSN: 1581-5374 E-ISSN: 1855-363X
VOL. 23 , NO. 11(2025)

The issue raised at this point, however, concerns the extent to which these mechanisms or legal means are adequate for achieving the intended consumer protection.

This issue may be addressed within the framework of the following sections:

Section One: The powers of the Directorate of Commerce within the framework of quality control and fraud suppression.

Section Two: The powers of the Directorate of Commerce within the framework of monitoring commercial practices.

Section One: Powers of the Directorate of Commerce within the Framework of Quality Control and Fraud Suppression:

The powers that may be exercised by inspection officers of the Wilaya Directorate of Commerce include the following: the inspection of defective products; their withdrawal, seizure, and redirection of their destination; and, finally, the destruction of seized products.

Subsection One: Inspection and Withdrawal of Defective Products

This subsection examines the Directorate of Commerce's powers within the framework of quality control and fraud suppression, as they relate to the inspection and withdrawal of defective products from the market.

Branch One: Inspection of Products:

To ensure product safety, officers of the Wilaya Directorate of Commerce conduct inspections. The methods of inspection vary according to the nature of the product and the surrounding circumstances. Accordingly, a distinction is made between two types of inspection: general inspection and in-depth inspection.

First: General Inspection:

This begins with the examination of the file documents submitted to the Directorate of Commerce, by hearing the concerned producers, or through direct observation with the naked eye and the conduct of apparent tests using measuring instruments. On this basis, inspection officers verify the extent to which the product complies with legal and regulatory specifications; the conditions governing its use, transport, and storage; its conformity with labelling requirements; and the absence of any damage or contamination that may cause harm to the consumer.[1] If inspection officers observe any violation, they draw up a report containing the data specified in Article 6 of Executive Decree No. 90/39 on quality control and fraud suppression.[2] General inspection often fails to reveal

[1] Habibah Kalem, *Himayat al-Mustahlik*, master's thesis (Uqud wa-Masuliyyah), Faculty of Law, Ben Aknoun, Algiers, 2005, 63.
[2] Algeria. *Executive Decree No. 90/39 of 30 January 1990 on Quality Control and Fraud Suppression*. *Official Gazette of the People's Democratic Republic of Algeria* (J.R.A.), no. 5, 19 September 1990.

ISSN: 1581-5374 E-ISSN: 1855-363X
VOL. 23 , NO. 11(2025)

a product's hidden characteristics; for this reason, the legislator provided for another, more precise type of inspection: in-depth inspection.

Second: In-depth inspection:

If the general inspection does not verify the product's safety, inspection officers resort to an in-depth inspection, which involves taking product samples and analysing them.[3]

1. Sampling: Article 39 of Law No. 09/03 provides that samples are taken for the purpose of conducting analyses, tests, or experiments.[4] Accordingly, sampling may involve a single sample if the product is perishable or if its weight, dimensions, and value are small. Sampling may also consist of three samples: the first is delivered to the laboratory for analysis and for the conduct of experiments and tests; the inspection service retains the second; and the concerned producer retains the third.[5] In this case, the three samples must be homogeneous and representative of the quantity inspected. A seal is affixed to each sample in accordance with Article 12 of Executive Decree No. 90/39 to prevent fraud and tampering prior to sealing. The officer then immediately draws a report upon taking the samples, indicating either the value of the samples as declared by the holder of the goods or the value as assessed by the competent administrative authority.

2. Analysis of Samples: The samples taken are analysed in laboratories accredited by the State at the expense of the budget of the ministry responsible for quality, pursuant to Article 29 of Executive Decree No. 02/68 of 26 February 2002, which sets out the conditions for opening quality-analysis laboratories and accrediting them.[6] In addition, Article 18 of Executive Decree No. 90/39 related to quality control and fraud suppression.

The samples taken were analysed in accordance with methods of analysis and experimentation that conform to Algerian standards. Where no Algerian methods exist for analysing a product, the law requires laboratories to adopt internationally recognised methods.

After the laboratory has completed its tasks, it prepares reports on the results of the analyses it has carried out, records all investigations concerning the product’s conformity or nonconformity, states the references for the method used, and then sends the report to the body that took the sample.

Officers act in accordance with the results of the analyses. If the product is proven to be free of risk, the concerned producer benefits from a reduction granted by the Directorate of Taxes. If the

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[3] Muhammad Boudali, *Sharh Jaraiim al-Ghishsh fi Bay al-Sila wa-l-Tadlis fi al-Mawadd al-Ghidhaiyyah wa-l-Tibbiyyah (Dirasah Muqaranah)* (Egypt: Dar al-Fajr li-l-Nashr wa-l-Tawzi, 2005), 84.
[4] Algeria. *Law No. 09/03 of 25 February 2009 on Consumer Protection and Fraud Suppression*. *Official Gazette of the People’s Democratic Republic of Algeria* (J.R.A.), no. 15, 8 March 2009.
[5] Lumayya Lajal, *Al-Himayah al-Fardiyyah wa-l-Jamaiyyah li-l-Mustahlik*, master’s thesis (Business Law), Faculty of Law, Ben Aknoun, Algiers, 2002, 116.
[6] Algeria. *Executive Decree No. 02/68 of 26 February 2002 on the Conditions for Opening and Accrediting Quality-Analysis Laboratories*. *Official Gazette of the People’s Democratic Republic of Algeria* (J.R.A.), no. 11, 13 February 2002
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ISSN: 1581-5374 E-ISSN: 1855-363X
VOL. 23 , NO. 11(2025)

contrary is established, the product is withdrawn from circulation if it has been placed on the market, or a decision refusing entry is issued if the product is at the border. In that case, the producer chooses between bringing the product into conformity, changing its destination, re-exporting it, rerouting it, or destroying it, in coordination with the supervisory administration.[7]

Branch Two: Withdrawal of Defective Products:

Where a product is found not to conform to the applicable legal specifications, authorised officers withdraw it from the market. Such withdrawal may be either temporary or final.

First: Temporary Withdrawal:

The Algerian legislature defined the purpose of the temporary withdrawal measure in Article 24 of Executive Decree No. 90/39 as preventing the holder of the product or a specific service provider from disposing of that product. Accordingly, temporary withdrawal is intended to prevent a particular product from being circulated on the market once nonconformity with legal specifications is suspected, on the basis solely of general inspection, until the results of the in-depth analysis establish whether it is compliant.

The temporary withdrawal measure may be lifted in two cases:

1. The examinations are not carried out within the period prescribed by law.

2. where nonconformity of the product is not established.[8]

If the product is shown to conform to the specifications, the producer is compensated for the value of the sample used in the analysis on the basis of the value recorded in the sampling report. If the contrary is shown, the officers serve the producer with a formal notice requiring the producer to take measures to bring the product into conformity and to remove the cause of nonconformity. If it proves impossible to bring the product into conformity and it remains fit for consumption despite its nonconformance and poses no danger to the consumer, the inspection officers change its intended destination. If it is established that conformity with the specifications is impossible, the product is seized, the public prosecutor is immediately notified, and the producer is compelled to pay the costs of the tests or experiments.

Second: Final withdrawal:

Inspection officers resort to final withdrawal when noncompliance with the applicable specifications is confirmed or when the dangerous nature of a product placed into circulation is established.[9]

[7] Muhammad Boudali, cited above, 86.
[8] Lumayya Lajal, cited above, 118.
[9] Muhammad Boudali, cited above, 87.

ISSN: 1581-5374 E-ISSN: 1855-363X
VOL. 23 , NO. 11(2025)

Final withdrawal may be carried out without authorisation from the competent judicial authority in the following cases:

1. Products proven to be counterfeit, adulterated, toxic, or whose expiration date has passed.

2. Products proven to be unfit for consumption.

3. Imitation products.

4. Objects or devices used to carry out counterfeiting.

With reference to Law No. 09/03, in both temporary and final withdrawal cases, officers draw up reports and seal the suspected products, which are placed under the custody of the concerned producer.[10]

Subsection Two: Seizure of Defective Products and the Change in Their Intended Destination or Their Destruction:

This subsection addresses the powers of the Directorate of Commerce within the framework of quality control and fraud suppression, as they relate to the seizure of defective products, changes in their intended destination, or their destruction on the market.

Branch One: Seizure of Defective Products:

A seizure consists of removing a product acknowledged to be noncompliant from the possession of its holder. It is carried out only with judicial authorisation; however, inspection officers may seize products without judicial authorisation in the following cases:

- Counterfeiting.
- Products acknowledged to be unfit for consumption, except for products in which the officer cannot determine unfitness without subsequent analyses.
- Products acknowledged to be noncompliant with the approved standards, legal specifications, and technical regulations pose a risk to consumer health and safety.
- The impossibility of bringing the product into the required conformity or the impossibility of changing its intended destination.
- The refusal of the product holder to bring it into conformity or to change its intended destination.[11]

From the foregoing, it is clear that seizure is intended to protect the consumer by removing a noncompliant product from its holder. The difficulty arises, however, in distinguishing between withdrawal and seizure, particularly since the definition of seizure has been formulated using the term "withdrawal". Seizures differ from withdrawals in that the former is undertaken only upon actual confirmation of the product's noncompliance with specifications. In contrast, the latter is

[10] Algeria, *Law No. 09/03*, arts. 61–62.
[11] Algeria, *Executive Decree No. 90/39*, art. 27, paras. 1 and 4.

ISSN: 1581-5374 E-ISSN: 1855-363X
VOL. 23 , NO. 11(2025)

imposed merely upon suspicion of noncompliance. For this reason, a seizure typically follows withdrawal rather than preceding it.

Branch Two: Changes in a Product's Intended Destination:

A change in a product's intended destination means either sending withdrawn products at the producer's expense to an entity that uses them for a lawful purpose, whether directly or through reprocessing, or returning the withdrawn products to the entity responsible for their packaging, production, or importation, with the costs borne by the product's owner.

Article 63 of Law No. 09/03 on consumer protection and fraud suppression states that "if the product is fit for consumption, it shall be directed, as the case may be, to a centre of public benefit". Accordingly, if the product remains fit for consumption despite its noncompliance with legal specifications and poses no danger to consumers, inspection officers change its intended destination and deliver it to a public institution that may benefit from it, such as hospitals or prisons.

Branch Three: Destruction of Seized Products:

If a product appears to be no longer fit for use, it is destroyed. Inspection officers draw a report recording the destruction process and then sign it together with the concerned producer.

The decision to destroy is made either by the Wilaya Directorate of Commerce, as the administration charged with consumer protection and fraud suppression, or by the competent judicial authority. The producer performs destruction in the presence of inspection officers. This measure is regarded as the final resort to which the supervisory administration turns when it is impossible to identify an appropriate lawful or economic use for these products.[12]

When the Algerian legislature provides for destruction and designates it as the final solution after all methods of remedying the product have been exhausted, the intention is, on the one hand, to protect the consumer from purchasing a product that may harm his or her health and compromise safety and, on the other hand, to allow the producer to find a solution before being compelled to destroy the product.

Section Two: Powers of the Directorate of Commerce within the Framework of Monitoring Commercial Practices:

Law No. 04/02 of 23 June 2004, as amended and supplemented, relating to the conditions governing commercial practices, has defined the powers enabling the Directorate of Commerce to ensure consumer protection through the functions performed by inspection officers.

The measures undertaken within the framework of monitoring commercial practices can be divided into two main categories: financial penalties and precautionary measures.

[12] Muhammad Boudali, cited above, 88–92.

ISSN: 1581-5374 E-ISSN: 1855-363X
VOL. 23 , NO. 11(2025)

Subsection One: Financial Penalties:

The Algerian legislature has adopted a modern approach to penalties for economic offences against consumers, centred on moving away from custodial sentences and relying instead on financial penalties as the basis for punitive deterrence.[13]

Financial penalties take two forms: fines and confiscation. Notably, inspection officers do not have the authority to impose fines on producers or to confiscate their products, as these powers are vested exclusively in the judiciary. Their role is therefore limited to proposing fines or confiscation when they include sufficient evidence in the reports they have drawn up and then proposing the financial penalties they deem appropriate within the limits prescribed by law.

Branch One: Proposal of Financial Fines:

A fine is defined as "the obligation imposed on the convicted person to pay to the State Treasury the amount determined by the judgment". Accordingly, a distinction may be made between two types of fines:[14]

First: Fixed Fine:

This is a specific sum of money determined in the judgment, which the convicted person pays to the State Treasury. This type of fine ordinarily involves a substantial monetary amount. Because the harm caused by such fines may affect other individual or collective interests in a manner that often makes it difficult to assess the damage resulting from the offense, consumer-protection legislation has set both minimum and maximum limits so that the administration may balance the risks and harms arising from the offense against the penalty prescribed for it.[15] Accordingly, the legislator has set the minimum fine for the offence of failing to provide information on prices and tariffs at 5,000.00 DZD. In contrast, the maximum limit is set at 5,000,000.00 DZD for offences affecting the integrity of commercial practices and violations involving abusive commercial practices. For the remaining offences, the acceptable range is from a minimum of 10,000.00 DZD to a maximum of 200,000.00 DZD, as is the case, for example, with offences such as failing to provide information on the conditions of sale, an invoice that is not compliant, unlawful pricing practices, and others. The legislature has thus left inspection officers the latitude to assess the gravity of the violation in light of the danger to consumers.

In view of the practical importance of this penal regime in protecting the consumer, inspection officers should recognise that the power to propose a fine conferred upon them by the legislature is of considerable significance. They must therefore exercise it properly to achieve its intended purpose and to assist the judge in determining a penalty proportionate to the scale of the violation,

[13] Muhammad Ali Sukaykir, *Sharh Himayat al-Mustahlik* (Egypt: Dar al-Jamiiyyin li-l-Tibaah wa-l-Tajlid, 2007), 76.
[14] Abd al-Munim Musa Ibrahim, *Himayat al-Mustahlik (Dirasah Muqaranah)* (Lebanon: Manshurat al-Halabi al-Huquqiyyah, 2007), 294.
[15] Sayyid Abd al-Wahhab Muhammad Mustafa, *Al-Nazariyyah al-Ammah li-Iltizam al-Dawlah bi-Tawid al-Mudarr min al-Jarimah* (Egypt: Dar al-Fikr al-Arabi, 2002), 215.

thereby deterring the offender from causing harm to the consumer's interests or endangering health and safety.[16]

Second: Proportional Fine:

A proportional fine is one whose amount is determined by reference to a particular element, such as the value of the money constituting the subject matter of the offense, the number of goods or their volume, weight, or measurement, or by reference to the harm resulting from the offense, or the benefit obtained by the offender.

The law does not set a fixed amount; instead, the amount is determined by a specific percentage of the offender's financial capacity. Among the examples of this fine is the fine arising from the offense of failure to issue an invoice, which is assessed at 80 percent of the amount the producer failed to invoice, regardless of its value.[17]

Where inspection officers establish the existence of a violation within the framework of commercial practices harmful to the consumer, they draw up a report containing all the information provided for in Article 56 of the aforementioned Law No. 04/02 and then propose a financial fine as a penalty for the violation of the legislation in force. The fine is determined in two ways:

1. Judicial Route: This is the principal route, as is clear from Article 60 of Law No. 04/02, which provides that the provisions of this law fall within the jurisdiction of the judicial authorities. Accordingly, the Wilaya director of commerce sends the report recording the violation to the territorially competent public prosecutor, who has the right to determine the appropriateness of prosecution, as he is the holder of the public action and initiates and conducts it. This is because the law does not expressly recognise any role for the Directorate of Commerce in judicial prosecution. The legislator has, however, permitted the legally authorised representative of the Directorate of Commerce to submit written or oral applications to the judicial body within the framework of judicial proceedings arising from a breach of the aforementioned Law No. 04/02.

2. Amicable Route: This fine is legally termed a settlement fine. This route constitutes an exception to the general rule of judicial settlement. This information is provided in paragraph 2 of Article 60 of Law No. 04/02, which states that reconciliation may be accepted from offending economic operators. Accordingly, for the producer to benefit from the procedures established by the legislature, a set of conditions must be met, including the following: the offender is not a repeat offender; the fine is less than or equal to 1,000,000.00 DZD; and the offender accepts the fine proposed by the inspector. In proposing the fine, the administration takes into account the objectives established by the legislature, including the effectiveness of deterrence and the gravity of the violation and its danger to consumers. Reconciliation brings judicial proceedings to an end.[18]

[16] Ali Muhammad Ali Hamudah, *Al-Himayah al-Jinaiyyah li-l-Tasni al-Ghidhai fi Daw al-Tashriat al-Mutabbaqah* (Egypt: Dar al-Hani li-l-Tibaah wa-l-Nashr, 2003), 97.
[17] Ahmad Muhammad Mahmud Khalaf, *Al-Himayah al-Jinaiyyah li-l-Mustahlik fi al-Qawanin al-Khassah (Dirasah Muqaranah)* (Egypt: Dar al-Maktabah al-Asriyyah li-l-Nashr wa-l-Tawzi, 2008), 544.
[18] Ahsan Bousqia, *Al-Wajiz fi al-Qanun al-Jazai al-Khass* (Algiers: Dar Houma li-l-Tibaah wa-l-Nashr wa-l-Tawzi, 2006), 246.

ISSN: 1581-5374 E-ISSN: 1855-363X
VOL. 23 , NO. 11(2025)

Branch Two: Proposal of Confiscation:

Confiscation is defined as compulsory vesting in the state of seized items connected to the offense, without compensation, from their owner.[19] Referring to Article 44, paragraph 1, of Law No. 04/02, as amended and supplemented, it provides: "In addition to the financial penalty provided for by law, the judge may order the confiscation of the seized goods."[20] As previously indicated, the legally authorised representative of the minister responsible for commerce may submit written or oral applications before the judicial authorities concerning confiscation, even where the administration is not a party to the proceedings, provided that the judicial prosecution arises from a breach of the provisions of Law No. 04/02.

Law No. 04/02 states that confiscated products are delivered to the State Property Administration, which sells them in accordance with the applicable legislation and regulations. In that case, the proceeds from the sale of the products accrue to the public treasury.

Therefore, confiscation is mandatory and is required by public order as a precautionary measure. Its purpose is not merely the imposition of a penalty but rather the removal of a dangerous item from circulation to prevent its harmful effects. For this reason, it is termed rem confiscation, since it is characterised by the dangerous nature of the item confiscated and the necessity of withdrawing it from circulation.[21]

The effectiveness and impact of this legal mechanism depend to a large extent on the significance of the evidence recorded by inspection officers in the reports establishing the violation and on the extent to which that evidence is capable of persuading the judge of the necessity of imposing such an important financial penalty.

Subsection Two: Precautionary Measures

The Algerian legislature did not confine itself to imposing financial penalties to deter producers; it also added a set of precautionary measures to ensure greater consumer protection against the various risks to which consumers may be exposed.

These measures include the following: the seizure of products, the proposal of administrative closure, and the prohibition of carrying out the activity. Each will be set out below.

Branch One: Seizure of Products:

The seizure of products is one of the powers conferred by law on the Wilaya Directorate of Commerce to protect consumers from violations within the framework of commercial practices. Article 39 of Law No. 04/02 states that "the goods constituting the subject matter of the violations

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[19] Ahmad Muhammad Mahmud Khalaf, cited above, 546.
[20] Algeria. *Law No. 04/02 of 23 June 2004 on the Rules Applicable to Commercial Practices*. *Official Gazette of the People's Democratic Republic of Algeria* (J.R.A.), no. 41, 27 June 2004.
[21] Muhammad Ali Sukaykir, cited above, 64.

provided for may be seized". The exercise of this measure, however, is subject to specific conditions set out with the same law. Seizures can take two forms: physical seizures and constructive seizures.

First: Physical Seizure

Article 40, paragraph 1, of Law No. 04/02 provides that physical seizure is any material seizure of goods. Accordingly, inspection officers physically seize all the property constituting the subject matter of violations, determining the value of the seized products on the basis of the violator's sale price or the actual market price. The violator is charged with guarding the seized goods after they have been sealed with red wax. The seized products may also be transferred to the State Property Administration, which stores these materials, which remain under the responsibility of the custodian of seizure until the courts issue a judgment or decision with respect to them. The offending producer bears the costs associated with seizures in this case.

Second: Constructive seizure:

Article 40, paragraph 2, of Law No. 04/02 provides that constructive seizure is any seizure related to goods that the perpetrator of the violation cannot produce for some reason. Constructive seizure, therefore, applies to products that the violator is unable to present to the competent authorities, either because of their large size or because of their nature, which may pose a risk when transported. In this case, the administration conducts a descriptive and quantitative inventory of the goods' identity and their actual value, relying on the sale price applied by the violator as shown on the most recent invoice or the actual market price. The Directorate of Commerce may also seize the equipment and apparatus used to commit the violation, with due regard for the rights of third parties acting in good faith.

Whether a seizure is physical or constructive, if the judge issues a judgment of confiscation, the seized materials accrue to the public treasury. If, however, a decision is issued lifting the seizure, the seized materials are returned to their owner, and the State bears the storage costs.[22]

Branch Two: Proposal of Administrative Closure

Administrative closure means preventing the perpetrator of the act from continuing the activity he or she practised prior to the closure of the premises. Accordingly, from a legal perspective, closure takes several forms: it may be an administrative closure issued by an administrative authority, in which case it is subject to the rules generally applicable to administrative decisions; or it may be a judicial closure ordered by the court.

The Algerian legislature has regarded administrative closure as a precautionary measure imposed on persons who, in the course of practising a profession or an economic or commercial activity, have demonstrated an inability to comply with the rules governing that activity. Closure may be either permanent or temporary.

[22] Ali Boulahyah, "Jihaz al-Riqabah wa-Mahamuhu fi Himayat al-Mustahlik," *Al-Majallah al-Mahalliyyah al-Jazairiyyah li-l-Ulum al-Qanuniyyah wa-l-Iqtisadiyyah wa-l-Siyasiyyah* 1 (2002): 85–86.

Article 46 of Law No. 04/02 authorises territorially competent wali, following a proposal submitted by the Wilaya Director of Commerce, to issue an administrative decision ordering the closure of commercial premises for a specified period or until the situation is regularised, where the matter concerns the absence of the legal documents required to carry out commercial activity. Administrative closure is therefore an effective precautionary measure to put an end to an economic establishment that produces a product posing a risk to consumers and to prevent the situation from worsening and the occurrence of other offences harmful to consumers' health and safety.

Notwithstanding its effectiveness, this measure entails a degree of risk for the economic and social life of producers and consumers alike. For that reason, this power should be further restricted, for example, by requiring the law to guarantee workers' wages, to ensure the payment of creditors' debts, to appoint another administrative body to manage the establishment, and other measures that preserve the continuity of commercial, economic, and social life and its natural equilibrium.

Branch Three: Prohibiting Carrying on the Activity:

The law has considered this a discretionary precautionary measure within the jurisdiction of the judicial authority upon a request from the competent administrative authority. According to Article 47, paragraph 3, of Law No. 04/02, the judge may prohibit the convicted economic operator from carrying out any activity mentioned in Article 2 of the same law, temporarily, for a period not exceeding ten years.[23]

From the foregoing, it is clear that the Algerian legislature has provided for the prohibition from carrying out an activity as a precautionary measure, limited it to a period not exceeding ten years, and made its imposition dependent upon a judicial ruling following a request submitted by the concerned administrative authority.[24]

Conclusion:

In conclusion, we have presented a set of findings, the most important of which are as follows:

- The Wilaya Directorate of Commerce plays an important and indispensable role in remedying shortcomings and confronting the persistent violations to which consumers are subjected.
- The Wilaya Directorate of Commerce is among the legal mechanisms and means established by the Algerian legislature. It aims to realise the public interest, maintain balance in the relationship between the consumer and the producer, and secure better protection for the consumer.

[23] Algeria. *Law No. 04/02 of 23 June 2004 on the Rules Applicable to Commercial Practices*. *Official Gazette of the People's Democratic Republic of Algeria* (J.R.A.), no. 41, 27 June 2004.
[24] Muhammad Boudali, "Tatawwur Harakat Himayat al-Mustahlik," *Majallat al-Ulum al-Qanuniyyah wa-l-Idariyyah* (Special issue, Faculty of Law, University of Sidi Bel Abbes) (Algiers: Maktabat al-Rashad li-l-Tibaah wa-l-Nashr wa-l-Tawzi, 2005), 70–72.

ISSN: 1581-5374 E-ISSN: 1855-363X
VOL. 23 , NO. 11(2025)

On the basis of these findings, we have also reached a set of proposals, the most important of which are as follows:

- We propose that the Algerian legislature further expands the powers of the Wilaya Directorate of Commerce, in view of its effective role in protecting consumers and in putting an end to traders who violate the law.

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