**Abstractivity of Algerian Law : is it affordable ?**

Civil law over the world is broadly divided into two different groups : the first one is what we call Civil law systems, that include continental Europe and its historical settlements, as opposed to the Anglo-saxon type, that has taken its roots in England, then expanded to the Commonwealth countries (USA, Australia, India, etc).

The Civil law system, adopted in Algeria by the civil code of 1975, completed and modified thereafter, uses abstract creteria in order to interprete and solve issues. It has obviously strenghts and weaknesses. Let us be more explicit.

A contract is a binding agreement between two or more « persons », that has legal effects. A contract under Algerian regulation has 3 terms of acceptability : the consent, the cause and the subject.

Some of the authors add the legal ability as a fourth condition, but we do think that it is a part of the consent : an unable person is a person whose consent is obviously alterated (misled, mentally deranged, etc), and that renders the contract void, either on the sole request of the victim or, more major than that, on the request of any interested party (prosecution services notably).

When we say that the contract should have a cause, okay, but what cause ? the inner cause or the apparent cause ? a person might show a will but intended, in fact, something else. Moreover, the cause may easily amalgamate with the consent. Omar concluded a marriage settlement with Sara. We do suppose that he wants to marry

her. He also wants to found a family, have kids with her. In that case is it a consent or a cause ? it is tricky and may be confusing most of the time.

We do think that the cause of the contract is making things more complex and should be abandoned by the Algerian legislator. A contract should have two conditions of validity : the consent and the subject.

The abstract creterion has the advantage of being moral (i). When a judge has to study the behaviour of a contracting party, is it good or bad, does it fulfill the agreed duties or not, he uses some rules, such as the rule of the « diligent and conscientious person ». That rule is not stated expressly as it is in the code (why not one day ?), but it is a general law principle in Algeria stating that one should act for his own good interests and the interests of the community, without excess.

The abstract standard is also a solution against the false appearance and the abuses (ii).

However, and as any system is not perfect, having an objective appoach may grant the judge a huge power, as the behaviour of the parties comes after the rule he follows. The Algerian magistrate proceeds by deduction * : (we should behave like this, then the behaviour was abusive).

Some authors in France are talking recently about the « contractual justice ». But the question is how do we assure it ? is it by applying thinking standards to a dispute, or, rather, by studying the facts ? Actually, by watching things closer, the Civil law system applies a thought police to the behaviours in the society in order to bring out what is or seems to be equitable, fair, nice. But, by doing this, aren't we sometimes sacrifying the will, the individual will, the « real » consent ?

On the other side, anglo-saxon countries have adopted, since centuries, the factual creterion. it is simply the opposite of the first one analyzed above. What should matter and what does matter are the facts, the clauses, the subjective appearance as it seems from the outside. It is a huge regard for the will, and no one, including the

judicial apparatus, will normally interfer with what you want to do, if you stated things correctly, concretly.

It is the opposite of the first approach. Under the Common law, it is an induction. We go from the facts in order to set the rule and the solution of a litigation or a misunderstanding. If you entered into a bad deal, thinking that it would be fruitful for you, then, normally, your claim would not be welcomed because law overthere does not protect what should be done but protect rather what have been done. Authors are qualifying anglo-saxon civil law by a merchants' law.

So this is it : ethics versus will. Social justice or unbounded desires.

What do we want for our sake ?

Even if we notice that both legal systems over the globe are certainly evolving, we do believe that their original identity still hold them together and the chances of mixing the two opposite underlying foundations are currently weak in practice. Chances of going to an adhoc system that could give a true place to the will, without sacryfing ethics and public order. This is one of the challenges for the twenty-first century we are passing through.

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