

The Right of Electronic Consumers to Withdrawal under Algerian Law No. 18-05 on Electronic Commerce

Labidi lazhar^{1*}, Zerguini Radia², Medellel Chaouki³

^{1,2,3}University of El Oued, Algeria; Labidi-lazhar@univ-eloued.dz

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Abstract. The right to withdrawal is one of the most important and newly developed legal guarantees that the legislator has granted to the consumer, who is regarded as the weaker party in the contractual relationship. It is a power exercised by consumers within a predetermined legal timeframe to reconsider the contract that they have concluded. It aims to protect them from all forms of deception and fraud that may occur to them as a result of not seeing the subject of the contract. However, this right cannot be exercised for all contracts as the law has excluded certain contracts from its provisions. Therefore, I tried through this research paper to address the right to withdrawal in some detail.

1. INTRODUCTION

Since the beginning of the last century, the world has witnessed a series of transformations due to the scientific and technological advancements that have affected all aspects of life. This has led to the creation of a new global system, known as e-commerce, that is linked to the use of the internet. With the emergence of this type of commerce, the economic lifestyle of all consumers has changed. They became able to purchase goods, receive services and enter the world of virtual commercial markets without the need to travel. This has resulted in the emergence of new types and forms of contracts that are concluded remotely, namely electronic contracts.

These contracts can pose a set of risks, in which the consumer is often the victim, especially following their widespread use in light of electronic transactions. Consequently, various legislations have provided protective mechanisms and guarantees for electronic consumers. One of the most important of these latter is the right to withdrawal, which was established by the legislator to protect consumers as they are the weaker party in the contractual relationship. This right is an exception to the general rule that the contract is the law of the contracting parties, which stipulates that it cannot be revoked by a single will due to its binding nature. That is to say, the right to withdrawal is a purely voluntary right exercised by the consumer without interference from others and any restriction or condition imposed on it is considered invalid.

Furthermore, this right allows the consumer to safeguard their consent from hasty decisions and encourages careful consideration, by granting him/her a specific timeframe determined by law. During this period of time, consumers can reflect on the contracts that they concluded and decide to withdraw them without needing to provide any reasons or explanations. Various legislations have specified the scope of exercising this right by determining the contracts that fall under its provisions and those that are excluded from it.

We have decided to delve into studying this right and highlighting its formal and substantive conditions in electronic contracting based on the following issue:

To what extent are the controls established by the legislator for using the right to withdrawal effective in protecting consumers and putting an end for any abuse in exercising this right?

To answer this question, we will address in the present paper the legislator's recognition of the consumer's right to withdrawal. In this context we will tackle its definition, its forms, and its regulations by determining the scope in which this right is exercised, along with its timelines, relying on the descriptive and analytical approach that are most suitable for this study. To do so, the following plan was followed:

Chapter One: Recognizing the Consumer's Right to Withdraw from Electronic Contracts.

Chapter Two: Regulations for the Electronic Consumer's Use of the Right to Withdrawal

2. CHAPTER ONE

2.1. Recognizing the Consumer's Right to Withdraw from Electronic Contracts

The legislator has granted consumers the right to withdraw from contracts in order to protect them from hasty decisions when concluding them. This is because the consumer is regarded as the weaker party in the contractual relationship and often lacks the expertise and knowledge necessary to safeguard his/her consent against the means of temptation employed by suppliers to attract consumers. Therefore, it is essential to address the definition of the right to withdrawal in the first section, and its forms in the second section.

2.2. The First Requirement: Definition of the Right to Withdrawal

Various definitions have been proposed regarding the consumer's right to withdraw from contracts. In this requirement, we will discuss the jurisprudential definition of the right to withdraw from contracts in the first section followed by its legal definition in the second section.

2.3. Section One: The Jurisprudential Definition

The jurisprudential trends have differed on establishing a comprehensive definition of the right to withdrawal, as well as on a unified term for it. Some refer to it as the right to withdrawal, while others call it the right of retraction, reconsideration or the right to retreat.

The jurisprudential disagreement on the establishment of a unified definition of this right stems from its status as a newly established right regulated by national legislations and European directives. Thus, some French jurisprudence have posited that it is "the ability or possibility that allows a consumer, who has expressed his/her intention to conclude a contract, to revoke his/her consent and withdraw it or withdraw unilaterally and discretionarily from the contract, thus, the agreement would be cancelled".ⁱ

However, this definition pertains to the right granted to both parties in the contract and does not precisely relate to the right to withdrawal.ⁱⁱ Another perspective in the jurisprudence suggests that it is "the declaration of a counter-will through which the contracting party amends his/her consent, withdraws it and treats it as if it never existed, aiming to negate any effects it had in the past or may have in the future."ⁱⁱⁱ Hence, the right to withdrawal is one of the manifestations of will that the consumer exercises and uses in order to withdraw from concluding the contract.^{iv}

Another opinion sees that it is "the consumer's right to return a product or refuse a service within a certain period specified by law, without providing any justification, while obliging the merchant or service provider to refund its value, with the consumer only bearing the costs of return."^v

2.4. Section Two: Legal Definition

The Algerian legislator had organized the consumer's right to withdrawal through the Law No.18-05 relating to electronic commerce in Article 11, which defined it as "... conditions and deadlines for retraction when necessary...."^{vi} By examining this article, it appears that it includes a set of data and information that the electronic supplier must include in their electronic commercial offer. Through this phrase in the previous article, it is observed that the legislator acknowledged the right to withdrawal but did not provide a definition for it, nor did it clarify the conditions and methods for its exercise by the consumer.^{vii}

The legislator has remedied this matter by issuing Law 18-09^{viii}, where the right of withdrawal is defined in Article 19 as "... the consumer's right to withdraw from purchasing a product without justification."

This text indicates that the legislator has defined the right to withdraw from electronic contracting, even though the recognition of this right is a departure from the principle of the binding force of the contract. Yet, this departure from the traditional rule is considered an exception to the general principle in order to protect the vulnerable consumer who enters a contractual relationship, in which he/she may be exposed to violations by the supplier. This is achieved by granting him/her a period for reflection and reconsideration, provided that this right is not absolute but must, rather, be subject to specific regulations.^{ix}

Some legislations have already stipulated the consumer's right to withdrawal. For instance, the French legislator was a pioneer in organizing the right to withdrawal according to Article 01 of the Law No.21-88 concerning on-distance sales and selling through the telephone. It also issued the Decree No. 741-2001, which affirmed, under the provisions of Article 20-121L^x, the consumer's right to withdraw from electronic contracts in general. This is in addition to imposing a set of procedures and regulations specifically organizing the right to withdrawal for the benefit of the consumer contracting on distance in Article 2-21-121L of the Consumer Law No. 344-2014^{xi}. Moreover, the right to withdrawal is also present in the European Directive No. 97/7/EC concerning the consumer's protection in remote contracts, Article 06, which stipulates that the consumer can exercise the right to withdraw from the contract within a period of 7 working days.^{xii}

The Egyptian legislator has also adopted the same decision as the French legislator regarding the right to withdrawal. It granted the consumer, in Article 08 of the Consumer Protection Law No. 67 of 2006^{xiii}, a period of fourteen days from the date of receiving any product to exchange or return it with a refund. However, it did not leave this matter entirely at the consumer's discretion, but rather tied the exercise of this right to certain conditions and justifications that must be met for the consumer to exercise this right. These conditions include that the product must be defective or not conformed to the specifications or purpose for which the contract was made.

By examining the legal texts that acknowledged the right to withdrawal, we notice that most legislations did not provide a definition for this right, but rather specified the conditions and deadlines governing it. The matter of definition was, in most cases, left for the legal scholars and the judiciary, unlike the Algerian legislator who explicitly defined the right to withdraw from electronic contracts.

2.5. The Second requirement: Forms of the Consumer's Right to Withdrawal

The legislator has attempted to protect the consumer's consent and find means to ensure a genuine expression of consent by recognizing the consumer's right to withdrawal. By examining the previous legislations, it appears that there are two forms of this withdrawal: the first is withdrawal or retraction before concluding the contract, and the second is withdrawal after concluding the contract.

2.6. Section One: Withdrawal from Contracting Before Concluding the Contract

According to the traditional rule regarding the conclusion of contracts, a contract is formed once the two parties exchange the expression of their congruent wills, unless the law requires a specific form for its conclusion. However, the legislator has recognized this form of withdrawal with the aim of postponing the contract's conclusion and granting the consumer the option of withdrawal, even though the will of both parties have agreed to conclude the contract. This implies that the mere meeting of offer and acceptance is not sufficient to establish the contractual bond. Rather, the period specified by the legislator must pass without the consumer exercising his/her right to withdrawal, for the contractual relationship to be established.^{xiv}

This time period gives the consumer an opportunity to reflect and think carefully in order to prevent haste decisions in concluding the contract. In this manner, if the terms agreed-upon align with his/her interests, while he/she does not use his/her right in the designated withdrawal period, the contract would be concluded. However, if the situation was contrary to what he/she expected or desired, he/she can withdraw from the contract. Thus, withdrawal can be a reason for preventing the conclusion of the contract and delaying it.^{xv}

This form was primarily established to alleviate the legislator's burden in violating the principle of the binding force of contracts,

which must be preserved. In this manner, consumers have the right to withdraw from concluding the contract as long as they are still in the phase governed by the principle of freedom of contracting.^{xvi}

This form has faced various criticisms, as it delays the conclusion of the contract during the specified period set by the legislator and is often unnecessary when the consumer has already decided to conclude the contract. Additionally, having the product in the consumer's possession during the reflection period and then retracting from the contract can disrupt economic values and lead to lost opportunities for the other party.^{xvii}

2.7. Section Two: Withdrawal from Contracting After Concluding the Contract

After concluding the contract and receiving the goods, consumers may discover that the product does not meet their needs, or that their expectations were different from reality, or that the information provided about the product was insufficient or misleading. However, general rules do not always grant the consumers contracting through electronic means a right to withdrawal, unless there is a prior agreement between the professional and the consumer. This case rarely happens and is called the withdrawal of agreement.^{xviii}

According to the general rules, once the offer meets acceptance, the contract is formed and valid and neither party can unilaterally cancel or terminate it. When the legislator organized laws for the protection of consumer's contracts, even though they were correctly and validly concluded, it deviated from the principle of the binding force of contracts by granting the consumer the right to withdrawal. The legislations that acknowledged the right to withdrawal have attempted to preserve this principle and mitigate the risks of its violation. However, this does not negate their departure from the traditional principle in contracts, even if it was within the framework of an exception. Yet, it is noted that there is considerable breadth in this exception, which places it in a position of comparison with the general principle, referred to as legislative withdrawal.^{xix}

3. CHAPTER TWO

3.1. Regulations on the Use of the Electronic Consumer's Right to Withdrawal

After researching the concept of the right to withdrawal, we conclude that the recognition of this right is a departure from the general rule. In this perspective, as long as the offer meets acceptance, the contract is valid, enforceable and neither party can unilaterally terminate it based on the principle of the binding force of contracts. By approving this right, the legislator aimed to protect the consumer's satisfaction and maintain a contractual balance between the consumer and the supplier. However, it allocated for the right to withdrawal a set of conditions and regulations to ensure that consumers can benefit from it appropriately. Therefore, we will discuss the deadlines for exercising the right to withdraw from electronic contracting in the first section, then the objective scope of this right in the second section.

3.2. The First Requirement: Deadlines for Exercising the Right to Withdraw from Electronic Contracting

Legislative systems have differed in determining the period available for consumers to exercise their right to withdrawal. In this requirement, we will address the position of European legislations by examining the opinion of the European directives and the French law in the first section, and the position of Arab legislations on the withdrawal period in the second section.

3.3. Section One: The Position of European Legislations

According to the provisions of Article 6-1^{xx} of the previously mentioned law, European directives state that consumers must exercise their right to withdrawal within a period of seven working days. Whereas, article 9 of the European Directive No. 83-2011 specifies this period as fourteen days. This article was issued to replace Article 6-1 of the old European Directive No. 7/97. In accordance with the provisions of Article 9-2 of the European Directive No. 83-2011,^{xxi} the legally determined withdrawal period expires after fourteen days from the day on which the contract was concluded for service contracts. As for sales contracts, the period is calculated starting from the day on which the consumer takes physical possession of the goods. While, in the case of multiple goods, it begins from the day the consumer takes physical possession of the last item.

As for the French consumer law, according to the Decree No. 741-2001, Article 20-121L^{xxii} stipulates that the period for the consumer to exercise his/her right to withdrawal is seven days, without requiring him/her to mention reasons for withdrawing from the contract. The calculation of this period starts from the moment the consumer receives the goods or products, or accepts an offer for providing services^{xxiii}. With the issuance of the Consumer Law No. 344-2014, the French legislator amended this period in Article 21-121L^{xxiv}, extending it to fourteen days during which consumers can exercise their right to withdrawal, instead of the seven days previously approved^{xxv}. Article 1-21-121L^{xxvi} states that if the information regarding the right to withdrawal is declared to the consumer, according to the conditions set out in Article 17-121L, the withdrawal period is extended to twelve months starting from the end of the stipulated period in Article 21-121L. Then the return period ends fourteen days after the consumer receives the information from the supplier.^{xxvii}

3.4. Section Two: The Position of Arab Legislations

In the Tunisian Electronic Exchange and Commerce Law No. 83 of 2000^{xxviii}, it is stated that the consumer has the right to withdraw from the electronic contract within a period of ten days. The starting point for calculating the period stipulated for exercising the right to withdrawal varies depending on the subject of the contract. If the contract concluded by the consumer involves goods and commodities, the calculation of the period begins from the date the consumer receives the goods. However, if the contract involves services, the period begins from the date the contract is concluded, in accordance with Article 30 of the Law No. 83 of 2000.^{xxix}

The Egyptian Consumer Protection Law has specified a fourteen-day period for withdrawing the contracts involving goods, unless the authority specifies a shorter period. This is in accordance with Article 40^{xxx} which states: "Without prejudice to any better guarantees or legal or contractual conditions for the consumer, the consumer who contracts on distance has the right to withdraw from the contract within fourteen days from receiving the goods..." By reading the texts of the Consumer Protection Law No. 181 of 2018 regarding the right to withdrawal, it is noted that the Egyptian legislator established the fourteen-day withdrawal period as a general rule. This is evident from the provisions of Article 32 of the same law, which states that the withdrawal period

for contracting under the time-share system or fractional ownership is fourteen days. In the case of distance contracts, the period begins from the day the consumer receives the goods according to Article 40, while for Article 32, it starts from the date on which the consumer signs the contract.^{xxxix}

The Algerian legislator has not yet issued specific regulations regarding the withdrawal provisions mentioned in Law 18-09. However, they have set a period of eight working days to withdraw from consumer loan contracts. Article 11-2 states: "Yet, the buyer is granted a withdrawal period of 8 working days, calculated from the date of signing the contract in accordance with the applicable legislation."^{xxxix}

With the enactment of the Law No. 18-05 that is related to electronic commerce, the legislator has specified the timeframe within which the consumer must return the product to the supplier, in the same condition that it had at the time of delivery if the supplier did not respect the specified delivery period. This timeframe is set at four working days starting from the date of actual or immediate delivery of the product, without affecting the consumer's right to claim compensation for damages under Article 22^{xxxix}. Some believe this constitutes a deadline for exercising the right to withdrawal; however, in our opinion, this case is not related to the right to withdrawal. It rather pertains to the supplier's responsibility for properly implementing the contract. Moreover, the return of the product is the consequence of the supplier's failure to fulfil his/her contractual obligations, particularly regarding delivery.

3.5. The Second Requirement: The Objective Scope of the Right to Withdrawal

Even though the consumer protection laws grant consumers the right to withdraw their decision and retract from contracts, this grant is not unconditional. The legislator has established a set of conditions and regulations to govern the use of this right. Therefore, consumers cannot exercise it in all circumstances^{xxxiv}. Since this right was established as an exception to the principle of the binding force of contracts, it is not considered a general right applicable to all contracts. It is rather subject to the legislator's discretion regarding the level of protection they wish to provide to consumers^{xxxv}, which is referred to as the objective scope of withdrawal.

In order to define this scope, it is essential to identify the contracts in which consumers cannot exercise this right to prevent abuse and avoid creating an imbalance in the principle of transactional stability^{xxxvi}. Consequently, we will address the contracts subject to the provisions of withdrawal in the first section, and the contracts excluded from the scope of the right to withdrawal in the second section.

3.6. Section One: Contracts Subject to the Provisions of Withdrawal

Jurisprudential opinions have not agreed on defining the contracts in which consumers can exercise their right to withdrawal^{xxxvii}. Some scholars argue that the consumer's exercise of the right to withdrawal is not limited to distance selling contracts. However, this view does not align with the explicit legislative texts that regulate the practice of withdrawal, which have included service contracts in addition to sales contracts and, thus, expanded the scope of contracts subject to withdrawal provisions.^{xxxviii}

Researchers in the field of consumer contracts can find that the legislator has not specified the contracts subject to withdrawal, but focused on mentioning and listing the contracts excluded from the scope of its practice. Therefore, it can be said that all consumer contracts that are not explicitly stated as exceptions by the legislator are subject to withdrawal provisions. The most important of these are the contracts that are concluded remotely or those made at the consumer's residence or workplace.^{xxxix} That is because this type of sales does not provide consumers with the necessary technical and legal capabilities to reflect and consider all the consumer contracts being concluded, even if the seller's description of the goods or services offered is highly accurate and reliable.^{xl}

3.7. Section Two: Contracts Excluded from the Scope of the Right to Withdrawal

By granting consumers the right to withdrawal and allowing it to be exercised at their discretion, without requiring justification or oversight, it was essential to establish controls for the exercise of this right. This was for the purpose of preventing any misuse by consumers that could harm the interests of the other contracting party.^{xli} Consequently, the legislator has excluded certain contracts from the scope of the right to withdrawal in order to achieve a balance between the interests and rights of both the supplier and the consumer.^{xlii}

3.8. First: Excluded Contracts in the European Directives

European directives related to consumer protection have clarified the contracts excluded from the scope of the right to withdrawal. Accordingly, Article 16^{xliii} of the Directive No. 83 of 2011 states that they are the following:

1. The service contracts executed by the professional during the withdrawal period, based on a prior and explicit agreement with the consumer, who is informed that the start of the implementation deprives him/her of his/her right to withdrawal.
2. Contracts related to goods and services whose prices depend on the fluctuations in the financial market, which the supplier cannot control and are expected to occur during the withdrawal period.
3. Goods manufactured according to specifications determined by the consumer or made specifically for him/her.
4. Contracts for perishable and easily breakable goods.
5. Covered goods that are difficult to return due to their connection with health or hygiene concerns and whose packaging have been opened after delivery.
6. Goods that the consumer has mixed with other items after receiving them, making it impossible to separate them.
7. Contracts for the supply of alcoholic beverages, the price of which is agreed upon at the time of concluding the contract and are delivered only after 30 days. Their actual value depends on market fluctuations beyond the supplier's control.
8. Contracts related to maintenance and repair services in which the consumer requests an urgent visit from the supplier for this purpose.
9. Contracts for the supply of audio or visual recordings or closed computer programs, where the consumer has opened their packaging after receipt.
10. Contracts for the supply of newspapers, periodicals, and magazines, with the exception of contracts for subscription to these publications.

11. Contracts concluded through public auctions.
12. Contracts related to restaurant, transportation, accommodation, and entertainment services, where services are provided within a specified timeframe or during certain periods.
13. Contracts for digital content that do not have a physical medium, if the performance begins with the explicit consent of the consumer or acknowledgement of the loss of his/her right to withdrawal.

Through this text, it is clear that the European Directive No. 83 of 2011 has specified the exceptions that were established in the Directive No. 7 of 1997^{xliv}, except for contracts related to legally authorized betting and lottery services.

It is noteworthy that this directive has added a set of exceptions that were not included in the Directive No. 7 of 1997, namely:

1. Contracts for the supply of closed goods that are difficult to return.
2. Contracts for goods that the consumer mixes with others after receiving them.
3. Contracts for the supply of alcoholic beverages.
4. Contracts related to maintenance and repair services.
5. Contracts concluded through public auctions.
6. Contracts related to restaurant, transportation, accommodation, and entertainment services."^{xlv}

3.9. Second: Contracts Excluded in the French Law

A closer examination of the position of French consumer law during the period before and after 2014 reveals that the French legislator followed the path of the European directives. During the period before 2014, it adhered to the provisions of the Directive No. 7 of 1997 and following the issuance of the Directive No. 83 of 2011, it promptly enacted a decree that included the exceptions it contained regarding the right to withdrawal^{xlvi}. An analysis of Article 28-212^{xlvii} of the Consumer Code shows that it aligns perfectly with the exceptions outlined in Article 16 of the European Directive No. 83 of 2011. However, after amending the Consumer Code in 2014, the French legislator has excluded certain contracts related to the regular supply of ordinary consumer goods that are regularly completed at the consumer's residence or workplace. This is achieved through distributors, as well as legally authorized betting and gambling service contracts that are excluded from the scope of the right to withdrawal, in accordance with the amendments introduced by the Directive No. 83 of 2011.^{xlviii}

3.10. Third: Contracts Excluded in the Arab Legislations

Some Arab legislations have addressed the scope of exercising the right to withdraw from contracts by excluding certain contracts from its provisions as exceptions, to be consistent with the approach of European directives and French legislation.

1. The Position of the Tunisian Legislator

The Tunisian legislator is one of the few Arab legislations that have addressed the contracts excluded from the scope of the right to withdrawal, allowing for the remaining contracts to be subject to consumer withdrawal. Article (32)^{xlix} of the Tunisian Electronic Commerce and Exchanges Law stipulates the cases in which a consumer can use his/her right to withdrawal, while adhering to the provisions of Article 30 of this law. This is with the exception of defective products. "The consumer cannot withdraw from the purchase in the following situations:

- When the consumer requests a service from the seller on the condition that it is performed before the end of the withdrawal period.
- When the supplier provides the consumers with a set of products that are allocated to them or supplied according to personal specifications based on the consumer's request. This also includes the case when these products are sensitive and cannot be reshipped, or are quickly damaged or spoiled due to their expiration date.
- When the consumer removes the covers from audio, visual or software recordings, or media data delivered or transmitted electronically.
- When purchasing newspapers and magazines."

It is noteworthy that this chapter that was included in the Electronic Commerce and Exchanges Law is similar to what was stated in Article 20-L121 of the French Consumer Code before its repeal by Article 28-L221 of this Code. It has also some similarities with Article 3-6 of the European Directive No. 7 of 1997. However, the Tunisian legislator did not address goods that depend on market fluctuations and that the supplier cannot control. Additionally, this law did not address betting and lottery service contracts, which were addressed in the French law and European directives.^l

2. The Position of the Egyptian Legislator

It is noted that the Egyptian Consumer Protection Law No. 67 of 2006 does not address the scope of the right to withdrawal, nor does it regulate the contracts subject to its provisions or those exempted from it. This is due to the fact that the Egyptian legislator has not treated the right to withdrawal in the same manner as developed legal systems did^{li}. With the issuance of the Law No. 181 of 2018 concerning consumer protection, it appears that the Egyptian legislator has stipulated a set of transactions that fall outside the scope of the right to withdrawal when executing a contract^{lii}. According to the provisions of Article 2-17, "As an exception to what is stated in the first paragraph of this article, the consumer cannot exercise the right to withdrawal to exchange or return the product in the following cases:

- When the nature of the product, its feature, or the way it is packaged or wrapped prevents its exchange or return, or makes it impossible to restore it to the same condition it was in at the time of contracting.
- The consumer cannot not return consumable goods that are characterized by rapid perishability.
- When the condition of the product changes from the state it was in during the sale to a different state due to reasons attributable to the consumer.
- When the goods are manufactured at the request of the consumer with specific specifications determined by the latter, unless the product complies with those specifications.
- Books, newspapers, magazines, and software programs, etc."^{liii}

Article 36^{liv} of the above-mentioned law states: "The provisions of this chapter cannot be applied on the contracts made between the consumer and the supplier in the following cases:

- Contracts concluded by the consumer within the framework of banking, financial, and service-related services associated with trading in the capital market.

- When the consumer contracts to subscribe to newspapers or other periodic publications."

Additionally, the executive regulations of this law, issued by the decision No. 822 of 2019, have allowed for the addition of other cases that are exempted from the application of the provisions of this chapter. As for article 41, it states that the consumer's right to withdraw from contracts, which was issued by the provisions of Article 40 of this law "is repealed in the following cases:

- If the consumer has fully benefited from the service provided by the supplier before the expiry of the period allocated for the right to withdrawal.
- If the consumer, in his/her agreement with the supplier, has asked for the manufacture of a specific product based on his/her request or has specified special characteristics for the product.
- If the agreement involves videotapes, discs, CDs, software or printed materials that are covered and the consumer has removed the packaging that is not permissible to remove.
- If the consumer's improper possession of the product causes a defect in it.
- Cases where there is a contradiction between the nature of the product and the request for withdrawal, or in which the withdrawal is contrary to the commercial custom. This is in addition to the cases in which the consumer's exercise of the right to withdrawal is considered abusive. These exceptions are determined according to the executive regulations of this law.^{lv}

Based on the examination of these provisions, it appears that the Egyptian legislator, when issuing the new Consumer Protection Law, sought to keep pace with legal developments by organizing the scope of the right to withdrawal. It followed the approach of European directives and the French law by enumerating and specifying the contracts exempted from being subject to the provisions of the right to withdrawal as exceptions. While, the other contracts that were not mentioned, have been subject to the possibility of applying the right to withdrawal as a general rule based on the consumer's desire.^{lvi}

3. The Position of the Algerian Legislator

It is evident that the Algerian legislator has not determined the scope of the consumer's right to withdrawal, but left it to the future regulations. Article 19, paragraph 4 of Law 18-09 states: "The conditions and manner of exercising the right to withdrawal, as well as the deadlines and list of the concerned products, shall be determined by regulation."^{lvii} Although the Algerian legislator has not yet issued the regulations mentioned in this provision, the consumer cannot be granted an absolute right to withdrawal as this would allow consumers who purchase any product to withdraw from that without reason. This aligns with what the Algerian legislator and most legislations stipulate. Therefore, it was necessary for the Algerian legislator to follow the lead of these legislations and to expedite the establishment of exceptions that restrict the right to withdrawal through regulatory texts, especially after stipulating the right to withdrawal under the Law No.18-09.^{lviii}

Moreover, under the provisions of the Electronic Commerce Law No.18-05, the Algerian legislator has prohibited a range of transactions and actions from being concluded electronically. Thus, it can be deduced that these transactions fall outside the scope of actions that can be subject to withdrawal in case that they were concluded as they are considered illegal^{lix}. These transactions, according to Article 3, paragraph 2^{lx} of the Law No.18-05, are represented in the following:

- Gambling, betting, and lotteries.
- Alcoholic beverages and tobacco.
- Pharmaceutical products.
- Products that violate intellectual, industrial, or commercial property rights.
- Any goods or services that are prohibited by the applied legislation.
- Any goods or services that require a formal contract."

4. CONCLUSION

This study was conducted to address one of the significant issues concerning the consumer's right to withdrawal, which is a modern right recognized by the legislator. It is also one of the key guarantees established to protect consumers, maintain contractual balance between these latter and suppliers, and create an exception for the general principle of the binding force of contracts. However, this right was subject to a set of regulations to prevent consumers' abuse during its exercise, especially since they can withdraw without needing to provide reasons.

The study concluded with a set of findings and recommendations as follows:

4.1. First: Findings

- The legislations recognizing the right to withdrawal varied and did not agree on a single name. Some consider it the right to reconsideration; while, others refer to it as the right to withdrawal or the right of rescission.
- The right to withdrawal is granted to consumers who hastily conclude contracts without the opportunity to assess the goods or services provided by suppliers. Thus, it provided them with sufficient time to review, examine, and reflect. This right represents a departure from the principle of the binding force of contracts.
- The Algerian legislator's acknowledgment of this right was late compared to European and Arab legislations in the field of electronic contracting. This recognition occurred under the Law No.18-05 concerning electronic commerce and the Law No.18-09 relating to consumer protection and fraud prevention, which amended and complemented the Law No.09-30.
- Despite recognizing the right to withdrawal, the Algerian legislator did not establish clear rules regarding the conditions, deadlines, and manner of exercising this right, leaving it to regulations that have not been issued yet.
- The right to withdrawal is a modern guarantee created by national and international legislations to protect the consumer, who is regarded as the weaker party in contractual relationships. However, this right is not absolute, but a specific time frame was established within which consumers can exercise it. These legislations have also addressed the scope of withdrawal in the contracts subject to this right and those exempted from it.

Based on these findings, we can end with a set of recommendations:

4.2. Second: Recommendations

- It is necessary to establish a model law to regulate electronic contracts during their execution at the international level in order to protect the consumer as the weaker party in the contractual relationship, especially in light of the rapid technological advancements. These latter led the contracts to be no longer confined to a single territory but rather become cross-border due to the emergence of virtual markets and the shifting of the world to a small village.
- Legislations governing the right to withdrawal should unify the time frame set for consumers as a period of consideration and reflection about contracts for goods or services. It should be appropriate for all types of contracts to prevent the consumer's right from being lost due to a lack of awareness of the differences between the period from one contract to another.
- The Algerian legislator should expedite the issuance of the regulation mentioned in Article 19 of the Law No.18-09 and align with the international and national legislations in defining the conditions and manner of exercising the right to withdrawal. This would alleviate the consumer's confusion and encourage him/her to exercise his/her right to withdrawal, leaving no chance for hesitation in using it.

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- ^{xxii} Ordonnance n° 2001-741 du 23 août 2001 portant transposition de directives communautaires et adaptation au droit communautaire en matière de droit de la consommation
- ^{xxiii} Jihad Mahmoud Abdel-Mobdi, The Right to Withdraw from an Electronic Contract "An Analytical Study of Consumer Contracts", International Journal of Jurisprudence, Judiciary and Legislation, Volume 4, Issue 1, 2023, p. 170.
- ^{xxiv} Lois n° 2014-344 du 17 mars 2014 relative la consommation " « Art. L. 121-21.-Le consommateur dispose d'un délai de quatorze jours pour exercer son droit de rétractation d'un contrat conclu à distance, à la suite d'un démarchage téléphonique ou hors établissement, sans avoir à motiver sa décision ni à supporter d'autres coûts que ceux prévus aux articles L. 121-21-3 à L. 121-21-5. Toute clause par laquelle le consommateur abandonne son droit de rétractation est nulle.
- ^{xxv} Amina Ahmed Mohamed Ahmed, the previous reference, p. 464.
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- ^{xxvii} Amina Ahmed Mohamed Ahmed, the previous reference, p. 464.
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- ^{lvii} Article 28-L221 of the French Consumer Code.
- ^{lviii} Abdelghani Bouchoul, The Consumer's Right to Withdraw from the Contract, PhD Thesis in Law, University of Mohamed Bouguerra, Boumerdes, Algeria, 2023, p. 136.
- ^{lix} Chapter 32 of the Tunisian Electronic Exchanges Law, the previous reference.
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