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The Crime Of Unlawful Use Of A Credit Card In Algerian Legislation

جريمة الاستخدام غير المشروع لبطاقة الائتمان في التشريع الجزائري

Dr. Mamene Besma

Lecturer * A* Abbes Laghrour University Khenchela, Faculty of Law and Political Science

Department of Law , State Intelligence and Community Security Health and Food Security

mamen.besma@univ-khenchela.dz

د. مامن بسمه

أستاذة محاضرة "أ"، جامعة عباس لغرور-خنشلة، الجزائر، كلية الحقوق والعلوم السياسية، قسم الحقوق.
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Abstract:

Banking has developed rapidly through the connection of Internet networks, thereby spreading e-commerce. As a result, sales and purchases between customers are now carried out using modern payment methods produced by banks and financial institutions, such as bank cards and smart cards, which are known as electronic payment cards.

We have dedicated this research paper to defining the conceptual framework of credit cards and determining criminal liability in cases of illegal use of cards..

Keywords: banking, customers, payment methods, credit cards, criminal liability

المخلص:

تطورت الحركة المصرفية تطورا سريعا من خلال اتصال شبكات الأنترنت وبذلك انتشرت عملية التجارة الإلكترونية، ومن خلال ذلك أصبحت عملية البيع والشراء بين العملاء تتم بواسطة وسائل الدفع الحديثة التي تنتجها البنوك والمؤسسات المالية، كوسيلة دفع وتتمثل في البطاقات البنكية والبطاقات الذكية والتي يطلق عليها بطاقات الدفع الإلكتروني.

ولقد خصصنا هذه الورقة البحثية لتحديد الاطار المفاهيمي لبطاقة الائتمان وكذا تحديد المسؤولية الجزائية في

حالة الاستعمال الغير المشروع للبطاقة .

الكلمات المفتاحية: الحركة المصرفية ، العملاء ، وسائل الدفع ، بطاقة الائتمان ، المسؤولية الجزائية

1. INTRODUCTION

Technological advancement has led to the development of information and communication technologies, ensuring the efficient flow of banking services. The proper utilization of electronic payment and settlement methods and systems is among the factors for modernizing the banking system to keep pace with the challenges of the era and face the competitive pressure from foreign banks, which are primarily aimed at attracting customers.

The commercial environment, particularly with regard to electronic commerce, is based on speed in financial transactions and keeping pace with developments in the field of payment methods usage.

Globalization and technological and informational development have also changed the content and direction of the world of commerce and business, where the concept of cash payment has changed to electronic payment, and its methods and tools have diversified, including electronic payment cards. America is considered the

starting point for the emergence of electronic payment cards, which then spread to other European countries and eventually to Arab countries, including Algeria.

Likewise, the features of commerce and the tools used in it have changed from traditional to electronic, leading to their rapid spread. These cards have become subject to many forms of attacks, whether by ordinary criminals or cybercriminals, due to the money these crimes generate. Due to the nature of the field in which information exists, it has become a target for attacks, especially by people who have expertise in the information field. However, this aggression has now become dangerous both nationally and internationally, as they are considered transnational crimes.

This has prompted us to raise the following question:

To what extent is the legal system adequate in protecting credit cards? And what is the penalty for their unlawful use?

2. First Subtitle First Axis: The Concept of Electronic Payment Cards

Electronic payment cards are considered among the most popular electronic payment methods, as they are widely accepted by users due to their ease of use, multiple services, and the advantages they offer to cardholders, merchants, and card-issuing entities.

First: Definition of Electronic Payment Cards

A: Definition of Electronic Payment Methods

Definitions of electronic payment methods have varied and diversified. Among these definitions, we mention that a payment method is "that tool that is socially accepted to facilitate transactions related to the exchange of goods and services, as well as debt settlement. In addition to legal currency, commercial bonds and loan bonds that their holders put into circulation when conducting their business fall into the category of payment methods"¹

It is also defined as that tool that enjoys general acceptance and plays an important role in facilitating the exchange of goods and services, as well as settling debts and obligations. This method was primarily represented by legal currency, but with the development of time, other methods such as commercial papers were found.²

Electronic payment methods find their basis within the electronic payment system ³ where electronic payment is defined as: "the process of transferring money, which is essentially the price of a good or service, using computer devices and sending data via telephone lines or networks or any method of data transmission"⁴

Electronic payment methods are defined as methods that allow for conducting commercial transactions to exchange assets or services via the Internet.⁵

B: What is Meant by Electronic Payment Cards

The word "card" in language means paper, and a card refers to a small piece containing an amount that you put in it if it is available, so its value ⁶

As for the term "electronic," it refers to electrical, digital, magnetic, optical, electromagnetic technology, or any other form of technology that includes capabilities similar to those technologies, or in other words, the use of all remote communication sectors ⁷

Electronic payment cards are used for cash withdrawals from ATMs and for purchasing goods and obtaining services. They give their holders great flexibility in payment, greater security, lower cost in completing operations, and faster completion of financial settlements. They have several names - some call them bank cards and others call them plastic cards.

They are called electronic payment cards because they rely on electronic devices to obtain authorization or conduct financial settlements.

An electronic payment card is defined as a card manufactured in a specific form, according to a model determined by the issuing entity for a specific person, accepted by a certain group in payment instead of money, according to a specific working mechanism under contracts concluded between its parties ⁸

Payment cards are defined as: "magnetic cards granted by banks, financial institutions, and even some commercial stores, which allow, like checks, to make purchases, and in some special cases to withdraw or transfer money..."⁹

Payment cards are electronic means by nature that have occupied an important place in banking transactions.

They are also defined as: "cards that depend on the existence of actual balances for the customer with a bank in current accounts to meet the expected withdrawals of the customer cardholder. These cards are characterized by saving time and effort for customers as well as increasing the revenues of the issuing bank" ¹⁰

They are also defined as: "cards issued by financial institutions in the name of a person, and perform the functions of payment and credit, meaning that their holder has the possibility of sequential

payment of amounts used from the open credit by the card issuer"¹¹

The Islamic Jurisprudence Academy of the Organization of the Islamic Conference in its seventh session in Jeddah in 1414 AH corresponding to 1993 AD defined it as: "a document given by its issuer to a specific person based on a contract between them, enabling him to purchase goods and services from those who accept the document without paying the price immediately, as it includes the issuer's commitment to pay, and some allow cash withdrawal from banks" ¹²

The payment process takes place between four parties: the global card center, the card issuer, the merchant, and the cardholder:

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Here's an analysis of the Algerian legislator's stance on electronic payment cards:

***Algerian Legislator's Stance on Electronic Payment Cards**

The Algerian legislator has attempted to define **electronic payment cards** within **Article 543 bis 23 of the Commercial Law**. It describes them as:

"Any card issued by legally authorized banks and financial institutions, allowing its holder to withdraw or transfer funds."²⁴

Furthermore, **Article 543 bis 24** of the same law addresses the effect of a payment order made using a payment card. It states that such an order is **final, irrevocable, and cannot be challenged**, except in cases of

card theft, loss, judicial settlement, or the cardholder's bankruptcy.²⁵

The Algerian legislation has only addressed payment cards in these two articles, treating them as specific rules governing payment cards.

Referring to the **Money and Credit Law No. 03-11**, the Algerian legislator defined an **electronic payment method** as:

"Payment methods are considered all tools that enable any person to transfer funds, regardless of the instrument or the technical method used."²⁶

This definition is comprehensive, encompassing all payment methods, but it **does not provide a specific or precise definition for payment cards** themselves.

Additionally, the Algerian legislator, within the **Electronic Commerce Law**, defined an **electronic payment method** as:

"Any payment method authorized in accordance with the legislation in force that enables its holder to make payments, whether in person or remotely, through an electronic system."²⁷

Second Axis: Unlawful Use of the Card During Its Validity

A contract is concluded between the electronic payment card issuer and the cardholder, where the card is delivered on the condition that it be used within the limits of the contract signed between them. The card's validity period is determined, and during this entire period, the cardholder must use it lawfully within legal boundaries, as during this period they are considered its legitimate holder. However, they may use it unlawfully, thereby committing a crime punishable by law.

First: Obtaining a Payment Card Through Unlawful Means

To obtain a payment card, the customer submits an application to the card-issuing entity and expresses their desire to obtain it, in the form of a template containing data that the customer is required to fill out. The provided data must be accurate to determine the identity of its owner for the purpose of concluding the contract, where they are obligated to disclose their name, surname,

address, as well as their professional and financial status and signature. The card-issuing entity then decides whether to issue the card or not²⁸

However, the customer may provide data contrary to the truth with the intent to defraud the card-issuing entity, which may be exposed to financial losses and will not be able to find them as a result of the false data they provided²⁹

This criminal act falls under the description of the fraud crime stipulated in Article 372 of the Algerian Penal Code.³⁰

The criminal behavior constituting the material element in this crime consists of the act of fraud and deception and providing false data that leads to changing the truth. Based on this data, the issuing entity granted the card to the customer, in addition to fraud by providing documents contrary to the truth that create hope of gaining the wealth they will receive in exchange for dealing with the card³¹

The crime of fraud is considered one of the intentional crimes that is based on both general and specific criminal intent. The general criminal intent is represented by knowledge and will in committing it and achieving its result, while the specific criminal intent is represented by taking possession of another's property.

The Algerian legislator pun

ished the perpetrator of fraud with imprisonment from one to five years maximum, and a fine from 500 to 20,000 Algerian dinars. This crime takes the description of a simple misdemeanor, in addition to the possibility of sentencing the perpetrator to deprivation of all or some of the rights mentioned in Article 14 of the Algerian Penal Code and prohibition from residence for a minimum of one year and a maximum of five years.

Second : Exceeding the Authorized Limit by the Cardholder

Banks issue electronic payment cards to facilitate financial transactions at any time through ATMs. Each card has a specific, pre-determined limit that cannot be exceeded, whether for payments or

withdrawals. This is in line with the bank's established system. While the card is valid and usable by its legitimate holder, exceeding the available balance in the account is considered a violation of the bank's rules. This can manifest in the cardholder exceeding their balance for payments, and for withdrawals.³²

A. Exceeding the Cardholder's Balance in Payments:

Electronic payment cards allow their holders to pay for purchases by transferring funds from their account to the merchant's account via the bank. In such cases, the cardholder uses their card, presenting it to the merchant to obtain services. The bank then settles the amount based on the cardholder's balance, provided that the amount does not exceed the available balance on the card. The cardholder is then expected to repay the bank, but in this scenario, they exceed the card's limit.³³

B. Exceeding the Cardholder's Balance in Withdrawals:

Withdrawing money is one of the functions electronic payment cards grant to their holders. Withdrawals are typically made via ATMs, by presenting the card and its PIN, or through one of the card-issuing bank branches. The fundamental principle is that the withdrawn amount should not exceed the available balance on the card. If the cardholder does so, it's considered an illicit act within the information technology domain.³⁴

Currently, in practical terms, these behaviors are largely no longer applicable due to advancements in electronic technology concerning automated teller machines (ATMs) at card-accepting locations. These machines now provide an immediate statement on the card's status, indicating whether it has sufficient balance or not. Consequently, such an action is generally **not considered a crime under current laws.**

C- Money Laundering Through Card Payment

This process is carried out by depositing money used in suspicious activities in one of

the international or local banks in order to obtain a payment card with the value of the deposited balance.³⁵

Then comes the layering stage, through which the source of suspicious money is concealed by using it to purchase precious metals and valuable artwork, either directly or through third parties, using electronic payment cards or the internet, in addition to using protection and encryption systems to ensure the confidentiality of these operations.³⁶

Finally, the suspicious money is integrated into the financial system and mixed with legitimate funds, becoming like them, by placing the suspicious money in the economy, and this time the source is known, such as selling the same paintings that were previously purchased. They are sold for cash³⁸

Conclusion

Through this research paper, we have concluded that electronic payment cards are a modern means of payment that offer better features than traditional means of payment, which is why their use has spread across various countries around the world. They are commonly used to withdraw cash from ATMs, purchase goods, and obtain services. However, they have also been used illegally by some individuals, prompting legislators to impose a series of controls that are still inadequate to combat the illegal use of these cards. We therefore recommend the following

- Establish legal provisions that define the legal framework for electronic payment cards and their security, as well as define the types and elements of crimes related to electronic payment cards in clear and explicit legal provisions.
- The need to subject the authorities responsible for detecting and prosecuting cybercrimes to high-level training in computer and internet technologies to combat crime.
- Support scientific research aimed at developing electronic payment cards to incorporate new technologies that provide

or in exchange for a check or money order drawn on another bank.³⁷

The Algerian legislator punished the crime of money laundering under Article 389 bis of the Algerian Penal Code.

In addition to another form of unlawful use of the card by its holder and committing the crime of money laundering, this occurs when the cardholder issues successive requests for payment cards for himself, his family, as well as his employees and assistants for national and international use, guaranteed by the company's cash or in-kind deposits. These are used in the field of electronic financial transfers through ATMs in money laundering operations, where transfers that reach abroad are made and before they settle, they are withdrawn, collected, and transferred in large amounts

greater protection against attacks through the development of protection programs .

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