

Penal liability of the customer of the cancelled credit card against the bank

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Abstract:

The perpetrators of money abuse have moved towards banking, especially with the emergence of electronic payment methods and the use of credit cards in fulfillment, and with the increasing prevalence of such crimes in the illegal use of the credit card offended by the legislative deficiencies in addressing them. Among these financial uses of the Bank is the use of the cancelled credit card by the customer with the intention of seizing the Bank's money. To be criminally liable for using the cancelled credit card in dealings with the dealer, the legal adaptation of these offences must be specified.

This study aims to highlight the penal liability of the user of the cancelled credit card, by addressing the conditions of its establishment and the reasons for its disappearance, and then identifying the forms of offences that occur from the user using the cancelled card.

Keywords:

Criminal liability, customer, issuing bank, credit card, crime .

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المسؤولية الجزائية للمتعامل ببطاقة الائتمان الملغاة في مواجهة البنك

الملخص:

لقد اتجه مرتكبي جرائم الاعتداء على الأموال نحو الأعمال المصرفية، خاصة مع ظهور وسائل الدفع الإلكترونية واستخدام بطاقات الائتمان في الوفاء، ومع تزايد انتشار هذا النوع من الجرائم في الاستخدام غير المشروع لبطاقة الائتمان قابله القصور التشريعي في التصدي لها. ومن بين هذه الاستخدامات التي تطل الذمة المالية للبنك، هي استخدام بطاقة الائتمان الملغاة من طرف المتعامل بنية الاستلاء على نقود البنك. ولتتحمل المتعامل المسؤولية الجنائية عن استخدامه بطاقة الائتمان الملغاة في تعاملاته مع التاجر، وجب تحديد التكييف القانوني لهذه الأفعال المجرمة. وتهدف هذه الدراسة لتسليط الضوء على المسؤولية الجزائية للمتعامل ببطاقة الائتمان الملغاة، بالتطرق لشروط قيامها وأسباب انتفاءها، ثم تحديد أشكال الجرائم التي تقع من المتعامل باستعماله للبطاقة الملغاة.

الكلمات المفتاحية:

المسؤولية الجزائية، المتعامل، البنك المصدر، بطاقة الائتمان، الجريمة.

Responsabilité pénale du client de la carte de crédit annulée contre la banque

Résumé :

Les auteurs d'abus d'argent se sont tournés vers le secteur bancaire, en particulier avec l'émergence des méthodes de paiement électroniques et l'utilisation des cartes de crédit dans l'exécution, et avec la prévalence croissante de tels crimes dans l'utilisation illégale de la carte de crédit offensé par les lacunes législatives pour y remédier. Parmi ces utilisations financières de la Banque figure l'utilisation de la carte de crédit annulée par le client avec l'intention de saisir l'argent de la Banque. Pour être pénalement responsable de l'utilisation de la carte de crédit annulée dans les relations avec le concessionnaire, l'adaptation juridique de ces infractions doit être spécifiée.

Cette étude vise à mettre en évidence la responsabilité pénale de l'utilisateur de la carte de crédit annulée, en abordant les conditions de son établissement et les raisons de sa disparition, puis en identifiant les formes d'infractions qui surviennent de l'utilisateur utilisant la carte annulée.

Mots clés :

Responsabilité pénale, client, banque émettrice, carte de crédit, crime.

Introduction

Banks work to provide a lot of banking services and work to develop their dealings with customers and, most importantly, the introduction of advanced technological development in the means of payment in its services, To satisfy and win over customers, these services include issuing a credit card to facilitate the process of fulfillment and withdrawal of cash on customers and reduce the stress that bank employees experience as a result of these financial customers.

The Customer applies to the Bank to issue the credit card. After examining the file and approving it, the Customer shall grant the credit card and inform him of all the conditions of its use, including the validity period. However, the Bank may cancel the Card before the expiry of its validity period if the Customer's abuse is found to be contrary to the conditions it collects with the Bank.

As a result of the cancellation of the card by the bank, the customer uses it in bad faith, and this illegal use is when the customer violates the contract he collects with the bank, resulting in the avoidance of this contract, and the customer asks the criminal if he continues to use the cancelled card after its cancellation by the issuing bank.

The importance of this issue lies in the widespread and sophisticated use of credit cards of all categories in fulfillment and withdrawals, which has enhanced the importance of this means of payment in the laws and the persons dealing with it, in order to study the attacks on the bank's money due to the use of this card in their banking customers.

In addition, attention to technological development and the state-of-the-art techniques that criminals use to circumvent banks and cashier machines put law makers in front of the imperative of confronting this new type of crime.

The purpose of this study is to establish the rules of penal liability of the customer with the cancelled credit card, and the illegal uses of this card by the customer after its cancellation by the bank and its claim to refund it in accordance with the terms of the contract that collects them.

The problem with this study is : What are the rules for accountability of the cancelled credit card customer in the direction of the bank? What offences can apply to the unlawful use of the card cancelled by the party?

To answer this question, we followed the following plan:

Axis 1: General Provisions of the Penal Liability of the Credit Card Customer Cancelled against the Bank

Axis 2: Offences of using the customer's cancelled credit card against the bank

1- General Provisions of the Penal Liability of the Credit Card Customer Cancelled against the Bank

The customer is asked to use the cancelled credit card against the bank in accordance with the terms and conditions that we will mention in the following form.

1.1- Conditions for the customer's criminal liability with the cancelled credit card against the bank

There are a number of conditions to be met for the criminal liability of the customer with the cancelled credit card so that he asks for his crimes against the bank, which we will address below.

A- relationship between the customer and the issuing bank

The relationship between the customer of the bank is the existence of the credit card contract, and the contract is concluded between the parties of the card like other contracts that need to be affirmed and accepted and this contract is done in writing. The writing here is not a condition for its conclusion but for proof. The answer issued by the issuance of the card includes all the terms and data of the customer¹.

In the credit card whether the contract is between the issuer and the customer or between the issuer and the merchant, the positive and acceptance must match the content of the contract. The bank's announcement that it will be rolled out to the credit card issuance service cannot be regarded as an indefinite approval of the card. Likewise, banks' offer of credit card application forms is not positive. This is all an invitation to contract and is not positive. Therefore, filling out the request for the card, signing the customer and delivering the application to the bank means positive for the bank to obtain the credit card in place of the contract. acceptance is the Bank's consent to the issuance or issuance of the card².

Thus, the parties to this contract are:

-Bank: The financial institution that is one of the parties to this contract, by doing banking customers, all financial customers, banking services such as issuing money, bank transfers and issuing e-credit card.

-Customer: means the person to whom the card is issued or used. The original card customer opens the card account in his name³, This card entitles its customer to obtain a credit facility from the issuer's bank. The customer shall be provided to the customer and shall receive goods and services reimbursed by the

¹ Jalal Aid al-Shura, Electronic Payment Methods, 1 edition, Culture Publishing House, Amman, 2008, p. 39.

² Abdel Hadi Al-Najjar: Credit Cards and Electronic Banking Operations in Banking Business from Legal and Economic Destinations, Part I, New in Banking Technologies, Halabi Rights Publications, Lebanon, 2007, p. 40.

³ Nabil Mohamed Ahmed Sabih, Some Legal Aspects of Bank Fulfillment and Credit Cards, Research published in the Journal of Rights, First Issue, Year 27, March 2003, p. 250.

exporter and thereafter reimbursed to the issuer within an agreed time limit; As a result, it grants the customer a real time limit of how long payment has been agreed upon with the exporter⁴.

The need to determine the identity of the customer of the card is considered to be a contract with the issuer of the card and entails, inter alia, that the customer undertakes to use the card in accordance with its contractual and legal requirements.

The credit card customer vis-à-vis the issuing bank is bound by two commitments:

The first is to refund the payments made by the bank to suppliers' merchants, the holder usually opens an account with the issuing bank, and the bank credits these payments on the debtor side of the card.

The second is to preserve the credit card and use it in good faith, and return it to the bank after the expiration of the accession contract; By the deadline for use, the contract may expire before then, Because of the demise of trust in the person of the customer, because it is a contract based on personal consideration, The contract ends with the holder misusing the card or enabling others to use it insolvency, bankruptcy or death⁵, The contract also expires if the bank cancels the card due to the customer's abusive use The bank cancels the card and notifies the customer until he refunds it.

The customer's penal liability is based on the credit card for its unlawful use. The act here constitutes a breach of one of the obligations guaranteed in the contract, namely the use of the cancelled credit card with knowledge of its cancellation by the bank.

The obligation we are also talking about here is the obligation to refund the card when it is cancelled and to ask the bank to do so, as it is a reason for the lack of responsibility and the bank is obliged to bear the price of the purchases and customers' dealings, due to its mistaken failure to notify the customer of the cancellation.

B- Cancellation of credit card

The contract between the issuer bank and the customer obliges the bank to place at the disposal of the customer directly or indirectly a credit tool, within a certain amount of cash and for a fixed or indefinite period for a commission paid

⁴ Abdel Fattah Bayoumi Hijazi, Combating Computer and Internet Crime in the Arab Model Law, edition 1, Dar al-Thawr University, Alexandria, 2006, p. 561.

⁵ Abu Aloufa Mohammed Abu Aloufa Ibrahim, Criminal Liability for Illegal Use of Credit Card in Comparative Law and Islamic Jurisprudence, Journal of the Faculty of Shari 'a and Islamic Studies, Qatar University, No. 23, 2005, p. 521.

by the customer⁶.

The issuance of the credit card is based on the request of the customer from the issuing bank. The latter examines his application and accepts the issuance of the card and grants it to the customer, informing him of the terms of use and the expiration date. These include the refund of the card upon expiry of its validity or cancellation by the bank due to the customer's arbitrary use of the credit card and request for a refund from the customer.

From the effects of the credit card contract, the bank has the right to withdraw the card or cancel it at any time, if it is proven that there is an error about the customer in the use of the credit card, the cancellation here is the avoidance of the contract between the customer and the issuing bank of the credit card.

The issuing bank may boil the customer card for any reason, such as closing the account, changing the customer system, or changing the quality of service performed by the service, however it may remain with the customer and may use it after cancellation⁷.

If the issuing bank or financial institution cancels this card, the cancellation will waste the value of the card as a credit tool. When the card is cancelled, it does not exist. If the customer uses it to obtain goods and purchases from merchants, it must be criminally taken to protect the card's confidence and the customers in which it is used, whether e-commerce or any other information system⁸.

The original is that the e-card remains valid until its expiration date, but sometimes it happens that the bank or financial institution issuing the card cancels it during its entry into force because the customer has misused it, forcing the bank to withdraw the card as a penalty for misuse. However, the customer refrains from refunding the card and uses it again despite being advised to return it to the bank. A reason for cancellation would also be to intervene in circumstances that would undermine the customer's financial position so as to affect his or her personal consideration⁹.

In this regard, it can also be said that the issuing bank of the credit card is not entitled to cancel the card except in specific cases and should be agreed in advance as required by the legal rules that the acquisition of the card is based on

⁶ Naila Adel Mohamed Farid Qura, *Economic Computer Crimes, Applied Theory Study*, edition 1, Halabi Publications House, Lebanon, 2005, p. 516.

⁷ Ihab Fawzi Alsakka, *Criminal Protection and Security of Electronic Credit Cards*, edition 1, Modern Book House, 2011, p. 216.

⁸ Abdelfattah Bayoumi Hijazi, op. cit., p. 574.

⁹ Nidal Ismail Barham, *Terms of Electronic Commerce Contracts, I, First Edition*, Culture Publishing and Distribution House, Oman, 2005, p. 115.

a contract And if the jurisprudence differs in its nature, it is as civil jurisprudence goes from binding contracts of the two sides that would arrange corresponding obligations to be agreed upon in advance in accordance with the principle governing relations, namely *pacta sunt servanda*¹⁰.

1.2- The reasons for the exemption of the penal liability of the customer with the cancelled credit card in the face of the bank

The penal liability of the recipient of the cancelled credit card against the bank may be excluded if a set of general and specific reasons for this study are met, as follows.

A- General reasons

Since the establishment of a person's criminal responsibility is the will of his or her representatives, it is difficult to say that moral persons are held criminally accountable if there is a reason for the disappearance of responsibility for the natural person representing them.

For a natural person, whether the latter is the same customer or a representative of the will of the moral person dealing with the card, the reasons for refraining from criminal liability are set out in articles 47-48-49 of the Algerian Penal Code¹¹, and the moral person's lack of criminal responsibility for the natural person acting on his behalf necessarily results in the latter not being held accountable.

First: lack of capacity:

1- Madness

Psychiatric disorders are caused by mental disorders or deficiencies in mental maturity such as hysteria, an imbalance in the nervous system and disorders in emotions, desires and other anomalies that have a direct impact on mental forces, and in this general sense encompasses all mental impairments¹².

Article 47 of the Penal Code stipulates: "No penalty shall be imposed on anyone who was in a state of insanity at the time of the commission of the crime." And even though the Algerian legislature did not define madness, But we can say that the situation where a person is unconscious and cognitive and is unable to discriminate in his actions, and insanity can be permanent or temporary in a person's rights", which is important to be available during the commission of the offence until the text of article 47 above is applied¹³.

¹⁰ Huda Abbas Mohammed Reza, Crimes Against E-Credit Card, Comparative Study, Kufa Journal of Legal and Political Sciences, vol. 1, No. 15, Kufa University, Iraq, 2013, p. 283.

¹¹ 1. Ordinance No. 66-156 of 8 June 1966, containing the Penal Code, Official Gazette No. 49 of 11 June 1966, amended and supplemented.

¹² Mustafa Ibrahim Al-Zulmi, Impediments to Criminal Liability in Islamic Law and Arab Legislation, i 1, Wael Publishing & Distribution House, Amman, 2005, pp. 39-40.

¹³ Ben Sheikh Lahsan, Principles of General Penal Law, Homa House for Printing, Publishing and Distribution, Algeria, 2002 edition, p. 105.

In order to be exempt from liability, there must be two conditions in the element of insanity:

A- The insanity must be contemporary in the commission of the crime. This is what we understand from the text of article 47 of the Algerian Penal Code. If it is established that the perpetrator was not insane at the time of the commission of the crime, he shall not be responsible for the commission of the crime, he may not be prosecuted but must be preserved¹⁴.

B- The insanity must be total (wholly): "Mental disorder is of such gravity that the feeling and choice are totally non-existent. The issue is at the judge's discretion so that the madman must be unselective and unconscious. It is not necessary for insanity to lead to a total lack of discrimination and choice, which results in their derogation and inability to know what the act is and to distinguish between right and wrong.

And the definition between these two elements and the consideration of whoever is to prevent responsibility is based on a reasonable and reasonable basis, because whoever does not know what to do is not in a position to distinguish what they do right from what they do wrong. "If the insanity is limited to the mere weakening of this consciousness and will, there is no justification for refraining from criminal liability and, if necessary, for reducing the degree of responsibility."¹⁵

2- Young: (Minor)

Article 49 of the Penal Code¹⁶ stipulates that: "A minor whose thirteen years of age have been completed shall be subject only to protection or education measures. A minor who has attained the age of 13 to 18 years shall be subject only to protection, education or reduced penalties."

It is understood from the text of article 49 that a minor who does not complete 13 years is not punishable by punishment, but that lack of responsibility does not prevent him from pursuing it and submitting it to the juvenile court to order protection and education measures. However, it is inconceivable that the customer is a minor, since the natural person is a person who owns funds in his or her personal account that he or she uses and disposes of. It is inconceivable that the minor has all these funds.

Second, lack of will and choice:

Article 48 of the same Act stipulates that: "There shall be no penalty for anyone who has to commit an offence by force unacceptable to him or her".

¹⁴ Abdul Hamid al-Sharbi, Ezzedine al-Dannasouri, Penal Liability in Punitive Law and Criminal Procedure, II, Al-Ma'raq Facility, Alexandria, 1993, p. 715.

¹⁵ Mohamed Sobhi Najem, Explanation of Algeria's Penal Code (Special Section), 4th Edition, University Publications Office, Algeria, 2003, p-p. 152-153.

¹⁶ Ordinance No. 66-156, containing the Penal Code.

Coercion if a person denies freedom to choose his or her conduct, and coercion may be of two kinds, either physical coercion or moral coercion.

Physical or moral coercion as a ground for failure to commit criminal liability requires that its issuing be unexpected and unacceptable by paying it from the human issuing and that it cannot be resisted, which means that it is impossible for the accused to avoid the crime¹⁷.

1- Physical coercion: a person is subjected to material force which he or she is unable to respond to or resist in an act prohibited by law.

2- Moral coercion: That is the pressure that a person exerts on the will of the perpetrator. Moral coercion is a force that weakens the will of the oppressor in a manner that loses the freedom of choice.

It is worth mentioning that coercion is only forbidden and affects the choice of the person to whom it is located, which has the effect of affecting the person's criminal responsibility when he commits the forbidden act¹⁸; That is to say, coercion to perform acts that harm others and harm their interests.

B- Special reasons

First, the customer is not notified of the cancellation of the credit card

One of the special reasons is the interference of the second party's act in the relationship of using the credit card And the intended party here is the bank, he may be responsible for the wrongful act of the credit card customer. If he does not notify about the cancellation of the card in the right way, This constitutes a reason for the irresponsibility of the customer's liability, as the correct notification of the withdrawal or cancellation of the card is the legal procedure that ensures the accountability of the credit card customer, which constitutes proof of his right to bypass this procedure and use it despite being properly notified.

Proving the bank's liability denies that there is an error from the credit card customer, and that he may be exempted from criminal liability, such as the person who mistook the notification process or mistook the name and address of the customer party to this relationship.

Hence, the lack of effective knowledge of the cancellation of the card constitutes a sufficient reason for the exemption of the penal liability of the customer. credit card ", the latter is not responsible for the use of the credit card during its cancellation because of the fact that he was not actually aware of it, such as the lack of access to text messages or emails sent by the bank and

¹⁷ Suleiman Abdel-Monim, General Theory of Penal Law - Comparative Study, Halabi Rights Publications, Beirut, 2003, p. 691

¹⁸ Abdelaziz Mohammed Mohsen, Coercion and its Impact on Penal Liability - A Comparative Study, 1st Edition, Al-Marefa House for Printing and Publishing, Lebanon, 2012, p. 161.

notifying it of its cancellation of the credit card Or they can't contact him directly and notify him for technical reasons.

If the customer learns of the cancellation of the credit card in any way available to the bank in those circumstances, or is easily known or assumed to be easy to detect, he or she is liable for criminal liability for use after cancellation.

In order to criminalize the customer in this case, the card issuer bank must alert the customer to cancel the e-credit card and request that he refund it¹⁹. The offence here is based on the moral element and is the criminal intent of the customer, which is the direction of the customer's will to use the cancelled card, and the knowledge that he uses the cancelled card.

On the other hand, the bank is obliged to notify the customer of the cancellation of the card If the cancelled card is submitted to the merchant and the merchant has not been notified of the cancellation by the bank, it must be available in order to criminalize the customer's act²⁰. If the issuer notifies the customer of the cancellation of the card and the customer accepts it nonetheless, No offence ", the customer does not ask for any offence because the submission of the cancelled card is a naive and untruthful method²¹.

If the credit card bears the expiration date, the customer must not accept it for the payment of the purchase price, because it is obliged to verify the validity of the card. If it neglects this, and before the card is fulfilled, it bears responsibility for this performance, and it is not entitled to ask the issuer bank to pay the purchase price²².

Lastly, it can be said that the customer cannot be criminalized and that the customer is responsible unless it has been notified of the cancellation and the merchant is not notified of the cancellation.

Second: The act of others

means a person outside the relationship between the customer and the bank. unlawful use of a third party's cancelled credit card after obtaining it by theft, forgery or by the Internet, It is anyone other than the customer who handles the card, and the owner of the card concludes the different dealings with him, Or the issuers of these cards, all of them have their own judgments, In this regard, others mean persons who do not fall into this category²³.

¹⁹ Nidal Ismail Barham, op. cit., p. 115.

²⁰ Abu Aloufa Mohamed Abu Aloufa Ibrahim, op. cit., p. 522.

²¹ Abdelfattah Bayoumi Hijazi, op. cit., p. 574.

²² Abu Aloufa Mohamed Abu Aloufa Ibrahim, op. cit., p. 502.

²³ Abdelfattah Bayoumi Hijazi, Crime in the Age of Al-Aoula (Study in the Information Crime Phenomenon with Application to Emirati Law), University Think Tank House, Alexandria, 2008, p. 168.

In this case, the aggressor seizes the credit card even after cancelling it and using it to obtain funds from the bank. The illegal use of the credit card by others is formed in two images:

First case: Third party's use of cancelled credit card to withdraw cash

Third parties use the cancelled credit card to withdraw lost or stolen cash from automated withdrawals or meet the value of the purchases or services received. And the prevailing view in criminal jurisprudence is that the illegal use of a stolen or missing card, It constitutes a crime of fraud, not theft. where delivery is done after the card is entered into the device and the secret number is recorded on the keyboard, That is, extradition made under these conditions is voluntary, but may be attributed to the perpetrator the offence of theft of the card itself or its code, Thus, he commits two crimes that are independent of each other, theft and fraud, and asks the perpetrator about the crime of fraud for being incorrect or using fraudulent methods²⁴.

Second case: Crime of credit card forgery

Credit cards like other official or customary documents are subject to changing the truth they contain so that the data and the information attached to it can be manipulated whether it is a phenomenon or incorporated into the magnetic strip or electronic chip, Perpetrators forge a credit card for the purpose of seizing funds by using it to satisfy merchants or hacking data and information and using it for remote fulfillment operations by shopping from websites via the Internet. Counterfeiting takes several forms, possibly by making a new card with other card data, which is termed total forgery or by partially altering an existing card data issued by a bank or financial institution, which is called partial forgery²⁵.

In order to avoid any abuse of the credit card by third parties and use it to make cash withdrawals through automated distributors or the fulfilment of the value of the goods and services obtained for the benefit of the shops in which they deal, The credit card customer should inform the bank of the lost or stolen card even if it is cancelled. And this obligation rests with him and is even included in the terms of the contract that was shown and between the issuer, Some issuers may also require that this notification be emptied in a written form if the card is lost or stolen, and that this be proven by an official record²⁶.

²⁴ Naila Adil Mohamed Farid Qura, op. cit., p. 541.

²⁵ Amjad Hamdan Al-Jahnami, Civil Liability for Illegal Use of Electronic Payment Cards, Edition 1, Al-Masirah House, 2002, p. 157.

²⁶ Abu Aloufa Mohamed Abu Aloufa Ibrahim, op. cit., p. 525.

2- Offences of using the customer's cancelled credit card against the bank

In order to achieve the client's criminal liability, the cancelled credit card against the bank must have committed one of the following offences.

2.1- Customer's use of cancelled credit card in fulfillment

The process of satisfying the transaction amounts is one of the most important reasons for which the card was issued, except a, this use may take the form of a set of crimes, which is.

A- Crime of fraud

The customer's use of the credit card after its cancellation, having been informed by the bank of the purchase of goods and services through the network, In this case, the use of the cancelled card to satisfy merchants constitutes a crime of fraud As the mere presentation of the card to the customer aims to convince the existence of fictitious credit that does not exist in fact and is not a mere lie and the cancellation of the card takes away its value as a credit tool in addition to the realization of the delivery element of the customer delivering the purchases to the legitimate customer of the card, This view was taken into account by the Paris Court in its 1974 judgment, which held that such conduct was a fraudulent method aimed at persuading the existence of a fictitious debt in order to obtain from the bank the sums of money seized²⁷.

With reference to article 372/1 of the Penal Code, we find that: (Any person who receives, receives or proceeds to receive funds, transfers, bonds, customers, securities, promises, securities, securities, proceeds or acquires any of the obligations. This fraud is to take away all or some of the other person's wealth or commence it by using either false names or qualities, fictional authority or fictional financial credit. by creating hope of winning anything, an accident or any other fictitious incident, For fear of occurrence, a penalty of at least one to five years' imprisonment and a fine of 500 to 20,000 dinars.

By extrapolating this material, you must have two elements in the crime of fraud using the cancelled credit card. Where the physical element of the seizure of a movable money owned by a third party, the bank includes the issuer of the credit card using fraudulent methods, namely deception, lying, fraud and any means that may help, The moral element is the direction of the customer's will to own this money knowing that it is inadmissible and also knowing that the credit card is cancelled and not allowed to use it And he uses fraudulent methods to grab these sums.

²⁷ Huda Abbas Mohamed Reza, op. cit., p. 284.

Doing so is a crime of fraud against the bank on the basis of the availability of abstract conduct of using fraudulent methods that led to financial abuse. And that's because by submitting the customer's cancelled credit card to the customer, He is a fraudulent perpetrator, trying to convince him of the validity and validity of the card in front of him, The Moral Corner is aware of the cancellation of the card and nonetheless defrauds the merchant.

In another view, it is not enough to realize the manoeuvre of fraudulent methods. Because this application and if it's an external act, it's not an incarnation of lying. And the judgment does not change the customer's allegation that the validity of the card is false, because this is an abstract lie. It's not about the merchant, and it's not about fraud, because lying doesn't extend to convincing that there's fake credit. It is intended that abstract lying is not enough to create fraudulent methods The Egyptian Court of Cassation held that if the defendant simply lied to the victim's complacency and believed him, The mere fact of such a lie that would not be permissible. It's not fraudulent, it's not punishable. lie, however, amounts to fraudulent methods, If it is accompanied by external or material acts that lead to the belief that it is true²⁸.

Another view was that the use of an electronic credit card after its cancellation was a fraudulent means of persuading the victim of the existence of fictitious credit and that he was a creditor in the bank²⁹.

If the customer uses his card to fulfill his purchases, and the customer agrees to this performance as the card is usable, without reviewing the issuer's bank to ascertain its validity and effectiveness, in this case the offence of fraud is against the customer, the latter using an incorrect character to convince the customer of the integrity and the right to use the card.

Also fraudulent is the complicity between the customer and the customer in accepting the fulfillment of a cancelled credit card, with the intention of damaging the issuing bank, and the availability of fraudulent methods is the crime of fraud.

In this criminal liability, the customer and the customer are deemed to be an actor in the crime of fraud, applying the general rules of criminal liability, which define the original perpetrator of the offence as anyone who has performed executive acts and his or her primary role in the commission of the offence.

Since the customer played an important role in the crime of fraud by upholding the customer's claims of validity of the card, which led the bank to meet the price of the purchases, the Egyptian Court of Cassation ruled that fraudulent methods were essential elements involved in the formation of the

²⁸ Abu Aloufa Mohamed Abu Aloufa Ibrahim, op. cit., p. 522-523.

²⁹ Abdel Hadi al-Najjar, op. cit., p. 56.

physical element of the crime of fraud, and the use of the offender was an executive act³⁰.

We believe that the customer's use of the cancelled credit card in fulfillment applies to the fraud offence, because the physical element of this offence is the customer's presentation of the credit card despite knowing that it has been cancelled, which is a form of fraud, where the customer has been accused of the validity of the card, without having to do other fraudulent acts confirming this fraud.

B- Crime of treason

The offence of breach of trust is defined as any waste, embezzlement or misappropriation in its judgement of money transferred to the offender by a contract of trust damaging the owner or holder of the money³¹.

Article 376 of the Algerian Penal Code provides for the offence of breach of trust: (Any person who misappropriated or dissipated in bad faith commercial papers, money, goods, securities, securities or any other editions containing or proving an obligation or acquittal to which it was handed only on leave, deposit, agency, mortgage, bare-use, performance of a remunerated or unpaid work, provided that it is returned, submitted, used, used or damaged by the trust.)

By extrapolating this article, it is clear that the offence of this offence is embezzlement or waste on the bank's money, which is presumed to be handed over to it by way of lease, deposit, agency or bare use.

When the customer refuses to return the credit card to the bank, although it is established that he is aware of the notification of the response from the bank, he is guilty of the offence of breach of trust. The card is handed over to the holder under the contract of accession, which allows him to use it on a bare-use basis and return it after the expiry or cancellation of the contract. The card remains owned by the bank and not the customer³².

The credit card is considered to be an object, a transferee of a material nature, which is the offence of breach of trust. The mental element of this offence is that the customer stamps the card and refrains from returning it to the person to whom it must be returned³³.

This is what some French courts have argued, since if the customer continues to use the card after its cancellation, he asks for the offence of breach of trust, since the use of breach of trust is such that it may not be issued by the non-owner that the offender considers himself to be the owner's view. Some went along with this trend by stating that once the holder submitted the

³⁰ Abu Aloufa Mohamed Abu Aloufa Ibrahim, op. cit., p. 524.

³¹ Mohamed Sobhi Najem, op. cit., p. 162.

³² Abu Aloufa Mohamed Abu Aloufa Ibrahim, op. cit., p. 521.

³³ Ibid., p. 521.

cancelled card and no one else knows this information (cancellation of the card), he is the owner of it. The use is the same as the appearance of the owner, since he is the owner of the card as long as he is the legitimate holder of the card, even if it is cancelled or expired. However, there are those who go to the contrary and say that the cancelled credit card holder does not appear as the owner but as a usable credit card holder and that he still enjoys the benefits granted to him by the card issuer's bank, thereby not having the crime of breach of trust³⁴.

We believe that the offence of breach of trust applicable to the unlawful use of the cancelled credit card by the customer, on the basis of a breach of the agreement between the customer and the bank by submitting the credit card with the knowledge that it was cancelled and used in satisfaction, was conditional on the customer's delivery of the credit card on conditions in the contract between him and the bank.

Some of the jurisprudence criticized the characterization of dishonesty of the customer's use of the credit card, based on the fact that the credit card is not the customer's peace editor based on a deposit contract, agency or bare-use, but merchandise money that was misappropriated by the abusive use of any contrary to the purpose for which the energy was allocated³⁵.

In our opinion, the customer's act using the credit card in performance does not apply to the offence of breach of trust. because the customer may receive money from the automatic distributor in the normal manner without cheating or falsifying, That is, the money handed over to the customer has not been transferred to his possession, which is contrary to the element of the crime of breach of trust, which requires that the money be in the hands of the customer who dissipates and uses it.

2.2- Customer's use of cancelled credit card to withdraw cash

Using the cancelled credit card to withdraw cash from ATMs (ATM) is, as some say, unimaginable and very difficult in the light of the precautions that banks put on their devices because these devices usually refuse to do the science of withdrawal or swallow the card, since the means of controlling the validity of electronic withdrawal cards made the use of bad (unlawful use) in exchange for ATMs is limited to the case of excess withdrawal, and does not involve the use of the cancelled or expired card as these cards are automatically withdrawn by the devices programmed to perform this work after they are provided with the necessary memory³⁶.

However, if the bank does not reprogram the distributors for technical reasons or the machinery that was programmed to identify the cancelled credit

³⁴ Abdelfattah Bayoumi Hijazi, op. cit., p. 574.

³⁵ Nabil Mohamed Ahmed Sabih, op. cit., p. 255.

³⁶ Naila Adil Mohamed Farid, op. cit., p. 533.

card is disrupted, and the withdrawal of the money by the credit card customer is done, in this case the customer seizes the bank's money and adapts its actions as a theft offence.

The Penal Code stipulates the offence of theft as: "Anyone who embezzles an object owned by him shall be considered a thief." According to this article, the offence of theft shall withdraw the bank's money with the cancelled credit card on two corners:

The physical corner, which is to take the bank's money without its consent, grab it and actually withdraw it from the automated distributors.

The moral element, which is the criminal intent of this crime and which consists of two elements, Knowing, and knowing the customer that the credit card is cancelled and that the withdrawal of money from the bank's automated distributors is an offence punishable by law, Despite this, the second element is the tendency of the credit card customer to embezzle the bank's movable money. The money is transferred from the bank account to the customer's hand.

There is an opinion from the doctrine that the pregnant woman's conduct is not considered as theft. And their position on that is that handing over money was only an optional delivery and not hidden. This is because when the customer put the credit card in the withdrawal machine and according to the programming provided by it You refuse the customer to cancel the card, or you pay him the required amount. If the card is rejected, there is no crime in the order, and if the balance exceeds and the machine disburses That's what the bank that programmed the device on that is, and that's an optional delivery. from the bank and this is not a theft by the customer³⁷.

The process of handing over the money from the bank to the customer was consensual, and this satisfaction runs counter to the idea of removing the money transferred in the crime of theft from the bank's possession.

And there are those who adapt the act of withdrawing money from the customer of the cancelled credit card as attempted theft. s withdrawal of cash using the cancelled credit card is often impossible, Because the bank will have programmed its distributors and machines to not respond to the cancelled card or withdraw it as soon as the customer places it inside the machine, thereby not withdrawing or embezzling the cash The crime of theft is not realized in this case, but is adapted as the crime of attempted or attempted theft. The will of the customer was to try to withdraw the bank's money and seize it. Although he knows that the card is cancelled, the failure to complete this theft is beyond the customer's control, but because the bank has programmed its machines and distributions to not respond to the cancelled card and withdraw it immediately

³⁷ Ihab Fawzi Alsakka, op. cit., p. 267.

when placed inside the machine by the customer, Bad faith is available here and is to seize the bank's cash deposited with ATMs against the will of its owner.

Conclusion

We have addressed various legal and legal differences in the adaptation of the non-lawful use of the credit card by the customer which may remain unpunished in the absence of provisions to criminalize attacks on the Bank's cash using cancelled credit cards, Thus, the penal liability of the customer of this card shall be as soon as the bank's financial assets are damaged, whatever the type of offence the elements of which may apply to such assault.

Due to the seriousness of these offences to business and banking operations, the credit card system must be strengthened by technical and legal procedures that address its risks and criminalize abuse by the customer.

•Results

- The nature of the obligations incurred by the credit card customer, under the credit contract, obliges him to respect the use of the card and its return after cancellation upon its request by the bank. The penal liability of the customer shall not be incurred if he breaches these obligations and the conditions guaranteed in the contract.

- If the customer has been notified of the cancellation of the card by the bank, if he accepts the customer of the customer, he shall bear the consequences of his disposition. If the merchant does not, the latter shall require the bank to reimburse the amounts used by the customer to meet the cancelled credit card.

- The customer shall bear the cancelled credit card for the crime of fraud, if he presents this card to the merchant on the basis that it is usable, once the credit card is shown cancelled by the customer, his use of a fraudulent means by which he wanted to take over the bank's financial disclosure.

- If the Bank programmed its automated distributors by booking the cancelled credit card, in this case the customer asks for the offence of attempted theft, and bears criminal liability for its use of the cancelled card despite the failure to complete the withdrawal.

•Recommendations

- The use of a credit card entails the occurrence of a series of offences, the crime of theft and the crime of fraud and dishonesty. However, the issue requires special texts criminalizing attacks on cancelled credit cards. For this reason, we call on the legislature to allocate a chapter in the Penal Code that criminalizes all forms of illegal use of the card.

- To promote legal and economic awareness of the validity of the use of the credit card and its handling in the fulfilment and withdrawal of money, and to indicate its legal provisions both during its entry into force and after its

cancellation, so as to guarantee the rights of all parties, bank, customer and even customer.

- Using research and legislative texts of other countries to combat the poor use of the credit card, how to solve the problems in which the issuing banks fall, and how to deal with such cases, thereby enhancing confidence in dealing with such sophisticated means of fulfillment.

- The formation of human frameworks both at the bank level and at the judicial control level to deal with the illegal use of the credit card, to detect these crimes at the beginning, before seizing the bank's money and charging it significant losses.