

Electronic consumer's retraction from contract

تراجع المستهلك الإلكتروني عن العقد

Fatima djilali Saou *

Nassima Derrar

Mohamed Ben Ahmed University, Oran 2

Mohamed Ben Ahmed University, Oran 2

Laboratory of the Rights of the Child

Dnnd87@yahoo.com

djilalisaou.fatima@uni-oran2.dzm

The date of Submission: 09/11/2022

The date of revision: 02/02/2023

The date of acceptance: 05/02/2023

Abstract:

The most important guarantee provided by contemporary legislation to the electronic consumer is the right to waive the contract. A waiver is an exceptional right from the rule of forcing the contract, imposed by inequality and the widening gap between a vulnerable consumer and an electronically, technically, and economically strong professional. A consumer's retreat from an electronic contract is an acquired right that allows him to retract a contract that he has already concluded without any consequences or questions. The waiver is time-bound and subject to provisions determined by law. Through our study, we tried to compare the system of Algerian legislation with that of French legislation concerning the right of electronic waiver. We recorded through several points how the French legislator handles the right of waiver more precisely and in detail. The French legislator addressed all gaps and issues and provided for exceptions that make the consumer loses his right of retraction. On the contrary, we note that the Algerian legislator has dealt with the right of waiver, but has remained more reserved and far from the thorough legal treatment of that right.

Keywords : remote contract, waiver, contractual balance, electronic consumer protection, professional.

الملخص:

إن أهم ضمانة قدمتها التشريعات المعاصرة للمستهلك الإلكتروني هي حق العدول عن العقد، فالعدول حق استثنائي عن قاعدة القوة الملزمة للعقد فرضه عدم التكافؤ واتساع الفجوة بين مستهلك ضعيف ومحترف قوي إلكترونيًا، تقنيا واقتصاديا.

إن تراجع المستهلك عن العقد الإلكتروني هو حق مكتسب له يسمح له بأن يتراجع و يعدل عن عقد سبق أن أبرمه دون أن يترتب عن ذلك أي آثار ولا أن يسأل عن سبب عدوله. و فالعدول يرتبط بمدة زمنية ويخضع لأحكام يحددها القانون، ومن خلال دراستنا حاولنا أن نقارن بين تنظيم المشرع الجزائري وتنظيم المشرع الفرنسي لحق العدول الإلكتروني وسجلنا من خلال عدة نقاط كيفية معالجة المشرع الفرنسي لحق العدول بشكل أدق وأكثر تفصيلا وتنظيما وألم بكل الثغرات وتطرق لجميع المسائل ونص على الاستثناءات التي تُفقد المستهلك في ممارسة حقه في العدول، بالمقابل نلاحظ أن المشرع الجزائري عالج حق العدول لكنه ظل مُتحفظا أكثر وبعبدا عن التفصيل والمعالجة القانونية الدقيقة لحق العدول.

الكلمات المفتاحية: عقد عن بعد، العدول، التوازن العقدي، حماية المستهلك الإلكتروني، المحترف.

* Corresponding Author.

Introduction:

The world's ICT developments have contributed to affecting all areas of human life. Technology has transformed each traditional into a contemporary that keeps pace with the new era, leading to the emergence of the electronic contract that emanated from technological mating with the classical contract.

The conclusion of an electronic contract (more than a traditional contract) has many obstacles to consumer satisfaction, as he buys a product or benefits from a service influenced by all the attractions of image and voice. Advertisement via the website is attractive and influential and can be misleading. Therefore, many times the electronic consumer makes the contract, expecting that he will receive the best commodity or service, and then realizes the error of the electronic offer (this is mainly due to the electronic consumer's vulnerability to the technical and economic legal power and the professional's electronic authority that gives him the feature of improving the offer of his commodity or service). The commodity is not in front of him and he did not touch it with his hand; he just watches it through the electronic screen.⁽¹⁾ Thus, in order to rebalance the contract between a weak consumer and a strong professional, and as a matter of consumer satisfaction, the right to refrain from performing an electronic contract was found to protect the consumer from the risks of the electronic environment. In general, the origin in sales is that the contract is final in order to stabilize and continue the transactions. If the buyer wants to refrain from performing the contract and returning the product, it is essentially and directly dependent on the seller's commercial policy.⁽²⁾ In some cases, however, the law intervenes and gives the consumer the right to waive as an exception in certain sales,⁽³⁾ such as sales in houses. These are the sales in which the seller travels to the buyer's house and offers its goods, and the contract is made between them to avoid fraud and error, particularly by older persons who enter into contracts affected by the seller's attractive offer. The law, therefore, gave the buyer the right to retract even if he was the one who contacted the seller and requested his goods or service. Similarly, a consumer loan is a type of loan that is intended for consumption and has easy procedures compared to other bank loans. Its advantage is to automatically replenish the loan once it is amortized against high bank interest. For these reasons, the law has granted the consumer loan beneficiary the deadline for its retraction. Retraction is permitted in the case of personal profit cards and is a type of offer adopted by major companies to attract the largest number of customers. An invitation card is sent in person's name to an address to receive a gift. Due to the possibility of deception and fraud, the law granted anyone who responded to a personal invitation (to receive a gift) the right to retract it⁽⁴⁾. The same is true for marriage offers agencies, which receive marriage applications from men and women with specific

¹ Michael Rasheed Ali Al-Zebari, *Online Contracts between Shari'a and Law*, New University House, 2014-2015, p. 431.

² Each seller has his business policy and bets on earning the most number of customers. He is free to accept the return of the product or not and to include any condition he deems appropriate. For example, some traders do not accept a direct refund of the price. However, the buyer gets a purchase voucher for the value of the item returned, which is valid for a certain period.

³ Nathalie Moreau. *Electronic contract formation: cyber consumer protection and alternative dispute resolution (M.A.R.C.)*. Doctoral School of Legal, Political, Economic and Management Sciences. Lille University 02, 2002/2003. P. 64.

⁴ The aim of the company is to deliver a gift ostensibly while basically soliciting the consumer to buy more priced sales.



specifications and link the relationship between each of the two, which are identical in terms of the required specifications, in exchange for a specific amount of money paid by each marriage applicant, whether a man or a woman. The law here gave the applicant to whom the agency finds his partner according to his specifications the right to retract the marriage. Such contracts cause consumer fatigue, which only specialists are aware of, and often involve a multiplier and unusual obligation on the consumer, requiring double protection.⁽¹⁾

An exception is also permitted in distance sales.⁽²⁾ The latter is each professional/consumer contract in the context of the sale or provision of a service without the parties' simultaneous physical presence, through one or more telecommunication techniques pending the conclusion of the contract.⁽³⁾

With the development of distance contracts, the right of retraction as the consumer's right has evolved with the logo **satisfied or reimbursed** i.e. the consumer is either satisfied with the sale (or service) or compensated (the value of the payment is compensated), all within the framework of ensuring the protection and balance of the contract to the consumer who contracts virtually and hopes that the contract will live up to his expectations. Each contractor's need to complete the electronic contract exceeds its willingness to retract it. If it happens and the contract is not suitable for the consumer or fails to meet his wishes and needs for which the contract is concluded, its renunciation is the best solution and the strongest guarantee.

We try to expand further on the subject through this study by answering these questions:

To what extent can the right of waiver protect the electronic consumer?

Is the right of waiver sufficient to rebalance an unequally relationship between an electronically weak consumer and a strong professional?

Can the right to waiver protect the electronic consumer and grant him a guarantee of an equal electronic contract?

To answer these questions, we considered that we should examine the concept of the right of electronic waiver and demonstrate its legal framework (deadlines and conditions for the exercise of the right to waiver and its effects).

1. concept of the right of electronic retraction

Retraction is the primary advantage that gives the electronic consumer protection of its rights and guarantee of the electronic contract. Among all of the rules and safeguards for the protection of the consumer before contracting and during implementation, retraction is considered to be the most prominent due to its exceptional specificity.⁽⁴⁾

Through this axis, we try to define retraction in terms of linguistics, jurisprudence, and law, as we show its characteristics and the difference between it and similar legal

¹ Ahmed Rabahi, "General Principles of the Right to Renounce the Contract under European Directive No. 83-2011 on Consumer Rights, French Consumer Law", Journal of Legal and Political Studies, Amar Telidji University of Laghouat, No. 03, 2016, Algeria, p. 13.

² It is the subject of our study.

³ Khaled Mamdouh Ibrahim, Electronic Contract Conclusion, 1st Ed, Egypt, University House, 2007, p. 53.

⁴ Among the consumer's established protection rules at the conclusion stage is the commitment to consumer foresight/consumer protection from electronic advertising/consumer satisfaction protection during the conclusion of the electronic contract. One of the safe guards established in the implementation stage is to send an electronic copy of the contract to the consumer/the seller's obligation to transfer the ownership of the sale/consumer protection from hidden defects/the preparation of an invoice by the supplier to hand to the consumer.



mechanisms, as well as the justification for the existence of electronic retraction in the world of e-commerce.

1.1- Definition of the right of Retraction:

a. Linguistically:

The verb is to retract, which means to take back an offer or statement, to withdraw, to recant or disavow something, and to waive.⁽¹⁾

b. Jurisprudentially:

Retraction is defined as the contractor's ability, after concluding the contract, to choose whether to proceed or revert to the contract.⁽²⁾

It is also defined as: "The power of a contractor to invalidate the contract without depending on the will of the other party."

It is also known as: "To show the desire of one of the parties to the contract to reverse his will in the contract, withdraw it as it wasn't to stop all its effects in the past and the future."⁽³⁾

It is further defined as: "A possibility granted by law to the vulnerable party to the contract which, within a certain period, allows him to revert unilaterally to his consent that he had expressed at the time of concluding the contract without needing to state the reasons for such revocation."⁽⁴⁾

It is also defined as: "A means by which the legislator allows the consumer to re-examine, unilaterally, the obligation to which he was previously bound, taking advantage of the period of thinking through which he will be able to retract his earlier commitment."⁽⁵⁾

Therefore, retraction is a mechanism created by the law whose primary objective is to inform the consumer (the weak party in the contractual relationship) of the function of retraction and withdrawal from the contract he entered into with the professional whenever he finds that he has misjudged his interest or that the contract carries considerable burdens on him, without explaining the reason behind the retraction."

c. Legally:

Article 19 of Act No. 18-09⁽⁶⁾ on Consumer Protection and the Suppression of Fraud defines revocation as: "The consumer's right to unduly reverse the acquisition of a product." The Algerian legislator had adopted the right to retraction or revocation to the consumer with the provision of a "no-justification" feature, which enabled the consumer to retract the contract without giving any reasons. It is one of the advantages of electronic retraction. In the Electronic Commerce Act 18-05⁽⁷⁾, however, we find it merely in article 11 stating that "the terms of electronic offer may include the conditions and time limits for retraction where necessary," without any detail or enrichment of the right of electronic retraction.

¹ Ibrahim Mustafa et al., Al-Wassit dictionary, part 1-2, Istanbul, Islamic Library, 1972, P. 588/2.

² Mansour Hatem Mohsen and Isra Khadir Madloun, "Refraining from Contracting in the Electronic Consumption Contract (Comparative Study)", Journal of Al-Halabi Investigator for Legal and Political Sciences, Second issue, Fourth Year, Babylon University, p. 52.

³ Gérard Haas & Stéphane Astier, Legal guide to e-commerce, France, ENI editions, 2012, p.91.

⁴ Ahmed Rabahi, op. cit, p. 136.

⁵ Tohami Sameh Abdul Wahid, Online Contracting-Comparative Study, 1st Ed, Law Books House and Diaspora Publishing and Software House, 2008, p. 321.

⁶ Dated 10 June 2018 amending and supplementing Act No. 09-03.

⁷ Act No. 18-05 of 10 May 2018, relating to electronic commerce.



The following articles were specific to the return of the product in the event of non-compliance with the formal procedures and delivery deadlines without stipulating the right to refrain from performing the contract as an exceptional independent right of electronic contracts.⁽¹⁾ The Algerian legislation also used the term “retraction” concerning the consumer loan in Executive Decree No. 15/114 on the conditions of consumer loan offers, which is provided for in article 11/2 “...However, the buyer has a time limit of 8 working days to retract, calculated from the date of the contract.” Article 1/14 of the same decree stipulates: “When the product is sold at home, the period of retraction shall be seven days, regardless of the date of delivery or submission of the goods.”⁽²⁾

The revocation in the HAMON Act⁽³⁾ stated that in contracts concluded remotely, the consumer could reverse its decision and withdraw from the contract within 14 days, without the French legislator giving a definition of the revocation leaving its detail to the jurisprudence.

From the foregoing, we can conclude that revocation is an advantage granted to the electronic consumer in which he has the right to renege on a contract concluded remotely without providing any justification, without entailing any sanctions, and not receiving any compensation.

Some commentators of the law have considered that revocation renders the electronic contract unnecessary against the consumer and a valid contract necessary for the professional to be subject to the consumer's discretion and subject solely to the consumer's will.⁽⁴⁾

Some law researchers consider that retraction or revocation destabilizes transactions and creates temporary insecurity in contracts. The professional contracts with the consumer between two equal possibilities of the contract being concluded and its retraction on the last day of the retraction period⁽⁵⁾. Nevertheless, the right of retraction remains the most important guarantee for the consumer to accept the conclusion of the electronic contract, knowing that he can withdraw when overburdened with unbalanced burdens with a strong professional capable of imposing protection on himself as an electronic bidder.

¹ Article 13 provides that information in the electronic contract shall be the terms and conditions for the return of the product. Article 14 provides that if article 10 is not respected, the electronic commercial transaction shall be preceded by an electronic commercial offer and documented by an electronic contract. If article 13 is not respected, the consumer has the right to seek annulment of the contract and compensation. The annulment of the contract and the compensation is a provision that differs from the right of retraction in which the termination of the contract occurs in exchange for a refund without compensation. Article 22 provides that if the supplier does not respect the delivery deadline, the consumer has the right to return the product no later than 4 working days counted from the date of actual delivery and claim compensation. The supplier is obliged to refund the product value as well as the delivery expenses. Sending the product for non-respect of deadlines is not a retraction in its modern legal sense. In the retraction, the value of the product is refunded with the consumer bearing the expenses of the delivery. Article 23 provides that in the event that the product does not conform to the consumer's request or is defective, the consumer may resend the product and indicate the cause. The expenses are borne by the supplier. The most important feature of resending for non-conformity or defect is stating the reason for the refusal, whereas one of the characteristics of retraction is not justifying the reason for the revocation.

² Executive Decree No. 15-114 on the Conditions of Consumer Loan Offers of 12 May 2015, Official Gazette of the People's Democratic Republic of Algeria, Issue. 10 of 13 May. 2015.

³ The Consumption Act is named after Minister HAMON, who brought about many changes in the Consumption Law and contributed to the change in the thinking of an entire society.

⁴ Abdullah Dib Mahmoud, Consumer Protection in Electronic Contracting, Comparative Study, Jordan, Culture Publishing and Distribution House, 2012, p. 199.

⁵ Nathalie Moreau, op.cit, p.64.



1.2- Characteristics of the right of retraction:

- The right of retraction is limited exclusively to contracts concluded remotely (with the aforementioned). The nature of the electronic contract, the imbalance between its parties, and the consumer's protection as a vulnerable party imposed retraction as a means of providing electronic security.⁽¹⁾

- The right of retraction is an exception to the general rules, because the contract is a binding agreement that cannot be revoked or amended except by agreement of the parties or for reasons established by law. The sanctity of the agreement binds the parties to it as soon as it is concluded, but in the electronic contract, given its specificity and imbalance between the parties, the right to refrain from performing the contract is found as a pure right of the consumer.⁽²⁾

However, there are law scholars who believe that talking about retraction as a way out of the binding force of the contract is only superficial. An electronic contract is not complete unless the legal period of retraction has expired and the consumer has not exercised his right of retraction. The latter does not violate the binding force of the contract but only delays the time of conclusion of the contract, which is not concluded as long as the period of retraction exists. In practice, the contract is concluded only when the retraction deadline is expired and the consumer's will to contract emerges. If the period has elapsed without the consumer retreating, the contract between him and the professional shall be concluded without the need to reconfirm his acceptance. Whereas, if he decides to retract, he must express his desire in the manner specified in the electronic contract.⁽³⁾

- The right of retraction is deemed public order and should not be waived. Any agreement to cancel it from the contract is invalid. The buyer does not have to waive his right to retract,⁽⁴⁾ and in return, it is the responsibility of the professional to inform the consumer of his right to retract before concluding the contract.

- The right of retraction is discretionary, as the consumer exercises his right to retract without justifying it. He is not obliged to justify his revocation to the professional at all. In no case shall he be required to give a valid cause behind his retraction unless it is within the framework of the development and improvement of the professional's services⁽⁵⁾ where his purpose in finding out the reason for the consumer's reversal is an investigative work for the benefit of the promotional policy and the achievement of the greatest sales in order to avoid falling into the same causes that may lead in the future to the loss of other consumers.

- The right of retraction is free and the consumer is not subject to any fine if he renounces the contract. Since retraction is unjustifiably accepted in all circumstances, it would be illogical if it entail any sanctions whatsoever.⁽⁶⁾ The consumer does not claim any amount as compensation for his revocation, even if it is after trying the product for a few days and then

¹ Amang Rahim Ahmed, Consensus in Electronic Contracts Online-Comparative Analysis, 1st Ed, Jordan, Wa 'el Publishing and Distribution House, P. 246.

² Ahmed Rabahi, op.cit, p. 134.

³ Nathalie moreau, op.cit, p.64.

⁴ Omar Khalid Rezikat, E-Commerce Contracts - Online Sales Contract, 1st Ed, Jordan, Dar Al-Elm for Publishing & Distribution, 2007, P. 36.

⁵ Gérard Haas & Stéphane Astier, op.cit, p91

⁶ Except in circumstances excluded by law from revocation.



return it because it was not up to his expectations.⁽¹⁾ However, the professional has the right to impose sanctions on the consumer and demand compensation in the event that the product is used more than the normal use of the experiment, which is considered to be enrichment for no reason.

Within the framework of free of charge, a professional is not entitled to deprive the consumer of contracting again with the same website as a form of punishment for reversing the performance of the contract.

- Expenses are borne by the consumer. The law granted him the right of retraction and, on the other hand, he bears the costs of re-sending the product without it being in the form of compensation to the professional. The amount shall not exceed the expenses of the return and the consumer shall be held accountable for the product's restitution according to the good head of household, who shall be obliged to return it as received from the professional.⁽²⁾

In a judgment of the European Court of Justice of 15 April 2010, No. 511-08 (binding on French judges), it stated: "The expenses of shipping goods belonging to the professional cannot be borne by the consumer and affirmed that the only expenses that the consumer can incur are direct expenses of the goods."⁽³⁾

- Retraction is a provisional right. The consumer exercises the right to retract within a legally prescribed or agreed period. The expiration of the period extinguishes the consumer's right to revoke. Making the retraction period temporary contributes to stabilizing business transactions and professionals' interests.⁽⁴⁾

- The right of retraction is derived from the law or agreement without the need for recourse to the judiciary. The principle is that the term of retraction, its procedures, its exceptions, and all matters relating to it are prescribed by law and are public order. A professional can make a safer offer to the consumer and be granted a longer term or accept the retraction in what is excluded by law.⁽⁵⁾

1.3- The difference between retraction and other similar protection mechanisms:

Through this point, we try to distinguish between retraction as an electronic consumer protection mechanism and other protective mechanisms available to the classical contractor, highlighting the common points and differences between retraction, invalidity, termination, and cancellation by the individual will.

a) Difference between electronic retraction and invalidity:

Retraction and invalidity share the effect they have where the contract is considered as if it were not existing before and terminates from the time of its conclusion. Once the consumer exercises his right to revoke, the contract is eliminated and the same is true of invalidity.

¹ French law also abolishes any insurmountable conditions for the consumer not to exercise his right to repudiate, such as not tearing the packaging of the product, since in practice he cannot see and inspect the product without opening it.

² Ahmed Rabahi, op.cit, p. 148.

³ Gérard Haas & Stéphane Astier, op.cit, p. 95.

⁴ Si Youssef Zahia Houria, "the Right to Withdraw from the Contract as a Mechanism for Electronic Consumer Protection", Journal of Ijtihad for Legal and Economic Studies, Vol. 7, Issue. 2, 2018, Algeria, p. 15.

⁵ A professional can infringe the law on a positive basis and in the context of providing more protection to the consumer and cannot provide a lower term than provided for by law, or add an exception to contracts that are not permissible for retraction.



However, invalidity is the result of a failure of one of the contract's elements or a condition of the contract's validity. When the flaw is connected to a pillar of the contract, a condition of its terms, or a cause, it is an absolute invalidity. It is relative invalidity when the defect relates to the conditions of consent or one of the parties to the contractual relationship is incapacitated, which is the issue agreed upon by jurists in distinguishing between absolute invalidity and relative invalidity.⁽¹⁾

If the contract arises invalid for the reasons preceding, then in the electronic retraction, it is valid and meets all its requirements in principle. However, it is subject to the electronic consumer's use of his right to retract within a certain period by law.

Perhaps the most important points between the two mechanisms are:

- Retraction is an innovative feature of e-consumer protection as a vulnerable party in the contractual relationship. It ensures that the consumer withdraws from any obligation that limits his freedom and burdens him without any balanced exchange in the relationship and without initiating any legal action. However, invalidity is a feature of each party in the contractual relationship, as it is invoked by all those who have an interest in invalidity.⁽²⁾
- Retraction is an exclusive and unwavering right of the electronic consumer, and he cannot be asked for any justification for withdrawing from the contract; however, the professional will be breaking the law if he attempts to force the consumer to declare the reason for retraction. The consumer withdraws from the contract simply by declaring his wish without the need to file a lawsuit, whereas the invalidity is subject to legally defined grounds and the contract is not deemed invalid unless the court said so or the contractual relationship parties' agreed upon.

b) Difference between electronic retraction and termination:

Electronic retraction and termination share the fact that both are protection mechanisms applied after the conclusion of a contract. The retraction is used by the electronic consumer after the conclusion of the contract and within the legally prescribed period when it appears to him that he is linked to onerous obligations or unbalanced performances in the contract. Termination is also the penalty required by a contractor if the other party refrains from fulfilling his obligations after the conclusion of the contract and within the specified period.⁽³⁾

Electronic revocation and termination share the impact. Both mechanisms return the parties to what they were before the conclusion of the contract. Termination removes every effect of the contract since its conclusion and each contracting party returns to the other party what he has done to carry out the terms of the contract. Once it has been avoided, it is null and void.⁽⁴⁾ Also, an electronic contract in the exercise of the right of retraction will be cancelled and deemed to be as if it had never been concluded from the time when the consumer decides to renounce it and withdraw from each obligation resulting there from. Hence, the

¹ Rafea Ahmed Belabidi and Abdel Djalil Lakhwemis, *The Right of the Electronic Consumer to Reverse in the Light of Comparative Legislation*, Master Memoir, Business Law, Hamma Lakhdar El Oued University, 2018-2019, p. 12.

² Mohamed Sabri al-Sa 'adi, *Al-Wadih in Explaining Civil Law, General Theory of Obligations, Sources of Contract Commitment and Individual Will*, Algeria, Dar al-Huda, 2007-2009, p. 240.

³ Article 119 of Ordinance 75-58 of September 26, 1975 containing the Civil Law, as amended and supplemented.

⁴ Rafea Ahmed Belabidi and Abdel Djalil Lakhwemis, *ibid*, p. 14



professional is obliged to return everything paid to him by the consumer under the contract and the latter is obliged to return the product to the professional.

However, what separates electronic retraction from avoidance or termination is the legal basis on which they are based. Retraction is based on the principle of the sovereignty of will and the pacta sunt servanda of contractors, whereas termination is based on the principles of justice and the principle of good faith.

Retraction is linked exclusively to contracts concluded remotely and without justification. Even if the professional has fulfilled his obligations in full, the electronic consumer has the right to withdraw from the contract with a fixed right without being compelled to prove his retraction by a judgment. However, the termination depends on the failure of one of the parties to perform his obligations, making the contract unbalanced between the contractors' performance. Once the non-execution has been achieved, the harmed party has the right to sue for avoidance and dissolution of the contract.

c) Difference between electronic retraction and unilateral cancellation:

Electronic retraction, together with unilateral cancellation, share that both cancel the contract concluded by one party's will without the other party, without providing any justification, and without the need for a judicial judgment.

However, what distinguishes retraction from unilateral cancellation is that the retraction cancels the contract and becomes as if it were not. The consumer returns the product to the professional and the professional returns its price to the consumer, and the parties return to the state they were in before the conclusion of the contract. Unilateral cancellation preserves the consequences of the contract in the past and cancels only what is to come in the future; unilateral cancellation is not entirely focused on the contract but is limited to its future effects.⁽¹⁾

1.4- Reasons for establishing retraction as an e-consumer's right:

Electronic retraction is the most important mechanism brought by contemporary legislation to keep pace with the accelerated development of e-commerce. Retraction is a departure from the principle of binding force of the contract and the sanctity of the contractual relationship. We refer, in the following, to the justification for the provision of revocation as a pure and constant right of the electronic consumer.

a. The product cannot be seen before and during the conclusion of the contract:⁽²⁾

In the electronic contract, given its function of concluding a remote contract, it is impossible for the consumer to inspect the product he wishes to purchase in an accurate and non-ignorant manner so that he can obtain a correct image of the size of the benefits he will enjoy or the services he will receive. The consumer usually coincides with an electronic advertisement of a commodity or service and concludes the contract under the influence of that attractive advertisement, which is usually misleading or false, and then discovers late that the commodity is not as it was drawn in his imagination or that the service is not like the one

¹ Zuhair bin Hijaz, The right of the consumer to refrain from the execution of the electronic contract, Master Memoir, Business Law, Larbi Bin Mhidi University, Oum El Bouaghi, 2015-2016, p. 61.

² Bouhamla Salahuddin, "Consumer's Electronic Right to Refrain from the Contract as a Mechanism for his Protection", Journal of Research in Contracts and Business Law, No. 05, 2018, Algeria, p. 238.



he expected.⁽¹⁾ Therefore, revocation here is a fair solution for a consumer who remains the weakest party in the face of a strong professional electronically, economically, and technically.

b. Consent theory's failure to protect the electronic consumer:

Dropping the theory of will defects and trying to apply it to the electronic contract is not possible because the latter is much wider and more developed than the traditional one. An electronic consumer may enter into a contract that falls short of his wishes and does not reach his aspirations without the contract being defective, erroneous, coercive, fraudulent, or exploitative. However, the law considers his will to be flawed only because he entered into a remote electronic contract. The flaw may be a rush and a lack of judgment, as may be a misleading or false advertisement, as may be any other reason, as long as the consumer is a weak party offset by a strong professional. Hence, we find the retraction mechanism a strong justification to be an exceptional feature for an electronically weak consumer. As long as the means of conclusion differ, it is natural that the means of protecting the buyer's satisfaction differ.⁽²⁾

c. Negative effects of modern means of communication:

Electronic contracting is a means for the consumer to conclude more than a contract and about more than one product (goods or service) simultaneously. It reduces mobility costs and provides him with multiple options. The world opens a market for him to choose what he wants by pressing a single button while he is sitting without one single step. These are features of e-commerce and others that are guaranteed to the consumer but do not eliminate the technology monster and the risks of remote contracting. The consumer remains disadvantaged and ignorant in the face of an electronically powerful professional, a great informational, and technical expert. The contract cannot be balanced without the intervention of contemporary legislation to regulate, monitor, and administer e-commerce contracts.

The consumer usually concludes the electronic contract after being influenced by what he saw in the advertisement and becomes a committed contractor with one push of a button. Many times, the consumer does not feel that the contract is overstretching or does not achieve the reason for its conclusion until he sees the product. He then becomes aware of the result of haste and the consequences of his attraction and his vulnerability. Here, retraction is a practical and effective legal solution brought about by contemporary legislation to protect consumers from the risks of electronic contracting.⁽³⁾

2. Legal framework for the exercise of the right of retraction

Electronic retraction has received considerable attention from contemporary legislation as a consumer protection mechanism in light of accelerated technological development and increasing remote contracts. The provisions governing retraction were jus cogens norms (peremptory norm) i.e. they were of public order that could not be waived and any agreement to violate them was invalidated.

¹ Meriem Twil, "Electronic Misleading Advertisement and Its Impact on Electronic Consumer Behavior", Journal of Legal and Political Jurisprudence, vol. 01, Issue. 01, p. 67.

² Lakhdar Daykha, Electronic Consumer's Right to Renounce Contracting, Master's Memoir, Business Law, Chahid Hamma Lakhdar University, 2017-2018, p. 10.

³ Abdullah Dib Mahmoud, op. cit, p. 202.



The legal system of electronic retraction is surrounded by a number of legal controls regarding the duration, procedures, and implications of its practice.

2.1- The legal deadline for exercising the right of electronic retraction:

The legal deadline is the most important control of electronic retraction. Its practice is subject to respecting the legal deadline by the consumer in order to ensure the stability of electronic business transactions and create a strong electronic environment based on trust and security, free from recklessness and chaos.⁽¹⁾

The law specifies the length of time of retraction within which the consumer can exercise the right to withdraw from the electronic contract. The Electronic Commerce Act did not provide for the term leaving its detail to ordinances and decrees.⁽²⁾

Furthermore, French law granted the consumer the right to cancel a remote contract within 14 full days.⁽³⁾ The period of revocation is calculated from the day the object is delivered to the consumer in the case of goods, and from the day the service is accepted in the case of services. It expires on the day it is re-dispatched to the professional, not the day it is delivered to him. In the event of a dispute between the professional and the consumer over the deadline, the French legislator has not indicated this. However, since the delivery fact is material, it may be proven by all means of proof in general rules such as witness testimony and writing. In addition, the receipt may be considered evidence for the beginning of calculating the deadline.⁽⁴⁾

The date of retraction is fully calculated. If the last day of the deadline falls on a public holiday or religious holiday, it extends to the first next working day. In the case where the consumer orders two different goods (a) and (b) from the same electronic commercial website and item A is delivered, and then item B is delivered two weeks later, the retraction period is calculated from the day of item B delivery.⁽⁵⁾

The deadline for revocation extends to twelve (12) months if the professional breaches his obligation to inform the consumer of his right of retraction before the conclusion of the contract. A period of twelve months from the date of the first deadline end⁽⁶⁾ will be calculated i.e. fourteen (14) days, which is the period of retraction established legally. During this period (12 months), if the information prescribed in the law is provided to the consumer, the calculation of the new term begins 14 days from the time the consumer becomes aware of this information.

Article L221-5 has indicated that the final contract must include:⁽⁷⁾

- Conditions and time limits for the exercise of the right of retraction.
- An indication that the consumer bears the expenses of retraction if the sale is a commodity and the nature of the product sold does not allow it to be sent by mail. If

¹ Granting the right of retraction without a certain period of time makes it possible for each consumer to request cancellation of the electronic contract, causing chaos and instability in transactions that are detrimental to the professional and eliminating strong and secure electronic commerce.

² As of 2021, the total number of ordinances and decrees explaining and regulating the right to exercise retraction for the electronic consumer has not been issued in a clear and detailed manner, which contributes to the lack of regulation and control of the electronic market in Algeria despite its increasing rapidly.

³ French Law No. 334-2014 on Consumption.

⁴ Agnès Rabagny - Lagoa. E-commerce Law. France, Ellipses, 2011.p. 100.

⁵ This is provided for in French law.

⁶ DIRECTORATE-GENERAL FOR CONSUMER AND THE SUPPRESSION OF FRAUD.

⁷ Romainv. Gola, E-commerce law, Practical guide to e-commerce, Paris, Gualino, 2013, p. 314.



the sale is a service, the consumer also bears the costs of revocation when he explicitly expresses the commencement of execution and before the end of the retraction deadline.

- An obligation to inform the consumer that he does not have the right to revoke it if he loses the product.
- All the data of the professional (his activity, address ...) to make it easier for the consumer to exercise his right to retract.

They are the sum of obligations aimed primarily at enlightening the consumer's mind and building a valid will for him to conclude the final contract, knowing his right to retract and all that follows from the exercise of this right. In principle, it ensure a contractual balance in terms of knowing all the aspects of the contract.

2.2- Procedures for exercising the right of electronic retraction and how to prove it:

The recognition of the right of retraction is a guarantee of the correct and proper satisfaction of the electronic consumer. Therefore, the consumer's expression of his will to withdraw from the contract should not be subject to any special formalities. However, as a matter of legal regulation of the right of electronic retraction, the legislator may require a particular formulation to express it or explicitly provide for leaving it to the parties' agreement in the electronic contract.

So, the rule is that the consumer has to express his desire to renounce in any way he wishes and by any means he chooses as long as it achieves the professional's knowledge of the retraction. The consumer may send an e-mail to the professional expressing the exercise of his right to retract the contract, send a fax, or even send an official paper through a judicial officer as evidence of respecting the legal period and preserving his rights. Because the revocation is an exceptional mechanism, its practice requires the e-consumer to express it explicitly and directly during the legal term and to re-send the product to the professional⁽¹⁾ after the expression of his retraction's decision to ensure the stability and continuity of e-business transactions.

Because the matter remains subject to the principle of equal interests and as an attempt to achieve a contractual balance between the consumer and the professional, the law obliges the professional to submit or attach the retraction form⁽²⁾ (it is a pre-prepared form printed with the commodity) with the electronic contract in order to ensure the consumer's interest and the preservation of rights. This form is considered a form of facilitation for the consumer to exercise his right to retract by filling out his personal data only without mentioning the reason for the revocation (unless included for statistical purposes by the professional in order to develop his sales without the aim of narrowing the consumer or preventing him from retraction). This is stipulated in article R 221-1/ R221-3 of the French Consumption Act.

In the context of guaranteeing the rights of the electronic consumer, in the event of a dispute between him and the professional regarding the legal exercise of retraction, the original is for the consumer, who wants to maintain the legal exercise of his right to retract, to provide the evidence. The rule is that the evidence is provided by who claimed retraction. He proves his retraction first as an act and then proves his practice of revocation within the period

¹ The law obliges the professional to send a form of retraction to make it easier for the consumer. The latter fill in the appropriate data and send it to the professional.

² European Directive 83/2011.



specified for it. As a material fact, retraction must be proven by all means of proof, including witness testimony and receipt. In Algeria's Electronic Commerce Law 18-05, there is no provision clarifying the issue of proof in case of a consumer-professional dispute. In French consumption law, article L221-22 provides that the burden of proving the exercise of retraction is on the consumer.

2.3- Effects of exercising the right of revocation on electronic contract implementation

The exercise of the right of absolute revocation undoubtedly creates instability in the contractual relationship between the consumer and the professional. Several legal controls have been put in place to achieve the contractual balance of the electronic contract. If the deadline for the right of retraction expires without the consumer expressing a desire to withdraw from the contract, the latter shall be deemed effective and enforceable.⁽¹⁾ Whereas, if the consumer exercises his right during the legal period, it affects the contract first and both parties second.

a) Concerning the electronic contract:

- Cancellation of the electronic contract, i.e. its revocation and avoidance, considering it as if it were not and returning the situation to what it was before the conclusion of the contract.⁽²⁾
- The elimination of the ancillary contract associated with the original contract retracted by the consumer. This is an application of the general rules according to which the elimination of the original contract automatically leads to the elimination of the ancillary contract associated with it.⁽³⁾

The revocation of the electronic contract with the professional extends to each contract associated with it. If the consumer enters into a contract to purchase a product and in parallel concludes a loan contract to be able to pay for the product, the second contract relating to the loan is deemed to be subject to the former. Without the first purchase contract, the second loan contract would not have been. If the consumer exercises his right to withdraw from the purchase contract, the first contract is canceled and becomes as if it were not and cancels with it directly and automatically the second contract. The consumer does not need the loan without a purchase contract, where the loan will overburden him.⁽⁴⁾

Therefore, regarding all contracts linked to each other to achieve a single end, the demise of the original contract when the consumer exercises the right of retraction leads to the elimination of the first contract and all other contracts as an inevitable consequential due to their association in terms of existence and non-existence.

b) Concerning the e-consumer:

- The exercise of the consumer's right to retraction entails his obligation to return the product within the legally prescribed period. Once the option of reversing the performance of the electronic contract with the professional has been expressed, the contract shall be canceled and the parties to the contractual relationship return to the

¹ Si Youssef Zahia Houria, op. cit, p. 13.

² Darwish Hafsa, Implementation of E-Commerce Transactions, National Forum on the Legal Framework for the Practice of E-Commerce in Light of Law 18-05, 08 October 2019, University of 08 May 1945, Guelma University, Algeria, P. 268.

³ Ahmed Rabahi, op. cit, p. 147.

⁴ Zouhaira Abboub, Civil Protection of the Consumer in the Framework of Electronic Transactions, Ph.D. thesis, the University of Mouloud Maamri in Tizi Ouzou, 17 April 2018, p. 245.



case they were in before the conclusion of the contract. Therefore, the consumer is obliged to return the product as delivered by the professional at his expense.

- Nothing in Law 18/05 sets out the obligations of the consumer in case of his retraction. However, in the French Consumer Code, article L121-23 stipulates that the consumer is obliged to return the product as it was at the time of delivery without any arbitrary delay within 14 days calculated from the day of his decision to revoke.

The risk of loss of the product after delivery lies with the seller even if he does not have it, given that the consumer is in possession of the product as long as he has not declared his desire to complete or revoke the contract. Hence, the risk of loss is borne by the owner who is the professional.⁽¹⁾

- The consumer may also choose to obtain another commodity identical instead of the value of the commodity for which he has retracted and therefore the contract is not canceled.
- The consumer bears the return expenses because he has taken the decision to refrain from performing the electronic contract. For the purpose of achieving a contractual balance, the professional is legally obliged to accept the retraction without any impairment, and the consumer is obliged to bear the expenses of returning the commodity that reached him and as it reached him. Expenses are limited to the requirements for sending the commodity without any additional expenses as burdening the consumer with expenses other than the basic expenses of shipping creates insecurity for the consumer and shakes his confidence in the e-commerce environment.

French law stipulates in consumer law that the consumer bears the direct expenses of sending the commodity. The professional is also under an obligation to inform the consumer that the return expenses fall on him (as previously indicated).⁽²⁾ However, if the commodity received by the consumer is not in conformity with his request or exceeds the agreed period of arrival, here the professional shall incur the cost of re-sending and this is according to the contractual liability provisions.

c) Concerning the e-professional:

- The electronic professional is obliged to refund all the money paid by the consumer as part of the completion of the contract.⁽³⁾ Once the consumer exercises his right to revoke, the professional is legally obliged to refund the value of what he has paid. This obligation is considered a natural consequence; the demise of the contract at the consumer's retreat returns the parties to the state they were in before the conclusion of the contract where the consumer recovers what he paid and the professional recovers what he sent.
- The professional is obliged to refund in the same way as the consumer paid unless they agree otherwise.

¹ Si Youssef Zahia Houria, op. cit, p. 13.

² Mowafaq Hammad Abd, Civil Protection of the Consumer in Electronic Commerce Contracts (Comparative Study), Zain Human Rights Publications, 2010, pp. 244-245.

³ Mohammed Hassan Kassem, Remote Contracting, Alexandria, New University House, 2005, p. 67.



- The professional is obliged to refund within a time limit⁽¹⁾ specified by the French legislator in the consumer law for a maximum period of thirty days from the date of the consumer's declaration of his right to withdraw.
- Failure to re-send the money results in delayed benefits for the consumer and is also a punishable crime.⁽²⁾ Non-payment by the professional was considered a crime punishable by a fine to protect the consumer and provide him with greater security in a virtual environment in which he is considered to be the weakest party, and to close the door in front of the professional who is reluctant to return the price and fails to fulfill his obligations.

2.4- Exceptions to the right of retraction:

The right of retraction is legally regulated and established in favor of the electronic consumer's sole authority. However, the consumer's authority is neither absolute nor extended to all contracts, some of which are excluded by law due to the nature of each contract.

The Algerian legislator in Electronic Commerce Law 18-05 did not provide for contracts that fall within the consumer's authority to exercise the right of electronic retraction nor those that are outside his authority, while the French legislator, according to article L121-28 of the Consumer Law, the right of retraction is not exercised (unless otherwise agreed by the parties) in subsequent contracts:⁽³⁾

- Supply of services if their implementation begins with the consumer's consent before the end of the entire retraction period. When a consumer requests a service (for example, an Internet subscription) and the service begins with his consent before the revocation period expires, he cannot cancel the service because he has begun to enjoy it.
- Supply of goods and services where the price is subject to financial market fluctuations that are out of the professional's control and likely to occur during the retraction period.
- Supply of goods according to the specifications ordered by the consumer personally such as photo album or necklace in which the consumer's name is written. The reversal here causes an illegal loss to the professional who has produced a product specifically for the consumer. It is not possible to withdraw from all such products, or those that do not bear re-shipment or expire due to their nature, such as food items that cannot be reversed, in order to instill confidence in commercial dealings and seriousness in demand. Because of the way they are made, it is unlikely that they will be shipped to the consumer and then returned to the professional. The likelihood of their corruption is predominant, causing a loss to the professional, as well as underwear considering their sensitive manufacture.

¹ Gérard Haas & Stéphane Astier, op.cit, p.100.

² Ghadouchi Naima, Electronic Consumer Protection University of Mouloud Maamari Tizi Ouzou, Master's Memoir, 2012, p. 86.

³ Romain V. Gola, op.cit, p. 310.



- Supply of audio recordings, video, and automated media software if the consumer opens them. It cannot be retracted if it is used because it jeopardizes transactional stability.⁽¹⁾
- Supply of magazines and newspapers. Retraction is impossible after the consumer has received the magazine and read it in order to maintain confidence in transactions.
- Licensed bet services. Retraction is not accepted in this field because it is originally tendentious in nature in which the consumer expects to profit just as the loss is foreseen.
- Supply of consumer goods on a daily basis to the home or work by distributors who do so on a regular and frequent basis in order to ensure continuity of transactions and develop trust between the client and the consumer.
- Transportation, accommodation, food and leisure services subject to a specified date or periods.
- Contracts concluded at the auction. The nature of the auction prevents the practice of retraction in order to achieve continuity of transactions. If everyone participates in the auction, bids on the price, deprives others of the contract, and then withdraws from it, it is regarded as an opening to the door of disregard for transactions and a lack of seriousness, as well as a loss of confidence in public auction sales.

It should be noted that all professional sellers can bypass legal provisions and add a more appropriate contractual system that provides more consumer protection provided for in the General Conditions of Contract on the website.⁽²⁾

Conclusion:

From the above study we have been able to reach several points, the most important of which are:

- Contemporary legislation has taken care of the consumer's right to refrain from contract implementation in order to achieve a contract balance between a strong professional electronically, informatively, and technically and a weak consumer who cannot in any way match the strength and status of a professional.
- Revocation is a prescribed protection in favor of the electronic consumer that gives him the right to revoke a contract he has concluded remotely (a contract known only through what he has heard or seen virtually) without any reason or to bear any financial sanctions as a result of his retraction.
- The specified period of retraction is a period for the consumer to reflect and wait before the conclusion of the contract because the initial perception of the contract is being from the world of technology, which makes giving an opportunity to think and make sure of the contract a must.
- The exercise of the retraction is an acquired right of the electronic consumer to use it whenever he wishes, which shall be bound only by the time limit specified by law, and

¹ We clearly note that the common factor in most of the contracts that were excluded from the retraction is to secure a safe environment for e-commerce transactions and to instill confidence in both the professional and the consumer.

² There are electronic sales websites that make the right of retraction extended and not restricted to a deadline in order to promote their goods and services, which is a legitimate characteristic that is often for the most number of customers



shall bear only the expenses of returning the product and may dissolve from them if the sale he has received does not conform or is received after the end of the agreed date.

- The absolute practice of retraction by the consumer gives him a kind of arbitrariness in its use, retracting every contract concluded whenever he wishes and without conditions, which contributes to the destabilization of transactions and the supposed trust in the world of electronic commerce, so the law has set a certain deadline for the reversal and excluded contracts from retraction, as well as making the expenses of return on the consumer. All this is to maintain the process of electronic life in order to close the door of disregard and lack of seriousness in contracts, as the spirit of electronic contracts is the trust and the supposed security between the professional and the consumer.
- Conversely, in the world of electronic contracting, the right of retraction is necessary as a guarantee to the consumer, and its contracts are concluded remotely with certainty and security that it has the right to withdraw from the contract, thereby contributing to the increase in electronic transactions.
- The right to retract is codified, regulated, and framed in detail in most legislation as it is important to gain proper consumer satisfaction and maintain the presumed contractual balance.
- The right to retract in the Algerian legislation is still at its beginning and at a very modest pace. Despite the increase in electronic transactions and the many electronic consumers, there is no precise, regulated, and practically framed law for the right of retraction despite the enactment of the e-commerce law in 2018. We, therefore, hope that there will be orders and decrees that explain and frame the right of retraction in particular and electronic commercial life in general so that we are not in front of an electronic chaotic market subject to professionals' whims and rituals beyond internationally recognized standards.
- We also note that the right of retraction benefits the consumer in order to achieve the balance of the electronic contract, and can also benefit the professional against another professional or so-called B2B, meaning business to business.

A professional has the right to practice retraction and withdraw from contracts with another professional, as introduced by the L121-16-1 of the HAMON Act, with only three literally and rigorously available conditions:⁽¹⁾

- The contract must be concluded outside the foundation.
- The subject of the contract must not be within the scope of the foundation's main activity.
- The number of foundation workers must be less or equal to five.

Perhaps what we should point out and there is no way to finish the study without mentioning it is that the protection of the buyer's consumer through his right to withdraw has striking roots in Islamic legislation and a remarkable treatment of it. Scholars are interested in

¹Website: <https://www.l-expert-comptable.com/a/534080-le-droit-de-retractation-entre-professionnels.html#:~:text=Pour%20les%20relations%20commerciales%20dites,dans%20le%20champ%20d'activit%C3%A9 on 04/04/2021 browsing hour 01.35.>



detailing all that was relevant to the transactions of Muslims. When we consider them, we find a clear reflection of them in contemporary legislation.

The legislation of options in sales is the closest to our study, defining the option as one or both parties can have the right to avoid the contract or the right to sign and perform it.

According to the Hanafis, the choice is defined as the human being having a choice between the execution of the contract and its termination. Moreover, for the Malikis, the choice is divided into two sections; Tarrawi (wait and consider) and Nakissa (defect). Tarrawi is the contemplation of whether or not the sale is concluded and Nakissa means that there is a defect in the product. The choice for Shafi'is and Hanbalis is to ask for the better of the two, either to sign the contract or to terminate it. The term "option" is used in the Islamic Sharia and the lesson is to ascertain satisfaction and consent. Options according to some scholars twelve (12), for some sixteen (16), and eighteen (18) for others.⁽¹⁾

Numerous options were therefore initiated to avoid a lack of contractor satisfaction or to allow him to reflect, consult, or test in anticipation of remorse. Options are legitimately established without agreement as the defect option, other options are established based on an agreement between the parties as the condition option.⁽²⁾

We touch very briefly on options that are more closely related to the electronic retraction that is the subject of our study.

- **The revocation option:**

It is an option in which the offeree has the right to revoke or remain on his word if it is accompanied by the knowledge of offer or and before the issuance of the latter's acceptance. It is an option that gives the offeree the right to retract his acceptance before the offeror's acceptance is issued (this is the opinion of the jurists of Hanafis, Shafi'is, and Hanbalis, except for the jurists of Malikiyah, who do not see the offeree's right to retract his acceptance, and even if the offeror's acceptance is not issued, the offeree's acceptance is binding until the other party rejects it).⁽³⁾

The option of revocation grants the offeree the right to revoke, which he is not bound to. This is what we find in the electronic retraction that gives the consumer the right to withdraw from the contract. Once you exit the purchase website or click on the rejection button, this is considered to be a retraction and the consumer is not bound by any contract.

The right of revocation may also be linked to a certain period of time if the offeree linked his acceptance to a specified period of time as well as electronic retraction is linked to a known legal period. If the period ended, the right to retract the contract is terminated. However, the retraction of the electronic contract remains the consumer's exclusive right to be proven whether or not the other contractor's acceptance is made.

- **The condition option:**

The option of the condition is a right proven to one or both of the contractors or by a third party by choosing between signing and terminating the contract within a defined period.⁽⁴⁾ It is evidenced by the Hadith of the prophet (PBUH), when he told Habban Ben Monkid (May

¹ Michael Rasheed Ali, op. cit., p. 326.

² Rabahi Ahmad and Amari Ibrahim, "Legitimacy of the Seeing Option in Islamic Jurisprudence", Academy for Human Social Studies, Issue 15, 2016, p. 108.

³ Michael Rasheed Ali, ibid, p. 328.

⁴ Lakhdar Daykha, op. cit., p. 22.



Allah be pleased with him), who was always being cheated, so he went to the Prophet and told him about that. He said to him: "When you buy something, say: "There should be no intention of cheating," and for every product you buy, you have the choice for three nights. If you are pleased with it, keep it, and if you are displeased then return it."

Scholars disagreed in determining the period of the option of the condition. Imams Abu Hanifa and El Shafei felt that the period should be three days on the basis of the prophetic Hadith⁽¹⁾. In Hanbali's view, the period of the condition option may be more than three days as long as it is agreed upon by the parties.

The condition option could be applied to retraction in the modern sense by the contractors expressly providing for requiring the condition option for themselves or a third party, whether the period is long or short.

- **The defect choice:**

The defect option is proven to the person who owns something and finds it defective and was not aware of it, as well as not shown to him by the seller. Uqba ibn Amer heard the Prophet (peace be upon him) say: "It is not permissible for a Muslim to sell his brother goods in which there is a defect, without pointing that out to him." The defect option is that a contractor has the right to avoid or complete the contract if he finds a defect in the product and he was not aware of it at the time of contracting. The reason for the option is the appearance of a defect in the article (the offered) that reduces its value or prevents the use of it depending on the purpose for which it is intended.⁽²⁾

The safety of the product, i.e. the sale, is necessary in the contract. If the defect appears to the buyer, his consent becomes defective and improper, hence giving him the option of defect enables to overcome this problem and obtain the correct full satisfaction of the buyer. The defect option is proved to the buyer individually. He alone has the right to decide, after the defect has appeared, whether to contract or to terminate it. This seems theoretically identical to the notion of electronic retraction granted exclusively to the consumer. The defect option, however, is based primarily on the need for the defect existence, given that the lack of defects in the sales is one of the requirements of the contract, while electronic retraction is based mainly on the absence of any reason i.e. the consumer exercises the retraction as a pure right even if no defect appears in the sale.⁽³⁾

The contractor's retraction is linked to a legally prescribed period as the most important control of the exercise of his right, whereas the defect option is unlimited for an indefinite period and is essentially linked to the defect. If the defect appears even after a long period of time, the contractor has the right to activate the defect option.

- **The seeing option:**

The seeing option is an option that proves to anyone who has bought something that he has not seen. If he saw him, he had the right to cancel the sale. It is "It is "the buyer's right to sign or terminate the contract upon seeing the product if he did not see it at the time the contract was created or before it."⁽⁴⁾

¹ Michael Rasheed Ali, op. cit., p. 368.

² Rafea Ahmed Belabidi and Abdel Djalil Lakhwemis, op. cit., p. 26.

³ Lakhdar Daykha, op. cit., p. 26.

⁴ Zuhair bin Hijaz, op. cit., p. 66.



A seeing option is proven to the one who has not seen the product or material, and the description is insignificant because it does not provide a comprehensive knowledge of the sale. It was narrated that Uthman ibn Affan (may Allah be pleased with him) sold land in Basra to Talha ibn 'Ubaydallah, and Talha was told: you were cheated, then he said I have the choice because I bought what I did not see, and Uthman was told: you were cheated, then he said I have the choice because I sold what I did not see, so Jubair bin Mut'im judged between them in favor of Talha in the presence of the companions, who agreed on the judgment.⁽¹⁾

Concerning the term of exercising the option of seeing, some scholars consider that it is a temporary term until the contract can be dissolved after seeing, even if the person was able to see the product/service and did not cancel the contract, his right falls. Refraining from dissolving after the possibility of canceling the contract is evidence for acceptance. Another aspect of jurisprudence holds that the duration of the seeing option is absolute and indefinite. The choice of seeing is demonstrated by the perpetual imbalance of consent and does not fall due to the possibility of avoidance. To say that the term is forever, on the other hand, undermines the stability of financial transactions and undermines contractual justice.⁽²⁾

The seeing option falls somewhat on the electronic retraction given that it is a right of the consumer because he cannot see and inspect the sale comprehensively and adequately because it is an electronic contract. Also, the retraction is of public order (as mentioned earlier) that cannot be waived nor agreed to be canceled and the option of seeing is also a legitimate provision that cannot be waived and existed to protect the correct consent of the contractor.

However, the rule in the option of seeing is that whoever bought what he did not see has the option, when he sees it, to accept it or to cancel the sale. It is limited to avoidance and continued sale, as well as satisfaction with the defect, while electronic retraction allows the consumer the ability to demand another product that meets his aspirations and satisfies his needs.

Similarly, the buyer's choice of seeing is exercised after seeing the product, whereas an electronic consumer's retraction is exercised both before and after seeing the product; it is about his protection as a weak party in an unequal electronic contractual relationship, not about seeing.

- The location choice:

The choice of location is that the contractors have the right to avoid the contract as long as they are in the same place and have not parted ways with their bodies, or one of them chooses to perform the contract. It is narrated about Ibn 'Umar (may Allah be pleased with them) that the prophet (peace be upon him) said: "Both parties in a business transaction have a right to annul it so long as they have not separated, except in transactions which have been made subject to the right of the parties to annul them."⁽³⁾

The location's choice is an opportunity to remedy the haste in concluding the contract and to obtain the correct and sound consent of the contractor. It shares with an electronic retraction that they aim to protect the buyer's satisfaction. However, the location's choice is given to both contractors. Electronic retraction is an exceptional advantage for the consumer alone.

¹ Michael Rasheed Ali, op. cit., p. 381.

² Rabbahi Ahmadu Amari Ibrahim, op. cit., p. 109.

³ Michael Rasheed Ali, op. cit., p. 343



List of references:

1- Books:

- Abdullah Dib Mahmoud, Consumer Protection in Electronic Contracting, Comparative Study, Jordan, Culture Publishing and Distribution House, 2012,
- Agnès Rabagny - Lagoa. E-commerce Law. France, Ellipses, 2011.
- Amang Rahim Ahmed, Consensus in Electronic Contracts Online-Comparative Analysis, 1st Ed, Jordan, Wa 'el Publishing and Distribution House.
- Gérard Haas & Stéphane Astier, Legal guide to e-commerce, France, ENI editions, 2012.
- Khaled Mamdouh Ibrahim, Electronic Contract Conclusion, 1st Ed, Egypt, University House, 2007 Ibrahim Mustafa et al., Al-Wassit dictionary, part 1-2, Istanbul, Islamic Library, 1972.
- Michael Rasheed Ali Al-Zebari, Online Contracts between Shari'a and Law, New University House, 2014-2015.
- Mohamed Sabri al-Sa 'adi, Al-Wadih in Explaining Civil Law, General Theory of Obligations, Sources of Contract Commitment and Individual Will, Algeria, Dar al-Huda, 2007-2009, mar Khalid Rezikat, E-Commerce Contracts - Online Sales Contract, 1st Ed, Jordan, Dar Al-Elm for Publishing & Distribution, 2007.
- Mohammed Hassan Kassem, Remote Contracting, Alexandria, New University House, 2005.
- Mowafaq Hammad Abd, Civil Protection of the Consumer in Electronic Commerce Contracts (Comparative Study), Zain Human Rights Publications, 2010.
- Romainv. Gola, E-commerce law, Practical guide to e-commerce, Paris, Gualino, 2013.
- Tohami Sameh Abdul Wahid, Online Contracting-Comparative Study, 1st Ed, Law Books House and Diaspora Publishing and Software House, 2008.

2- Journals:

- Ahmed Rabahi, "General Principles of the Right to Renounce the Contract under European Directive No. 83-2011 on Consumer Rights, French Consumer Law", Journal of Legal and Political Studies, Amar Telidji University of Laghouat, No. 03, 2016, Algeria.
- Bouhamla Salahuddin, "Consumer's Electronic Right to Refrain from the Contract as a Mechanism for his Protection", Journal of Research in Contracts and Business Law, No. 05, 2018, Algeria.
- Darwish Hafsa, Implementation of E-Commerce Transactions, National Forum on the Legal Framework for the Practice of E-Commerce in Light of Law 18-05, 08 October 2019, University of 08 May 1945, Guelma University, Algeria.
- Mansour Hatem Mohsen and Isra Khadir Madloun, "Refraining from Contracting in the Electronic Consumption Contract (Comparative Study)", Journal of Al-Halabi Investigator for Legal and Political Sciences, Second issue, Fourth Year, Babylon University.
- Meriem Twil, "Electronic Misleading Advertisement and Its Impact on Electronic Consumer Behavior", Journal of Legal and Political Jurisprudence, vol. 01, Issue. 01.



- Rabahi Ahmad and Amari Ibrahim, "Legitimacy of the Seeing Option in Islamic Jurisprudence", Academy for Human Social Studies, Issue 15, 2016.
- Si Youssef Zahia Houria, "the Right to Withdraw from the Contract as a Mechanism for Electronic Consumer Protection", Journal of Ijtihad for Legal and Economic Studies, Vol. 7, Issue. 2, 2018, Algeria.

3- University thesis and memoir:

- Zouhaira Abboub, Civil Protection of the Consumer in the Framework of Electronic Transactions, Ph.D. thesis, the University of Mouloud Maamri in Tizi Ouzou, 17 April 2018.
- Nathalie Moreau. Electronic contract formation: cyber consumer protection and alternative dispute resolution (M.A.R.C.). Doctoral School of Legal, Political, Economic and Management Sciences. Lille University 02, 2002/2003.
- Ghadouchi Naima, Electronic Consumer Protection University of Mouloud Maamari Tizi Ouzou, Master's Memoir, 2012
- Lakhdar Daykha, Electronic Consumer's Right to Renounce Contracting, Master's Memoir, Business Law, Chahid Hamma Lakhdar University, 2017-2018.
- Rafea Ahmed Belabidi and Abdel Djalil Lakhwemis, The Right of the Electronic Consumer to Reverse in the Light of Comparative Legislation, Master Memoir, Business Law, Hamma Lakhdar El Oued University, 2018-2019.
- Zuhair bin Hijaz, The right of the consumer to refrain from the execution of the electronic contract, Master Memoir, Business Law, Larbi Bin Mhidi University, Oum El Bouaghi, 2015-2016.

4- Law:

- Ordinance 75-58 of September 26, 1975 containing the Civil Law, as amended and supplemented
- Executive Decree No. 15-114 on the Conditions of Consumer Loan Offers of 12 May 2015, Official Gazette of the People's Democratic Republic of Algeria, Issue. 10 of 13 May. 2015.
- French Law No. 334-2014 on Consumption.

5- Websites:

- <https://www.l-expert-comptable.com/a/534080-le-droit-de-retractation-entre-professionnels.html#:~:text=Pour%20les%20relations%20commerciales%20dites,dan s%20le%20champ%20d'activit%C3%A9> on 04/04/2021 browsing hour 01.35.

