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Consumer Protection in Concluding E- Contracts In light of Palestinian Law

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Abstract

This research has tried to address the most important problems related to the impact of the IT revolution on the consumer who concludes contracts through the Internet. This research addressed the definition of the consumer in the contract on the Internet and the statement of privacy and differences from the ordinary consumer and the reasons to justify its protection; it also deals with the measures developed by the Palestinian legislator for consumer protection via analytical descriptive approach. As a result, this article shows the importance of the need to provide the necessary protection for the consumer who contracts through modern means of communication.

Keywords: Consumer Protection, Contracting, the Internet Networks.

Protección al consumidor en la conclusión de contratos a través de Internet a la luz de la Ley palestina

Resumen

Se abordan problemas importantes relacionados con el impacto de la revolución de TI en el consumidor que contrata a través de Internet. Se define el consumidor en el contrato en Internet y la

declaración de privacidad y diferencias con respecto al consumidor ordinario y las razones para justificar su protección; también se ocupa de las medidas desarrolladas por el legislador palestino para la protección del consumidor, tanto en las reglas tradicionales generales que determinan su adecuación para la protección del consumidor a través de Internet, como en las reglas relacionadas con las transacciones electrónicas, en la etapa previa y de ejecución del contrato.

Palabras clave: Protección del consumidor, contratación, las redes de internet.

1. INTRODUCTION

It has become known that the main drive of any transformation in our modern world is based primarily on knowledge and scientific accumulation, as the solid basis of social and economic progress, which constitute the cornerstone of the progress of any society. In this context, a new and unbridled revolution was launched under a new name. It has now become known as (the information technology revolution).

This Revolution has produced unprecedented developments in various fields of contemporary life. It has brought about a dramatic change in the way of life, in depth, in inclusiveness, and in the world of speed that are witnessed at present. The IT Revolution has interacted with all sectors and institutions; it has brought us into the era of globalization and internationalization of production. This occurred by virtue of the most famous interaction between computing systems and communication systems which generated what became

known as the Internet. (Salama, 2005; see also Al-Mutlaqa, 2006; Abdullah, 2001). In view of the characteristics (Salama, 2005) of the Internet, it provides its services to a large part of the various social groups, starting with governments and institutions of all kinds and ending with ordinary individuals; making it a technical, social, cultural and commercial phenomenon.

The IT Revolution has had a great impact on business transactions. We are now concerned about e-commerce, which can be defined as activity and business practices through electronic means. In this sense, it includes the various types of commercial activities that exist today and what will be created in the future, together with any other electronic means created in the future by technological development, without being restricted to one means only.

Given the access to global markets through the Internet, returns, greater than those of traditional business have been gained. Overcoming the geographical boundaries and the time factor that often restricts traditional trade movement, the world has been turned into a market open to the consumer to shop to satisfy his needs for goods and services without the existence of a physical presence of the parties to the contract.

Since there are some contracts that are concluded on the Internet, where the other party is a consumer, it is necessary to ensure substantial protection to him/her. Being the weaker party in the equation that connects him/her to the producers and suppliers of goods and services who, in some cases, use various dazzling and exaggerated means of advertising and propaganda that sometimes affect the direction of the consumer's will and

urge him to go for a contract. Contracting through electronic means, makes the consumer unable to inspect goods and services to be sure that they are useful and safe as required. This leads us to investigate the mechanism provided by a legislator to protect the consumer in contracting through modern means of communication, especially the Internet. Does the legislator try to find legal rules that take into account the specific mechanism through which the conclusion of the contract is done? Or is it limited to the measures provided by the legislator to protect consumers in traditional contracts? And are they able to provide the necessary protection to the consumer who concludes contracts through the Internet?

The research will try to answer these questions and others through analytical approach to identify the nature of the problems and to monitor all the problems raised by the consumer protection issue when contracting online and analyze them to investigate the appropriateness of applying the legal rules related to the consumer who contracts through the Internet to identify their strengths and shortcomings.

2. THE DEFINITION OF THE CONSUMER IN CONTRACTING ONLINE AND THE REASONS FOR HIS PROTECTION

Before entering into a statement of the reasons that called for providing protection to the consumer, especially the consumer who contracts through the Internet, it is necessary to define the concept of “consumer”, to know the persons who are entitled to protection and to indicate whether there is a difference between the consumer and the consumer through electronic means; therefore, we will divide this subject

into two requirements: the first deals with the concept of the consumer and his/her privacy in contracting through the Internet; in the second, we address the reasons that called for required protection.

2.1 THE DEFINITION OF THE CONSUMER

It is known that the consumer seeks to go for relations with other natural as well as substantive persons to satisfy his needs or goods and services. If there is consensus among economists (Boadli, 2006; see also Ibrahim, 2008; Abdul Baqi, 2008; Al-Shindi, 2010a; Abdullah, 2003), that every person is a consumer and consumption, in their view, is the last stage in the economic process that follows two processes: production and distribution, which is not the case with legal persons (Al-Shindi, 2010a) which leads us to question the legal concept of the consumer. Does the consumer in the scope of traditional transactions differ from the one in the scope of electronic transactions? This is what we will try to answer by stating the attitudes of both legislation and jurisprudence towards the concept of “consumer”.

2.1.1 LEGISLATIVE DEFINITION OF THE CONSUMER

Article 1 of the Consumer Protection Law No. (21) of 2005 and Article 1 of the Executive Regulation No. 17 of 2009 of the Palestinian Consumer Protection Law defines the consumer as "Each person who purchases or benefits from goods or service". Thus, for the purposes of

this Act, any beneficiary of the goods or service is a consumer. It is noted that the definition, at first glance, extends the application of the Consumer Protection Law to normal and substantive persons who conduct acts for professional or non-professional purposes. Does that mean that the persons who conclude contracts for the purposes of their professions are consumers? The answer to this question is, “No”; this confirms that when we refer to the concept of a supplier as mentioned in Article 1 of the Palestinian Consumer Protection Law, we conclude by the concept of the violation that the legislator ruled out the “professional” (Boadli, 2006) from the definition of the consumer when the professional conducts a contract for the purposes of his own profession, because if he wanted to be considered a consumer, he would define only the consumer, without defining the supplier in the same article. Therefore, legislation implicitly indicated that the consumer may be a natural or a substantive person provided that the latter concludes the actions for purposes which are not related to his profession; whereas, there is legislation which directly and explicitly refers to this.

2.1.2 THE JURISPRUDENTIAL DEFINITION OF THE CONSUMER

The definition of the consumer in the jurisprudence has generated considerable controversy and has been divided into two categories. Some of them narrowed the concept of the consumer while others expanded it.

The advocates of the first trend focused on the purpose that the person seeks to achieve when contracting for the goods or services. The French jurist, Raymond, defines the consumer as "a natural person who obtains or can obtain consumables or services of the same nature for the sole purpose of satisfying his personal or family needs, excluding projects and free professions." (Abdul Baqi, 2008: 23; Al-Shindi, 2010a:163). Another party of French jurisprudence suggests that, "It is the person who owns or uses the commodities or services for unprofessional use." (Abdul Baqi, 2008: 23; Al-Shindi, 2010a:163). Some Egyptian jurisprudence defined the consumer as "any person who engages in legal acts in order to obtain money or services to satisfy his personal or family consumption needs" (Abdul Baqi, 2008: 23; Al-Shindi, 2010a:163). These definitions state that they are required to be contracted for purposes that are not related to the professional activity of the consumer and, therefore, one who concludes contracts for purposes related to his or her profession is not considered to be a consumer. (Boadli, 2006). One of the supportive arguments on which the proponents rely is that the professional who conducts the acts in his or her field of specialty has expertise and knowledge in everything related to his profession; unlike the consumer who does not have the experience and the know-how like that of the professional. Moreover, the adoption of the narrow concept of the consumer leads to the provision of legal protection intended for the consumer, and which is not achieved when adopting the broad concept. (Boadli, 2006).

Proponents of the second trend consider the consumer to be any person who concludes a contract for consumption; for the acquisition or use of money or service, even if that person was a professional if he acts outside his or her professional sphere. (Boadli, 2006; see also Al-Shindi, 2010a; Mahmoud, 2009) As a consumer, according to the opinion of the proponents of this trend, (Beauchard,1994; Mestre ,1989) the person who contracts for using services, whether for personal or professional use and which is not directly related to his professional activity. Some people see (Al-Shindi, 2010a) that protection must be extended as to cover all contractors with economic vulnerability. We believe that the consumer is the person who contracts for the acquisition of goods and services for use in the non-professional activity, so the professional is a consumer when the conduct of actions does not fall within the scope of his professional activity, because, in this case, he lacks legal and technical experience and know-how towards another specialist professional.

As for the position of the consumer in the scope of electronic transactions, he is not different from the consumer who concludes contracts by conventional methods, but the difference lies in the means through which the contract is concluded, where the consumer in the field of electronic transactions is contracted through the modern means of communication created by the revolution of information technology, namely, the internet. Therefore, the consumer can be defined as anyone who concluded contracts by means of modern means of communication to obtain goods and services for use outside his profession. It should be noted that the impact of the different means by

which remote contracting takes place. It is possible that the two contracting parties are not in the same country and have different laws, in which case, the problem of determining the law applicable to the incident would arise. The average consumer enjoys the protection provided by national consumer protection legislation and the general rules in respect of which no special provision is provided. The electronic consumer is entitled to the protection provided by the consumer laws on electronic transactions, and general rules for the protection of the ordinary consumer when legal texts of his own do not exist.

2.2 JUSTIFICATIONS FOR CONSUMER PROTECTION OVER THE INTERNET

The consumer's need for the necessary goods and services provided through the Internet (such as tourism services, banking and insurance, the sale of airline tickets, hotel reservations, computer programs, etc.) leads to a demand for them and the conduct of transactions through the Internet. The consumer often lacks experience and know-how and knowledge in the field of information technology, - especially the Internet - which leads him to engage in relationships through fake websites and thus exposes him to fraud and deception, (Badr, n.d.) since he is the least experienced and knowledgeable party in commercial transactions conducted through the network of the Internet.

It is also known that the consumer is the weakest party in the economic equation, therefore, should have been made able to obtain the optimum benefit from his or her financial resources and protect him/her from all that would damage his/her economic interests, which are directly affected by the failure of any element (Abdul Baqi, 2008) of the prospective commodity; its possession and use in a manner equal to the price he paid for it. There are also reasons that justify the protection of the will of the consumer against any pressures that may be exerted on him and push him to conclude contracts without a real desire to do that and make them buy the product or service without any actual need for them, such as pressures exerted through traditional or internet commercial advertisements, that contain tempting means and methods that are meant to urge him to go for contract. Such reasons and others called for various legislations for setting up and developing traditional or electronic legal texts aimed at protecting the consumer, being the weakest party in the contractual relationship.

3. CONSUMER PROTECTION OVER THE INTERNET IN THE PRE-CONTRACT STAGE

The Internet is a great way to get people to sign in. It is well known that the many web pages on the network are working at full potential to entice and attract consumers to conclude contracts with them. This often makes them vulnerable to being cheated and deceived and having their interests manipulated, using propaganda and advertising methods that are different from reality in some cases, and

through non-obligation to provide sufficient information about the goods or services to be contracted. Therefore, it was necessary to consider preventive means to protect the consumer when he or she intends to conclude contracts through the Internet, by way of protecting the consumer against the advertisements that are published through the Internet (first section), and by obliging the professional to provide the consumer with sufficient information about the product or service (Commitment to Insight) (second section).

3.1 CONSUMER PROTECTION AGAINST ONLINE ADVERTISING

The Internet is a wide space for electronic advertising on goods and services; it is far outweighing the field of traditional advertising by traditional means. Advertising can be defined (Ibrahim, 2008:81) as "any means aimed at promoting a commodity or service directed at persons to market that product or service" which causes the advertising of every act or behavior to have a significant impact on the psyche of the consumer to convince him of the advantages of the product or service to be marketed, regardless of the means used. Therefore, advertising published through the Internet or any other electronic means is no different from that done by traditional means, except for the means used. It should be noted that a consumer-targeted advertisement over the Internet may be regarded as positive (Sultan, 1998; see also Burhan, 2007; Abu Al-Lail, 1995) when it clearly and specifically contains the essential basic terms of the contract. If it does

not contain the basic and essential terms of the contract or is unclear and specific, the advertisement on the internet is not considered positive but an invitation to negotiation.

Online consumer protection in the face of electronic advertising requires the clarity of electronic advertising and should not contain misleading data for deceit and cheating that is, not misleading. The requirement of clarity in electronic advertising means to be unequivocal, allowing the consumer to submit consciously to consent and awareness to the contract.

As for the commercial advertisement, which contains data that can mislead the consumer and is aimed at deception and cheating, the various comparative legislations prohibited the use of any means that would affect the consumer's will in such a way as to lead to misinformation of essential elements and descriptions of the product or service provided. Article (15) of the Palestinian Consumer Protection Law stipulates that: "Each person who promotes and advertises products must observe that his advertisements are congruent with the real specifications of the advertised products. Such advertisements may not entail a mischief or deception of the consumer." Thus, we note that the Palestinian Legislator imposed commitment on a professional or a provider not to include any misleading data to the consumer, and warned that any disruption of such commitment would lead to an imprisonment sentence for a term not exceeding three years, or to paying a fine, not exceeding three thousand Jordanian Dinars or any equivalent legal current currency; sometimes both penalties are

simultaneously applied, in accordance with the provisions of Article (28) of the Palestinian Consumer Protection Law.

3.2 COMMITMENT TO KEEP THE CONSUMER WELL- INFORMED & ENLIGHTENED VIA THE INTERNET

The large number of offers of goods and services over the Internet may lead to a loss of customers' focus on identifying the best goods and services they need, especially if they lack the experience and knowledge that enables them to distinguish certain goods or services from others in terms of quality and usefulness. Thus, rules to protect the consumer by obliging the professional to provide him with the necessary information to enable him to choose the right goods and services offered are required. The implementation of this obligation also requires the definition of the consumer identity and the character of the merchant who will deal with him through the Internet. He should be informed of all that in Arabic.

The "professional" commitment to inform (Ibrahim, 2008; see also Boadli, 2006; Khaleel, 2009; Abdul Baqi, 2008) the "consumer" is one of the most important means of protecting the latter, so that his agreement will be based on full knowledge of the contract. This has made it of great importance in the field of contracts in general and in contracts through modern means of communication - the Internet - in particular, due to its role in achieving justice. It also aims to enlighten

the consumer's desire before concluding the contract to achieve the equality of having information between the contractors.

Some researchers have defined the obligation of information prior to contracting as "a prior obligation to contract relating to the obligation of a contractor to submit to the other contractor, at the time of the formation of the contract, the data necessary for the creation of a full and informed consent on the knowledge of all the details of this contract." (Abdul Baqi, 2008:189 ; see also Ibrahim, 2008:94 ; Khalafi, 2013:6 ; Mahmoud, 2009:48). The obligation for electronic media is defined as:

...prior legal obligation to enter into an electronic contract whereby a party that has substantial information in respect of the contract to be concluded is obliged to provide it by electronic media in a timely manner and with all transparency and trust to the other party who cannot get to know about it by his own means. (Khalafi, 2013:7).

It is clear from the previous definitions that the essence of the obligation to pass information before the contract, whether traditional or electronic, is the same. It states that a professional shall provide all the data and information regarding the goods and services to be contracted for the consumer as to be aware of his order. However, this obligation required in electronic contracts is provided through an electronic medium, which prevents the consumer from making real physical inspection of the items to be stated in the contract. A case, which makes the commitment to information in electronic contracts, is more dangerous than that in normal contracts.

The obligation to provide information and data about the content and details of the contract to be entered with the consumer is the subject of professional obligation. (Abdul Baqi, 2008; see also Ibrahim, 2008). The various comparative legislation (Abdul Baqi, 2008; see also Hmaish, 2003) obliges the professional or provider to provide clear basic information about the goods or services presented to the consumer. But the question that can be raised in this context is about the nature of the information to be provided by the supplier or the professional to the consumer, and about the nature of the penalty for the professional or provider in the event of breach of this obligation?

The purpose of the report was to inform the consumer before the conclusion of the contract to enlighten the will of the consumer, prior to concluding a contract so that he can be aware of the appropriateness of the contract to satisfy his intended purposes. Therefore, besides being authentic and sufficient, the data should also be fundamental, that means to be inclusive of all that can affect a consumer's decision on entering any contract. It is the responsibility of the supplier or the professional not only to provide sufficient and authentic data, but also to inform the consumer of any statement of interest to his knowledge, a matter that leads, in the case of having such knowledge, to change his mind on contracting, and thus, it is the supplier's or the professional's commitment to provide all information and data with full transparency and safety, in accordance with the principle of good faith prevailing in all contracts. If the supplier or the professional violates this obligation by providing incorrect information

or data when the consumer has concluded the contract, a consumer has the right to cancel it because of a mistake or fraud. (Abdul Baqi, 2008; see also Ibrahim, 2008; Khalafi, 2013; Mahmoud, 2009).

The professional's obligation to provide information and data is not limited to the submission of data on the legal, physical and fundamental descriptions of goods or services, (Abdul Baqi, 2008; see also Khalafi, 2013) but also to informing the consumer about the way or means of using the commodity. This information is particularly important, given the technological development that has recently been involved and introduced in the production of goods and the provision of services. This makes the average consumer unable to consider all that is new in the field of modern technology, and therefore, led to ignorance of the best way to use it to achieve optimal benefits, besides, the use of the commodity or service contracted may involve certain risks. This needs a professional to inform a consumer of the sources of such risks and their dimensions and ways to avoid them to protect a consumer against damage that he might be exposed to.

It is the responsibility of the provider or the service provider to clearly identify his or her personality to the consumer, because the latter may refrain from contracting online because he does not know the identity of the provider or the service provider, and therefore a means must be found to instill trust and confidence in the consumer. (Ibrahim, 2008; Khalafi, 2013). The Palestinian legislator requires the service provider to provide a license indicating his eligibility to provide the service to be contracted, and all information identifying

him clearly, such as his name, and the trade mark imprinted on the merchandise he puts on the market.

As for the language used in providing information, we note that the various legislation provided that the consumer should be informed in the national language to be aware of and know the nature and content of the contract to be concluded. Internet networks have special international peculiarity which is not bound to one country but a global market open to all. This peculiarity raises two issues: there are many companies that offer products and services through an internet network in different languages. Since English is the most widely used language globally, the comparative legislation requires that the text be accompanied by a translation into the national language of any State, so that the information provided is clear, understandable and not ambiguous. The second issue is that the consumer must be informed, in his international contractual relations, that the contract concluded is a contract of an international character to be aware of the nature of the relationship to which he is a party. This is necessary for consumer protection since the applicable law may be required as one clause in the rest of the contract, and should, therefore, be subject to this requirement so as not to be surprised by the application of a law different from his homeland legal system.

It is clear from the foregoing that the obligation of the provider or the professional to inform the consumer prior to contracting is one of the duties that are indispensable for the validity of the contract, whether it is traditional or electronic, bearing in mind that electronic

contracts impose on the professional or supplier an additional obligation to provide information electronically since it is not possible for him to inspect the sale material before the contract.

4. CONSUMER PROTECTION IN CONTRACTING THROUGH THE INTERNET IN THE STAGE OF IMPLEMENTATION OF THE CONTRACT.

Most contracts between a professional, a supplier and a consumer, whether traditional or electronic, are sales and purchase contracts that focus on goods or services. The purpose of the consumer is to obtain the benefit of the object he or she intends to buy or use. We note from contracts of sale that the seller has imposed many obligations, which are at the same time collateral for the consumer and are determined in the sales contracts as a rule, regardless of the mechanism of their conclusion, (Abdel-Aal, 1998) including guarantee of hidden defects, while ensuring non-exposure and entitlement of the consumer's right to repudiation of the contract. These guarantees will be addressed through the following demands:

4.1 THE RIGHT OF THE CONSUMER TO ENSURE HIDDEN DEFECTS

Of the guarantees provided by the legislator to the consumer in the sales contracts, whether conventional or electronic is the seller's

obligation to ensure the guarantee of any hidden defects in the sale, which is a guaranteed effective means to protect the consumer from the defects that may exist in the sale, and that invalidate using it, contrary to the purpose of the contract. In contrast to the regulation of the provisions of this guarantee, Article 1 of the Palestinian Consumer Protection Law defines the defect as, "An error or shortfall in terms of the quality, quantity, efficiency or incompatibility with the standards and measurements which must be adhered to in accordance with the Law or effective Regulations in relation to the product." It is noted that the Palestinian legislator clearly defined the defect, but only limited the existence of the defect in products; not in services. The Palestinian legislator also added the state of non-conformity to the criteria and the standards, where it is the commitment of the seller to provide a commodity that matches what has been agreed upon.

It should be noted that the legal guarantee of the hidden defect exists in all sales, whether movables or real-estate or whether the product is new or used. It is not important for the seller to be professional nor is he required to fulfill his commitment to the warranty. The defect that can be entitled to warranty must have certain terms; (Dawas & Dodin, 2013; see also Al-Obeidi, 2011; Abdul Baqi, 2008) it must be old, hidden and influential and unknown to the buyer. When such conditions are met, the seller has an obligation to guarantee the hidden defects in the sale. The buyer shall have the right according to Article 337 of the Journal of Judicial Judgments (*majalat al'ahkam aleadlia*) to several forensic options, either contract termination with refunding or accepting the contract,

despite the existence of hidden defect in the sales and the price agreed upon without the right to reduce the price except in cases where the case cannot be reinstated to what it was at the time of contracting. (Dawas & Dodin, 2013).

In Article 513 of the Jordanian Civil Code, the legislator granted the buyer the right to return the sale and be refunded or have the right to the retention of the sale and the return of the price or withholding it. The Egyptian legislator refers in Article 450 of the Civil Code, to a "Guaranteeing hidden defects" case, he distinguished between serious defects and non-serious defects, where the buyer, if the defect is serious, will have the right to return the sale to the seller or to keep it with a claim for any damage caused to him. If the defect is not serious, the buyer shall only have a claim for compensation, unlike what occurred in the Palestinian Consumer Protection Law, which states that the right of the consumer to replace the goods or return them with a refund of their price, without distinguishing between a gross defect and a serious defect. Article (1641) of the French Civil Code stipulates that the implicit defect of the sale holds the seller responsible to the consumer if the sale lacks validity of being liable to be used for the intended purpose or because of the lack of optimal benefit.

It should be noted that the supplier or the professional is held responsible not only for the hidden defect that would prevent the consumer from benefiting from the sale as required, but also to ensure the health and safety of the consumer in the event of the discovery or knowledge of a defect in the product or service that can pose a danger

to his health and safety. According to Article (11) of the Palestinian Consumer Protection Law, the following procedures shall be imposed upon the provider or the professional without delay:

1. Notify the competent authorities and inform the public by means of the mass media about such defects, as well as warn against the hazards which may result therefrom;
2. Withdraw the goods from the market;
3. Restore the goods which have been sold or leased and refund the price paid;
4. Replace the goods at his own expense and refund the paid price in the event their maintenance is unattainable;
5. Get rid of them using sound and environment-friendly techniques at his own expense.

4.2 THE CONSUMER'S RIGHT TO ENSURE NON-EXPOSURE TO ABUSIVE ACTS, AND ENTITLEMENT

A professional or supplier is obliged to conclude a contract through the Internet by abstaining from doing any act that would cause the consumer to be prevented from benefiting from the sale or service according to the desired purpose. This requires enabling him to use it

in a calm and stable manner; he shall not go for abusive acts, (Dawas & Dodin, 2013; see also Al-Obeidi, 2011) nor shall he allow others to do so. (Dawas & Dodin, 2013; see also Al-Obeidi, 2011) Such commitment shall be consistent with the nature of the obligation of the seller stated in the general rules governing the sale contract.

The guarantee of non-exposure to abuse shall be defined (Ibrahim, 2008:166) as, "the seller's guarantee of any act of his or hers or of others that would prejudice the right of the buyer to enjoy all or part of the ownership of the sale." Therefore, the seller is obliged to refrain from committing any personal abusive acts against the buyer and does the same towards other parties in accordance with legal means.

If he can sustain non-exposure to abuse, he shall have fulfilled his obligation to ensure that the exposure is in-kind, otherwise, if he cannot while the third party is entitled to a sale, in whole or in part, then he shall be held accountable to indemnify the buyer for the damages he suffered as a result of this entitlement, based on his contractual liability. This is known as "entitlement guarantee". (Dawas & Dodin, 2013:329; see also Al-Obeidi, 2011:114). The seller commits himself to guarantee his non-personal physical exposure as not to be limited to ordinary contracts, but to include contracts made via the Internet, either through a professional or vendor selling a program. The professional or the provider, i.e. the seller, shall refrain from any abusive act such as implanting a virus in a program through remote means, that can prevent the buyer from benefiting fully or

partially from the program, without any legal justification. Such exposure is an in-kind and intangible exposure, not a material or physical damage. (Ibrahim, 2008; see also Mahmoud, 2009; Al-Ajami, 2011). It is also possible to imagine a third-party claiming ownership of a specific program or trademark on the Internet. In such event, it is the responsibility of the seller to seek legal intervention to stop that claim through the application of traditional texts in this regard.

4.3 THE CONSUMER'S RIGHT TO ABANDON THE CONTRACT VIA THE INTERNET

Given the speed with which electronic transactions are conducted over the Internet, and the consumer's lack of experience and know-how in the face of the seller or the professional craftsman, where the contracts they conclude are often free from the elements of management, reflection and deliberateness, this sometimes makes them discover the inadequacy of the contract after it is concluded. (Mirabail, 1997). For these reasons, the right to repudiation or, as some calls it, right to renounce the contract is found to be one of the best legal means in favor of the consumer's protection. This right is a departure from the principle of "the binding force" for the contract, because of the considerations mentioned above. The existence of this right was not related to the organization of contracts remotely, but was related to the existence of legislation aimed at protecting consumers. (Ghestin & Desché, 1990).

There are many definitions that have been made to accept the right to abandonment. Some have defined it as "the ability of the contractor, after the conclusion of the contract, to favor either the choice of completion or withdrawal." (Al-Shindi, 2010b:257; see also Jalal, n.d.:341; Khalafi, 2013:13; Dayeh, 2005:168). There are those who have defined it as: "the power of a contractor to unilaterally revoke the contract and dispose of it without ceasing to do so on the will of the other party". (Al-Shindi, 2010b:257; see also Jalal, n.d.:341; Khalafi, 2013:13; Dayeh, 2005:168). In view of the specificity (Mirabail, 1997) of the right to set aside or refer to the contract, the various comparative legislations has been concerned with its regulation, but it is noted that some legislation has restricted the exercise of this right in certain cases.

The French granted the consumer the right to the cancelation of contract, even if the seller did not breach any of his obligations, because this right was found to deal with the haste of the consumer when concluding the contract over the Internet, especially because he cannot see the sale and preview it when contracting, provided that this right shall be practiced within a period of seven days as specified by the French legislator beginning from the date of the consumer's receipt of the sale.

This period is the same as the period allocated by the Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, (Ibrahim, 2008; see also Masa'deh & Khasawneh, 2011) and if the

French legislator and the European Directive had agreed on the right of veto. However, the European Directive takes a broader scope for the option of redress, which includes all remote contracts, whether related to goods or services. The French legislator restricted this right only to products and not to services. However, this right is not absolute; some transactions cannot be abandoned after being concluded, such transactions are those related to the contracts dealing with performance of services initiated by agreement with the consumer before the end of the option period of 7 days; this applies to products manufactured according to consumer specifications and at his own will, as well as contracts for the supply of funds for the performance of services whose prices are based on the volatility of financial markets . (Ibrahim, 2008; see also Masa'deh & Khasawneh, 2011).

The Tunisian legislator, in Chapter 30 of the Law No. 83 of 2000 concerning Electronic Trade and Commerce, granted the consumer the right to cancel the purchase of services within 10 days beginning from the date of receiving the product or the date of the contract. However, Chapter 32 prohibited the consumer from exercising his right to cancel the purchase in certain cases, having been cited as exclusive. As for the Palestinian legislator, he did not approve of the right of the consumer to cancel the contract in the form stipulated in the French law and the European Directive and Tunisian law, but they granted the consumer the right to return the goods and products in certain specific cases and to replace them with other goods and products or return them with a refund. However, such options are restricted, provided that the goods or products are defective or not in

conformity with the agreed or applicable specifications or for the purpose for which they were contracted; such cases, in fact, are not an exercise of the right to redress in the legal sense, but they are in accordance with the above-mentioned legislation, but are applied in accordance with general rules when the obligation to guarantee defects in the contract of sale has been breached.

Finally, we can say that the right to opt out of the contract is a license granted by the legislator to the consumer, as the latter is the weaker of two parties, through which he can revoke the contract without requiring the intervention of the other party, without providing justification for it, or without the need to prove the existence of a defect in the commodity or the service. The exercise of this right has a retroactive effect where the parties to the contract can return to their pre-contract status.

5. CONCLUSION

This study shows the importance of the need to provide the necessary protection for the consumer who contracts through modern means of communication, due to the privacy of the means through which the contract is concluded in an electronic space and without a physical presence that allows the consumer to inspect and check the commodity to be contracted; a matter that calls for providing greater consumer safety and health, and to provide adequate and correct information to the consumer, which enables him to form his conviction

in contracting, keeping him away and safeguarded from misleading ads that attract the consumer to contract; and to provide goods and services that are wholesome, free of flaws and conform to agreed specifications for the purpose of benefitting from them, as well as respect for the consumer's right to annul or return commodities or services within the specified period, taking into account restrictions on the exercise of this right as stated previously.

This research also shows that contracts concluded online have an international character; therefore, we believe that consumer protection measures should go beyond the borders of a single country by establishing the idea of international cooperation in this field to achieve the desired protection. It is, therefore, incumbent on States to work on the exchange of information on both consumer and national measures in the field of consumer protection and to strengthen information links on products that are banned, withdrawn or restricted in all ways provided by modern means of communication. Finally, it is necessary to promote the culture of shopping on the Internet and provide the infrastructure for it, and to identify consumer rights and consumer awareness of their rights through cooperation with civil society organizations and consumer protection systems. Help to issue flyers, pamphlets and other print-outs shall be sought from educational systems that conduct seminars aimed at creating a consumer who is conscientious and aware of the specialty of the mechanism through which he concludes contracts and of his rights as well.

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