
The Consumer's Right of Recourse the Implementation of the E-Consumption Contract

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Abstract

It is clearly known in the contract that the relationship between an offer made by one of the two contractual parties and its acceptance by the other serves as evidence of that offer's impact on the terms of the agreement. Recent technical advancements have allowed a new sort of contractual arrangement to enter the world of business. This arrangement relies on contemporary methods of communication and information technology, particularly the Internet. Information technology has produced a new reality of contracting, which is called the remote contract or the E-consumption contract. People are now able to conduct contractual relationships remotely from various locations around the globe, which has given rise to a renewed interest in protecting Internet users who are entering into contracts from the risks of an unbalanced contractual relationship with suppliers and the threats of deceptive electronic advertisements. This is accomplished by developing and enacting regulations as well as introducing legal protections that deal with consumer privacy through electronic contracting within a modern legal framework that is compatible with the vast virtual environment that has increasingly come to resemble the real world in a number of various fields.

1. Introduction

It is clearly known in the contract that the relationship between an offer made by one of the two contractual parties and its acceptance by the other serves as evidence of that offer's impact on the terms of the agreement. Recent technical advancements have allowed a new sort of contractual arrangement to enter the world of business. This arrangement relies on contemporary methods of communication and information technology, particularly the Internet. Information technology has produced a new reality of contracting, which is called the remote contract or the E-consumption contract. People are now able to conduct contractual relationships remotely from various locations around the globe, which has given rise to a renewed interest in protecting Internet users who are entering into contracts from the risks of an unbalanced contractual relationship with suppliers and the threats of deceptive electronic advertisements. This is accomplished by developing and enacting regulations as well as introducing legal protections that deal with consumer privacy through electronic contracting within a modern legal framework that is compatible with the vast virtual environment that has increasingly come to resemble the real world in a number of various fields.

Therefore, several legislations, especially European ones for decades, resorted to finding a legal guarantee to protect the satisfaction of the consumer who was not informed when concluding the E-consumption contract. For instance, in Article (30) of the Tunisian Electronic Trade and Exchange Law No. 83 of 2000, Article (55) of the Lebanese Consumer Protection Law No. (659) of 2005, Article (29) of the Moroccan Consumer Protection Law No. (08.31) of 2011. Article (40) From the Egyptian Consumer Protection Law No. (181) of 2018). Article 6 of European Directive No. 7/97 issued on May 20, 1997 stipulates that every "remote contract must provide for the consumer's right of recourse within a period of no less than (7) days starting from the date of receipt for products and commodities." As for services, the seven-day grace period starts from the date of conclusion of the contract or from the date of the supplier writing a letter declaration. This period would last for (3) months if the supplier failed to fulfill his obligation to send a written declaration containing the key elements of the contract. By allowing the ability to recourse the contract, which increased protection for the interests of the weak party in the contractual connection, this was done to rebalance the contractual relationship. This is accomplished by allowing him the freedom to end the agreement at his discretion without requiring supplier's approval or coming via the legal system. (Ammar, 2009). By this research, we intended to detect the content and provisions of the consumer's right to recourse the execution of the E-consumption contract in accordance with Directive No. (83/2011) of the European Parliament and the

Council of the European Union dated October 25, 2011 regarding the protection of consumer's rights as the general framework approved by most Arab legislation, including the Egyptian Consumer Protection Law No. (181) of 2018. There are two reasons for this: The first is because the study does not warrant getting into all the specifics of this subject. Second: The Iraqi legislator did not regulate the E-consumption contract and the guarantees introduced in the Consumer Protection Law No. (1) of 2010. We relied on the analytical comparative approach among the European directive, the Lebanese and Egyptian laws. Knowing the content of this guarantee and its effectiveness to protect the consumer, we will discuss in this section the guarantee of the consumer's right to recourse the execution of the E-consumption contract in the first requirement. Then we discuss the provisions of this guarantee in the second requirement.

1.1 Ensuring the Consumer's Right of Recourse the Implementation of the E-Consumption Contract.

In this requirement, we will discuss the definition of the right of recourse for the implementation of the E-consumption contract in the first section. The scope of the right of recourse and the exceptions contained are therein indicated in the second section.

The first section: definition of the right to recourse the implementation of the E-consumption contract.

We will outline the legal concept of the right to cancel an E-consumption contract in this section and the first item. In the second item, we'll talk about how similar laws have recognized the consumer's right to revoke and provide examples of such cases.

1.2 The First Item: - The Definition of Jurists to Guarantee the Right of Recourse for the Implementation of the E-Consumption Contract

The right of recourse is called by several terms, as there are those who call it (the right to choose, the time to think, the right to regret, the right to recourse, to reconsider). All of them indicate one meaning, which is to enable the consumer to derogate from the contract with full appreciation of his will in accordance with legal controls (Ghazali, 2019).

The right of recourse was difficult for jurists to define since it was not explicitly defined by law. The definition offered by the jurist G. Cornu is one of the most well-known explanations of a contract's right of recourse. He defined it as: "an expression of a contrary will according to which the author of a disposition or expression of a single will intends to withdraw his will and withdraw it, as if it was not in order to empty it of all traces of the past and the future." Through this definition, it appears that the right of recourse the contract has three elements, without which it cannot be imagined. On the one hand, a legal act with a single will, on the other hand, it assumes that there is a conflict between the subsequent and previous wills issued by the same person. On a third hand, it aims to empty the previous will of all legal effect (Al-Zahra & Tabub, 2019).

According to the definition by the jurists Brice and Kaufman, it is a right granted in the contract that allows the return of the thing due to the breach of the condition of acceptance in the contract. (Bresse, 2000). It is a final right. Finally, the right of recourse was defined as a legislative liability or an agreement that allows the consumer, within a specified period, to retract the contract without giving justification, provided that he bears the expenses of returning the sale (Asia, 2017).

The second item: acknowledging the consumer's right of recourse the implementation of the E-consumption contract in the comparative legislation and its justifications.

1.3 First: Approval of the Right to Recourse the Implementation of the Electronic Consumption Contract In the Compa

Comparative consumer protection legislation approved the consumer's right of recourse the E-consumption contract as an exception to the general rule and a departure from the principle of the binding force of the contract. Thus, guaranteeing the right of recourse is an independent and self-contained right whose source is the law alone. The guarantee of the right of recourse has nothing to do with the will, whose texts are among the peremptory rules. The consumer may not be deprived of it unless the legislator provides for exceptions to the exercise of this right. Comparative legislation has organized the guarantee of the right of recourse the implementation of the E-consumption contract in order to provide effective and real protection for the consumer through explicit texts. We list below:

- 1- The text of Article (6/1) of European Directive No. (7/1997) stipulates the right of recourse for two systems of contracts: "the remote contract and the contract concluded outside the work premises." (An off-premises contract means a contract concluded with the simultaneous physical presence of the supplier and the consumer,

away from the supplier's business company. (Clause (21) and Article (2/8) of the European Directive (83/2011). This directive has been canceled by Directive No. (83/2011). Article (1/9) of it stipulates that the consumer has a period of (14) days to recourse the implementation of a remote contract and the contract concluded outside the work premise without justifying his decision and without incurring any costs other than those stipulated in this directive. It is noted that the European legislator endorsed this right for the aforementioned contracts only.

The customer was given this power by the European legislator without having to provide any justification for their decision. Without having to convince the supplier, wait for his consent, or even seek a court ruling, he may exercise his right to recourse the execution of the contract remotely at his own discretion. That is, the consumer can exercise this right whether he has a reason to return, such as realizing after concluding the contract that the contract includes arbitrary conditions, or that the subject matter of the contract contains a hidden defect, or that it does not conform to the agreement and legal specifications, or if he does not have any reason for that.

- 2- The Egyptian legislator approved guaranteeing the right of recourse for many contract systems, "the time-sharing system", "partial ownership participation" (The concept of the real estate partial ownership system refers to dividing the same real estate unit into two or four parts. Each part has its own title. It gives its owner the freedom to dispose, sell or transfer it to another owner), or any other systems similar to the time-sharing system according to Article (32) of the valid Egyptian Consumer Protection Law). The time-sharing system was defined by the French Consumer Code in Article (61-L121) as: "a contract in return for a period of more than one year. According to which the consumer is granted the property of residential use and the enjoyment of residence in real or movable property for specified or determinable periods. The Tunisian legislator regulated it in the Accommodation Law Tourism and the Omani legislator in Tourism Law No. 33 of 2002. (Barakat, 2020). It was approved by the "remote contracting" system in Article (40 / first paragraph) of the same law, which stipulates (without prejudice to any guarantees, legal conditions, or a better agreement for the consumer, the consumer who contracts remotely has the right to return to the contract within fourteen days from receiving the item). (Egyptian Consumer Protection Law (in force).

In this paragraph, it is taken for the Egyptian legislator not to explicitly stipulate the right of recourse to service contracts. However, he implicitly referred to this right when he obligated the supplier under Article (40 / second paragraph) to refund the amount paid by the consumer within a period not exceeding seven days from the date of returning the product for commodities, or from the date of contracting for services. (Egyptian Consumer Protection Law (in force). We believe that the matter requires the intervention of the legislator to amend Article (40 / the first paragraph) by adding the phrase (...or from the date of the contract for services) similar to the European legislator. It is also blamed on the legislator that he did not indicate that the consumer has the right to recourse the contract without the need to justify his decision.

- 3- As for the Iraqi legislator, we mentioned previously that he did not regulate the provisions of (remote contracting) until this moment in the Iraqi Consumer Protection Law (in force). However, according to Article (6/Second) of the aforementioned law, he referred to the right to recourse the implementation of the traditional contract in (in case the supplier breaches an obligation to inform) only. It is permissible for the consumer and any interested party to return the goods in whole or in part to the supplier in the event that he did not obtain the information mentioned in Article (6/First) and to claim compensation before the civil courts for the damage incurred to him or his money as a result of that.

It should be noted that the legislator did not specify a period for the right of recourse in traditional contracts, which leads to instability of transactions and damage to the supplier in the event that the consumer delays in returning the commodity. It is proposed to amend the text of Article (6/Second) by adding a specific time limit for this right and a date for its entry into force.

Second: The justifications for the decision to guarantee the right of the consumer to recourse the implementation of the E-consumption contract. One of the most important justifications that called on both the European and Arab legislators to recognize the right of the consumer to recourse the implementation of the E-consumption contract, we summarize it below:

- 1- The main justification that called on the European legislator to approve the right of recourse, given that in the case of distance selling, the consumer is not able to see the commodity he is buying before the conclusion of the contract. (Article (37) of the European Directive (83/2011). The consumer is allowed to try to examine the commodity he has purchased, to the extent necessary to determine the nature, characteristics and proper performance of the commodity.
- 2- Absence of physical contact between the producer and the consumer, not seeing the commodity and knowing the service.

- 3- The consumer entering into the contract without thinking and deliberation, under the influence of psychological pressure exerted by advanced advertising methods. These means may be deceptive and misleading as a result of the use of modern technologies that work to lure him, especially since he sees a model of the commodity and does not have the appropriate and sufficient idea about the commodity he wants to buy.
- 4- The need to protect the consumer as he is the weak party in the face of a supplier party who has mastered the method of influencing by advertising towards a party that does not really have the possibility to discuss the terms of the contract, nor the possibility of seeing the sold or verifying its characteristics (Fathi, 2014).

After reviewing the position of comparative legislation and some jurisprudential definitions to guarantee the right to recourse the implementation of the E-consumption contract, we were able to formulate a definition of this guarantee. It is "a legal possibility that allows the consumer the right to recourse the implementation of the E-consumption contract and other contracts stipulated by the law within a specified period, without the need to justify his decision and without incurring any costs other than those stipulated by the law."

2. Section Two: The Scope Of Guaranteeing The Right Of Recourse For The Implementation of the E-Consumption Contract and the Exceptions Contained Therein

The problem arises about the objective scope of this right, whether it is absolute or restricted. That is, is it permissible for the consumer to adopt the right of recourse to the implementation of all contracts concluded remotely, or are there cases that the legislator excluded, in which the consumer is not permitted to use this right?

This problem can be answered by extrapolating the texts of the relevant comparative legislation that approved the right to recourse the implementation of the E-consumption contract. The objective scope of this right includes, according to Article (1/9) of the European Directive, the remote contract and the contract outside the workplace (It is worth noting that the Moroccan legislator regulated the provisions of (sale outside commercial shops), similar to the European legislator, and singled out Chapter Three of Law No. 31.08 of 2011 to specify consumer protection measures. Article 45 of it stipulates that (everyone who practices or works to practice selling outside commercial shops in the home of a natural person, in his place of residence, or in his place of work, is subject to the provisions of this chapter, even at his request. This is in order to suggest that he buy products or commodities, sell them, rent them, lease them leading to selling, or rent them with the option to buy or provide services. This is also subject to the provisions of this chapter selling outside commercial shops in places not intended for marketing the proposed product, commodity or service, especially the organization of meetings or trips by or for the benefit of the supplier in order to carry out the operations specified in the first paragraph). The legislator authorized the right to withdraw from the above contract under Articles (49) and (50) of the above-mentioned law). However, a number of cases were excluded from the application of this right, to ensure the proper conduct and stability of transactions (Dalilah, 2017). We include them below:

1. Service contracts after the full implementation of the service. Its implementation commenced with the express prior consent of the consumer, and his acknowledgment to waive his right of withdrawal once the contract has been fully executed by the supplier.
2. A supply of goods or services whose price depends on fluctuations in the financial market that are beyond the control of the supplier. It is likely to occur during the withdrawal period.
3. the supply of Goods which are prepared to consumer specifications or which are clearly designated;
4. Supplying goods subject to damage or expiring quickly.
5. The supply of sealed goods that have been unsealed by the consumer after delivery and which cannot be returned for reasons of health protection or hygiene.
6. The supply of goods that, after their delivery, are mixed by their nature with other items.
7. The supply of alcoholic beverages, the price of which was agreed upon at the time of concluding the sale contract. It can only be delivered after thirty days and its actual value depends on fluctuations in the market. It is thus beyond the supplier's control.
8. Contracts in which the consumer explicitly requests the merchant to visit him to carry out urgent maintenance or repair work.
9. Supplying sealed audio or video recordings or sealed computer programs that were opened after delivery.

It should be noted that the European legislator has mentioned these above-mentioned exceptions exclusively. This is what prevents expansion with this exception. The reason for restricting this right appears by looking at the nature of specific goods or services or the difficulties that the supplier faces with regard to some contracts of goods or services whose prices change according to market fluctuations or the difficulty of fulfilling obligations arising from certain

services. For example, goods manufactured to exact consumer demand that are clearly personalized, such as custom-made curtains, are not subject to recourse. It is not permissible to revoke the implementation of the fuel delivery contract as it is a commodity, once it is delivered. It cannot, by its very nature, be separated from the other elements with which it has been mixed. It is also not permissible to revoke the implementation of a hotel reservation contract, given that the supplier will face difficulties in fulfilling its obligations (Article (49) of the European Directive (2011/83). The Egyptian legislator, in Article (41) of the Consumer Protection Law (in force) and Article (26) of the executive regulations of the law restricted the right of recourse to five cases. The consumer's right to recourse the contract remotely falls, and it was mentioned exclusively, similar to the European legislator. (Article (49) of the European Directive (2011/83).

2.1 The Second Requirement: Provisions to Guarantee the Right of the Consumer to Recourse the Implementation of the Electronic Consumption Contract

In this requirement, we review the controls for the right to recourse the implementation of the E-consumption contract in the first section, and then we address the legal implications of this right in the second section.

3. Section One: Controls for the Right of Recourse

Comparative legislation has established certain controls for the right to recourse the implementation of the contract, in order to preserve the principle of stable transactions. Determine the time period for its exercise by the consumer and the manner in which it is exercised. To clarify the details of these controls, we will explain them respectively.

3.1 The First Item: The Time Period for the Right of Recourse

The granting of the right of recourse to the consumer under comparative legislation was not absolute in terms of the time scale, but was limited to a specific period, at the end of which his right to recourse lapses, in order to maintain the stability of transactions. It is not fair that the legal position of a supplier remains in turmoil for a long period during which he may be surprised by a request to terminate a contract that has been concluded for a long period of time (Article (40 / first paragraph / and second paragraph) of the Egyptian Consumer Protection Law (in force). Legislation may differ in determining the period of recourse and its effective date. They are as follows:-

1. The European Directive specified a period of time for the consumer's right to recourse the implementation of the contract remotely, and how to calculate the effective date of this period for two cases. They are:-

The first case: In the event that the supplier is committed to informing the consumer of his right to withdraw in the previous stage of a contract, the consumer has a period of fourteen days to recourse the implementation of the contract remotely or a contract outside the workplace (The position of the Egyptian legislator on approving the right of recourse the implementation of the E-consumption contract in the comparative legislation in (the first section / item one / first). Its effective date is calculated according to the type of subject matter, as follows. For service contracts, as of the date of conclusion of the contract. As for sales contracts, from the day on which the consumer or a third party other than the carrier identified by the consumer actually takes delivery of the goods. (Article (40 / third paragraph) of the Consumer Protection Law (in force). In addition, its effective date must be calculated in some goods contracts, as follows:

1. In the case of multiple goods ordered by a consumer in a single order and delivered separately, it shall count from the day on which the consumer or a third party other than the carrier designated by the consumer actually receives the last item.
2. In the case of delivery of goods consisting of multiple batches or lots, it shall be counted from the day on which the consumer or a third party other than the carrier designated by the consumer actually receives the last batch or lot.
3. In the case of contracts for the regular delivery of goods over a specified period of time, it is counted from the day on which the consumer or a third party other than the carrier designated by the consumer actually takes delivery of the first commodity.

The second case: - But if the supplier violates his obligation to inform the consumer of his right to return in the previous stage in the contract, then the aforementioned recourse period shall be extended to twelve months. Its effective date starts from the end of the initial return period, which is calculated as specified above. But if the supplier informs the consumer of his right to recourse the contract during the extension period, the revocation period expires within fourteen days. Its validity is calculated from the day on which the consumer receives this information. The Egyptian legislator agreed with the European legislator to specify the period of time for the consumer's right of recourse, which amounts to fourteen days. However, there are some differences in the provisions, which can be clarified, as follows:

The first case: the consumer has the right to recourse the time-share contract, partial ownership, or any other similar time-sharing system within fourteen days starting from the date of signing it. The consumer has the right to recourse the remote contract within fourteen days of receiving the commodity. As for service contracts, they shall apply from the date of the contract as previously stated.

The second case: - The consumer has the right to recourse the remote contract if the supplier is late in delivering the product beyond the agreed date, or does not deliver it within thirty days if the delivery date has not been agreed upon. The consumer may recourse the contract, without any expenses, within fourteen days from the date of delay or from the date of receipt, whichever is longer, provided that he notifies the supplier of that. (Article (40 / third paragraph) of the Consumer Protection Law (in force))

It should be noted that the period stipulated in the comparative legislation is a period of forfeiture and not a period of prescription, because it is an element of the right itself and necessary for its final appearance. It does not accept interruption or cessation due to its connection to public order, so the consumer's right to recourse the contract is forfeited if he does not exercise this right within the specified period.

The second item: How to use the right of recourse

The consumer must inform the supplier before the end of the recourse period of his decision to recourse the contract. This is what is required by Article (11/1) of the European Directive (83/2011). It is also required that the notification be clear, so a message, a phone call, or the return of the commodity with an explicit declaration can fulfill this condition. It is in the interest of the consumer to use a permanent intermediary when informing the supplier of the decision to recourse the contract, given that the burden of proving the right of recourse within the time period stipulated by the law rests with the consumer (Clause (44) and Article (11/4) of the European Directive (83/2011)).

If a dispute arises in this regard, the supplier shall promptly send to the Consumer an acknowledgment of receipt of the Notice of Right of Recourse against a Permanent Mediator (Article (11/3) of the European Directive (83/2011)).

The consumer can use one of the methods described below to inform the supplier of his decision:

1. Using the reference form specified in (Annex I / Part B), which was provided with it in the pre-contracting stage based on Article (6/1/H) of the European Directive.
2. Make another unambiguous statement specifying his decision to recourse the contract. For example, sending a notification of the right to recourse the contract by a message sent by (mail, fax, or e-mail) (Appendix (1/b) of the European Directive (83/2011)).
3. The supplier may offer the Consumer, in addition to the possibilities referred to above, the option to complete and submit the said return form online on the supplier's website. This is another unequivocal statement.

As for the Egyptian legislator, they did not specify the procedures or means that must be taken by the consumer in the event of exercising the right of recourse to inform the supplier of his decision. They did not specify who bears the burden of proving this right. Thus, reference is made to the general rules in the event of any dispute arising between the parties to the contract.

4. The Second Section: - The Legal Implications Of The Right To Recourse The Implementation of the Electronic Consumption Contract

The legal implications of the right to recourse the implementation of the E-consumption contract, including those related to the contract itself and the contracts related to it. Some of them are related to both parties to the contract. We explain these effects successively:

4.1 The First Item: The Effects of the Right of Recourse on the Contract Itself and Ancillary Contracts. First: The Effects of the Right of Recourse on the Contract Itself

The consumer's right to refer to the termination of the obligations of both parties in the remote contract, or may lead to the termination of the obligations of both parties and the conclusion of a remote contract in cases where the consumer makes another offer (Article 12 Effets de la rétractation).

The contract during the return period is bounded by a state of instability, which makes it unnecessary for the consumer. The contract is not finally determined until the recourse period expired, depending on what the consumer decides during it. Thus, the consumer's failure to use his right of recourse within the due period makes the contract stable and arranges all its effects. However, if the consumer executes his right of recourse within the due period and in the manner specified by the legislator for this right, the contract shall retroactively lapse and be considered as if it did not exist, and both parties shall be returned to the state they were in before the contract. This entails all the legal implications of the right of recourse (Al-Tahir, 2022).

4.2 Second: The Effects of the Right of Recourse on Ancillary Contracts

As for the effects of the consumer's right of recourse the contract concluded remotely for ancillary contracts, the retraction of the original contract leads to the automatic termination of any ancillary contract, without the consumer incurring any cost. This is what Article (15) of European Directive No. (83/2011) stipulates. We see that this ruling is nothing but an application of the general rules which stipulate that the consequential obligation revolves with the original obligation, whether or not it is valid and invalid.

4.3 The Second Item: - The Effects of the Right of Recourse for Both Parties to the Contract

First: The Effects of the Right of Recourse for the Supplier

It is recognized that the consumer's recourse from concluding the contract remotely leads to restoring the situation to what it was before concluding the contract. Therefore, comparative legislation imposed a number of obligations on the supplier, which are as follows:

1. The European legislator, according to Article (13) of European Directive No. (83/2011), obliged paying all payments received from the consumer, including delivery costs, within fourteen days from the date of informing the consumer of the decision to return taken according to the legal period. The legislator also regulated the method of supplier payment of the amounts paid by the consumer, in a way that preserves the interests of the parties to the contract. These interests are embodied through the following:
2. Obliging the supplier to make the payment using the same means of payment used by the consumer when paying the price, unless the consumer has expressly agreed to another means of payment, provided that the consumer does not bear any additional expenses.
3. Exempting the supplier from paying any additional expenses if the consumer explicitly chooses a delivery method other than the least expensive unified delivery method. For example, a consumer requests delivery of the price within 24 hours for express delivery. The supplier provided a normal and generally acceptable delivery method, which would have led to lower delivery costs (Article 46 of the European directive (83/2011)). Thus, the consumer has to bear the cost difference between these two types of delivery.
4. The right of the supplier to withhold payment in the case of selling until the goods have been recovered or until the consumer provides evidence that the goods have been sent. The chosen date is the first of these events.
5. The Egyptian legislator established several obligations for the supplier if the consumer uses his right to recourse the contract, which differ according to the case:

The first case: If the supplier is committed to refunding the amount within the legal period.

Article (2/40) of it stipulates (--- In this case, the supplier is obligated to refund the amount paid by the consumer using the same method of payment, unless another method of refund is agreed upon. This shall be done within a period not exceeding seven days from the date of returning the product in relation to the goods, or from the date of contracting for services...). Regarding this provision, we would like to point out that the Egyptian legislator obligated the supplier to refund the amount paid within a period not exceeding seven days. The period starts from the date of returning the product for commodity contracts. We agree with what the legislator judged, but we disagree with the Egyptian legislator when he specified the validity date of the aforementioned legal period for service contracts from the date of the contract. It is supposed to take effect from the date of notifying the supplier of the decision to recourse the contract. We see that the matter requires amending the Article No.(40/2).

4.4 The Second Case: If the Supplier Is Late In Delivering the Product in Due Agreed Date

The Egyptian legislator dealt with the supplier's obligations in the event of his delay in delivering the product beyond the agreed date. If he did not deliver it within thirty days, and the date of delivery was not agreed upon in Article (3/40) of the above law, then the consumer would have the right to return to the contract without any expenses within fourteen days from the date of delay or from the date of receipt, whichever is longer, provided that he notifies the supplier so. In this case, the supplier is obligated to refund the amount paid by the consumer immediately after he is notified of revoking the contract, according to the method and period stipulated in Article (40/1 and 2), as the case may be. In this case, the supplier shall bear all re-shipment and delivery costs.

In addition to the above, the Egyptian legislator was strict with the supplier in the event that he violated the provisions of Article (40 / the first and second paragraphs) in favor of the consumer. A criminal penalty was imposed if the supplier did not commit to informing the consumer of his right to recourse the contract and if the supplier did not commit to refunding the amount within the legal period. He shall be punished with a fine of not less than ten thousand pounds and not more than five hundred thousand pounds, or the same value of the product in question, whichever is greater (Article (64) of the Egyptian Consumer Protection Law (in force)).

4.5 Second: - The Effects of the Right of Recourse for the Consumer

Comparative legislation has established obligations for the consumer in the event that he uses the right of recourse. We explain them successively:

1. The European legislator differentiated between the obligations incurred by the consumer if the contract is a commodity or a service, which are as follows:

4.5.1 If The Contract Is A Commodity

- The consumer is obliged to return the commodity to the producer or to a person authorized by the latter to receive the commodity, unless the producer offers to receive this commodity himself within a date not exceeding fourteen days. This period starts from the date on which the supplier is notified of his decision to recourse the contract. The consumer is also obligated to pay the costs of returning the goods. The consumer shall bear only the direct expenses resulting from the return of the goods, and the consumer's obligation to pay the above-mentioned expenses shall be forfeited in one of the following two cases:

First: If the supplier agrees to bear these expenses. Second: If the supplier fails to inform the consumer that he must bear it (Article (14/1) of the European Directive (83/2011)).

- The consumer is responsible for each consumption of the goods if the consumer uses his right of recourse after using the goods to an extent that exceeds what is necessary to determine the nature, specifications and proper functioning of the goods. He shall not be liable if the consumption of the goods is for the purpose of determining their nature, specifications and proper functioning. If he checks it out the way it is allowed in the store, for example, he should try to wear one piece of clothing and not wear all the pieces. Therefore, the consumer must handle and examine the goods with all due care during the return period (Article (47) of the European Directive (83/2011)).

- The consumer is not responsible in any way for the consumption of the goods when the supplier fails to inform the consumer in the pre-contracting phase of his right to recourse the contract (Article (14/2) of the European Directive (83/2011)).

B- If the subject of the contract is a service, the consumer will be obligated to pay an appropriate fee for the service provided by the supplier when using his right of recourse. The calculation of the appropriate amount should be based on the price agreed upon in the contract unless the consumer shows that the total price itself is disproportionate. In this case, the amount due must be calculated on the basis of the market value of the service provided. The market value must be determined by comparing the price of an equivalent service provided by other suppliers at the time of the conclusion of the contract (the time when the consumer submits a request to the supplier to perform the service before the return period ends) (Article (55) of the European Directive (83/2011)).

2- The Egyptian legislator shall charge the consumer, in case of having the right of recourse, the costs of shipping and returning the product, unless the contract stipulates otherwise under Article (2/40) of the Egyptian Consumer Protection Law (in force). The Egyptian legislator is to blame for not regulating the expenses incurred by the consumer in the event of the practice of recourse from the remote service contract.

Based on the foregoing, we recommend that the Iraqi legislator, when developing the legal framework for the E-consumption contract, approve special provisions to guarantee the right of the consumer to recourse this contract, specify the time period, and indicate the conditions and procedures that must be followed when exercising the right and the cases excluded from its application, and the legal effects of its exercise. In the event that the legislator decided to approve this right for other contractual systems, the specificity of the right of recourse must be taken into consideration that it is an exception to the principle of the binding force of contracts. Therefore, it should be limited to specific types of contractual systems that require the establishment of maximum protection rules for the weak party to rebalance the contractual relationship to pay damages and risks on behalf of the consumer, similar to comparative legislation.

5. Conclusion

1. We have come to define guaranteeing the right of recourse the E-consumption contract as “a legal possibility that allows the consumer the right to recourse the E-consumption contract and other contracts stipulated by the law within a specified period, without the need to justify his decision and without incurring any costs other than those stipulated by the law.
2. Ensuring the right of the consumer to recourse the E-consumption contract is an exception to the general rule and a departure from the principle of the binding force of the contract. Therefore, it is an independent, self-contained right whose source is the law alone, and the will has nothing to do with it. Its provisions are

among the peremptory rules, as it is not permissible to deprive the consumer unless the legislator stipulates otherwise.

3. The consumer bears the burden of proving his right to recourse the E-consumption contract within the time limits specified by the law.
4. We concluded that the time period stipulated in the comparative legislation for the right of recourse the contract is a period of forfeiture and not a period of prescription, because it is one of the elements of the right itself and is necessary for its final appearance, and does not accept interruption or suspension due to its connection to public order. Consequently, the consumer's right to recourse the contract is forfeited if he does not exercise this right within the specified legal period.
5. The Iraqi legislator did not specify a period for the right of recourse in the traditional consumption contract, when it was permitted under Article (6 / II) of the Iraqi Consumer Protection Law for the consumer and any interested party to return the goods in whole or in part to the supplier in the event that this did not obtain the information mentioned in Article (6/First). This leads to instability of transactions and exposure of the supplier to damages in case the consumer delays in returning the commodity.

6. Suggestions

We list below some suggestions to address the shortcomings and imbalances in some provisions of the Iraqi Consumer Protection Law:

1. A legal framework for the E-consumption contract should be developed, similar to the comparative legislations, taking into account the following:
 1. Defining the E-consumption contract, and defining its scope by excluding some contracts that are concluded remotely from the scope of application of its provisions, such as banking and financial services contracts, as they are organized according to their own legislation.
 2. The commitment should be explicitly stipulated by informing the stage prior to concluding the contract and specifying the information that must be provided to the consumer in a language that is clear, understandable and readable to the consumer. It must be provided to a permanent mediator, including the guarantee of his right of recourse the contract and the imposition of a criminal penalty in the event of breach of this obligation. It must also be determined that the burden of proving the implementation of the notification obligation rests with the supplier.
 3. Special provisions should be enacted to guarantee the consumer's right to recourse the implementation of this contract, specifying the time period for exercising it, the conditions and procedures to be followed when exercising the right, the cases excluded from its application, and the legal implications of its exercise. Additionally, it is the consumer's responsibility to demonstrate that their right to recourse was used. The specifics of the right of recourse, which is an exception to the rule of the binding force of contracts, must be taken into consideration if the legislature decides to support this right for other contractual systems. It is necessary to limit it to specific types of contract systems that require the establishment of maximum protection rules for the weak party, and to rebalance the contractual relationship to ward off damage and risk to the consumer.
2. Similar to the European legislator, the definition of the term "consumer" should be replaced by limiting the scope of legal protection to the natural person who acts for purposes that do not fall within the scope of his commercial, industrial, craft or free activity, as it is closer to the logic of legal protection established by law.
3. The term "provider" should be replaced with the term supplier, because it is a general objective term that covers everyone who has played his role in the production relationship. It is defined, similar to the European legislator, as "any natural or legal person, whether public or private, who acts, including through another person in his name or on his behalf, for purposes that fall within the scope of his commercial, industrial, craft or free activity".
4. The text of Article (6/Second), which stipulates guaranteeing the consumer's right of recourse for executing the traditional consumption contract should be amended by specifying a legal period in which the consumer and any interested party are obligated to return the goods in whole or in part to the supplier in the event that he does not obtain the information. The start date of the period must be specified.

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