

CONSUMER PROTECTION IN E-COMMERCE: SOME NOTES ON THE IRAQI ELECTRONIC SIGNATURE AND TRANSACTIONS ACT

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Abstract: In any electronic contract (e-contract) transactions, confidence is considered as a paramount importance for the parties involved. The legal protection for the consumer all stages of e-contract are crucial particularly to avoid any unfair conditions that may be imposed by the dominant party towards the consumer who usually considered as a weaker party in the contract. Given the nature of e-contract, the risk posed to consumer is greater than the risk in the traditional trade because the scope of e-commerce is more comprehensive and broader. The aim of this paper is to examine the extent of confidence provided by the Iraqi law to protect consumer in e-contract transactions under its Electronic Transactions Act. The methodology used in this paper is a pure library research focusing mainly on primary and secondary sources. As comparison, there are claims of the adequate protection for the consumer in the electronic contracts in the European Union included in the European directives such as the requirement of informing the consumer in his language, the right to withdraw from the contract and the right to obtain the information. Hence, this paper attempts to demonstrate that the Iraqi's Electronic Transactions Act lacks these basic rights, and needs further improvements to offer better protection to the consumers.

Keywords: Consumer protection, E-Commerce, Electronic Transactions Act, Iraqi Electronic Signature and Transaction Act

INTRODUCTION

During the recent period, several important developments in information and telecommunication technology have taken place. This led to the changing pattern of economic life for all consumers in the countries of the world. Today, the consumer can shop and do all of the commercial and banking dealings from home (Kamel, 2015) or work and pay bills electronically and effortlessly via computer. The electronic progression has a rapid impact on the process of linking the world with electronic networks in which it makes this world an interconnected cell. However, when this network emerged, it was accompanied with large waves of unexpected violations and attacks that resulted in the emergence of many new forms of crime, cheat and fraud. This led to the emergence of active attempts to search for the means and methods required to reduce those violations and attacks, and then fight against accompanied cheat and fraud (Kim, 2014). For example, despite the fact that some consumers may refuse to deal with modern technology due to their fears of being cheated and fraud, the expansion of the size of e-commerce cannot be stopped especially when it used for commercial and governmental activities (Meltzer, 2014).

In Iraq, the success of e-commerce in Iraq depends on the appropriateness of the current legal provisions that offers effective protection the consumer. After 2010, Iraq has sought to link the Iraqi market with the global economy by the legislation of the Iraqi Consumer Protection Act No. 1 for the year 2010 in addition to the legislation of Electronic Signature and Transactions Act, No. 78 of 2012(Consumer Protection Law, 2010).The aim of is legislation is to go in line with the development in the field of information and communication technology and the activities of the internet. It also aims to provide the foundation and legal framework of the electronic transactions through the modern means of communication and encouraging and developing the industry of internet and information technology. In addition, it aims to organize the electronic signature services and electronic transactions, keep abreast of legal developments in the electronic aspects and develop the traditional legal system which goes in line with modern information and communications technology systems. The main problem in this paper is that the laws that we have referred to did not provide the text regarding the provision of mother tongue languages on the site, and the right of withdrawal, and provide information about the contracted person and item.

This paper therefore attempts to examine how these legislations would be able to provide adequate protection for Iraqi consumers in dealing electronic contracts in terms of the requirement to offer consumers an agreement prepared in their mother tongue language, the electronic consumer's right for withdrawal and the right to obtain the information? It is important to note these issues are the subject of the current paper.

First: The requirement for the consumer to have information in their mother tongue language

One of the most important means of consumer protection in the electronic contracts is to oblige the provider to inform the consumer of their rights and obligations in the language that they fluently understand and mastered in this is due to the fact that most of the websites characterized by the global nature are introduced in English (Luna, 2012). Thus, a crucial question that must be raised and addressed is whether the Iraqi Electronic Signature and Transactions Act appropriately deal with this problem in a way that balances between consumer protection and global electronic sites.

When searching in the Iraqi Electronic Signature and Transactions Act, there is no clause that stipulates the language that should be stated in the language of the contract. In addition, there is no statement that confirms that Arabic and Kurdish language must be put within the language choices from which the Iraqi consumer can understand the content of the contract since most of Iraq's population are fluent in Arabic and Kurdish languages considered as official languages in Iraq (The Iraqi constitution, 2005).

There are actually difficulties in the use of Arabic language at the conclusion of the electronic contract. This is because most of the products and services are advertised in English (Labrador, 2014). Hence, there must be a law that requires the Arabic and Kurdish languages to be within the language choices in the display of goods, services, related advertisement, and the terms of the contract by ensuring that this issue must be compulsory. The consumer's language of the mother tongue that should be taken consideration is one of the most important types of consumer protection added by modern legal principles. It should be noted that the language is an important means used for the consumer's understanding of the content of the contract. Therefore, it is necessary to inform consumers in their language and the conclusion of the contract must be in their own language as well. Although the contracting is often conducted in English, this does not give an excuse to the provider that displays the goods and services via the internet in several global languages, including Arabic (Euromonitor, 2011).

Additionally, the approach of Iraqi electronic transactions act is subject to much criticism for being considered as the most negative act on e-commerce, resulting in the discouragement of e-commerce which is now considered the most important means to provide the necessities of life, especially in Iraq in which e-commerce has been rapidly growing lately (Mohammed, 2012). In this respect, Toubon Law issued in 1994 and its own regulations issued on March 19, 1996 and the regulation issued on March 6, 1997 related to the need of the use of the French language has been emerged. In an era of rapid technology, which became the English common language universal, fear of the loss of the French language, the French parliament proceeded Toubon law in 1994 mandating the use of the French language in all transactions, the law imposes fines and even criminal penalties for violators, and is considered a must and preventive to keep the French language. (Vanston, 1999) As stated in Article II, (The French language should be positively used in all kinds of commerce, including e-commerce, and this applies to visible, audible, oral or written advertisements). Therefore, the use of the French language is compulsory in e-commerce to protect the French consumer, considering that the French mother tongue is the language that the consumer can understand and realize the offering in which it purports to gain the acceptance (Toubon Law No. 94-665, 1994).

In the European Union, the European directive issued on June 8, 2000 No. 31/2000 concerning e-commerce in Article 12 stressed that that the information presented by the offeror through electronic exchange must be European languages, that has been affirmed by the member states to ensure that issue in paragraph 4 of the same Article concerning the languages offered for the conclusion of the contract must be European languages to enable the consumer in the electronic contract to obtain sufficient information about the contract in their mother tongue which is regarded as consumer protection (European Parliament and the Council Directive, 2000).

Furthermore, the European directive issued on October, 25 2011 No. 83/ 2011 regarding the consumer rights stated in Article 6, paragraph 7 which shows the electronic consumer protection in the electronic contracts. In that Article, it is stated that the member states should continue to work in the language requirements with respect to the contractual information in order to ensure that these information can be easily understood by consumers (European Parliament and the Council Directive, 2011). Thus, the European directive issued on November 13, 2007 No. 64/2007 concerning the payment services in the internal market in Article 36 stressed the need for offering the whole languages to European Union in

relation to the payment service which stipulated that the provider of payment service has to easily provide information and conditions provided with understandable words given in the official languages of the member states in order to protect the consumer. In Article 24 and in the same directive in which it stated that the communication between the provider and the consumer in electronic contracts should be in the languages of the member states by which the conclusion of the contract will be conducted (European Parliament and the Council Directive, 2007).

Based on the aforementioned, it is necessary to issue rules concerning the mother tongue language in the Iraqi Electronic Signature and Transactions Act and achieving a balance between the rights of the consumer and commercial reality and the technological progress. It is important to indicate that most of the problems in the electronic contracts stem from the lack of understanding of the terms of the contracts. Hence, it is better that the Iraqi Electronic Signature and Transactions Act should focus on ensuring the consumer understanding of the offer made by the provider in a language understood by the consumer. The internet sites should be obliged to provide the whole global languages for all parties, including the Arabic language considered as one of the global languages. In addition, it may be useful for the Iraqi legislator to benefit and consider the European directives and principles and the laws of developed countries in this field.

Second: The electronic consumer's right for withdrawal

The right to withdraw has its origins in the national legal systems of various European countries, but in recent years it has emerged as a prominent feature of European contract law (Loos 2009, p. 239). A series of directives issued between 1985 and 2008 introduced the right of withdrawal in transactions relating to life insurance, real estate timeshares, and distance selling of goods and financial services, and consumer credit. In 2008, the European Commission proposed a new Directive on Consumer Rights (DCR), which would subsume and extend some of the previous directives (Ben, 2011).

Since the consumer does not have a real possibility to preview the item or identify the characteristics of the service by which the conclusion of electronic contract is conducted and the privacy of the electronic contracting remotely conducted, the permission is given to the consumer in which he can go back on the contract within a certain period specified by law, meaning that he has the right to abandon the contract. It should be noted that the right to withdraw from the contract is considered as a means for the consumer to reconsider the commitment he was associated with. Giving the consumer this right is regarded a departure from the principle of will and the principle of consent in the contract (Kunnecke, 2014). Thus, when giving that right, the stability of the transactions carried out will be threatened since going back on the contract is from unilateral party at his individual willingness after the establishment of the contract in a right and perfect form. However, the consumer has been granted this right in order to provide protection and safety for the consumer in e-commerce, resulting in encouraging the consumers to conclude such contracts.

Additionally, withdraw from the contract is a determined right of the consumer. The consumer is obliged to return the product and the provider cannot reject it. Besides, the service provider is obliged not to provide his service and he is obliged to refund the item price or the service (Tang, 2015). Moreover, the Iraqi electronic transactions Act does not state that the right to withdraw from the contract is from the consumer party which is considered a consumer protection when concluding contracts via the internet to which most of the European directives and laws are stipulated. Thus, the main objective of the Iraqi electronic transactions has been to facilitate the use of electronic means to conduct electronic transactions. On the other hand, the Iraqi civil law is still applied to transactions

concluded electronically via the internet. Hence, one can raise a question: Is the Iraqi civil law is adequate to regulate those contracts? This approach is subject to much criticism and has negative impacts on e-commerce in Iraq.

It is crucial to indicate that e-commerce in Iraq cannot flourish under that law in which there are no clear, adequate and accurate rules. In addition, the presence of this mystery does not encourage the consumer to conclude electronic contracts because the law itself does not have a statement which shows the right to withdraw from the contract from the consumer side. In the European Union, the European Directive, issued on May 20, 1997 No. 7/1997 concerning the protection of consumers in respect of distance contracts as stated in Article 6, stated that the consumer has the spontaneous right to withdraw from the contract within 7 days. The consumer has to pay the cost of returning the item and pay the amount within 30 days. Nevertheless, it is stated in the same Article in paragraph 3 that there are exceptions that may not allow the consumer the right to withdraw such as the contracts stated with respect to newspapers and magazines and the contracts stated concerning the goods that are particularly manufactured for the consumer, the goods that cannot be returned to the seller due to its nature, and the goods that suffer from quick death and damage.

Consequently, given the use of the right to withdraw from the contract within the specified period, the consumer is required to notify the other party of such withdrawal through electronic messages. Furthermore, the seller has to return the price of the item or the price of the service within the period specified in law. It is important to indicate that the consumer bears all the expenses of returning the item or the refusal of the service.

Third: The right to obtain the full information

In order to protect the consumers via the internet and boost their confidence in the electronic contracts, the consumer needs some information that must be obtained before the conclusion of the contract. This information is about the character of the provider and characteristics of the item (Hoffman, 1999). By providing this information in electronic contracting would encourage greater use of electronic contracts by consumers.

The European directive issued on July 8, 2000 No. 31/2000 regarding the e-commerce in Article 12 showed that the internet service providers have to provide consumers with fast, direct and effective means of communication in addition to include the e-mail of service provider and any other means like the conventional communications such as telephone or fax (European Parliament and the Council Directive 2000).

As mentioned above, the information related to the provider is one of the most important information for the consumer in electronic contracting until full satisfaction is achieved. It is also important to identify the identity of the contracting provider so that the consumer can make a complaint when the provider violates his commitments and obligations towards the consumer. This is regarded as a guarantee to protect the consumer.

Furthermore, the enlightenment of the consumer on the characteristics of sales makes him conclude electronic contract in a state of tranquility with the absence of fraud or deception made by the provider. Thus, informing the consumer about the price makes him aware so that he can make the contract based on his physical potential. Informing the consumer about the characteristics of items in the remote contracting is also very important because the consumer cannot preview the items. Hence, the above

statements result in the importance of informing the consumer in the electronic contracting (Hoffman, 1999).

In the European Union, the European directive issued on May 20, 1997 No. 7/97 concerning the consumer protection in Article 4, requires that information to consumers before the conclusion of the contract should be provided. The required information is regarded the main characteristics of the goods, services, the price, taxes, the cost of delivery, payment data, the right to withdraw, and the cost of using the means of remote communication. As a result, introducing the above details to consumers to be fully aware about the characteristics of the item and services should be imposed on the provider by that directive(European Parliament and the Council Directive 1997).

However, the Iraqi Electronic Transactions Act does not impose providing those details to consumers on the provider. This Act is considered as consumers protection in the contracts concluded via the internet before the conclusion of electronic contract. Therefore, the provider has the full freedom to deal with the consumer. He does not provide the consumer with any required information to conclude the contract and thus the consumer has no protection from this aspect. Consequently, there must be a valid environment and confidence between the provider and the consumer; there will be confidence only after this information has been announced by the provider to the consumer.

CONCLUSION

It is confirmed that the absence of an appropriate legal framework for dealing with e-commerce has a negative impact on the stability and predictability of electronic commerce in Iraq. For example, the Iraqi electronic transactions Act only tried to give the electronic transactions the legal nature. It did not refer to the rights and fundamental guarantees to protect the electronic consumer as stipulated in the relevant European directives or in UNCITRAL Law concerning consumer protection in electronic contracts. Moreover, determining the legal basis in order to deal with e-commerce enhances the confidence in Iraqi consumers in business via the internet such as the right of informing the consumer in their mother tongue language, the right to withdraw, and the right to obtain the information. Therefore, it is urgent to directly address these issues and issue specific rules relating to consumer protection on the internet in order to achieve a balance between the rights of consumers and the technological development of business reality.

To achieve the above objectives, the Iraqi legislator is required to try to clearly deal with consumer's rights in e-commerce based on the general provisions of the conventions and the laws of the countries. These conventions and laws gave the consumer the full rights. In addition, dealing with the native language of the consumer is one of the fundamental rights in the electronic contracts from which he can clearly identify his rights, the content of the contract, and the right to obtain the full information about the character of the contractor and the contract in detail since the contracting is between two absent parties in the electronic contracts. Therefore, it is considered essential to know who the consumer is dealing with. Further, giving the consumer's right to withdraw from the contract without any reason is considered a protection for this consumer because he has not been able to preview the item or the service before. In order to protect the consumer in the electronic contracts, an appropriate environment of e-commerce must be provided. The confidence in the conduct of online business via the internet must be enhanced as well.

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