

<b>RESEARCH ARTICLE</b>	<b>The Legal Framework for the Abuse of Electronic Cards by Their Lawful Holders</b>	
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<b>Abstract</b>		
E-commerce has today become a new driver of economic growth, encompassing all commercial transactions, including the sale and purchase of goods and merchandise. This evolution relies fundamentally on electronic payment methods, which hold significant importance due to their cost-effectiveness and immaterial nature. However, the use of such means requires a robust legal framework and a high degree of control over modern technological developments. These tools have contributed to overcoming the obstacles posed by traditional payment methods. Nevertheless, their use has also been accompanied by offenses and instances of misuse, including abusive conduct by the legitimate cardholder. The increasing diversity of such infractions necessitates the establishment of legal protection against the abusive use of smart cards by their rightful holders.		
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## 1. Introduction

Our current era is witnessing an unprecedented boom in the field of digital technology, to the extent that it has become widely referred to as the “digital age,” due to the profound impact of this technological revolution on various spheres of life—particularly the economic sector. The latter has undergone a qualitative transformation as a result of its close integration with modern technology, which has contributed to enhancing the functioning of economic activity by offering positive features such as the abundance of information, the speed of its circulation, and the ease of access.

This digital transformation has led to the emergence of new concepts that transcend the geographical and physical boundaries which once restricted the movement of individuals and institutions. This has enabled economic actors to carry out their activities with greater freedom and flexibility within an open electronic environment. Among the

most prominent of these new concepts is online commerce, a term that emerged nearly three decades ago. It is based on the use of digital tools and purely electronic information systems that facilitate the conclusion and execution of various types of commercial transactions remotely.

In light of this, and in order to support and facilitate electronic commerce, the need arose for payment mechanisms that are compatible with the nature of such transactions. One of the most notable developments in this area was the emergence of the electronic payment system, which has, in many cases, replaced traditional paper currency. This system now provides users with the ability to carry out financial transactions via electronic cards in a convenient, secure, and rapid manner, benefiting from the services and facilities offered by banking institutions.

However, the use of these cards has not been free from practical and legal challenges, particularly in view of instances of misuse by their lawful holders—whether through abusive withdrawal practices or exceeding the authorized balance limit. This raises important legal questions regarding the regulatory framework governing such conduct, its legal classification, and whether such actions constitute punishable offenses or merely contractual breaches that give rise to civil liability.

To address this legal issue, the study adopts an analytical approach through the examination of relevant provisions of the Penal Code, alongside a descriptive methodology in the theoretical section, aimed at clarifying the concepts related to electronic payment and its significance.

This research is divided into two main sections: the first section examines the concept and significance of electronic payment methods, while the second section addresses the issue of abusive use of the electronic card by its lawful holder.

Finally, the study concludes with a set of findings, accompanied by a number of practical recommendations based on the conclusions drawn.

## **2. The Concept and Significance of Electronic Payment Methods**

In recent decades, the world has witnessed remarkable advancements in the field of technology, with direct and profound implications for various sectors—particularly the economic sector. Among the most significant manifestations of this impact is the emergence of what has become known as “electronic commerce,” a modern form of commercial practice that takes place via electronic media. This, in turn, necessitated the development of payment methods compatible with its digital nature, leading to the rise of electronic payment systems.

These mechanisms have transformed money from its traditional physical form—such as banknotes and coins—into intangible forms that rely on smart cards and digital payment systems. This represents a qualitative shift in the manner in which modern financial transactions are conducted.

### **2.1. Definition of Electronic Payment Methods**

Electronic payment methods may be defined as: "A set of digital tools and mechanisms issued by banks and financial institutions and used as means to settle financial transactions through secure electronic systems. These include bank cards, electronic money, electronic checks, and other modern digital instruments." (*Khaoula Adnani, Faiza Belaâbbed, Abdeljalil Moqaddem, 2018, p.151*)

They are also defined as: "The use of information and communication technologies, particularly computers and internet networks, to execute electronic fund transfers in exchange for goods or services via communication networks or the internet." (*Hamid Qoroumi, Najia Dhahak, 2014, p.141*)

### **2.2. Characteristics of Electronic Payment Methods**

Electronic payment methods are distinguished by several characteristics that differentiate them fundamentally from traditional paper-based payment instruments. The most prominent characteristics include: (*Raafat Radwan, 1998, p.29*)

- **International Nature of Electronic Payments** These methods are used to settle commercial and financial transactions across borders, enabling financial operations between parties located in different parts of the world within a digital environment that transcends geographical boundaries.
- **Reliance on Electronic Money** Electronic payments rely on digital monetary values stored on smart cards or within the information systems of financial institutions. These are considered digital currency used in transactions without the need to carry physical cash.
- **Remote Transaction Settlement** These methods enable contracts to be concluded and payments made electronically, without the physical presence of the parties involved, thanks to modern communication technologies that allow for remote payment instructions via digital data. (*Khaoula Adnani, Faiza Belaâbbed, Abdeljalil Moqaddem, 2018, p.154*)
- **Multiple Modes of Execution**
  - **Prepaid Payment:** Where preloaded monetary amounts are stored and deducted directly at the time of transaction—e.g., internet payment via e-wallet or prepaid card.
  - **Postpaid Payment:** Involving the use of bank cards linked to current accounts, where the spent amounts are debited afterward, and settlement may also occur through instruments such as checks.
- **Requirement of an Electronic Banking System** Implementing this form of payment necessitates a well-developed digital banking infrastructure, including technical equipment, software systems, and secure electronic processing networks to ensure transaction safety and efficiency.
- **Dependence on Two Types of Networks**
  - **Private Networks:** Closed networks connecting parties with pre-established commercial relationships, used within limited scopes.
  - **Public Networks:** Such as the internet, where contracting parties have no prior relationships. This type of network is currently the most widely used for electronic payments. (*Khaoula Adnani, Faiza Belaâbbed, Abdeljalil Moqaddem, 2018, p.154*)

### 3.Challenges Facing the Electronic Payment System in Algerian Banks

Despite the numerous advantages that electronic payment methods offer, their implementation within the Algerian context continues to face several challenges, most notably:

- **Legislative Deficiencies:** A lack of comprehensive legal frameworks regulating electronic commerce and its associated payment systems creates legal gaps that undermine the effectiveness of the system.
- **Risks Related to Digital Banking Services:** These include threats such as hacking, fraud, counterfeiting, and violations of user privacy.
- **Low Financial Literacy:** Among citizens, there is still a limited use of checks and other banking tools, reflecting a broader issue of insufficient banking culture.
- **Low Adoption Rate:** Due to weak digital awareness, lack of trust in these systems, and inadequate user training.
- **Misuse of Electronic Cards:** By institutions or individuals, which leads to financial and security issues. (*Khaoula Adnani, Faiza Belaâbbed, Abdeljalil Moqaddem, 2018, p.155*)

### 4.The Importance of Electronic Payment

The importance of electronic payment methods is evident through the advantages they offer to all parties involved in the transaction process. These benefits can be outlined as follows:

#### 4.1. For the Merchant:

- They serve as an effective mechanism for safeguarding the merchant's financial rights.
- They contribute to increasing the volume of sales by facilitating the purchasing process.
- They reduce the burden of debt collection from customers, as the responsibility for payment recovery is transferred to the bank or the issuing financial institution. (*Ramzi Ben Seddik, 2021, p. 221*)

#### 4.2. For the Cardholder:

- They provide ease and speed of use, eliminating the need to carry large amounts of cash.
- They enhance personal security by reducing the risks of theft or loss.
- They enable the user to complete transactions and purchases easily, simply by entering card information or digital credentials, without the need for physical presence or movement.

#### 4.3. For the Issuing Financial Institutions:

- They generate significant revenue through interest, service fees, and penalties arising from card usage.
- They contribute to the expansion and modernization of the banking system, and the development of digital banking services. (*Ramzi Ben Seddik, 2021, p. 222*)

### 5. The Abusive Use of the Electronic Card by Its Legitimate Holder

The issue of the unlawful or abusive use of an electronic payment card by its legitimate holder has garnered increasing attention in contemporary legal doctrine and jurisprudence, particularly in light of the growing number of crimes linked to electronic payment cards. The legal debate primarily revolves around actions carried out by the cardholder that exceed the scope of the contractual agreement concluded with the issuing entity—such as unauthorized withdrawals or using the card to pay debts without sufficient funds, particularly in the case of cards with deferred credit features.

#### 5.1. Exceeding the Balance in Withdrawal Operations

Exceeding the available balance during withdrawals via an electronic card has sparked considerable debate within legal scholarship, especially in the absence of explicit legal provisions criminalizing such conduct. Legal opinions diverge between those who consider such acts a contractual breach giving rise to civil liability, and those who argue for criminal liability by qualifying the conduct under classical crimes such as **theft**, **fraud**, or **breach of trust**.

#### 5.2. Legal Characterization as Theft

Some legal scholars have likened the act of overdrawing a balance to **theft**, on the basis that the cardholder has unjustly obtained funds exceeding their entitlement. This view found some judicial backing in a decision of the French Court of Cassation, which convicted a creditor for collecting more than the owed amount without the debtor's knowledge.

However, this characterization faces significant legal hurdles—chief among them the fact that the transfer of funds during a withdrawal occurs based on an automated process initiated by the bank, thereby negating the element of **covert appropriation**, which is essential for establishing the crime of theft. (*Samah Mohamed Abdel Hakam, 2003, p. 60*)

The ATM dispenses cash following a valid card and PIN input, without technical tampering or manifest deception. Proponents of this view have attempted to overcome the challenge by arguing that an ATM has no legal will and functions merely as an executor, akin to a legally incapacitated person. However, this position also fails under scrutiny, as the machine operates according to pre-set instructions defined by the bank. Hence, the cash

dispensation is not passive but stems from an intentional act by the financial institution. (*Samah Mohamed Abdel Hakam, 2003, p. 66*)

### 5.3. Legal Characterization as Fraud

Another school of thought qualifies the act of withdrawing funds without sufficient balance as **fraud**, arguing that it inherently involves an element of deception. Nevertheless, French courts, notably in a judgment dated **November 11, 1983**, rejected this interpretation, holding that the use of the card in such a context was legitimate and devoid of fraudulent means.

The user neither entered false data nor used counterfeit cards, but operated within the standard procedural framework, thereby eliminating the material element of the crime. (*Reda Ahmed Ibrahim Mahio Eid, 2010, p. 82*)

#### 5.3.1. Legal Characterization as Breach of Trust

Some scholars have suggested that overdrawing a balance constitutes **breach of trust**, since it violates the contractual terms prohibiting the holder from withdrawing funds beyond the authorized limit. However, this legal qualification is undermined by a fundamental flaw—the **absence of entrusted property**. (*Reda Ahmed Ibrahim Mahio Eid, 2010, p. 83*)

An electronic card is not a physical asset entrusted for a specific purpose; rather, it is a programmed banking instrument. Similarly, the funds withdrawn are not delivered to the cardholder under any trust agreement, but are the result of an automated banking process. (*Amina Ben Amior, 2005, pp. 129 & 134*)

French jurisprudence has consistently held that such behavior does not constitute a criminal offense but rather a **contractual breach**, giving rise to **civil liability** and entitling the bank to recover the disputed amounts through a civil, not criminal, action. (*Amina Ben Amior, 2005, p. 134*)

#### 5.3.2. Exceeding the Credit Limit in Fulfillment (Consumption Without Actual Balance)

Banks often provide certain cards with a "**deferred credit**" feature, which allows the cardholder to purchase goods or services even in the absence of an actual balance, on the condition that the payment will be settled at a later date. In this context, a legal question arises regarding the status of a cardholder who obtains goods or services without sufficient balance and subsequently refrains from making the payment within the agreed-upon time. (*Asmaa Bouakal, 2023, p. 28*)

#### 5.3.3. When the Goods Are Obtained Within the Guaranteed Credit Limit

If the cardholder acts within the credit limit granted by the bank, the bank is obligated to settle the payments with the merchant, and later recover the amount from the client. However, the failure of the cardholder to fulfill their payment obligations constitutes a **civil liability** and is considered a **contractual breach**, not a criminal offense, unless clear elements of **fraud** or **deception** are present. (*Kilani El-Radi Mahmoud, 2001, p. 51*)

Proponents of this view assert that the bank bears the consequences of its choice of client and has the right to cancel and recover the card in cases of payment delinquency. Should the client refuse to return the card upon request, the bank may then reclassify the act as **breach of trust**, given that the card is the property of the bank and not the client.

#### 5.3.4. When the Cardholder Exceeds the Guaranteed Limit

In such cases, some legal scholars argue that liability may shift to the **merchant**, particularly if it is proven that the merchant failed to verify the card's credit limit before providing the service or product. The merchant has a duty to ensure the validity of the card and its usage limits, and if negligent, cannot claim the payment from the client, but must instead bear the consequences of providing goods outside the scope of the bank's guarantee. (*Jamil Abdel Baqi Al-Saghir, 2013, p. 62*)

In its landmark ruling dated **24 November 1983**, the **French Court of Cassation** ruled that the act of making payment via a card that exceeded the credit limit does **not** constitute the crime of fraud. Similarly, the **Swiss Federal Court** acquitted a cardholder of fraud charges, despite their awareness of insufficient funds—further reinforcing the position that such conduct does **not** amount to a crime due to the absence of criminal intent and fraudulent means. (*Ramzi Ben Sadek, 2021, pp. 225–226*)

The foregoing demonstrates that **the abusive use of an electronic card by its legitimate holder**, whether in the context of withdrawals or payments, **cannot be automatically criminalized** unless the **material and moral elements** of the offense are fulfilled. Liability in such cases is typically **civil**, requiring the cardholder to fulfill contractual obligations. It is the responsibility of the financial institution to assess the creditworthiness of its clients and activate preventative systems to minimize legal risks arising from misuse.

## 6. Conclusion

In light of the above analysis, it is evident that the **unauthorized or abusive use of a smart card by its legitimate holder** constitutes behavior with significant legal and societal risks, requiring robust legislative and regulatory

intervention. While modern technologies—particularly smart cards—have enhanced the ease and efficiency of financial and service transactions, they have also introduced new challenges for lawmakers, necessitating stringent regulation to safeguard individual rights and maintain public order.

The study highlights that **criminal liability** does not only arise from third-party access or technical breaches but can also arise from **misuse by the rightful owner**, when they act outside the lawful scope or operational rules of the card. Accordingly, the **legal basis** for criminalization in such cases lies in **preserving digital trust**, protecting public and private funds, and ensuring the integrity of electronic transactions.

#### Key Findings:

- A cardholder who exceeds their balance during a withdrawal is **not** automatically committing any of the traditional offenses.
- Such conduct is deemed a **breach of contractual obligations** between the cardholder and the bank.
- The **French Court of Cassation** has consistently ruled that such actions amount to **contractual breaches**, not punishable criminal offenses.
- **Recommendations:**
- National **criminal and commercial laws** should be updated to explicitly cover cases of **misuse of smart cards by their legitimate holders**, with clear definitions of prohibited behaviors.
- Specific legal provisions should be incorporated into **cybercrime legislation** to criminalize such conduct and eliminate legislative loopholes.
- Banks should **upgrade their software systems** to improve oversight.
- **ATMs should be integrated into the bank's central computer network** for real-time monitoring.
- Banks should undergo **digitization** and provide **training programs** for their employees to stay abreast of technological advancements.

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