

# The legislative reality of the e-tourism contract in Algeria

Aghiles ZIANI

\* PhD student in Economic Regulation Law and Social Development (2017-2024), Faculty of Law and Political Science, Mouloud Mammeri University of Tizi Ouzou (Algeria).

---

## Abstract

Tourism in its traditional form is no longer consistent with the changes of this era, as the Internet has become a mirror for the individual on the world around him, so the hands of development had to extend to the tourism sector, which is currently witnessing technological development and tremendous progress, which allowed to improve and promote tourism in recent years in most countries of the world and what followed what is known as the era of digitization, today we find many sectors walking with digitization and technology techniques, and among these sectors we find the tourism sector, which knows a great technological and digital development, given the importance of this sector in the field of contributing significantly to the improvement of the economy of some countries, which made these countries work hard to exploit the means of technology, media and digitization so that today people, whether local or foreign, are able to develop a great digital development. This is what made these countries work hard to exploit technological, media and digitalization means so that today people, whether local or foreign, can conclude electronic tourism contracts through modern technological means such as social media, the Internet and other pages on the Internet and the accounts of tourism and travel agencies, and not only this, but even electronic payment means exist through the acquisition of electronic payment cards, so today it has become possible to conclude electronic tourism contracts.

**Keywords:** Contract, tourism, agency, travels, eligibility.

---

## Introduction

This development witnessed by the world in the field of technology and media allowed the emergence of what is known as e-tourism, which is considered a tourism pattern that some of its transactions are

carried out using information and communication technology, so that this type of tourism allowed the emergence of what is known as the electronic tourism contract, which links the tourist agent to the tourist, according to which the second is committed to benefit from the aspects of the tourism

activity that he performs in exchange for a known fee that the latter is committed to, so that this type of contract must have elements for its conclusion or it is considered invalid, but it is concluded through modern electronic means provided by the Internet which facilitates in a way that facilitates the formation of a contract with the tourist.

This modern form of tourism places on us, as legal researchers, to search for a legal system for this type of contract by posing the following question: What is the concept of the electronic tourism contract and what are the ways of concluding it and its effects?

### **Topic I: The e-tourism contract**

In this paper, we will deal with the e-tourism contract through two requirements, in the first requirement we will deal with the legal characterization of the e-tourism contract, while in the second requirement we will deal with the affirmative in the e-tourism contract and its images.

#### **Requirement 1: Legal characterization of the e-tourism contract**

There are different jurisprudential opinions about the legal characterization of the e-tourism contract, and in this requirement we address this jurisprudential difference, and

therefore we divided this requirement into four sections as follows:

#### **Section 1: The e-tourism contract is a paid agency contract**

Accordingly, the tourism agent is considered a paid agent for the tourist, and under his agency, he concludes legal acts on behalf of the tourist client, such as booking travel tickets through various means of transportation, or booking rooms in hotel establishments for the benefit of the client, who has the right to terminate the agency at any time under the penalty of compensation in favor of the agent for the damage caused by his dismissal at an inappropriate time or with an unacceptable excuse in accordance with Article 587 of the Algerian Civil Code<sup>1</sup>, which states that: “The principal may at any time terminate or restrict the agency, even if there is an agreement to the contrary. If the agency is remunerated, the principal shall be obliged to compensate the agent for the damage caused to him by his dismissal at an inappropriate time without an acceptable excuse.”

#### **Section 2: The e-tourism contract is a contracting contract**

<sup>1</sup> كركوري مباركة حنان – التزامات السائح التعاقدية المترتبة عن تنفيذ عقد السياحة والأسفار في مواجهة

الوكالة السياحية - مجلة دفاتر السياسة والقانون – جامعة ورقلة – عدد خاص جوان 2018 ، ص 130.

The legislator defined the contracting contract in Article 549 of the Algerian Civil Code as: “Contracting is a contract under which one of the contracting parties undertakes to make something or perform a work for a fee promised by the other contracting party.”

Therefore, if the role assigned to the tourism and travel agency is to organize a comprehensive group trip by preparing in advance the tourist trip program and then announcing it to the public for participation, it takes the role of contracting in accordance with the general provisions stipulated in Article 566 of the Algerian Civil Code, which states: “The employer can dissolve the contract and stop execution at any time before its completion, provided that he compensates the contractor for all his expenses, the work he completed and what he could have earned if he had completed the work.”<sup>2</sup>, as for the e-tourist, he takes the role of the employer, from which he has the right to modify the contract he has concluded and get rid of his obligations at his own will<sup>3</sup>. This is a departure from the rule of *pacta sunt servanda* stipulated in

Article 106 of the Algerian Civil Code, which stipulates that “A contract is *pacta sunt servanda* and may not be rescinded or modified except by agreement of the parties, or for reasons prescribed by law”<sup>4</sup>.

### Section 3: The e-tourism contract is a sales contract

A part of the jurisprudence considers that the provision of pre-organized tourist trips can be characterized as a contract of sale, as the organized trip is considered a product that can be sold either wholesale or retail, as the tourist can buy the entire organized trip for an agreed total price, and he can also request an independent tourist service that he buys from the agency<sup>5</sup>, and this is stipulated by the legislator in Article 3 of the law regulating the activity of tourism and travel agencies, which states that: “A tourism and travel agency is any commercial organization that permanently practices a tourism activity consisting in the direct or indirect sale of individual or group trips and accommodations and all kinds of related services.” The legislator confirmed this meaning in Article 3 of the Consumer Protection and Suppression of Fraud Law

<sup>2</sup> المادة 566 من القانون المدني الجزائري.  
<sup>3</sup> كركوري مباركة حنان – التزامات السائح التعاقدية المترتبة عن تنفيذ عقد السياحة والأسفار في مواجهة الوكالة السياحية، مرجع سابق، ص 131.  
<sup>4</sup> المادة 106 القانون المدني الجزائري.

<sup>5</sup> زواقي مصطفى – النظام القانوني لوكالات السياحة والأسفار في التشريع الجزائري – مجلة الاجتهاد للدراسات القانونية والاقتصادية – المجلد – 08 العدد – 02 سنة 2019، ص 254.

No. 03-09 of 2009 by saying:” Every good or service can be the subject of a waiver for a fee or free of charge.”

Therefore, if we consider that the e-tourism contract is a contract of sale, the legislator has granted the customer the right to abandon the electronic contract, in the Electronic Commerce Law No. 18-05 in Article 23, which states that the electronic supplier must return his goods, in the event that an item is delivered that does not conform to the order or in the event that the product is defective.

The e-consumer must resend the item in its original packaging, within a maximum period of four (4) working days from the date of actual delivery of the product, indicating the reason for the rejection, and the costs of resending shall be borne by the e-supplier, and the e-supplier shall be obliged to:

- A new delivery in accordance with the order, repair the defective product, replace

the product with a similar one, or cancel the order and return the amounts paid without prejudice to the possibility of the consumer's claim for compensation in case of damage.

- Refunds must be made within fifteen (15) days from the date of receipt of the product.”

It is noticeable from this article that the legislator has restricted the electronic customer in using his right to cancel the electronic contract, in case the item does not conform to the order, or in case the product is defective, and the consumer must state the reason for his rejection of the product<sup>6</sup>.

However, there are those who criticize this trend on the grounds that the legal definition of a sales contract does not apply to the travel and tourism contract, as a sales contract is a contract that transfers property<sup>7</sup>, and we do not find any transfer of property in the travel and tourism contract.

<sup>6</sup> This is contrary to the judgment of the French Court of Cassation of November 25, 2010 First Civil Division, Appeal No. 708339, where the Court of Cassation criticized the position of the district court, stating unequivocally that the right of withdrawal does not apply to contracts concluded by electronic means for a service exclusively listed in Article L.121-20-4 of the aforementioned Consumer Code, which constitute legal exceptions to

the principle granted to the consumer. See: Stéphane Rouquette - Droit de rétractation: l'e-tourisme privilégié par le Code de la consommation - [www.journaldunet.com](http://www.journaldunet.com).

<sup>7</sup> A sales contract is defined as: “the obligation to transfer the ownership of the sale to the seller, and the obligation to pay the price to the buyer”.

محمد حسنين- عقد البيع في القانون المدني الجزائري  
-ديوان المطبوعات الجامعية- الجزائر – سنة 2000  
-ص 2.

#### **Section 4: The e-tourism contract is a commission agency contract for transportation**

The tourism and travel agency often undertakes the transportation process, as transportation is one of the basic services it provides to customers, and this is confirmed by the legislator in Article 4/6 of Law No. 99-06 on the rules governing the activity of the tourism and travel agency, which states that: "The services associated with the activity of the tourism and travel agency. The services associated with the activity of the tourism and travel agency are, in particular, the following: tourist transportation and the sale of all types of transportation tickets in accordance with the conditions and regulations applicable to transportation institutions."

Paragraph 11 of the same article of the same law stipulates that "Renting cars with or without a driver, transporting luggage, and renting mobile homes and other camping equipment." The commission agency for transportation is a contract under which the agent commits to contract in his name for the account of the client or in the name of his client with a carrier to transport something or a person to a certain

destination, and to perform, if necessary, the operations associated with this transportation in exchange for a commission he receives from the client, so the tourism and travel agency is considered a commission agent for transportation when it enters into transportation contracts in its name and for the account of travelers, which entails its commitment to the final result of the transportation, i.e. in front of the transportation process, and its obligation to ensure the safety of passengers, which is an obligation to achieve a result, as the tourism and travel agency guarantees the damages that he suffers during transportation, if the tourist is injured during transportation, the agency is responsible despite the absence of a direct relationship between the client and the carrier<sup>8</sup>, and it does not matter after that whether the contract is concluded electronically or traditionally.

We must point out with regard to the transportation contract, transportation is not the tourist's goal because when he contracts with the tourist agent, he did not intend from this contract to enjoy the tourist trip by its means, but to achieve pleasure and entertainment, so transportation is not the tourist's goal, but a means to achieve an end, in addition to that, even if we assume that

<sup>8</sup> فوزية شبانة – النظام القانوني لعقد السياحة والأسفار – مذكرة ماستر في الحقوق – تخصص قانون أعمال – كلية

الحقوق والعلوم السياسية – جامعة العربي بن مهيدي- أم البواقي- سنة 2015 / 2014 - ص 22.

the tourist agent performs transportation for himself or by others, his role is not limited to transportation only, but he performs other tasks, the first of which is to organize the trip through the announced program, and the tourist's role is by signing the contract containing the specific program for the trip for the monetary remuneration mentioned therein

The tourist's role is to sign the contract containing the specified program for the trip with the monetary compensation mentioned therein<sup>9</sup>.

## **Requirement 2: the positive in the e-tourism contract and its forms**

In this requirement, we will address the definition of the offer in the e-tourism contract, how to conclude it by addressing the images of the offer, as well as the reasons that lead to the withdrawal of the offer in the e-tourism contract.

### **Section I: The legal definition of the e-affirmative in an e-tourism contract.**

In this section, we will deal with the meaning of the electronic offer according to

the point of view of the law, and we will see the specificity it enjoys that distinguishes it from the ordinary offer, as follows:

European Directive No. 7 of 1997 on consumer protection defines an electronic offer as: "Any remote communication that includes all the necessary elements that enable the addressee of the offer to accept the contract directly and excludes from this scope a mere advertisement"<sup>10</sup>.

It is clear from this definition that it does not specify the means of remote communication through which the electronic offer can be directed, and therefore it can be directed to a specific person, or to the public through any electronic means.

A trend in jurisprudence argues that the European approach did not emphasize the most important characteristics of the electronic offer, which is the electronic character of the offer, but it was concerned with the need for the offeror to include the necessary elements of the offer so that the acceptor, usually the consumer, can issue his acceptance with knowledge<sup>11</sup>.

<sup>9</sup> زينة غانم العبيدي، سارة أحمد حمد العبيدي- عقد السياحة الإلكتروني (دراسة تحليلية مقارنة) - مجلة جامعة تكريت للعلوم القانونية والسياسية - العدد - 7 السنة - 2 ص 2017.

<sup>10</sup> نقلا عن علاء محمد الفواعير - العقود الإلكترونية بالتراضي، التعبير عن الإرادة (دراسة مقارنة) الطبعة الأولى - دار الثقافة- عمان - سنة 2014 م- ص 125 .  
<sup>11</sup> نقلا عن خالد ممدوح إبراهيم- إبرام العقد الإلكتروني (دراسة مقارنة) الطبعة الأولى - دار الفكر الجامعي - الإسكندرية - سنة 2006 م- ص 248.

While another trend believes that the previous point of view is incorrect because the electronic characteristic is focused on the means through which the offer is made, not on the latter in itself, as it is well established in jurisprudence and jurisprudence that the intention inherent in the soul is the core and basis of the contract, and the expression is nothing more than a means through which third parties are informed of the content of the intention to conclude the contract, whether this means is traditional or electronic<sup>12</sup>.

## Section 2: Forms of the affirmative in the e-tourism contract.

The affirmative in the e-tourism contract has several forms, as the affirmative may be done by electronic correspondence, as it may be through the websites of tourism and travel agencies, and the affirmative may be done through direct interaction via the Internet between the tourist and the tourism and travel agency, and we will address these various forms below:

### Firstly: Affirmation by electronic correspondence

This form is used in contracts concluded via the Internet by e-mail and here the offer is directed to a specific person, who can know the content of this offer by entering his e-mail, as this technology allows knowledge of contractual offers with ease, and allows the fulfillment of the conditions required in the offer without great difficulty, and thus the e-mail message should be edited in such a way that it constitutes an offer, which is not achieved unless it includes all the obligations to be committed<sup>13</sup>.

In this type of offer, a direct relationship is generated between the offeror and the consumer<sup>14</sup>, and in the electronic tourism contract, the tourist can send an e-mail to the tourism and travel agency through which he expresses his will to conclude a contract according to the specifications specified in advance by the tourism and travel agency, and thus the exchange of electronic messages between them in

<sup>12</sup> عنادل عبد الحميد المطر- التراضي في العقد الالكتروني - رسالة دكتوراه في الحقوق - كلية الحقوق - جامعة عين شمس - القاهرة - سنة 2009 م - ص. 177  
<sup>13</sup> عمرو عبد الفتاح علي يونس- جوانب قانونية للتعاقد الالكتروني في إطار القانون المدني (دراسة مقارنة) مدعمة بأحدث الأحكام القضائية الأجنبية والعربية - رسالة دكتوراه في الحقوق - كلية الحقوق - عين شمس - القاهرة - سنة 2008 م- ص 264.

<sup>14</sup> Abbas Youssef JABER, Les contrats conclus par voie électronique : étude comparée -thèse de doctorat - université MONTPELLIER 1 - école doctorale - droit et science politique Année : 2011/2012 - P 48.

preparation for the implementation of the contract concluded between them.

### **Secondly: Acceptance through the websites of tourism and travel agencies.**

The offer through web pages is not much different from the offer issued through newspapers, magazines and television channels dedicated to displaying goods, and the offer through web pages is distinguished by the fact that it is directed to the entire public<sup>15</sup>, so anyone anywhere can access the websites of electronic stores spread on the network, to order a good or service offered through these sites and containing all the basic elements necessary for contracting, which is a legal positive that produces its contractual effects<sup>16</sup>, for tourism and travel agencies we often find that they own websites where they offer their various tourism services to the public, where they place on these sites different

### **Thirdly: Affirmative through direct interaction via the Internet.**

It is meant by the affirmative through direct interaction via the Internet by displaying the affirmative on chat sites that allow immediate and direct interaction and

respond to it at the same moment when both parties are on the computer, this conversation may take place through social networking sites such as Facebook and Twitter, so the affirmative and acceptance are exchanged between the travel agency and the tourist through these technologies, either by direct writing via Messenger mail or by voice and image.

In the end, we note the different forms of the offer in the e-tourism contract, but the common denominator is that it contains all the essential elements of the contract to be concluded, in order for it to be a real offer that produces its legal effects.

### **Fourthly: Affirmation through electronic advertising.**

The Algerian legislator defined advertising in Law No. 04-02 of 2004 on the rules applicable to commercial practices as: "Any advertisement aimed directly or indirectly at promoting the sale of goods or services, regardless of the place or means of communication used." It is noticeable that this definition mentions the phrase "media and communication..." Through this definition, the Algerian legislator did not try

<sup>15</sup> محمد أمين الرومي - التعاقد الإلكتروني عبر الإنترنت - الطبعة الأولى - دار المطبوعات الجامعية - الإسكندرية - سنة 2004 م - ص 92.

<sup>16</sup> عمرو عبد الفتاح علي بونس- جوانب قانونية للتعاقد الإلكتروني في إطار القانون المدني (دراسة مقارنة) ، مرجع سابق- ص 257.

to limit these means, but rather left them in general due to the great and rapid development of the media and communication means day by day.

### **Section 3: Reasons for the lapse of the offer in the e-tourism contract.**

The offer in the e-tourism contract remains productive of its effects as long as the tourist to whom it is addressed is free to establish the contract by accepting this offer, but it is inconceivable that it remains indefinitely pending the desire of the other party, there are cases in which this offer lapses, and this is what we will show below:

#### **Firstly: Expiration of the term**

Offers may expire after a reasonable period of time, as this period varies, depending on the different circumstances of electronic transactions, as offers expire quickly in volatile markets.

The offer may be associated with a specific period of time from the offeror, which is here the tourism and travel agency, and in this case the offer is binding on its owners for the period specified by it, if the period expires without issuing an acceptance, the electronic offer falls, and if an acceptance is issued after the fall of this offer, that

acceptance is considered a new offer, which is stipulated in Article 63 of the Algerian Civil Code, which states: " If a time limit is set for acceptance, the offeror is obligated to maintain his offer until the expiration of this time limit, and the time limit may be derived from the circumstances of the case or from the nature of the transaction. According to this text, the basis of the binding force of the affirmative is due to the unilateral will of the offeror, so if the latter sets a time limit for acceptance, he is obligated to remain on his offer until the expiration of this time limit, which may be implied from the circumstances of the case or from the nature of the transaction<sup>17</sup>.

#### **Secondly: Revocation of acceptance.**

The tourism and travel agency can modify its electronic offer provided that no acceptance has been issued by the other party, the tourist, and this happens if there is a change in the prices of services as a result of increased supply or demand for them, so the tourism and travel agency modifies its offer.

#### **Thirdly: Rejection of the positive.**

<sup>17</sup> العيشي عبد الرحمان - ركن الرضا في العقد الإلكتروني - أطروحة دكتوراه علوم - تخصص قانون

خاص - كلية الحقوق - جامعة الجزائر 1 - سنة 2017  
ص-150.

The tourist, who is the recipient of the affirmative, can reject it by not responding to it, for example in electronic messages sent to people's e-mail without prior request, and the consumer can express his unwillingness to receive these messages in two ways:

- The first method: Informing the travel and tourism agency sending the email that it is spam.
- The second method: The website of the travel and tourism agency that subscribes to the email service informs the subscriber that these messages are unsolicited and does not send them again<sup>18</sup>.

## **Topic II: Acceptance in the electronic travel and tourism contract**

The provisions of electronic acceptance are generally considered no different from the provisions of the traditional ordinary acceptance, and the difference lies only in the fact that the electronic acceptance is carried out remotely through the Internet, which gives it a kind of privacy that creates some difficulties and obstacles when contracting. These means have greatly affected the traditional concepts of acceptance in the general theory of the

contract, which impedes the application of the general rules to the electronic acceptance.

The modern electronic means of communication, especially the Internet, have made the acceptance made through it characterized by its own rules, which are due to its methods of expression, and the right of the contractor to revoke his acceptance after he has expressed it and the contract has been completed, so we divided this research into two requirements. In the first, we deal with the concept of acceptance in the e-tourism contract and its conditions, then in the second requirement, we deal with the conditions of acceptance in the e-tourism contract, methods of expression and also the effects of this type of contract.

### **Requirement 1: The concept of acceptance in the e-tourism contract and its conditions.**

In this requirement, we will deal with the definition of acceptance in the e-tourism contract in the first section and in the second section, we will deal with the conditions of acceptance in the e-tourism contract, and ways of expressing it.

<sup>18</sup> حليلة بن حفو – التراضي في العقد الإلكتروني - مجلة الأملاك- مجلة فصلية تعنى بالدراسات القانونية

والفقهيّة - العدد المزدوج السادس - سنة 2009 م- ص 154.

### **Section 1: Definition of acceptance in the e-tourism contract.**

Acceptance in the e-tourism contract takes place via the Internet, as it is a remote acceptance<sup>19</sup>, otherwise it does not differ from the normal acceptance in terms of rules and provisions<sup>20</sup>.

The UNCITRAL Model Law, Annex X to the Draft Model Contract on Electronic Transactions, defines electronic acceptance as: "Acceptance is considered accepted if the sender of this offer receives an unconditional acceptance of the offer within the specified time." In most cases, the electronic acceptance is issued by the consumer and is done remotely and through an electronic medium and is identical to the affirmative<sup>21</sup>.

### **Section 2: Conditions of acceptance in the e-tourism contract and ways of expressing it.**

Since acceptance is the second will that must be coupled with the affirmative to complete the contract, it must meet the

The acceptance, like the affirmative, does not require a specific form in its expression, so it is valid through modern means of communication, including the Internet, orally or in writing, due to the absence of a legislative obligation to formulate the acceptance in a specific form, based on the principle of the authority of the will, which refuses to force the contractor to express his will in a special way<sup>22</sup>, but this does not prevent that the offeror has stipulated that the acceptance be issued in a specific form, if the tourism and travel agency requires the customer to issue his acceptance in a specific form, the latter must comply with this condition.

conditions for it to be considered, and its methods of expression also vary.

#### **A. The first condition: The acceptance must be issued while the affirmative remains.**

<sup>19</sup> عاطف عبد الحميد حسن - وجود الرضى في العقد الإلكتروني عبر شبكة الانترنت - دار النهضة العربية - القاهرة  
- سنة 2008 م - ص 110.  
<sup>20</sup> عمرو عبد الفتاح علي يونس - مرجع سابق - ص 293.

<sup>21</sup> نقلا عن عبد الفتاح محمود كيلاني - المسؤولية المدنية الناشئة عن المعاملات الإلكترونية عبر الانترنت - دار الجامعة الجديدة - الإسكندرية - سنة 2011م - ص 39.  
<sup>22</sup> عبد الباسط جاسم محمد - إبرام العقد عبر الانترنت - الطبعة الأولى - منشورات الحلبي الحقوقية - بيروت - سنة 2010م - ص 176.

The acceptance must be issued by the other contracting party, the tourist, while the affirmative is still in place, and here we must distinguish between whether the contract was made in a single contract council or through electronic correspondence.

**First hypothesis:** If the offer is issued in the council of the contract between two contractors present and the offeror does not set a deadline for acceptance, the acceptor must issue his acceptance immediately according to the original, according to the text of Article 64 paragraph 01 of the Algerian Civil Code, which states:” If the offer is issued in the council of the contract to a person present without specifying the time limit for acceptance, the offeror shall be relieved of his obligation if he does not issue the acceptance immediately, as well as if the offer is issued from one person to another by telephone or by any similar method<sup>23</sup>. However, the legislator has relaxed this rule to allow the acceptor to delay in expressing his acceptance, and ruled that the contract is completed despite this, provided that at the time of issuing the acceptance, the offeror must still stand by his offer without modifying it, and that the contract council is still in place and has not

been dissolved at the time of its issuance, according to the second paragraph of Article 64 (02) of the Algerian Civil Code, which states:” However, the contract is completed, even if the acceptance is not issued immediately, if there is no evidence that the offeror has modified his offer in the period between the offer and acceptance, and the acceptance is issued before the contract council is dissolved”<sup>24</sup>. These general rules can be applied to the electronic contract in contracting through direct interaction, which takes several forms, including contracting through social networking pages by exchanging messages directly or through skype, i.e. audio-visual communication, in these cases, the acceptance must be issued before the offeror modifies his answer, unless he has specified a period for acceptance, the acceptance must be issued within this period, and in the event that the offer is not associated with a specific period, the acceptance must be issued before the offeror modifies it and before the dissolution of the contract council, that is, before the conversation or communication between the two contracting parties ends.

**Second hypothesis:** If the tourism and travel agency, through its website or by any other means, sets a certain period of time for

<sup>23</sup> المادة 64 فقرة 01 من القانون المدني الجزائري.

<sup>24</sup> المادة 64 فقرة 02 من القانون المدني الجزائري.

the tourist to issue his acceptance, in this case the acceptance must be issued before the expiration of this period, as stated in Article 63 of the Algerian Civil Code, and this assumption takes two forms:

**First form:** If the acceptance is through a website, the acceptance must be issued within the period specified by the offeror for the validity of his offer or during the existence of the offer on the website, as long as the offer is still present on the website, the acceptor can click on the icon for acceptance until the contract is concluded, because the offer still exists<sup>25</sup>.

**Second form:** If the acceptance is made through e-mail, which provides the possibility of linking only without the possibility of communication or viewing, the tourism and travel agency through this technology maintains its positive for the reasonable period required to inform the tourist of it, and the reasonable period to send his acceptance, and if he sends it within this period, the contract is concluded because the acceptance is issued and the positive still exists.

**B. Second condition:** The tourist's acceptance must be identical to the travel and tourism agency's offer.

This is in all matters addressed by it, whether these matters are essential or minor, as stipulated in Article 65 of the Algerian Civil Code, which stipulates that: " If the parties agree on all substantive matters in the contract and reserve detailed matters to be agreed upon later and do not stipulate that the contract has no effect if they are not agreed upon, the contract is considered concluded, and if there is a dispute over matters that have not been agreed upon, the court shall rule in accordance with the nature of the transaction and the provisions of the law, custom and justice"<sup>26</sup>, where the legislator referred in this text to substantive matters and detailed matters, but he did not specify a criterion to distinguish between them, and with reference to the text of Article 65 mentioned above, it is clear to us the cases in which the acceptance corresponds to the affirmative, namely:

- The agreement of the parties to the contract on all substantive and detailed matters.

<sup>25</sup> سامح عبد الواحد التهامي -التعاقد عبر الانترنت ( دراسة مقارنة )- دار الكتب القانونية - مصر - سنة 2008م -ص189.

<sup>26</sup> المادة 65 من القانون المدني الجزائري.

- The agreement of the parties on substantive matters but not secondary matters.

- The agreement of the contracting parties on the substantive issues, and postponing the discussion of the detailed issues to be discussed later<sup>27</sup>, in which case it is left to the court to determine them if a dispute arises.

### **Requirement 2: Methods of expressing the tourist's acceptance in the e-tourism contract and the effects of this contract.**

In this requirement, we will address the methods of expressing the tourist's acceptance in the e-tourism contract, and therefore we divided this requirement into three branches, in the first branch we will address the method of expressing the tourist's acceptance through e-mail, in the second branch, the method of expressing the tourist's acceptance through social

### **Section 2: Acceptance through social media.**

The tourism and travel agency works by providing its customers with its Facebook account by informing or informing the

networking sites, and in the third branch we will address the implications of the e-tourism contract.

### **Section 1: Tourist acceptance via email.**

The tourist takes a means of expressing his acceptance in the form of an electronic data message carrying this expression, and it is required to be consistent with the affirmative without increase or decrease.

In this regard, Article 11 of the UNCITRAL Model Law on Electronic Commerce states: "In the context of contract formation, and unless the parties agree otherwise, data messages may be used to express the offer and acceptance of the offer ... etc."<sup>28</sup>. The Emirate of Dubai Law No. 2 of 2002 on Electronic Transactions states: "Nothing in this law requires a person to use or accept information electronically, except that the person's consent may be inferred from his positive behavior"<sup>29</sup>.

tourist through its page about its trip programs, whether inside or outside the country, and introducing the programmed tourist sites, and all other services such as hotels and means of transportation available, allowing the tourist to form a

<sup>27</sup> محمود عبد الرحيم الشريقات - التراضي في تكوين العقد عبر الانترنت (دراسة مقارنة) الطبعة الأولى - دار الثقافة - عمان - سنة 2009 م - ص 154.  
<sup>28</sup> أنظر المادة 11 من قانون الأونسيترال النموذجي بشأن التجارة الالكترونية لسنة 1992، ص 08.

<sup>29</sup> أنظر المادة 06 المتعلقة بقبول التعامل الالكتروني من الفصل الأول من القانون رقم 02 لسنة 2002 المتعلق بشأن المعاملات والتجارة الالكترونية، إمارة دبي.

comprehensive idea of the agency's way of working and how to contract with it while being aware of it, and the page also facilitates communication between the agency and the tourist quickly, allowing them to discuss the contract terms in a short period of time.

### **Section 3: The effects of the e-tourism contract.**

In this section, we will address the obligations that fall on the travel and tourism agency as an organizer of comprehensive trips, and the obligations that fall on the tourist as a beneficiary of the tourism services provided by the agency, in the following two sections:

#### **A. Obligations of the travel agency.**

There are several obligations of the travel agency, which we will address below:

##### **a. Obligation to inform.**

Article 4 of Law No. 6 of 1999 regarding the rules governing the activity of the tourism and travel agency, and within the framework of the tourism and travel agency's obligation to provide customers with all necessary information, stipulates that one of the services associated with the activity of the tourism and travel agency is assisting tourists during their stay, using all

the means at its disposal, so its obligation to inform customers of administrative documents is complemented by its obligation to facilitate obtaining them, and it is obligated to provide the necessary advice for customers to obtain a visa and help them purchase it.

##### **b. Obligation to ensure safety.**

Law No. 6 of 1999 on the rules governing the activity of tourism and travel agencies is considered an obligation to achieve a result, as can be seen from the text of Article 18, which states: "The agency must take all measures and precautions in the exercise of its activity to ensure the security of the customer and his property, which it accepts to take care of." In any case, the existence of an obligation to ensure safety invites us to refer also to the provisions of the Commercial Code, which explicitly stipulates in Article 62 that the carrier is liable for damages caused to the passenger during the execution of the transportation contract, and nullifies any agreement that fully or partially exempts the carrier from this responsibility, as it states: "The carrier of persons must ensure during the period of transportation the safety of the passenger and deliver him to his intended destination within the time specified in the contract." It is understood from this text that the carrier's obligation to deliver the passenger and

maintain his safety is an obligation to achieve a result<sup>30</sup>.

### c. Obligation to select and monitor service providers.

#### c.1- Good selection.

This lies in the good choice of the agency in the framework of comprehensive trips with tourism professionals who carry out all or most of the stages of the trip, and there is no doubt that it has the means to choose the competent and competent persons whom it considers capable of carrying out the trip in the best way, such as the carrier, the hotel establishment, the tour guide, the restaurateur.

This obligation is in the nature of an obligation of care and does not amount to the realization of a result and is also included in the obligations of the agency as While the obligation to follow up the service providers comes after the contract or during implementation, its purpose is to monitor the proper conduct of the trip and ensure the proper and orderly conduct of the trip<sup>32</sup>.

an agent, in accordance with Article 580 (2) of the Civil Code<sup>31</sup>.

#### c.2- Monitoring service providers.

The better the tourism agencies choose those entrusted with the implementation of the agreed tourism program, if they are experienced and knowledgeable in tourism and travel affairs and enjoy a good reputation, the easier it will be for them to monitor them during the performance of their work.

Some believe that the obligation to follow up on tourism service providers is the same as the obligation to select tourism service providers, but the truth is otherwise, as the obligation to follow up on tourism service providers follows the obligation to select tourism service providers because the latter falls before the contract.

The Algerian legislator did not explicitly refer to this obligation, but it is implicitly imposed by the nature of the tour contract, and it is also derived from the text of Article 21 of the aforementioned 99-06, which considers the agency responsible for any

<sup>30</sup> سميحة بشينة – الالتزام بضمان السلامة في عقد السياحة – مجلة الحقوق والعلوم الإنسانية – المجلد الحادي عشر – العدد الثاني – سنة – 2018 ص 369.  
<sup>31</sup> دلال يزيد - الحماية القانونية للسائح في ضوء عقد السياحة – مجلة المعيار في الآداب والعلوم الإنسانية والاجتماعية والثقافية – المركز الجامعي تيسمسيلت – العدد – 13 جوان - 2016 ص 165.

<sup>32</sup> أحمد داود رقية – الحماية القانونية للسائح في عقود السياحة الالكترونية: الخدمات السياحية نموذجا (دراسة مقارنة-) مجلة دراسات وأبحاث – المجلة العربية في العلوم الإنسانية والعربية – المجلد - 12 العدد – 3 سنة – 2020 ص 677.

damage caused by any service provider used by the agency when performing the agreed services.

In this context, and in order to strengthen the position of the consumer of tourism services in comprehensive tours, some believe that the legislator should intervene and require the agency to appoint at the head of each traveling group a representative, not just a guide, who monitors the implementation of the agreements made with service providers for the benefit of the tourist, so that the latter can benefit from these services and achieve the desired enjoyment of the trip<sup>33</sup>.

### **B. Obligations of the tourist**

They include the obligation to abide by the instructions of the tourism and travel agency, the obligation to inform, and the obligation to respect public order and public morals, and we will present them below:

#### **a. Obligation to abide by the instructions of the travel agency**

The tourist has an obligation to implement the tourist trip program, adhere to all the instructions set by the travel agency to the fullest extent, and inform the latter of all the information necessary for the proper implementation of the trip program, and this can only be achieved through his observance of the timetable specified in the

tourist contract, starting with the departure and departure times from the specified places, as well as his adherence to the specified times for visiting museums and other tourist places, until he respects the dates of the various services, transportation, food and other paragraphs specified in the tourist trip program.

Therefore, the tourist must adhere to the instructions issued by the tourism and travel agency, and not violate them, otherwise he will be held responsible for any damage that occurs as a result of deviating from its instructions, and if he does not comply with this, he will bear the consequences of his fault resulting from the violation of these instructions<sup>34</sup>.

#### **b. Obligation to inform**

It means the tourist's obligation to respect the tourist trip program by informing the travel and tourism agency of all necessary information that may affect the conduct of the tourist program or result in material and legal risks.

#### **c. Obligation to respect public order and public morals**

Positive laws have emphasized that a foreigner, whatever his destination, must abide by and abide by the laws of the country to which he went, in a way that does not violate the privacy of this country or the

<sup>33</sup> دلال يزيد – المرجع السابق - ص166.

<sup>34</sup> كركوري مباركة حنان – مرجع سابق ص133.

duties imposed on him, so every country develops laws for foreigners and tourists in order to stabilize its security and at the same time it is a protection for the tourist from all aggression and harm, and the reason for this is because the idea of public order is a flexible and evolving idea that varies according to time and place.

**Conclusion:**

The e-tourism contract is the easiest way for tourism and travel seekers to access it according to special conditions and bases, and for this we can summarize the most important results we reached as follows:

- E-tourism is one of the contracts concluded remotely, but despite the presence of advanced means, it is necessary to have a judicial presence between the parties to the contract.
- One of the issues raised by the research is the adaptation of the e-tourism contract, as we may find that in cases where the role of the tourism company is limited to mere mediation between the tourist and the service providers, it does not go beyond being a commission agency or an ordinary agency as the case may be, but when the tourism company takes upon itself to

provide services to tourists itself, it is represented in two hypotheses, the first of which is its organization of comprehensive tourist trips with all the details of transportation, accommodation, food and entertainment, and others, it takes here the description of the contractor, and the second is the transportation process only, and it takes the carrier's description.

- The e-tourism contract is considered a consensual contract that is binding on both sides based on the principle of legitimate trust and can be proven by all methods of proof.

In light of the conclusions presented, the following suggestions can be summarized:

- The e-tourism contract is a consumer contract that requires a special legal organization that is in line with the electronic environment for this type of contract.
- On the other hand, we may not be exaggerating if we say that the rules of jurisdiction need to be adapted to the electronic environment for e-tourism contracts that are concluded and executed via the Internet.