

COVID-19: Amendments on the Execution of the Crime of the Issuance of a Bad Cheque

With the significant effects of the Coronavirus (**Covid-19**) outbreak that has affected the world, as well as in Turkey in recent months, many measures are being taken to prevent the outbreak. In this context, many regulations have been set forth in order to protect the individuals in economic social and cultural fields. In this regard, the Law Amending Certain Laws Numbered 7226 (**Omnibus Bill No. 7226**) adopted by the Turkish Grand National Assembly on 25.03.2020 sets forth certain important amendments in terms of the Cheque Code (**Cheque Code**) numbered 5941. It is seen that amendments made by the Omnibus Bill No. 7226 within the scope of Cheque Code, intensify on the sanctions that will be imposed if the cheque is unrequited. In order to deeply understand the extent and the goal behind this amendments, a comparative analyze with the settled practice has to be made.

General Status of the Provisions and Sanctions Relating to Bad Cheque under Cheque Code

The Cheque Code sets forth the sanctions to be imposed on the person/s who are responsible for an “unrequited” transactions, in the event the issued cheque is submitted within the legal submission period. The primary objective of the Cheque Code is to protect the cheque bearers and to bring under control the unrecorded economy. As per Cheque Law, the sanctions to be imposed regarding unrequited cheques are as follows:

- Upon the complaint of the bearer, a judicial fine shall be imposed for each cheque, up to one thousand five hundred days.
- Upon the complaint of the bearer, the court may rule on the prohibition of issuing cheques and opening cheque accounts against the person who conducted the “unrequited” transaction to be performed in relation to the cheque; or on extending the prohibition, if this prohibition is already enforced.
- During the judicial process, the court may rule on the prohibition of issuing cheques and opening cheque account, as a preliminary injunction. The prohibition of issuing cheques and opening cheque accounts shall be imposed on the real or legal person who owns the cheque account, those who issue cheques on behalf of this legal person, and in the event of issuing a bad cheque on behalf of a capital company, also to the authorized persons that registered in the trade register with the governing body.
- The person who has been banned from issuing cheques and opening cheque accounts, shall return all the cheque sheets to the banks which they belong to and shall not be able to open a new cheque account.
- The person who has been banned from issuing cheques and opening cheque accounts, shall be obliged to give a list of cheques which have been issued and which have not yet been collected; by identifying the issuance dates, the amounts and, if any, the beneficiaries to the addressee bank, within ten days from the date which s/he is notified about the decision.

Since it is a frequently encountered situation in practice, it should be noted that; although there is no maturity in the check, forward-dated checks are widely seen in commercial life. There is no controversy in determining liability for real person check holders.

However, in terms of legal persons, the Supreme Court decided that, it is not only the person signing the cheque, but also the person who has to keep the money in the bank account on the issuance date has criminal liability. In other words, if the amount of the cheque submitted is not available in the bank account, the criminal liability of the company official at the issuance date of the cheque can be in question. Without a doubt, the purpose of all such practices is primarily to prevent damage to the bearer by malicious persons within the scope of commercial or individual relations. Yet another purpose is, imposing a sanction on such acts that constitute a crime.

Amendments on Sanctions to be imposed on Bad Cheques Introduced by the Omnibus Bill No 7226

A provisional article has been added to the Cheque Law with the Omnibus Bill No. 7226 published in the Official Gazette on 26.03.2020. With this provisional article, regulations have been introduced in favor of the person who conducted the “unrequited” transaction for the unrequited cheque crimes committed before 24.03.2020. In the unrequited cheque crimes, the date of crime is the date of the “unrequited” transaction is conducted, according to the Supreme Court. If a payment plan is made in accordance with the provisional article for cheque that have been processed as “unrequited” prior to this date, the judicial fine or the penalty of imprisonment shall not be imposed. Likewise, the prohibition of issuing cheques and opening a cheque account shall not be imposed for cheques that are processed as “unrequited” prior to the date specified. The details of this amendment, which has somewhat neutralized the significant sanctions under Cheque Code, are as follows:

- According to this provisional article, as of the date of the entry into force of this article, the execution of sanctions of those who convicted for committing the crime of issuing bad cheque until 24.3.2020 shall be suspended.
- According to the provisional article, the convict shall be obliged to pay one tenth of the unpaid portion of the cheque value within three months from the date of release.
- If the convict pays the remaining part of the cheque value in fifteen equal installments with the two-month intervals from the end of the three-month period, the court will decide to abolish the criminal conviction with all its consequences.
- If one tenth of the unpaid portion of the cheque value is not paid within three months from the date of the execution is suspended, the court will decide on the continuation of the execution of the verdict upon the complaint of the creditor.
- If the convict does not pay one of the installments for the first time within the term, it will be added as an installment to the end of the term. If s/he does not pay another installment, the court will decide on the continuation of the execution of the verdict upon the complaint of the creditor.
- Where the execution of the verdict is suspended, the criminal statute of limitations shall not apply.
- In accordance with this provisional article, judicial control measures that contain restrictions on the person, which are envisaged in Code of Criminal Procedure, can be decided concerning the person whose execution has been suspended.

As is seen; the regulation for persons sentenced to imprisonment as a result of non-payment of the judicial fine imposed for the crime of issuing bad cheque covers crimes committed up to date of 24.03.2020. The crime of issuing bad cheque that committed after this date is not within the scope of this regulation.

These provisions regarding the cessation of execution will be considered separately for each conviction. One of the debatable points of the regulation introduced with this provisional article is; the status of unrequited cheque trials that are already being in process. The questions of whether the trials will be affected and, therefore, whether or not the trials will continue, and if so, how they will continue have not been explained. Even though there is no explicit provision on this subject, an assessment that the trials will not be affected, will be reasonable. If the sentence is decided on the defendant as a result of the trial, in case the sentence is finalized and reaches the execution stage, it is expected that the provisional Article 5 of the Omnibus Bill No. 7226 will be applied.

Also, it has not been explicitly regulated that what kind of application will be done in terms of cheques that have been issued before 24.03.2020, but have not been subject to a complaint yet. However, when the provisional Article 5 of Omnibus Bill No. 7226 is examined, it is seen that there is no separation regarding the complaint date, and the determining factor is the date the crime is committed. Therefore, from the interpretation of the relevant provision, it can be inferred that the unrequited checks, which have been issued before 24.03.2020 but are not yet subject to complaint, are also included.

It is also worth noting that these regulations regarding the execution under the Omnibus Bill No. 7226 can only be benefited from once for each crime.

Competent Court and Objection Procedure

In the event that the person who commits the crime of issuing bad checks do not comply with the payment conditions stated in the regulation after their release by the provisional article, the court authorized to decide whether to continue the execution of the sentence shall be the Criminal Enforcement Court that sentenced the conviction about the person.

In addition, it is also possible to apply objection procedure against the relevant decisions. In the examination of the objection to be made in this scope, the objection procedure regulated under Bankruptcy Law shall be applied. In the objection against the decision made to the court; the criminal enforcement court which follows it as the number in the same location or in case there is no other criminal enforcement court, the penal court of first instance will be competent.

Conclusion

Due to Covid-19 outbreak, it is clear that serious economic problems have been faced both individually and socially. Many businesses have been adversely affected economically extremely since the first day of the measures taken and have even suspended their activities. From this point of view; it is clear that, the persons issued a cheque may have difficulty to paying the cheque due to this extraordinary epidemic situation, without having any intention to commit the crime of issuing a bad cheque. Considering the reality of commercial life, it is a very common situation to issue a future-dated cheque. In this manner; protecting the real and legal persons who have the difficulty of paying the cheque without any malicious intent, seems to be a reasonable regulation at first sight, due to the necessary measures taken against the Covid-19 epidemic.

However, certain issues contained in this regulation are open to abuse. The fact that the relevant provision is applied to anyone without any evaluation raises some question marks. Ultimately, it is also possible for a legal entity to use this clause unfairly for its own benefit even though it has not fallen into difficulty in payment in reality. This issue can be raised especially in bank loan applications. Under the regulations, there is no obstacle to conduct credit transactions for a person convicted from the crime of issuing bad cheque. However, considering the usual course of life, banks that have the authority of not to make transactions in case of an untrusted situation, will probably refrain from conducting credit transactions of these individuals.

On the other hand, regardless of the measures taken against the epidemic, it may be said that the measures to protect the cheque holder against those who perform the act of issuing the unrequited cheque with malicious intent, are insufficient. We are of the opinion that, the cheque bearer can be protected against the persons with malicious intent, by regulating exceptions so that the provisional article added to the Cheque Code with Omnibus Bill No. 7226 will not be applied. It should be noted that one of the main objectives of the Cheque Code is to protect the cheque bearer against issuing of unrequited cheques. In this scope, it is seen that the provisional article added to the Cheque Code is insufficient and does not fully meet the need.

Kind regards,

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