

Constitutional Court rules on annulment request regarding Article 5 of Cheque Law

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Introduction

Facts

Decision

Introduction

On July 15 2016 the Omnibus Act amended the Cheque Law (5941) regarding the issuance of cheques, bounced cheques and the liability of cheque issuers and banks. In addition to introducing new provisions (eg, the requirement to register cheques under the two-dimensional barcode system), the Omnibus Act reintroduced previously abandoned criminal liability for bounced cheques. In this regard, Article 5 of the Cheque Law imposed a judicial fine of up to 1,500 days per bounced cheque on the cheque account owner following a complaint by the cheque holder.⁽¹⁾

Under Article 5 of the act, a judicial fine cannot be less than the amount of the bounced cheque plus the accrued interest on the cheque's submission date and the total fees for execution and legal proceedings. If the cheque account owner does not pay the judicial fine, this penalty is directly converted into a prison term without recourse to compulsory public work (which is the general rule for the non-payment of judicial fines). The courts also prohibit account owners from issuing cheques and opening cheque accounts *ex officio* during such proceedings as a protection measure.

Facts

Several execution courts (a type of civil court) recently made applications to the Constitutional Court to request the annulment of Article 5.⁽²⁾ In their applications, the courts claimed that:

- the lower limit of judicial fines to be imposed is not concretely determined as the accrued interest on the cheque's submission date and total fees for execution and legal proceedings depend on uncertain criteria which may change according to time and circumstances;
- no party should be subject to criminal penalties due to the breach of an agreement;
- such a penalty violates the principle of individual criminal responsibility; and
- execution courts are civil courts which are competent to provide only a limited judgment, and such cases should be heard by general criminal courts in order to have a fair trial.

Decision

After evaluating the execution courts' applications regarding the constitutionality of Article 5, the Constitutional Court annulled the article in part (Decision 2016/191, 2017/131, July 7 2017). The court decided that:

- only the amount of the bounced cheque should be considered when determining judicial fines; and
- the accrued interest or total fees for execution and legal proceedings do not need to be considered when determining judicial fines.

In its reasoning, the Constitutional Court mentioned that;

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- the relevant section of Article 5 did not determine the point up until which interest would be accrued;
- fees for execution proceedings may vary according to the proceedings initiated (ie, the claimant may also request the debtor's bankruptcy from the execution office) and actions taken by execution offices during the proceedings on the claimant's request; and
- it is impossible to determine the total fees for legal proceedings.

The court concluded that the accrued interest amount and the execution and legal fees to be included as part of judicial fines had caused uncertainty and led to a violation of the legality principle of crimes and penalties.

The Constitutional Court decision was rendered unanimously and published in *Official Gazette* 30,296 on October 10 2017. Accordingly, Article 5 of the Cheque Law was amended in accordance with the annulment decision and judicial fines thereunder cannot be less than the amount of the bounced cheque. The accrued interest and total fees for execution and legal proceedings are no longer considered when determining judicial fines.

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Endnotes

(1) As of 2016, a judicial fine per day is determined at a minimum of TRY20 and a maximum of TRY100.

(2) Pursuant to Article 5 of the Cheque Law, execution courts have the jurisdiction to hear cases initiated for criminal liability due to bounced cheques.

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