

Banking law amendment provides relief to bank officers and company executives

March 13 2017 | Contributed by [Gün + Partners](#)

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Introduction

On February 9 2017 Decree-Law 687 was enacted by the Council of Ministers (based on its powers under the state of emergency). Among other things, the decree-law amends Banking Law 5411 by introducing a sub-paragraph into Article 160, which regulates the crime of embezzlement committed by bank officers.

The new provision (Article 160/4) stipulates:

"Loan allocation or extension; allocation of additional loans; instalment, securing or restructuring of loans which have been conducted in compliance with the banking legislations and banking procedures and principles do not constitute the crime of embezzlement."

Background

The need to make this amendment may be questioned at first glance, since Article 160/4 seems merely to state the obvious. However, to understand the rationale behind the provision, the background of the crime of banking embezzlement should be considered.

Article 160 defines 'banking embezzlement' as the embezzlement of money or any kind of monetary deed by a bank officer who is in possession of it in connection with his or her official duty, on his or her own or others' account. Article 160 also provides for imprisonment of six to 12 years and a judiciary fine of up to 5,000 days⁽¹⁾ for this offence.

The need for a detailed legal arrangement on banking embezzlement first arose during the economic crisis that Turkey experienced between 1999 and 2001. Many banks were transferred to the Saving Deposit Insurance Fund in the wake of the crisis and it was subsequently revealed that a considerable amount of the banks' losses derived from loans granted to shell corporations which had never been repaid. The embezzlement crime was consequently introduced to the banking legislation.

Such circumstances led to a strict interpretation and implementation of the relevant provision in daily business practice. Over time, almost every unpaid loan began to be suspected of being related to acts of embezzlement. This inevitably reflected on the rules and procedures adopted by banks in the allocation of loans. With a view to protecting themselves and their management and personnel, banks started to set strict requirements for even the simplest loan agreements. This has ultimately caused bottlenecks in the flow of commercial life.

What will the new provision bring?

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The new provision does not amend the definition or other elements of the crime of banking embezzlement. As stated in a press release issued by the Banking Association, the provision intends to remove uncertainties in practice by explicitly setting out that the proper allocation or restructuring of loans does not constitute the crime of banking embezzlement.

Loans are undoubtedly the most commonly used commercial instrument and this provision will make the procedures for loan-related banking transactions easier by extending legal protection and giving a significant relief to bank officers. Therefore, it can be concluded that the provision will alleviate the abovementioned commercial bottlenecks.

Comment

Although the new provision at first seems to focus on banks and bank officers, it actually has a two-way effect. Other parties to loan-related banking transactions include company executives, who in many cases are parties to acts of corruption encountered at the company management level. In this regard, the strict implementation of Article 160 of the Banking Law was automatically impeding the legitimate activities of such executives, as the bank officer would frequently simply refuse to proceed with the transaction when he or she saw any possible risk.

In corruption cases, the types of crime attributed to executives typically relate to breach of trust or fraud, the prison term for which can be up to 10 years. However, where banking embezzlement is involved, the other party to the transaction also becomes subject to the prison term foreseen under Article 160 as an accessory to the crime. This naturally constituted a psychological impediment against executives in their transactions with banks. With this clarified new provision, company executives will now enjoy the same relief. Whether this provision will have an impact on corruption cases is an issue of interest that will hopefully be addressed in near future.

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Endnotes

(1) At the court's discretion, this can range from TRY100,000 to TRY500,000.

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