

## Some New Regulations Brought by the Judicial Reform Package

The first step has been taken towards the judicial reform, which has become a hot topic recently. With the Law No. 7188 on Making Amendments to the Code of Criminal Procedure and Certain Laws ("Law No. 7188") dated 17 October 2019, which took effect with its promulgation in the Official Gazette No. 30928 of 24 October 2019; critical amendments have been made particularly with regards to the criminal procedure. Among these amendments, the ones which are considered to affect the business life to a greater extent can be summarized as follows:

1. Within the scope of the institution of prepayment, which is regulated in Article 75 of the Turkish Criminal Code No. 5237 ("**TCC**"), perpetrator has been enabled to make payments in three instalments. As is known; except for the crimes falling within the scope of reconciliation, criminal case shall not be filed against the perpetrator for the crimes which requires only judicial fine or the upper limit of the prison sentence foreseen in the relevant article does not exceed a period of six months provided that the perpetrator pays the lower limit of the fine along with the investigation expenses. As per the amendment made with promulgation of the Law No. 7188; this prepayment amount may now be made as three equal and consecutive monthly instalments. If instalments are not paid in a timely manner, prepayment shall be declared null and void, and the investigation shall be proceeded with.

Additionally; with the amendment made with the Law No. 7188, prepayment shall be allowed also for the crimes committed by the executives of the association who do not keep the statutory books or records of the association or use uncertified statutory books, which is regulated in Article 32/1(d) of the Law No. 5253 on Associations.

2. Pursuant to Article 171 of the Code of Criminal Procedure No. 5271 ("**CCP**"), the public prosecutor was granted the discretion to postpone a public prosecution for a period of five years despite presence of plausible doubt for crimes whose upper limit of imprisonment was 1 year at the utmost. As per the amendment introduced with the Law No. 7188, public prosecutors may now decide to postpone a public prosecution for five years for crimes whose upper limit of imprisonment is 3 years at the utmost. This authority may be exercised for imprisonments with an upper limit of maximum 5 years for juvenile criminals who are under the age of fifteen. A decision of non-prosecution shall be rendered if no intentional crime is committed within the postponement period.
3. With promulgation of the Law No. 7188, Article 250 of CCP has been amended and **accelerated trial procedure** has been introduced to the criminal justice system. According to the referred procedure which has been introduced for the crimes listed in the relevant Article, the public prosecutor may propose to the suspect application of the accelerated trial procedure and if the suspect agrees before a lawyer, the accelerated trial procedure shall be applied.

Upon examining the provisions on accelerated trial procedure, which shall enter into force on 1.1.2020, it is seen that prominent provisions are as follows:

The public prosecutor shall determine the penalty by reducing half of the standard penalty to be determined between the lower and upper limits of the crime. The imprisonment penalty to be determined following this process may be converted into other alternative sanctions, it may be postponed or announcement of the verdict may be deferred. Thereafter, the public prosecutor shall request in writing from the competent court to apply the accelerated trial procedure along with the determined sanction. After hearing the suspect in the presence of a lawyer; if the court reaches the conclusion that required conditions have been fulfilled, it shall pass a verdict in parallel with the penalty as determined in the written request. Otherwise, the Court shall refuse the subject matter request and send the file to the Chief Public Prosecutor's Office for conclusion of the investigation according to the general provisions. In case of unexcused absence of the suspect, he shall be deemed to have waived this procedure. If the accelerated trial procedure is not concluded for any reason, documents related to accelerated trial procedure may not be used as evidence during the stages of investigation and prosecution. If the Court accepts implementation of the accelerated trial procedure, this verdict may be appealed as per Article 267 et seq. of CCP.

Additionally; indictment which is drawn up without implementing the accelerated trial procedure shall be returned if the addressed crime is subject to accelerated trial procedure.

Among the crimes subject to the accelerated trial procedures, the following ones are considered to affect the business life most:

Counterfeiting money (TCC, 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs of Article 197), Destruction of seal (TCC, Article 203), Untrue declaration during issuance of an official document (TCC, Article 206).

4. **Simple trial procedure** has been introduced with the amendments made with the Law No. 7188 to Articles 251 and 252 of CCP. According to this procedure, the simple trial procedure may be applied for crimes that require a judicial fine and/or imprisonment of 2 years or less.

The below-given steps shall be followed in the simple trial procedure which shall enter into effect on 1.1.2020 just like the accelerated trial procedure:

If the court decides to apply the simple trial procedure, the indictment will be notified to the defendant, injured party and complainant, and these parties will be asked to submit their statements and defences in writing within fifteen days as of the receipt. Relevant parties will also be notified of that the court may pass a verdict without holding a hearing. After the time given for the statements and defences has expired, the court may render a decision without holding a hearing and taking the public prosecutor's opinion. In case of imprisonment sentence, the penalty will be reduced by a quarter. The imprisonment penalty to be determined following this process may be converted into other alternative sanctions, it may be postponed or announcement of the verdict may be deferred. If deemed necessary by the court, the trial may be continued as per the general provisions by way of holding a hearing at every stage until a verdict is passed.

The decisions rendered as per the simple trial procedure may be appealed. Decisions which are not appealed within the legal deadline shall become final. In case of an appeal, the court who has passed the appealed decision shall hold a hearing and proceed with the trial according to general provisions. Even if the parties do not appear, a hearing shall be held

and a verdict may be passed in their absence. If any appeal is withdrawn before the hearing, no hearing shall be held and the appeal shall be deemed not to have been filed.

5. Article 253 of CCP has been amended by the Law No. 7188 and scope of the crimes falling within the scope of reconciliation has been expanded. As per this amendment which is considered to greatly affect the business life, the following crimes are now subject to reconciliation: Violation of freedom of work and labour (TCC, 1<sup>st</sup> paragraph of Article 117, sub-paragraph (c) of the 1<sup>st</sup> paragraph of Article 119), Misuse of trust (TCC, Article 155), Purchase or acceptance of property acquired through committing an offence (TCC, Article 165).