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The Effect of Provisional Article 1 of Law No. 7226 on Cheque Law

The Act to amend some provisions in other Acts ("Act", Law No. 7226) has been published in the Official Gazette on March 26, 2020. Provisional Article 1 of the Act has suspended time limits in legal proceedings due the outbreak of COVID-19 in order to prevent loss of rights in judicial proceedings. This has led some arguments in legal practice on whether the cheques are within the scope of the Provisional Article 1 of the Act or not.

Pursuant to Article 795 of the Turkish Commercial Code ("TCC", Law No. 6102), cheques are paid on sight. The TCC further states that if a due date is written on a cheque, it is considered as "unwritten". However, provisional Article 3/5 of the Cheque Act ("CA", Law No. 5941) states that an actual due date can be created by stating not the date of drawing but a future date on the cheque. In other words, a post-dated cheque is still valid.

It has been argued that the Provisional Article 1 of the Act does not cover the cheques since the Act imposes a limitation by stating "*in order to prevent the loss of rights in judicial proceedings*" and therefore, it requires a narrow interpretation. It is also stated that Negotiable Instruments Law is a discipline which has its own rules and further, cheques should have been stated in a separate section or with a separate wording in order to be covered by the Provisional Article 1 of the Act.

On the other hand, some authors are on the opinion that cheques are within the scope of the Provisional Article 1 of the Act. Considering the purpose, essence as well as the letter of the Provisional Article 1, the period of presentation in cheques are also suspended since it is stated that all the time periods including periods regarding the origination, exercise and termination of rights are included in the suspension.

Furthermore, the Provisional Article 1 of the Act, not only regulates the law of procedure, but also regulates the time periods in the substantial law by explaining the reason of the suspension with the phrase "*...in order to prevent loss of rights...*" Therefore, if the presentation periods in cheques do not come within the scope of the provision, it will not be able to prevent loss of rights.

It is likely that the second opinion will prevail but consequently, clarification of the scope of the Provisional Article 1 of the Act regarding cheques will be made by the decisions of judicial authorities.

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