

Seeking for solutions to bounced cheque: example of Turkey

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Abstract

*The cheque, which has been replaced by money order and credit card in many countries, still remains as an important payment instrument in Turkey. Several sanctions are imposed for the use of bounced cheque in all legal systems in order to increase the credibility of cheque. In the early years of the Turkish Republic, there were no special sanctions imposed for the use of bounced cheque. Such lack of legal sanction for drawing bounced cheque led to an increase in the number of bounced cheque. The said abuse gave cause for certain sanctions on drawing bounced cheque. Considering bounced cheque fraud within the framework of Turkish Criminal Code did not however constitute a proper legal solution for post-dated cheque in particular. As such, Turkish lawmaker had the sole opportunity to define a new crime named “drawing bounced cheque” including imprisonment in the relevant code regulating cheque related issues. But the increase in the number of bounced cheque due to the economic crisis in the nineties made it necessary to find out a new solution. Accordingly, the Turkish lawmaker abandoned imprisonment and carried out a new regulation based on the *acquis communautaire* that led to the employment of the principle stated as “economic punishment for economic crime”. Since 2016, the QR-code cheque is also employed in order to prevent drawing of bounced cheque. This study aims to review the aforementioned measures with regard to bounced cheque and analyze the impacts of the QR-code cheque.*

Keywords: *Negotiable instrument, bills of exchange, bounced cheque, QR-code cheque, Turkish Commercial Code.*

JEL Classification: K22

1. Introduction

Cheque is a negotiable instrument, which includes the drawer’s order for the payment of a certain amount of money on his bank². In Turkish law, cheque is regulated in Art. 780-823 of Turkish Commercial Code Nr. 6102 (“TCC”)³, which belong to the regulations regarding bills of exchange. Since 1985 special legislations regarding cheque were also put in effect in order to solve some problems.

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² Hüseyin Ülgen/Mehmet Helvacı/Abuzer Kendigelen/Arslan Kaya, *Kıymetli Evrak Hukuku*, On İki Levha, İstanbul, 2014, p. 233; Senem Ülküm Keskin, *Karşılıksız Çekten Kaynaklanan Hukuki ve Cezai Sorumluluklar*, Seçkin, Ankara, 2011, p. 17; Şafak Narbay/Zehra Güney, *6728 Sayılı Kanun’un Çeke İlişkin Hükümlerinin “Çekte Şekil Şartları” Bakımından Değerlendirilmesi*, “Terazi Hukuk Dergisi”, 2017/12/126, p. 44; Turhan Esener, *Business Law II*, Boğaziçi University, İstanbul, 1997, p. 40.

³ Resmi Gazete, 14.02.2011, 27846. This document is available at <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2011/02/20110214.htm&main=http://www.resmigazete.gov.tr/eskiler/2011/02/20110214.htm>, 10.11.2018.

The statistics show that the usage of cheque is decreasing in recent years⁴. The development of new payment methods such as money order, debit card, credit card, phone or mobile payment seems to be the reason of this decline. A similar trend can be observed in Turkey as well. Due to the latest data declared by the Risk Center of the Banks Association of Turkey, the number of the presented cheques to the banks decreased from 25.640.825 in 2009 to 19.914.156 in 2017. The total number of presented cheques amounts 15.077.676 in the first nine months of 2018⁵. Although the usage of cheque is constantly decreasing, cheque related problems are still being discussed. The most challenging one of these problems is the bounced cheque. Then the increasing rates of bounced cheque lead to a decrease of the credibility of cheque in one hand and of the trust and stability in commercial life on the other hand.

For a good understanding of this study, it is important to take into account the economic crisis Turkey has overcome in 1994, 2001 and 2008. Then the number of bounced cheque increases prominently around these years⁶.

The aim of this article is to summarize the experiences of Turkey regarding the bounced cheque problem. The study will begin with the fundamental explanations on payment of cheque according to Turkish law in order to clarify the term of “bounced cheque”. The next sections of the study include a historical overview of the sanctions for the use of bounced cheque. In this section the reasons for failure will also be analyzed. Finally, the QR-code cheque as the last development regarding bounced cheque will be evaluated.

2. Payment of cheque

As a written payment order of the drawer to the drawee bank, the cheque is considered legally as a “qualified transfer”⁷. TCC Art. 780 regulates the essential

⁴ The Committee on Payments and Market Infrastructures of Bank for International Settlements determined that the percentage of cheque payment among all payments declines, while those of card payments increase. For a comparative table of cheque and card payment rates in various countries see Committee on Payments and Market Infrastructures, *Statistics on Payment, Clearing and Settlement Systems in the CPMI Countries*, Bank for International Settlements, 2016, p. 430-431. The document is available at <https://www.bis.org/cpmi/publ/d172.pdf>, 07.11.2018. For an analyze on cheque usage in United Kingdom see House of Commons Treasury Committee, *The Future of Cheques*, The Stationery Office, 2011. The document is available at <https://publications.parliament.uk/pa/cm201012/cmselect/cmtreasy/1147/1147.pdf>, 07.11.2018. The decrease of cheque usage is also reported in Australia. For a related analyze see Ed Tellez, *The Ongoing Decline of the Cheque System*, “RBA Bulletin”, Reserve Bank of Australia, p. 57-66. The document is available at <https://www.rba.gov.au/publications/bulletin/2017/jun/pdf/bu-0617-7-the-ongoing-decline-of-the-cheque-system.pdf>, 07.11.2018.

⁵ The statistics are available at https://www.riskmerkezi.org/en/Content/Upload/istatistikraporlar/ekler/1471/Information_about_Returned_Checks_Out_of_Presented_Checks_to_Banks_-_September_2018.pdf, 07.11.2018.

⁶ The statistics of Risk Center indicates that the rates of the bounces cheque increased from 2,7 % in August to 3,3 % in September. This increase could be a result of financial circumstances in the country.

⁷ Fırat Öztan, *Kıymetli Evrak Hukuku*, Turhan Kitabevi, Ankara, 2016, p. 220; Ali Bozer/Celal Göle, *Kıymetli Evrak Hukuku*, Banka ve Ticaret Hukuku Araştırma Enstitüsü, Ankara, 2017, p. 209; Hasan Pulaşlı, *Kıymetli Evrak Hukukunun Esasları*, Adalet, Ankara, 2013, p. 231; Reha Poroy/Ünal

elements of cheque. Accordingly a cheque should include the wording cheque, an unconditional order to pay a certain amount of money, the name of the drawee bank, the place of payment, the date and place of issue, the signature of the drawer, the serial number given by the bank and the QR code⁸. Since the date of issue is an essential element, but not the date of payment, the cheque is considered as a “payment instrument” due to its economic function⁹. TCC Art. 795/1 emphasizes this fact by stating that the cheque is to be paid at sight.

Cheque is to be presented to the drawee for payment within the in TCC Art. 796 stated period. TCC Art. 796 determines the presentation period in consideration with the place of issue and the place of payment. This period begins to run on the date of issue stated on the cheque.

The drawer does not have to state the real date of issue on the cheque. If the date of issue written by the drawer is a posterior date than the real date of issue, then such cheque is called a “post-dated cheque”. Post-dated cheques are valid and to be paid on presentation date according to TCC Art. 795/2, even if they are presented on posterior date than the written date of issue. This provision caused so many bounced cheque related problems in practice that the lawmaker had to enact a provisional article in order to overcome the problem in 2003 and prohibited the presentation of the post-dated cheques before the written date of issue. As stated below, this “provisional article” is however still in force¹⁰.

3. Bounced Cheque

In order to draw a cheque, there should be an agreement between the drawer and the drawee bank. The drawer should open a cheque account due to this

Tekinalp, *Kıymetli Evrak Hukuku Esasları*, Vedat Kitapçılık, İstanbul, 2018, p. 309; Ülgen/Helvacı/Kendigelen/Kaya, p. 233; Narbay/Güney, p. 44; Ebru Tüzemen Atik, *A Novelty in Turkish Commercial Life: Execution of QR Code on Cheques*, “International Journal of Business and Social Research”, 2017/7/12, p. 10, this document is available at <https://thejournalofbusiness.org/index.php/site/article/view/1079/673>, 30.10.2018.

⁸ The serial number and the QR code were added to the requirements with the Code Nr. 6728 of 15.07.2016.

⁹ Öztan, p. 222; Bozer/Göle, p. 220; Ülgen/Helvacı/Kendigelen/Kaya, p. 97; Keskin, p. 19; Poroy/Tekinalp, p. 145; Pulaşlı, p. 232; Yılmaz Yörдем, *6728 Sayılı Kanunla Çek Kanununda Yapılan Değişiklikler ve Karşılıksız Çek Sorunsalı*, “Türkiye Adalet Akademisi Dergisi”, 2018/9/33, p. 348, this document is available at <http://www.taa.gov.tr/indir/6728-sayili-kanunla-cek-kanununda-yapilan-degisiklikler-ve-karsiliksiz-cek-sorunsali-bWFrYwXlfDkwMDFILTIwMDNjLTA2ZmI0LTFkZTU4LnBkZnwxMDgx/>, 05.11.2018; Zeki Yıldırım/Ekrem Çetintürk, *İbraz Edilen Çekle İlgili Olarak Karşılıksızdır İşlemi Yapılması Halinde Nasıl Bir Yaptırım Uygulanması Gerektiği Sorunu*, “Türkiye Barolar Birliği Dergisi”, 2012/103, p. 28, this document is available at <http://tbbdergisi.barobirlik.org.tr/ViewPDF-ibraz-edilen-cekle-iligili-olarak-karsiliksizdir-islemi-yapilmasi-halinde-nasil-bir-yaptirim-uygulanmasi-gerektigi-sorunu-1227>, 15.10.2018; Tüzemen Atik, p. 10; Esener, p. 43; Ali Haydar Yıldırım, *Türk Hukuku’nda Vadeli Çek (İleri Tarihli Çek) Ve Bunun Doğurduğu Sonuçlara İlişkin Bazı Tespitler*, “Gazi Üniversitesi Hukuk Fakültesi Dergisi”, 2017/21/4, p. 91. This document is available at http://webftp.gazi.edu.tr/hukuk/dergi/21_4_4.pdf, 20.10.2018.

¹⁰ For further information on post-dated cheque see Pulaşlı, p. 326 ff. Poroy/Tekinalp, p. 362 ff.; Ülgen/Helvacı/Kendigelen/Kaya, p. 260 ff; Yıldırım, p. 91 ff.

agreement and the drawee bank should provide the drawer with a cheque-book. As for the payment of the cheque amount, the drawer should have a provision at the drawee bank. In case of lack of such provision at the drawee bank, the payment demand of the cheque holder will be rejected by the bank. Such an unpaid cheque due to lack of provision at the drawee bank is called “bounced cheque” (TCC Art. 783)¹¹.

4. Historical overview of sanctions for the use of bounced cheque

Since the increase in the number of bounced cheque could not be prevented, the doctrine and practice in Turkey had to deal with the problem of bounced cheque for many years. The Turkish lawmaker had been responsive to the problem as well and developed some solutions. Practical and legislative solutions will be analyzed in this section¹².

a. Punishment According to Art. 503 of Turkish Criminal Code no. 765¹³ Regarding Fraud. Until 1985, there were no special provisions regarding the punishment of drawing bounced cheque. In Art. 695 of the former Turkish Commercial Code no. 6762¹⁴ (“fTCC”) regulated just civil measures. Accordingly, the drawer had to pay the 5% of the unpaid cheque amount and also compensate the resulting damages. Since such civil measures were not effective enough to solve the problem, criminal measures became necessary. The proposal on including a new paragraph on penalization to the Art. 610 of Turkish Commercial Code no. 865 (“TCC-865”) was rejected in Turkish Grand National Assembly on 07.01.1929¹⁵. Accordingly, drawing bounced cheque could be dealt under Art. 503 of former Turkish Criminal Code no. 765 on fraud. However, there had to be all elements of fraud, in order to subject drawer to fraud. As fraud is an intentional crime, intentional action was also necessary for the punishment within the framework of this crime. The lack of this element restrained however the application of Art. 503 and many bounced cheque drawer gone unpunished¹⁶. Then especially in cases of above

¹¹ Yördem, p. 350; Keskin, p. 34.

¹² For detailed information on history on regulations regarding bounced cheque in Turkey see Yıldırım/Çetintürk, p. 29 ff.; Keskin, p. 83 ff.; Basak Babaoğlu/Alexander J. Wulf, *Decriminalizing the Issuance of Bad Checks in Turkey. An Analysis of the Effects of Changes in Penalties*, “European Journal of Law and Economics”, 2016/42, p. 8 ff., this document is available at <https://link.springer.com/content/pdf/10.1007%2Fs10657-015-9502-3.pdf>, 10.11.2018.

¹³ Resmi Gazete, 13.03.1926, 320. This document is available at <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/320.pdf&main=http://www.resmigazete.gov.tr/arsiv/320.pdf>, 10.11.2018.

¹⁴ Resmi Gazete, 09.07.1956, 9353. This document is available at <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/9353.pdf&main=http://www.resmigazete.gov.tr/arsiv/9353.pdf>, 10.11.2018.

¹⁵ Decision Nr. 471 of 07.01.1929 is available at https://www.tbmm.gov.tr/tutanaklar/KANUNLAR_KARARLAR/kanuntbmmc007/karartbmmc007/karartbmmc00700471.pdf, 09.11.2018.

¹⁶ Öztan, p. 294; Yıldırım/Çetintürk, p. 32; Keskin, p. 84.

mentioned post-dated cheque, the drawer issues the cheque generally without the knowledge about the provision at the drawee in the future¹⁷. This restrictive punishment caused misuses and the number of bounced cheque gradually increased¹⁸.

b. Creation of a New Form of Crime Named “Drawing Bounced Cheque”. Since the increasing number of bounced cheque lead to lack of stability and trust in commercial life, the discussions on bounced cheque improved again. These discussions lead to the adoption of the first cheque specialized code named Code no. 3167 on Adjustment of Cheque Payments and Protection of Cheque Holders¹⁹ in 1985. In Art. 16 of the new code, the Turkish lawmaker defined a new crime named “drawing bounced cheque”. The punishment for the mentioned crime was imprisonment from one to five years. The same article prescribes s prohibition of drawing a cheque during 1-5 years as well.

The crime of drawing bounced cheque was prosecuted on complaint of the cheque holder. Withdrawal of the complaint is allowed up to judgement. A right to correction is also regulated in Art. 8 and accordingly the drawer can use his correction right by paying the insufficient part of the cheque amount, 10 % compensation and the default interest within seven days after receiving the warning letter from the bank. Art. 8 provided no right to complaint in case of correction or payment of the insufficient part of the cheque amount, 10 % compensation and the default interest in lack of correction right.

Art. 16 of the Code was amended in 1993 with the Code no. 3863²⁰. Accordingly, upon using the correction right or paying the insufficient part of the cheque amount, 10 % compensation and the default interest, criminal proceedings and sentences shall be ceased, even if there is no withdrawal of the complaint. The reason of this amendment is the misuse of right to withdrawal of the complaint. Then the cheque holders withdrew their complaints on payment of big amount of money.²¹

c. Decriminalization on the Way to European Union. At the beginning of 2000s, despite imprisonment prescribed in Code no. 3167, the discussions on the problem of bounced cheque continued. The first reason of this discussions was the increasing number of bounced cheques. In 2001, Turkey experienced a big economic crisis and this crisis effected many sectors in Turkey. Due to this crisis, the number of bounced cheque and the proceedings at criminal courts increased.

¹⁷ Öztan, p. 294; Keskin, p. 84.

¹⁸ Öztan, p. 294; Yıldırım/Çetintürk, p. 32.

¹⁹ Resmi Gazete, 03.04.1985, 18714. This document is available at <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/18714.pdf&main=http://www.resmigazete.gov.tr/arsiv/18714.pdf>, 10.11.2018.

²⁰ Resmi Gazete, 26.01.1993, 21477. This document is available at <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/arsiv/21477.pdf&main=http://www.resmigazete.gov.tr/arsiv/21477.pdf>, 10.11.2018.

²¹ Babaoglu/Wulf, 10.

The second reason was the EU-Membership process of Turkey. Turkey applied to join the EU in 1987 and in 1997 it was declared eligible to join the EU. For this reason, Turkey working on integrating the *acquis communautaire* into Turkish legal system. During this process, the Constitution of Turkey was amended in 2001 by Turkish Grand National Assembly. One of these amendments was made in Art. 38 and a new paragraph was included in the mentioned paragraph. The aim of this amendment was the integration of the Protocol no. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms into Turkish legal system. Art. 1 of the mentioned Protocol states: *“No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.”*²²

For the above mentioned reasons, the Code no. 3167 was amended once again in 2003 with the Code no. 4814²³. The amendment was justified with a principle of modern criminal law doctrine, that the economic crimes should have economic punishments and imprisonment should be the last option²⁴. With the Code no. 4814, the sanction of drawing bounced cheque amended as fine for those who committed the crime for the first time. Accordingly, the drawers who committed the crime for the first time were subject to fine amounting to the cheque value but not exceeding 80 billion. If they commit the crime more than one, then the punishment is imprisonment of 1-5 years.

This amendment was insufficient by solving the bounced cheque problem. Then the number of criminal proceedings were still increasing. Furthermore, the imprisonment was in contradiction with the Art. 38 of the Constitution which prohibits imprisonment on the ground of inability to fulfil a contractual obligation. In addition to these circumstances the necessity of harmonization of cheque related regulation with the Turkish Criminal Code no. 5237²⁵ lead to second cheque related code of Turkey in 2009²⁶. Cheque Code no. 5941²⁷ regulated bounced cheque in Art. 5. In the mentioned Article, drawing bounced cheque was considered a crime, but the punishment for bounced cheque was monetary fine up to 1500 days. The drawer shall also be prohibited from drawing cheque and opening cheque account. The drawer shall give all the remaining cheque books back to the related bank as well. If the drawer does not pay the fine, imprisonment could be imposed.

²² Öztan, p. 295; Yördem, p. 352-353; Yıldırım/Çetintürk, p. 36; Babaoglu/Wulf, p. 11; Keskin, p. 85; Narbay/Güney, p. 46, fn. 30.

²³ Resmi Gazete, 08.03.2003, 25042. This document is available at <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2003/03/20030308.htm&main=http://www.resmigazete.gov.tr/eskiler/2003/03/20030308.htm>, 10.11.2018.

²⁴ This principle was stated as “economic punishment for economic crime” in the preamble of the code. The preamble of the amendment is available at <http://www2.tbmm.gov.tr/d22/1/1-0433.pdf>, 09.11.2018.

²⁵ Resmi Gazete, 12.10.2004, 25611. This document is available at <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2004/10/20041012.htm&main=http://www.resmigazete.gov.tr/eskiler/2004/10/20041012.htm>, 10.11.2018.

²⁶ Bozer/Göle, p. 424-425; Babaoglu/Wulf, p. 11.

²⁷ Resmi Gazete, 20.12.2009, 27438. This document is available at <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2009/12/20091220.htm&main=http://www.resmigazete.gov.tr/eskiler/2009/12/20091220.htm>, 10.11.2018.

The decriminalization of drawing bounced cheque completed with the amendments in 2012. Art. 5 of the Cheque Code no. 5941 was amended with the Code no. 6273²⁸. With this amendment the criminal sanctions are replaced with administrative sanctions. Accordingly, the drawer of bounced cheque shall be prohibited from opening new cheque accounts and writing new cheques on the decision of public prosecutor. The public prosecutor decides upon application of the cheque holder. If the full cheque amount and the default interest are paid, the prohibition may be abolished.²⁹

5. Current status: recriminalization of drawing bounced cheque and the QR-code cheque as a new experience

The recent amendment in Cheque Code no. 5941 and in TCC was made in 2016 with the Code no. 6728³⁰. In this Code, there are two important amendments regarding bounced cheque.

With the first important amendment, the lawmaker defined drawing bounced cheque as a crime again³¹. According to the amended Article 5 of the Cheque Code no. 5941, the punishment for bounced cheque is monetary fine up to 1500 days. The drawer shall also be prohibited from drawing cheque and opening cheque account. The drawer shall give all the remaining cheque books back to the related bank as well. If the drawer does not pay the fine, imprisonment can be imposed.

The second important amendment is the employment of the QR-code cheque. As mentioned above, the essential elements of cheque are listed in TCC Art. 780. With the Code no. 6728, two new elements have been added to this list. One of these elements is the serial number given by the drawee bank and the other one is the QR-code. The use of QR-code on cheque is obligatory since 31 December 2016 and accordingly the banks are not permitted to print cheques without QR-code.

According to TCC Art. 780/2, the QR-code provides the following information:

- a) Name, surname or trade name of cheque account holder,
- b) If the cheque account holder is a merchant, name, surname or trade name of the authorities registered with the trade registry
- c) The total number of banks in which the cheque account holder has checking accounts,

²⁸ Resmi Gazete, 03.02.2012, 28193 1. Repetitive. This document is available at <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2012/02/20120203m1.htm&main=http://www.resmigazete.gov.tr/eskiler/2012/02/20120203m1.htm>, 10.11.2018.

²⁹ About the effects of decriminalization on the number of bounced cheque see Babaoglu/Wulf, p. 20 ff. The Authors state that the decriminalization caused an increase in the number of bounced cheque.

³⁰ Resmi Gazete, 09.08.2016, 29796. This document is available at <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2016/08/20160809.htm&main=http://www.resmigazete.gov.tr/eskiler/2016/08/20160809.htm>, 10.11.2018.

³¹ Against recriminalization see Yıldırım/Çetintürk, p. 81. For recriminalization and imprisonment see Yördem, p. 364.

- d) Number and amount of cheques of the account holder not presented to banks,
- e) Number and amount of cheques issued and presented to banks,
- f) Number and amount of cheques paid on presentation within the past five years,
- g) Presentation date of the first presented cheque,
- h) Presentation date of the last presented cheque,
- i) Presentation date of the last cheque paid on presentation,
- j) Number and amount of “bounced” and still unpaid cheques within the past five years,
- k) Number and amount of “bounced” cheques that were later paid within the past five years,
- l) Presentation date of the last “bounced” cheque within the past five years,
- m) Information on whether the cheque account holder is prohibited from opening a cheque account, and if any, the date of the prohibition decision,
- n) Information on whether there is an injunction record on any cheque leaf
- o) TCC Art. 780/3 prescribes a QR-code scanning and information sharing system in order to collect and share the in article mentioned information. The system is established by Credit Reference Bureau under the name of “findeks”. The members of the system shares the information on this platform and the potential cheque holders can get a summary of drawers’ cheque usage habits and credibility. The cheque holder does not have to become a member of the system and enter the information to the system.

Since the QR-code contains the information about the past cheque payments of the drawer³², the potential cheque holders get the chance to reject the cheques, which are probably not to be paid. The QR- code does not guarantee the payment of the cheque, but provides insight about the probability. So it is expected that the QR-code system helps solving the bounced cheque problem and ensuring trust and stability in commercial life.³³ However the statistics prove the contrary. The number of bounced cheque decreased in 2017, but began to increase especially in the last months of 2018. In September, the number of the presented cheques decreased, but the rate of bounced cheque increased. This indicates that the punishment or technological measures are not enough to solve economic problems. In order to prevent bounced cheque, the financial factors are to be considered as well. Within this framework we agree with the opinion of *Pulaşlı*³⁴, who suggests the usage of different cheques with different limits determined according to the financial status of the drawer. *Pulasli* states that the problem arises while the drawee banks give

³² For the importance of the knowledge about the past payment habits of the drawer in terms of preventing bounced cheque see Bozer/Göle, p. 243; Yıldırım/Çetintürk, p. 80; Yördem, p. 363. Tüzemen Atik, p. 14; Narbay/Güney, p. 48.

³³ Tüzemen/Atik, p. 15; Narbay/Güney, p. 48.

³⁴ Pulaşlı, p. 384.

every drawee the same cheques. As the financial status effects the payment abilities of the drawer, the banks should print different cheque books for different drawers. Such a differentiation in analogy to credit cards may be helpful by solving the bounced cheque problem.

6. Conclusion

Cheque is an important payment instrument in Turkey. However the usage of post-dated cheque in practice converts its economic function into credit instrument.

Due to its widespread use, the cheque related problems are still being discussed. Bounced cheque seems to be the most important one of these problems while this effects the prestige of cheque as a payment instrument. For this reason Turkey is seeking solutions for bounced cheque problem for many years.

In the early years of the Turkish Republic, there were no special sanctions imposed for the use of bounced cheque. Such lack of legal sanction for drawing bounced cheque led to an increase in the number of bounced cheque. Since the civil sanctions were not enough to prevent bounced cheque, a proposal on including a new paragraph on penalization to the Art. 610 of TCC-865 came before the Turkish Grand National Assembly but was rejected in 1929. For this reason bounced cheque was considered fraud. Considering bounced cheque fraud within the framework of Turkish Criminal Code did not however constitute a proper legal solution for post-dated cheque in particular.

In 1985 the Turkish lawmaker defined a new crime named "drawing bounced cheque" including imprisonment in Code no. 3167. But the increase in the number of bounced cheque due to the economic crisis in the nineties made it necessary to find out a new solution. Accordingly, the Turkish lawmaker abandoned imprisonment and carried out a new regulation based on the *acquis communautaire* that led to the employment of the principle stated as "economic punishment for economic crime". This was the beginning of the decriminalization process. In 2003, the imprisonment was replaced with fine and in 2012, was the decriminalization completed.

In 2016, the Cheque Code no. 5941 is amended once again. With this amendment, the Turkish lawmaker defined drawing bounced cheque once more as a crime. Since 2016, the QR-code cheque is also employed in order to prevent drawing of bounced cheque.

The statistics show that the rate of bounced cheque increases in times of financial problems. The historical overview on bounced cheque regulations in Turkey indicates that the amendments are made in time of financial problems as well. For this reason, the financial factors are to be considered as well, in order to solve the bounced cheque problem. In reference to *Pulaşlı*, determining cheque amounts with different limits for different drawer in accordance with their financial status may be proper solution for bounced cheque problem.

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3. Basak Babaoğlu, Alexander J. Wulf, *Decriminalizing the Issuance of Bad Checks in Turkey. An Analysis of the Effects of Changes in Penalties*, "European Journal of Law and Economics", 2016/42, pp. 5-23.
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