

FRAUD BY USING A CHECK

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ABSTRACT

Check is one of the most important tools to facilitate the trading and financial transactions between people. In fact, the check is a special type of finance credit from the bank to an individual or legal person, unfortunately, this concept, like many other concepts have not understood in comprehensive way and these check books caused many problems for people. These days, "overdrawing check" is not incomprehensible words, for many of us because it happened for many of us, first and foremost question should in this context, is what will you do to get your right? Refer to a court? If someone used check as a tool to fraud and looting of property of others, should they just be subject to check law, and according to the provisions of the law are prosecuted? Are crook people the same as honorable merchants that due to some unwanted changes and fluctuations in the market and social conditions could not promise checks that they have been forced to issue pay, is good, acceptable, and in the interests of society? Accept the idea that the check exporter, however, according to check law, be prosecuted and punished, regardless of intent on check and even if he proves that the check is used for fraud, he cannot be pursued in accordance with the law relating to fraud, that is inferior corruption. In this paper, the false belief on one hand and repeated the intention of the legislator to the adoption of Article 238 of the Penal Code and the laws of the years 1933, and later 1954 on check was studied.

Keywords: Check; the check law; fraud.

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1. INTRODUCTION

One of the most common legal acts between people is using checks as means of payment. In practice, after facing the problem of non-payment that the holder of the check immediately attempted to sue the issuer, however, in the majority of cases the court to consider plausible citations and according to the law as specific legislation in the field of the check to his declaration was issued to a series of fraudulent practices which resulted does not care for loss of the property. But contemplated in current laws can be concluded that in contrast to the usual practice of issuing checks in all cases only issuing checks in accordance with the law but under certain conditions and circumstances under which the check is issued, prosecutors can claim the plaintiff's based on the "fraud" and, therefore, to investigate the matter.

A-Statement of the problem

There are significant differences between the crime of issuing "overdrawn checks" and "fraud" and the most important of them are pointed out here.

1-Conditions of fraud compared with issuance of overdrawn check on one hand under (Law on Amendment of the Law on the check approved in July 1976), if the issuer of the checks it issued in a way that is not paid by the bank, his act is punishable. Because when the issuer attempted to issue checks shall be equal to the sum of the drawee bank, the cash or credit and should not all or part of the aspect of checks validity, withdraw from the bank, or give non-payment orders of a check and shall set a check to the bank to sign or crossing reasons such as the lack of consistency in the context of difference check the check or the like to refrain from paying check. On the other hand based on (law more severe penalties for perpetrators of bribery and embezzlement and fraud), anyone who is tricking and cheating people, creating fictitious companies or businesses or factories or institutions, or to deceive the property and false authority or to give the unrealistic hope, or fear, or unrealistic events and circumstances and given false name or title to one of the aforementioned items or equipment other funds frauds or property or documents or drafts or bills or recouplement account others like them educated and in this way to take someone else's property, considered as fraudulent and in addition to give back the original property to owner, get imprisonment

from one to seven years and a fine equivalent to that obtained financing has to be condemned. However, according to the law, issuing checks without a contained fee in it, or to extract money from the credit check was issued to the bank, or ordering the payment of funds to the bank, or setting checks that the bank does not pay for issuing checks with knowledge of the closed bank account, at first brings this thought to mind at the outset that this case, the provisions outlined in Article 1 of the law more severe penalties for perpetrators of bribery and embezzlement and fraud, the difference is not recognized and issuing checks also has the characteristics of fraud that has been developed according to the specific causes of that Act, but it should be noted that there are many similarities between issued checks with fraud and the purpose of either is taking another person's property, a major difference between the two can be seen it being in charge of issuing checks, exporter no fraudulent maneuvers to issue a check only, but in fraud they use different strategies to the trick the person, and he receives the overdrawn check or even does not receive any check. In this situation, does the law can say that in terms of issuing checks as a special law before the law relating to fraud, the plaintiffs should be forced to follow the law of checks? In this regard, it should be said: although the Law on checks is a specific law but the idea of the absolute necessity of implementing the practice of issuing overdrawn checks compliance with this Act has sever negative consequences that should be considered. For example, if a person uses all means and resources available and reflected in Article 1 of the law more severe penalties for perpetrators of corruption and embezzlement, fraud; take someone property and instead give back an overdrawn check, the notion that the practice of issuing checks exporters must comply with the law, in this case it is not be subject to the law relating to fraud; however, for the same act (speculative) submit to victim, his act will be subject to the law relating to fraud. It is obvious that such an interpretation is contrary to the intention of the legislator; because whenever a person introduces himself with special powers and considerable credit that without resorting to the said issues, exiting property from victim was not possible and for getting them issue an overdrawn check, his act is considered as fraud. Because what the legislator intended that the arrangements referred to in Article 1 of the Law is the provision of more severe penalties for perpetrators of corruption and embezzlement, fraud and achieving the final result that is

desired by a guilty person; considering the preparations and tricks he used to issue overdrawn check, give a promissory note or a simple note or nothing. Thus, we see that if the investigation to commit fraud is confirmed, even if there is no document, it can be considered as examples of fraud. How it can be about the same as the plaintiff has an overdrawn check, prevent his fraud complaint and according to check law simply led the person?

2- The status of overdrawn checks of legal (non-criminal aspects)

Issuing checks in-law, enacted in 1976, it was predicted that if the check was issued under those conditions, loses the prosecution ability, particularly the check time of being effective as a tool by which the professional issuer against the owners of these checks were exploited, obviously, if the complainant had to check compliance with the eligibility issue in the prosecution case as a fraud she was, If the check type had no guarantee, promise, or was blank, or from any cause had no criminal aspect, in terms of non-judicial checks, the plaintiff's prosecution was lost. However, this problem is exacerbated in the case of possible fraud and litigation based on the existed Act. Now, although the amendment of issuing checks that were conducted in 1993, Article 12 of this law was removed; but at the same time if the situation of those who have overdrawn checks before the Act of 1993 , approved the issuance of checks to be matched with the law of 1976, the problem still exists.

3- Forgivable crime of issuing overdrawn check

Issuing overdrawn check is a forgivable crime; while fraud is non-negligible. The accused may under certain circumstances; enticed the plaintiff has or somehow put him under pressure, in short, to any device that is able to obtain the consent of the complainant for his freedom. In this case, unlike lawmakers about the need to punish persons guilty of fraud as public crime, despite committing fraud by putting themselves under the law relating to the issuance of checks, will remain practically unpunished.

4- The punishment difference between fraud and overdrawn checks

The amount of punishment in overdrawn checks is less than the prescribed punishment for the scam offense. The penalties of issuing overdrawn checks is six months to two years in prison

and pay a fine in the amount of one-fourth or less the way checks are available while the fraud penalty of one to seven years in prison and a fine equivalent to that obtained funding. An example clarifies this better: in the case that a person seeking to commit fraudulent acts; take one million Rials of someone property, and in return give an overdrawn check, in the practical application of the Law on the check and to assume his conviction on charges of issuing overdrawn checks, is sentenced maximum up to two years in prison and will be fined two hundred fifty thousand Rials. But if the law is compliance with fraud punishment, the accused will be sentenced to maximum seven years in prison and pay a million Rials as fine, one million Rials private claimant as compensation for losses. The demand implementation of Article 139 of the law sanctions (imprisonment up to payback) of the Criminal Court, for both checks and fraud is possible. Therefore, the perpetrators of these crimes have to bear their consequences (especially for large sums), it is clearly evident that depriving the complainant from resorting to fraud complaint in the case of entitlements to use it, to what extent the rights to the property lost his way, will bring harm.

B- The Guardian Council comment about returned checks

Answering the question of the Tehran Public Court “issuing returned checks due process of law provides criminal prosecution, and even under the former rules exporter has been prosecuted as fraud. Now, given that some of them resorted to fraud others, or at least non-payment of their debt at due time, would provide creditor caused losses and if possible they should not face criminal prosecution the collection of money is impossible, is perusing the issuer is against the Sharia or not? And if the answer is no, and it is confirmed that the check was issued without history or promise or guarantee and conditionally, in such cases, the issuer can be get prosecution or not? Also, in case of time lapse what will be the situation?

Council of Guardians on 12/9/1982 has commented; issuing overdrawn checks traditionally considered to be fraud and deception, can be punished by the judge. This comment did not solve the problem of issuing overdrawn check in all cases and in practice issuing checks without the increased willingness of prosecutors to law enforcement. This procedure is also acceptable manner absolutism, according to the reasons already mentioned, it is not without drawbacks.

C- Partners Status and crime assistants

If the issue of returned checks should be considered from the perspective of law, if the principal offender escapes, partners and his deputies will be immune from prosecution. For the crime of issuing checks, the accomplice is not possible while for fraud they need assistants and without their help committing the crime is not possible. But by issuing checks at the end, only one person is opposed to law and the rest remain inviolable. As a result he escapes or only bear the punishment for issuing checks accept the punishment. The sad truth only arises from the idea that the law is issuing checks, we just have this law in place to implement the issuer of the check immediately, and that the law be abolished any time, law to the possibility of fraud on such people will be faced and consequently partners and assistants will be wanted criminals, whereas the notion of legislation relating to the matter in question, compliance with legal logic and purpose of the legislature and not the good of society and the only result is the way for the entry of people who arrived one by one, and together with his assistant introduced with a history of thriving commercial and business premises and the induction of the business and its capital is owned by them, take out the cash or goods of those people, and in turn and perhaps in other neighborhoods or even in other cities to improve the livelihoods continued operations and at the time of accountability and involvement, claim that business sites where they receive funds and pay checks to business and employment and it belongs to another side and they have nothing in that place but internal managers, accountants and the like are not jobs!

D- Single act and numerous titles of crime

According to Article 46 of the Penal Code Act of 1991: "The crime is punished, every single act has numerous titles of crime, which is punishable by the severest punishment for given crime", according to the article, it can be argued that in cases where the check immediately places a series of fraudulent practices and to enhance non-issued property. The action eventually issuing checks of instances of severe penalties for perpetrators of bribery and embezzlement and puts fraud, single act is the act of judgment that has been guilty of numerous titles, the above article should be punished in accordance signified fraud that has

exceeded forecasts should be considered.

2. CONCLUSION

From the mentioned points these following result can be received:

1-With regard to the issuance of the check law and severe penalties for perpetrators of corruption and embezzlement, fraud law, it cannot be said that the issuance of overdrawn checks is absolutely and always is fraud and not to be believed that the presence of issuing checks (as a special law) is applicable in all cases subject to the law. But in fact, depending on the factors and conditions that lead to issuing checks; If the define and describe acts committed with the law of fraud has to be adapted, the subject should be described under fraud and otherwise, the issue of checks in accordance with the law will be issued.

2- In cases where after a series of fraudulent practices, financial accused to the complainant's and in exchange gave him a returned checks it must believe that fraud checks issued to the plaintiff, in his claim that the judgment documentary, in which case he offer any proof of loss no need to returns his property and hence the difference between him and who holds the same status promissory note or other written document.

3- However, on check in bad faith law is presumed guilty and issuing an overdrawn check. No need to prove criminal intent and because of that legislative considerations in mind, it is indictable but also said the law should be applicable only if, the person without deceit and fraud by the subject as (fraud) attempts to issue the check. But if the act he committed with criminal intent and actions, in addition to the title (overdrawn check) with the criminal crime of (fraud), according to a description ((verb unit has multiple titles)) and more severe punishment for past crimes, regardless of issuing checks with the law, the law will apply more severe penalties for perpetrators of tricks on him.

4- Finally, according to the law, if the holder of the check returned checks will be issued with reasons of claiming fraud, the investigating authority had to hear and address the reasons why is the plaintiff and should not be relied on check law ,as a special law, to refrain from pursuing the fraud case. It is obvious that if the plaintiffs' due to lack of the necessary elements and features did not have to deal with fraud, issuing checks will continue to pursue

the issue through legislation. Finally if the defendant pursuing the matter, the plaintiff must prove fraud claim against him, and if he cannot prove that, should respond the accusation and endured as defamation to protect the rights of those issues that the legislator has predicted. This is the only penalty that the plaintiff may enter charges against others and with the condition that legally be considered in order to slanderer him.

3. REFERENCES

- [1] Enacted in 11 November of 1993.
- [2] Enacted in 15 December of 1988.
- [3] Article 12 of the Law on the check Act of 1976.
- [4] Cash the checks reform law enacted in November of 1993"by the same author, journal Faculty of Law and Political Sciences, Tehran University, No. 33.1373, pp. 43-60.
- [5] It is important to note that the court can determine the punishment less than 6 months. We should add that depending on the case, paying Brief penalties have also been predicted that not much importance. Article 12 of the Law on Amendment of the Law on check.
- [6] The important point to note is that fraud in sentencing, the court may determine whether less than one year of imprisonment.
- [7] The Supreme Court on the implementation or non-implementation of Article 139 of Law sanctions on returned checks, the opinion that the implementation of the Article concerning checks, they responded vaguely case led to the occurrence of disagreement between criminal courts, found the aforementioned votes (No. 577 dated 10.21.1992).

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