

Compare Civil Liability Arising from Non-payment Check in Iran and France

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Abstract

Check principally by cash payments, issuance of checks promise, however, is very common in economic relations. Today, in many parts of the world and also in Iran has seen a significant increase in the number of checks that are not due to lack of payment. This study aimed to learn more about the rules of non-payment check and laws in Iran and compare it with France. Every country has certain rights in the areas of social and economic relations in accordance with the facts and circumstances in the country (at least should be) And France in particular check laws and regulations without legislative response to these realities in that country is in order to deal with this act. To be sure, the laws and regulations in Iran can meet the check problem, but it can at least be considered as a model and to feed his thinking on this issue, and ultimately inspired by these rules, the rules in accordance with the facts and we design our conditions.

Key words: Non-payment check, Demanding, France, Chests, Civil court

INTRODUCTION

A significant increase in the number of checks that are not due to lack of payment and the problems that it has created in the financial and commercial effectiveness of the laws of the check undermined in Iran. This issue has attracted the attention of lawmakers and the parliament is considering a proposal to amend the rules. The problem is not limited only to our country and many other countries are facing. But in Iran over the past few years, crimes related to non-payment check assumed alarming dimensions, to the extent that credit as a means of payment in the check population and especially economic activists questioned.

Some authors of Rights commerce, the check is Farsi word, understand that has long been common in Iran (Skin, 2002, p. 184) In Iran, check exports to its modern concept, with the possibility of opening a current account in the bank at the same time closely is. New East Bank, the first bank in the year 1887 was established (Saghary, 1999, p. 261)

can be deduced from the context most jurists Czech word historically been imported to Iran from Europe. In fact, tracing the path of the term Old Persian literature and language of contemporary culture first time in 1995 AD in the city of Pisa (Italy) in the eighteenth century AD located at the beginning of the nineteenth century in England, then later in the United States Canada is also common. check in English means dealing, record, collate, who entered the French language is English.

Assembly Bill 312 in 1311 to 318 in the business materials check, check import rights for the first time Iran. In 1344 for check law known as the Law on check was adopted in 1355, revised in 1372 were revised in 2003, was amended again in 2003 to open trade reform bill was reviewed on some check law approved in 1355 (kaviani, 1999, p. 21).

Both in terms of what the check terminology to be used as a means of payment, under the influence of international norms, conventions international documents. The provisions relating to check in Iran, despite the fact that many substantive differences with check regulations at the international level, However, influenced by these regulations formed by the footsteps of the revised regulation that has been modified (Jalali and khakzad, 2012).

This study aims to learn more about non-payment rules and laws in the countries where check economy achieved

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relative success in combating this phenomenon have Iran rules out the theoretical strengths and weaknesses in this area appear French law in this article is provided as an example.

It is worth noting that the solution to preventing, or rather reduce such crimes in the check only be found in the laws and regulations. In France, on the one hand the spiritual factor, namely the check credit transactions and the other practical, the correct way of using it as a means of payment Such as credit cards, widespread and in many cases the alternative is check. But laws and especially penalties foreseen for the crime of non-payment check also of great importance and is one of the most important factors in preventing this crime is the public's mind.

Check legal system without available in French from the outset on the basis of legal regulations was based dated October 30, 1935, after the amendments - including most of the law dated January 3, 1975 and Regulations dated 3 October the same year. Finally, the law dated December 30, 1991 (No. 1830-91) and in particular the law of this law No. 456-92 dated May 22, 1992 changed and evolved.

Law Regulations of December 1991 and 1992, more seriously deal with the issue and on the one hand the banks, especially the Bank of France's role in the prevention of check export without the active inventory and the other on the severity of penalties for this crime has increased. By following the main axes of current French law, the first rules in force in order to prevent crime and to address it examined and then the penalties foreseen the crime and consider legal action against it.

It should be noted that the 1991 Act and implementing regulations in 1992 in France with the check-term (bank) briefly employed and the notion that all kinds of financial and credit institutions, which by law has to be in possession of their current accounts (Article 1 thereof. 1992), this paper also short term (bank) uses the same broad sense.

Civil Liability for Non-payment Check in Iran

Check NSF is one of the crimes on crime issues in its civil and criminal proceedings are interwoven and mutually influence each other. check is one of the commercial documents such as bills of exchange and promissory notes in row other instruments that lawmakers put it in terms of criminal backed and exporter of check non-payment penalty is imposed.

So on check and responsibility of the exporter, it is a must if unpaid civil check way, the Court discussed and addressed. The main check export base criminalization without the protection of the rights of holders check and

why the legislator fate criminal case from one side to the other holder and Exporter of the check deposits.

The fate of the criminal case is in the hands of owner check no complaints and criminal cases do not fall through after the complaint, He may at any stage of the proceedings by announcing his past criminal procedures to stop Also exporter of check as well as the fate of the criminal case in his hand; Because you can pay with check prevent falling during the criminal case, it can also be used before and after the final judgment, the payment of the principal check and legal costs thereof, or providing grounds for their payment, as the case cease or stop the chase to bring the execution (Mohammadi, 2012).

Explicitly stated and signed and sealed and submitted to the holder of the check. The leaves must match the signature of exporter Signature samples in the database (about customary banking) or non-compliance by the Bank acknowledged. The bank is obliged to inform the exporter of the Czech second edition of the leaves immediately to the last address of the owner of the bank account that has been sent. First and last name and full address of the holder of the check leaf shall also be mentioned. If the check exporter to the bank account balance is less than the amount of the check at the request of the holder of the check, the bank is obliged to pay the amount on the check account holder and holder of the check shall be on the back of the check amount received and submit it to the bank, certification specifications including the amount paid by the bank receives the check. Ignore the amount that is not paid the check and certificate holder of the check to the bank in this case will be the successor of the original check. In this matter, the Bank is required notices to the owner of the account mentioned in article (Article 5).

If a check to the cause of the reasons for not paying the bank is obliged under Article 3 The leaves for the profile and identity checks and address of the exporter indicated on or to explicitly the reasons for non-payment and sign and stamp it and submit to the holder of the check. The leaves must match the signature of exporter Signature samples in the database (about customary banking) or non-compliance by the Bank acknowledged. The bank is obliged to inform the exporter of the check second edition of the leaves immediately to the last address of the owner of the bank account that has been sent. First and last name and full address of the holder of the check leaf shall also be mentioned.

The delay in payment and necessity demand it

In a general, the delay in payment in check delay in payment is generally not much different, so the same principles that the delay in payment to its function as a civil matter.

According to Article 719 of the Civil Procedure Code enacted in 1318 first delay in payment of all claims that were the subject of cash, it was claimed did not exceed the rate of 12% per year. Article penalty law was in force until 1362, but then delayed payment of compensation by the Guardian Council, contrary to the Sharia was diagnosed.

Despite the fact that contrary to the Sharia was announced compensation of delayed payment, delayed payment was accepted compensation over time. The law of banking without usury (Interest) Act 8/6/1982 and the law of debt collection banks approved by 5/10/1989 allowed banks to receive payments for the delay was given. Despite the general order under Article 719 of the Civil Procedure Code (1939), the legislator in Article 11 of the Law on Czech 1976 (current Article 12) of the Czech holder the right to receive compensation for delayed payment was made clear.

The need to demand compensation of delayed payment the holder of a check-owned check require compensation for delayed payment is required to be litigated. Litigated primarily with petitions submitted to the competent authority takes place. The demand for compensation of delayed payment required to submit petitions seeking major works are: First, no criminal court can't ask the beneficiary to pay check exporter of check and condemn the delay in payment.

In crimes such as theft and fraud legislator Criminal Court has an obligation to explain its decision, the defendant would refuse to issue property theft or fraud were sentenced. In such crimes, theft or fraud is not necessary to demand financial issue that victim filed a lawsuit, but the offense is not on the check NSF of such crimes; Secondly, if the issuer of check sentence to pay damages of delay in payment is not in criminal court, applying article 696 of the Islamic Penal Code of the sentenced person, that is keep him in prison until the end of criminal conviction cannot be sustained payment.

Legislator in Article 12 of Law on check, the check Exporter of the data points before and after the final judgment, the payment of the principal check and damage caused by non-payment, including delayed payment for damages caused pause or stop execution proceedings provide. Accordingly, if an exporter of check, the check payment and delayed payment of damages to be paid to the holder, before the final judgment of the cessation of prosecution and then put the final judgment will be issued endowments run (Mohammadi, 2012). The article 12 of Law on check has created the impression that the check exporter, however, have delayed payment of damages to be paid by the original check way through the trial or

execution, in each case, endowments, but the interpretation of Article 12 makes the civil nature of the delay in payment and necessity demand it be ignored.

In fact, losses due to delay in payment of the crime issue and an economic right to the holder of the Czech check NSF. According to the general rule in civil matters that are necessary to claim the right to the Civil Procedure Code states in Article 2, No claim for compensation of delayed payment by the issuer of the Czech rightful cannot be condemned to pay compensation of delayed payment or otherwise it will collect exporter of check in favor of the holder. So, if the holder of the check criminal case, therefore, the principal check and delayed payment of damages to be claimed by presenting a petition to the criminal authority, before the final judgment exporter of check and check have the means to pay compensation of delayed payment slow to suspend proceedings and in the absence of demand, with the payment of the principal check Exporter proceedings will be suspended. Also, after the final judgment, if the exporter, the check side to pay the penalty for failing to pay damages only if the delay in payment will continue.

Non-payment check in France

Prevention and elimination of non-payment check without inventory

French law provides for the operation of check banks have had a special responsibility. In fact, banks are considered active in this operation because they are responsible to pay check exporter account. According to applicable rules, banks are required to record and instantly all forms of payment check Central Bank and immediately ordered ban on any check in the future for the account holder, to help debug your payment, issue. The account holder the right to appeal the order to the ban on check civil courts, but in the end the only way to repeal the ban, bug fixes check payment is returned. In the meantime, the Bank of France, in turn, plays an important role.

In fact, in France, the bank has no obligation to pay a check that does not have enough funds in the account. If for some reason the relationship between the bank and the customer is concerned, payment check banks to pay the beneficiary, in this case for their joint account balance deficit, the credit is opened. The only thing the law, the bank is obliged to pay check amount of interest (equal to or less than a hundred francs) (see paragraph 1 of Article 73 legal. n 1935). But apart from this legal obligation by the bank-based payment check NSF is rare and usually banks refrain from such an initiative.

If the banks due to the lack or shortage of funds, as well as the closure of the account, the payment check refrain,

is bound forms of payment, a maximum of two working days from the date your payment is refused, the Office special register (paragraph 1 Article 2 A.N the .992). For the record, the check profile, as well as the profile of the account owner, date of payment and because it is mentioned (Article 3 shall A.N).

Registration forms along with payment, the bank is obliged, within two working days from the date your payment is refused, the Office special register (paragraph 1 of Article 2. n 1992). For the record, the check profile, as well as the profile of the account owner, date and because it is non-payment (Article 3 A.N above). Sign the forms of payment check, the bank is obliged, within two working days from the date opposed it with all the information about registration to inform the Bank of France (paragraph 2 of Article 16 A.N 1992).

Registration forms and payment in check and report it immediately to the Bank in a sign that the exporter check only against the carrier and is not responsible for the check beneficiaries but also civil liability also arises in the Bank in fact, the bank based on customer confidence he puts in the check categories and the expected him to properly use it to pay your account.

When the bank from paying all or part of the check side due to the lack of refrains, Should be issued to the owner of the account in which the will of him that from now on, until the problem your payment, check has not issued any and all categories of bank checks that had returned to their respective banks (Article 6 A.N 1992) if the joint account, the bank will issue two types of command: the person who issued a check that is faced by subtracting inventory, and send the same command as above, and for other account holders, the order bans check only contains the subscriber's account will be considered. If a third party has the right to sign check is out of your account, the bank must count him out of action against the owner informed him of the right to issue a check from that account, until the ban prohibiting the original owner of the account.

The account holder could be subject to the ban on check civil complaint against the decision of the bank to court. However, protests the issuance of injunction prohibiting check ban is suspended and called for the issuance of any check bank denied the claim still remains. Only in special and rare cases, at the discretion of the court may issue an immediate suspension of the ban until the final vote on the nature of the case, it is possible (row 5 paragraph 3 of Article 65 legal A. N 1935).

Tribunal de Grande instance an injunction prohibiting the jurisdiction of the issuing bank is located, is competent to

deal with disputes related to the ban on check. The court issuing fines when repeating the check non-existing is good.

Obviously, the owner of the account holder statement protesting the ban on check shall provide justification to the court, for example, the deficit caused by the wrong bank accounts or delays in the registration database inventory has been received on account This deficit balance due to delays by third-party funds have been deposited to the court is not convincing Because of the delay in receiving the funds should account when issuing check predicted. Thus, according to case law, that the deficit has been stripped of will alone account holder is not a reason to accept his protests.

Exporter check could, upon receipt of orders ban on check deducted because of a lack of funds deposited in the account with the required fix. In this case, the ban on check removed and re-signed and issued a check person can make their payments to suppliers.

The specific time to meet the check payment forms by the issuer and does not specify the account holder. However, decreed that the absence of bug fixes payment within one month after the date of issuance of injunction prohibiting check, owner of the account, apart from deficits inventory, amounted to 120 French francs per 1,000 francs from the check amount to pay to fund the government until the ban is lifted. If a person is more than three times a year met with check payment forms, terminate ban on check deficit and should double the amount mentioned above, namely 240 francs for every 1,000 francs, to fund the government.

On penalties and legal proceedings against its check without inventory

When issuing no inventory check carrier could, in case of non-payment by the exporter bug fixes check, against whom legal action. Act civil penalties for Exporter check considered.

Check Carries no Legal Action Against Check Exporters

If a check that will be submitted to the bank for payment within thirty days from the date of payment or payment forms have not been resolved within the prescribed period. check carrier could not pay the Bank Certificate (paragraph 3 of Article 65 legal A.N 1935). This certificate within fifteen days after the request is submitted to the check carrier (Article 36 A.N 1992) If the thirty days, check exporters have to meet its payment forms, other forms of non-payment issue would not be justified in If so, banks can be A.N accordance with Article 72 Frank was sentenced to a fine of up to 80,000 legalized in 1935.

Check non-payment certificate contains all the details check and exporter and its carrier. Then the officer communicated check carrier (Huissier) referred and through him to the check non-payment certificate issuer deems appropriate. For this purpose, the prosecutor's office can be notified about shows check exporter, His work address and the names of financial institutions that he has an account with them the information.

Issued a certificate of non-payment by the officer, the validity of the settlement (Payer Commandment de) as well. If the officer notified within fifteen days from the date of notification does not receive check way, without any judicial action execution is issued. The check carrier allows execution of judicial measures necessary to provide for confiscation Exporter check (paragraph 3 of Article 65 legal A.N 1935). It should be noted that, according to existing case law, the expiration of a period of fifteen days, the check exporter to protest and the right to provide their reasons for non-payment check carrier collapsed against the bank or not (Paris Court sentence dated May 17, 1990).

If the account holder and Exporter check commercial register without being in the office and the company or the registered office is a professional list, the bank is obliged to make a copy of the certificate of non-payment or branch office commercial office commercial court civil court check exporter sends location. In this case, a certified copy of the ad is to inform the public (Article 37 A.N 1992).

Check issuing punishment without inventory

Check export without available in French at first, the law of August 2, 1917, was considered a criminal offense. In the early 1970s, the crime was so common that complaints against the prosecutor and criminal courts became cumbersome. In 1972 a new law was trying to criminal punishment for this crime is lighter but it was short-lived. Because as soon as the necessary implementation of the new law dated January 3, 1975 and A.N On October 3, 1975 were replaced by executive.

The main objective of the reform was in 1975 that the offense outside the criminal realm and into the realm of civil offenses. In this regard, no inventory was assigned to banks and issuing punishment check was given to them authority and they were given the option of the issuer check in the future from using any form of payment until their ban. But regulations in 1975 brought much opposition. Those who were carrying the check returned it to support check exporters and undermining their legal position were considered. In practice, these reforms did not prevent these crimes and the courts to respond to an increase in the number of cases in this area have expressed dissatisfaction.

Law of December 30, 1991 and A.N Executive May 22, 1992, although the principle of civil Abuse emphasis on check has no inventory, but some criminal prosecutions arising from A.N 1935 left in force. Meanwhile, non-criminal penalties, the mechanism ban on check banks has worsened.

Non mechanism comes into force when the check issuing bank responsible for paying the bank, (due to lack of sufficient inventory to refrain from pay check.) (The first line of paragraph 3 of Article 65 A.N 1935). This action by the Bank were discussed in the previous chapter. Here are just a few details about it here.

Before the law in December 1991, bans remain in force for one year was check. After the expiry of this period, the ban will be automatically ended, even if the check was still unpaid. Act 1991, a ban on check, as already mentioned, increased to ten years. The purpose of this action was that the exporter checks extended for a longer period without being put under pressure to pay all beneficiaries check. check without being subject to criminal penalties in certain cases be issued.

These are as follows:

1. If a person deliberately to damage other, after the issuance Czech, some or all of your accounts in any way (money orders, transfers, cash withdrawals) from their bank accounts, withdraw or deny a payment (Article 66 legal.n. 1935). Here is the constituent element of the crime, according to the case law is intended to damage other (Supreme Court, Criminal Branch, dated 3 Watt 1987). For example, if your Exporter check no guarantee that the expected payment request, after the issuance of the relevant account is taken, will not be subject to criminal punishment (Supreme Court, Criminal Branch dated October 29, 1990).
2. If a Czech person who is issued in the above-mentioned conditions, with the knowledge or endorsed accept it (Article 66 above).
3. When the person who ordered despite the ban on the use of check in the bank, to issue one or more counts of check make (Article 66) in the case, check carrier, which is facing forms of payment can be requested by lossescheck criminal courts do request payment (Article 71 A.N above). According to existing case law, the provisions of that law are criminal aspects in order to protect the public interest and There are also the interests of those who commit such a crime otherwise (Supreme Court, Criminal Branch, dated November 29, 1993).
4. When the judicial ban on check personal violated and despite the attempt on one or more counts of check make (Articles 69 A.N above).

5. If the right holder signature of the account holder in the bank or judicial Follow-Back hammer on check has been forbidden, knowing that it would have to be check to issue one or more items (Articles 66 and 59A.n. above).
6. Whenever someone made or falsify or counterfeit check knowledge, the check counterfeit or fraudulent use or attempted use, or that, knowing this, check counterfeit or fake accepts (Article 67 A.N mentioned). In the cases mentioned under Nos. 1 to 5, the punishment is imprisonment for up to five years provided or a fine of up to 2,500,000 francs (Articles 66 and 59A.n. above).

In cases as under No. 6, on the check counterfeit or fake, punishable by imprisonment for seven years or a fine in the amount of 5 billion francs forecast (Article 67 A.N above) and all equipment and apparatus for manufacturing check counterfeit or forgery has been used is recorded, unless specified owner was unaware of the use of these devices and systems for this purpose.

In all cases above, the court may issue any check offender from the ban for one to five years. In case of plurality of crimes, the ban together, but its duration cannot exceed five years (Supreme Court, Criminal Branch, dated October 5, 1978). It should be noted that the same punishment can be applied in the case of criminal offenses related to credit cards. Following the ban on judicial check central bank shall notify all French banks to the check right delivery to the offender avoided.

CONCLUSION

Every country has certain rights in the areas of social and economic relations in accordance with the facts and circumstances in the country (at least should be) And France in particular check laws and regulations without legislative response to these realities in that country is in order to deal with this act. To be sure, the laws and regulations in Iran can meet the check problem, but it can at least be considered as a model and to feed his thinking on this issue, and ultimately inspired by these rules, the rules in accordance with the facts and we design our conditions.

In particular, the role of the central bank issuing checks without sufficient funds in France to collect and centralize

information and then distribute this information to the beneficiary banks. The main role of the Bank of France, monitor the performance of banks in the check payment forms and full respect for the provisions of the laws and regulations in this area, the role of central banks under the overall supervision of all banking operations are in France.

The information that is concentrated at the central bank include reports from banks, with any payment forms, checks, orders prohibiting the use of Czech issued by the bank, and certified lifting the ban. Prohibition orders issued by competent judicial authorities will be notified by the prosecutor to the central bank. Any third party to collect and keep such information will be placed prosecute according to law.

Check application for the issuance of checks on credit transactions appears promise. However, to follow the French law (Hemard, 1980T, p. 9) in the regulation of our business for check, unlike bills and promissory notes, maturing and promised not defined and in accordance with Article 313 of the Commercial Code "check way to Once a server is provided." However, with the adoption of the Law on Amendment of the Law on check, adopted on 6.2.1382, in check historicity, its maturity is deemed to be, because under Article I of this law, "check exporter to the date indicated in the above-mentioned sum drawee banks have cash." "check only on or after the date mentioned therein will be accessible from the banks," and therefore Article 313 of the Commercial Code and Article 311 of the Act which provides: "Payment shall be Promises" and implicitly is obsolete.

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