

Turkish Court of Cassation: Article 6/A of the Abolished Law number 4077 on the Protection of Consumers, on which the unification of the judgments was requested, is regulated in Article 4/5 of the Law Number 6502 on the Protection of Consumers as to Eliminate the Contradiction of the Judgments

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The First Presidential Board of the Court of Cassation determined conflicting judgments between chambers in the matter of " *whether or not the claim of invalidity arising from not issuing a registered bill can be put forward against the holder in good faith who has taken over through endorsement in case of the issuance of an order bill that should be issued as a registered bill as per 6/A of the Law number 4077 on the Protection of Consumers*". The Assembly decided to resolve the uncertainty between different chambers of the Court of Cassation.

12th Civil Chamber of the Court of Cassation stated that "*the claims based on the invalidity of the bill are decided to be rejected due to the reason that even if the bill is given within the scope of the consumer contract, it is not possible to claim and prove that the bad faith of the creditor and it is not written in the text of the bill that it is given by reason of the consumer contract and it is not possible to object to the signature and to prove the debt has been paid to the creditor*".

On the other hand, 13th Civil Chamber of the Court of Cassation stated that "*both article 6/A of the Law No. 4077 and Article 4/5 of the Law number. 6502 which explicitly states that the bills of exchange shall be issued as a registered bill in connection with the transactions carried out by the consumer are imperative, the bills subject to the case should be issued separately for each installment in accordance with this imperative provision, otherwise, they shall be invalid, the current regulation in the Turkish Commercial Code is a general regulation related to bills of exchange, whereas the issue is stipulated in a more special law.*"

11th Civil Chamber of the Court of Cassation decided that "*Unless it is noted in the bill that it is given as per the consumer contract, it is also necessary for the holder to prove that the bill which is invalid for the consumer was issued by the consumer by reason of the consumer transaction and that it was intentionally endorsed by the holder for the installment payment due to the consumer contract, otherwise the consumer cannot put forward the invalidity plea against the holder in good faith.*"

Assembly of Civil Chambers stated that "*Contrary to the article in the Law Number 4077 which deems the bills invalid entirely in terms of sanction, the article enacted in same content in the Law number 6502 came into*

force on 28 May 2014, it is set out that the bills are merely invalid in terms of consumers, all of the decisions of the Civil Chambers and the Assembly of the Civil Chamber are for the disputes arising during the period when the Law number 4077 was in force... Even the consumer's invalidity claim against the holder whose bad faith is not proved is not possible and it is a plea that can be put forward against the beneficiary and in this respect, the difference of opinions between the Assembly of the Civil Chamber, 11th Civil Chamber and 12th Civil Chamber require unification of judgments".

The Assembly finds no need to the unification of judgments since the regulation in the Article 6/A of the Law number 4077 on the Protection of Consumers which states "*If a bill is to be issued as a negotiable instrument separately from the contract, this bill shall be issued separately for each installment payment and only as a registered bill. Otherwise, the bill shall be invalid.*" is abolished and the Article 4/5 of the Law number 6502 on the Protection of Consumers states that "*Bills may be issued in only in the form of a registered bill of negotiable instruments and separately for each installment in connection with the transactions carried out by the consumer. Bills issued in violation of the provisions of this paragraph are invalid in terms of consumers*" and therefore it has been regulated to eliminate the contradiction of the judgments by determining that the bill is valid in terms of persons other than consumers.

Please see this [link](#) for the full text of the Court of Cassation's decision dated 29 November 2019 published in the Official Gazette dated 30 June 2020 and numbered 31171. (only available in Turkish).

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