

30 March 2020

## INFORMATION NOTE ON THE PRESIDENTIAL DECISION ORDERING THE CEASE OF ENFORCEMENT AND BANKRUPTCY PROCEEDINGS

On March 22, 2020, the presidential decision numbered 2279 (“**Presidential Decision**”) which orders the cease of enforcement and bankruptcy proceedings across the country is promulgated. The presidential decision is based on Article 330 of the Enforcement and Bankruptcy Code which sets forth that *“it is possible to cease enforcement proceedings across or a part of the country or in favour of a commercial community by presidential decision in case of epidemic, general disaster or warfare.”*

The Presidential Decision orders the cease of all enforcement and bankruptcy proceedings, not to accept new enforcement and bankruptcy proceeding requests, not to perform any transactions by the parties or enforcement transactions and not to execute any interim attachment decision until April 30, 2020. Having said that the Presidential Decision excludes the proceedings relating to alimony receivables.

Following the promulgation of the Presidential Decision, the Ministry of Justice has published an explanatory statement related to the implementation of the Presidential Decision.

### 1. Scope of The Presidential Decision

The Presidential Decision refers to any sort of transactions by the parties and enforcement transactions as the scope thereof. The “transactions by the parties” refers to the transactions taken by the parties of enforcement proceedings. In principle, the creditor and the debtor are inherent parties of enforcement proceedings. In this respect, transactions to be made by the creditor such as enforcement request, attachment request and sale request or transactions to be made by the debtor such as objection to the payment order are considered as transactions by the parties.<sup>1</sup> On the other hand, transactions to be carried out by the enforcement authorities are defined as enforcement transactions. Issuance of a payment order, realisation of attachment proceedings can be counted as examples of enforcement transactions.

Besides the ordinary enforcement proceedings, the Presidential Decision also orders that the provisional attachment decisions shall not be executed until April 30, 2020. Since the execution of interim attachment decision does not qualify as an enforcement transaction<sup>2</sup>, the Presidential Decision specifically includes interim attachment decisions in the scope of the decision. It should be noted that the judicial proceedings to take an interim attachment is not prevented. However, the execution of such decision is not possible until April 30, 2020.

### 2. Transactions by Third Parties

In principle, there are two main subjects in enforcement proceedings (apart from enforcement authorities): the creditor and the debtor. However, third parties may be involved in the enforcement proceedings for various reasons. For instance, in case a third party’s property is attached/ seized, the respective third party gets involved in the enforcement proceeding by claiming ownership on the

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<sup>1</sup> Nilüfer Boran Güneysu, “Enforcement Proceedings Transactions”, TBBD, 2012, No: 101, p. 35

<sup>2</sup>The Court of Cassation, Assembly of Civil Chambers, D. 11.4.2018, 2015/21-3372 M., 2018/766 D.

relevant property. Another well-known example is the attachment notice which is sent to third parties in order to seize the debtor's receivables from the respective third parties.

The Presidential Decision does not include any provision with respect to the transactions related to third parties. In this respect, the Presidential Decision has to be assessed in line with its purposes. The first purpose is to decrease the workload of the enforcement offices as far as possible. The second one is to protect the parties of an enforcement proceeding. Considering these purposes, third parties shall also be included in the scope of the Presidential Decision.<sup>3</sup> Accordingly, the explanatory statement of the Ministry of Justice indicates that all periods related to enforcement and bankruptcy proceedings are ceased during the period of the Presidential Decision; so that the periods related to third parties are also included in the decision.

One of the critical issues is the situation of the salary attachments. The salary attachment is a unique institution under the enforcement law. Once the attachment is applied by the enforcement office on the debtor's salary, the debtor's employer has to deduct the attached amount from the debtor's salary until the debt is completely paid.

The deduction made by the debtor's employer is identified as a protective transaction rather than an enforcement transaction.<sup>4</sup> Therefore, one can argue that the deduction transaction does not fall in the scope of the Presidential Decision. However, it should be noted that the main purpose of Article 330 is to protect the debtor's financial status.<sup>5</sup> In addition, the explanatory statement of the Ministry of Justice does not exclude the periods pertaining to third parties while stating that all periods related to any enforcement proceedings are ceased. Therefore, the transactions relating to delivery of salary deduction requests to employers as well as the deduction transactions by the employers should cease within the scope of the decision.

### 3. The Exceptions of the Presidential Decision

The only exception set forth by the Presidential Decision is the alimony receivables. It should be noted that the proceedings related to privileged receivables such as employment receivables or pledged receivables are also subject to the Presidential Decision.

On the other hand, the Presidential Decision is taken for the enforcement proceedings related to civil receivables. Since the collection of public receivables are subject to a separate regime regulated under the Law No. 6183 regarding the Procedure for the Collection of Public Receivables, the enforcement proceedings relating to public receivables are not ceased by the Presidential Decision.

Apart from this, the execution of interim injunctions are not ceased or prevented by the Presidential Decision as explained under the explanatory statement of the Ministry of Justice.<sup>6</sup>

Furthermore, according to the Ministry of Justice's respective statement, the enforcement offices are still entitled to make payments to the creditors from the amounts which have already been received prior to the promulgation of the Presidential Decision.

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<sup>3</sup> **Oğuz Atalay/Muhammet Özkes**, İcra ve İflas Kanunu m. 330 Hükümünü Uygulayan Cumhurbaşkanlığı Kararı İle İlgili Ortaya Çıkan Bazı Sorular Ve Tartışmalara Cevaplar, İzmir, 22.03.2020

<sup>4</sup> The Court of Cassation 12th Civil Chamber, 7.12.2015 D. 20015/21790 M. 2015/30722; 28.10.2014 D. 2014/24201 M. 2014/25123 D.

<sup>5</sup> **Baki Kuru**, İcra ve İflas Hukuku El Kitabı, Ankara, 2013, p. 1583; **Atalay/Ozekes**, ibid, p. 3

<sup>6</sup> It should be noted that interim injunction is a different institution from interim attachment. While interim attachment is foreseen only for monetary receivables, interim injunction may be requested for any other matter of dispute not relating to money.

#### **4. Consequence of Non-Compliance with the Measures Provided by the Presidential Decision**

In case the measures taken by the Presidential Decision are not applied, the respective transaction that is taken against the Presidential Decision will be subject to complaint of the respective party before the enforcement court. Since this is a matter of public interest, the complaint is not subject to any time limitation.

Should you have any queries on our note above, please do not hesitate to contact us.

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