

Prior to 2018 amendment, the use of printed invoice does not require special irregularity penalty

The subject matter of the case is related to the resolution dated 31.1.2017 E: 2016/629, K: 2017/81 given by the sole judge at the Denizli Tax Court for the cancellation of the special irregularity penalty imposed on the taxpayer company pursuant to Article 353/1 of the Tax Procedure Law (“TPL”) due to issuance of an invoice in hard copies that should be issued as an e-invoice in 2014.

Upon the claim that the rejection of Denizli Tax Court is against the law, with the appeals request of the Office of the Advocate General for the benefit of the law, the 9th Chamber of the Council of State concluded its appeal with Decision E: 2017/3886, K: 2019/7414 and resolution to annul it was published in the Official Gazette dated 13.5.2020. In the decision, it is accepted that the invoice, which is the instrument of proof of the purchase-sale relationship between the seller and the buyer within the requirements of the commercial activity, is the primary element of recording the expense and income for the buyer and the seller; it is stated in the Articles 229 to 232 of the TPL containing regulations regarding invoices that there is no paper invoice and e-invoice distinction and the TPL General Communiqué no.397 indicates that the e-invoice will have the same legal results as the paper invoice.

The Council of State overturned the Court's decision which had been finalized before, for the benefit of the law "as it expresses a result contradicting the existing law in terms of its quality".

Because it is of the opinion that the penalty in the TPL 353/1 should not be imposed in the event that both the buyer and seller do not perform an act that requires explicitly regulated punishment in the law.

In the incidence subject to the case which had been overturned for the benefit of the law, there was no transaction requiring a penalty as defined in the law, since the transaction was recorded with an invoice issued, albeit with paper. Therefore, since it is not possible to impose fines based on comparison and assumption on the basis of constitutional principles regarding the legality of taxes and penalties, as per article 353/1 of the TPL for the actual invoices, it is illegal to impose a special irregularity penalty and It has been unanimously decided to overturn the decision of Denizli Tax Court.

Impacts of overturning for the benefit of law

The scope of “annulment for the benefit of the law” contains the decisions expressing a contrary outcome to the existing law in terms of their quality among the ones given by the regional administrative court and the decisions made by the administrative and tax courts and finalized by the Council of State as the first-instance court without reviewing the appeal.

In the face of the inappropriate implementation of the existing legal rules, the purpose of this appeal is preventing the possibility of misrepresentation in similar applications in the future and preventing the courts and ensuring unity in practice by clearly announcing that the law could not be applied as specified in the final decision after determining that the law was applied incorrectly. Therefore, annulment the benefit of the law is one of the most remarkable remedies.

Decisions finalized before the appeal for the benefit of the law are examined by the Supreme Court or the Council of State upon the appeal of the Chief Public Prosecutor's Office for the benefit of the law. If the Supreme Court of Appeals or the Council of State considers that the existing law has been misapplied, it overturns the final decision provision for the benefit of the law. The annulment decision for the benefit of the law is published in the Official Gazette and it's ensured that the law is implemented in the same way everywhere in Turkey. However, the decision to overturn for the benefit of the law does not affect the legal consequences of the decision made regarding disputes that have already been finalized.

Therefore, following the decision to overturn for the benefit of the law, the renewal of the trial and a new decision cannot be made or the decision to resist the resolution for the annulment in the benefit of the law cannot be made. If the appeal is rejected by the Supreme Court or the Council of State for the benefit of the law, the Supreme Court of Appeals or the Council of State cannot apply for a correction against this rejection decision. Regarding the decision to overturn for the benefit of the law, the parties cannot apply for a correction of the decision.

Justification for overturning a decision on e-invoice

The basic regulation regarding the application of electronic invoices was made with the TPL General Communiqué no.397 published in the Official Gazette dated 5.3.2010.

The regulation of the Communiqué is based on the authority granted to the Ministry of Finance with the 2nd paragraph of the repetitive Article 242 of the TPL. Article 353/1 of the Tax Procedure Law did not contain a statement regarding "electronic document" when the Communiqué was published.

Due to the problems caused by this situation, Article 353 of the TPL was replaced with the Article 12 of the Law no.7103 and had been enacted as of 27.03.2018. Through the amendments of the Law no.7103, the penalties to be applied in case of issuing the documents to be prepared in electronic environment as hard copies and non-compliance with the e-notification obligations have been clarified. In addition, if the documents covered by the Tax Procedure Law are deemed to have never been issued, the issue of special irregularity penalty has been clarified.

As stated in paragraph 3 of the Article 73 within Constitution of the Republic of Turkey, "the lawfulness principle of tax" is essential in taxation. Therefore, the decision of the Council of State to overturn was mainly taken within the framework of the "lawfulness principle of tax". The court found the absence of a statement regarding "electronic document in the text of the law" against the principle of legality and found that the penalty imposed on the taxpayer who issued a printed invoice instead of e-invoice in violation of the "lawfulness principles of taxes and penalties" as contrary to the law due to its being based on the comparison and assumption. Thus, the Council of State emphasized the principle of "legality in taxation" with this decision and established the taxpayer's right and justice in the face of public power.

Therefore, the aforementioned decision to perpetrate is related to the text of the article before the amendment made with the Article 12 of the Law no.7103 to the Article 353 of the TPL; the claim that the special irregularity penalties imposed under the present article are "against the constitutional principles regarding the legality of taxes and penalties" should not be evaluated in this context.



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