

TURKISH NOTIFICATION LAW

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Abstract:

Notice Law is an important law because, apart from specific regulations in other laws, it is applied in different kinds of legal procedures such as judicial, administrative and military procedures and is related to legal right of hearing, the right of prosecution and defense and the right to a fair trial. Turkish Notice Law took effect in 1959. Before this date, provisions concerning notice were codified in the Code of Civil Procedure. From this date on, there has been a separate Notice Law. Some amendments have been made in this law until today. The latest amendments took place on January 10, 2011. Therefore, it was deemed useful that these latest changes in the Notice Law should be investigated. The Article is going to do a thorough investigation of the issue in Turkish Civil Law and specifically focusing on these new changes.

Keywords: Notification in Law, Turkish Civil Procedure Law, Official Notification

Introduction

Turkish Notice Law¹ took effect in 1959². Before this date, provisions concerning notice were codified in the Code of Civil Procedure. From this date on, there has been a

¹ About the Notice Law, see: Akcan R., Notice through Present and Future Means (A Study on Notice Law Article 7) (Dedicated to Prof. Dr. Fırat Öztan, Ankara 2010, Volume (C) 1, pp. 41-61); Akcan R., Notice in Execution (Selçuk University Faculty of Law Journal (SÜHFD), Volume 7, 1999/1-2 pp. 63-95); Akcan R., Notice of the Execution Writ to the Proxy (Dedicated to the 55th Birthday of Prof. Dr. Ömer Teoman, Volume II, İstanbul 2002 pp. 853-888); Akcan R., The Question of Notice via the Fax Machine (Dedicated to the 75th Birthday of Prof. Dr. Baki Kuru, Ankara 2004, pp. 1-10); Deliduman S., Knowledge of Notice Law, Ankara 2011; Muşul T., Notice Law, Ankara 2012; Yılmaz E./Çağlar T., Notice Law, Ankara 2005; Reisoğlu K., Notice Law, Ankara 1959; Moroğlu E./Muşul T., Notice Law, İstanbul 1985; Aşşaroğlu O., Notice Law, Ankara 1992; Turan A. U., Notice Law, Notice Crimes and Relevant Legislation, Ankara 2002; Ruhi A. C., Notice Law, Ankara 2004; Birkaş H., Application of Notice Law According to Decisions of the Court of Appeals and Relevant Legislation, Ankara 1968; Altay Ş./Ünür S., Notice Law, Ankara 1960; Yelekçi M./Yelekçi İ., Annotated and Justified Notice Law with Court Practices and Legal Profession Act, Ankara

separate Notice Law. Some amendments have been made in this law until today. The latest amendments took place on January 10, 2011.

This study will generally investigate the implications of the rules and new changes in the Notice Law and the effects of these changes on law. The Notice Law will be handled generally in order not to expand the scope of the study and the Regulations on the Enforcement of the Notice Law³ and other rules related to notice in the legislation will not be dealt with⁴.

Notice Law is an important law because, apart from specific regulations in other laws, it is applied in different kinds of legal procedures such as judicial, administrative and military procedures⁵ and is related to legal right of hearing⁶, the right of prosecution and defense and the right to a fair trial. Therefore, it was deemed useful that these latest changes in the Notice Law be investigated.

Amendments to the Notice Law

Through the latest changes, the conceptual conflicts between Public Finance Management and Control Law and Notice Law regarding the budget were removed and a conceptual agreement was reached in the two laws concerning the budget. In addition to notice through General Directorate of Post and Telegram Services (PTT) and officials, by air, telegram and other fast or special means (Notice Law articles 1-2, art.7 and art. 41)⁷; the procedures of notice to the court clerk, notice at a trial and electronic notice were codified for the first time (art.7/A and art.36).

Electronic notice was made optional for natural persons whereas it was made obligatory for incorporated companies, limited companies and limited partnerships whose

1977; Kuru B./Arslan R./Yılmaz E., Code of Civil Procedure, Ankara 2011 pp. 760 and so on; Alangonya Y./Yıldırım M. K./Deren-Yıldırım N., Principles of Code of Civil Procedure, İstanbul 2011 p. 177 and so on; Pekcanitez H./Atalay O./Özekes M., Code of Civil Procedure According to Court Procedure Law Provisions, Ankara 2011 p. 195 and so on; Muşul T., Code of Civil Procedure, Ankara 2012 p. 197 and so on.

² Notice Law numbered 7201: Date of Adoption: 11.2.1959. Date of Publication in the Official Gazette: 19.2.1959, Issue 10139.

³ For the Regulations Concerning the Enforcement of Notice Law, see: Official Gazette, 25.01.2012, Issue, 28184. Although the provisions of these regulations generally contain rules parallel to the Notice Law, it sometimes includes new rules, too. For example, Regulations 15 and 41. These regulations codify terms in domestic and international notice.

⁴ For example: Legal Profession Law article 56; Execution and Bankruptcy Law articles 21 and 57; Tax Procedure Law article 93 and so on.

⁵ See, Notice Law art. 34.

⁶ Code of Civil Procedure art. 27.

⁷ From now on, the abbreviation “art.” will be used in place of Article. The abbreviation “art.” signifies the relevant articles in the Notice Law.

capital was divided into shares⁸. Some of the other changes are as follows: The notice will first be given to the address the parties stated. If the notice can not be made to this address, it will be given to the address in the address registration system kept in an electronic environment in accordance with Census Services Law (art.10,art.21,art.35). With the new change, an exception was made to the rule “notice can be given day and night including official holidays”. Now, notice can be given to lawyers in their offices only during office hours (art.11). With these changes, legal cases will be concluded within the shortest period, at the lowest cost and with a fair decision and notice will be given using the latest techniques of our time.

Provisions Concerning Notice within the Framework of Notice Law

The institutions stated in article 1 of Notice Law can give notice according to the Notice Law. These are judicial authorities, general and annexed budget institutions, municipalities, village legal bodies, bars and notaries. Institutions not mentioned here can give notice through Postal Law or notary. What the general and annexed budget offices, which are cited in Article 1, are is codified in Public Financial Management and Control Law and their numbers and names may change according to law amendments.

Notice through an official is codified in article 2 and article 41. Article 2 stipulates certain conditions for notice through an official. Article 41, on the other hand, does not stipulate any conditions for notice through an official in terms of judicial authorities and offices. An additional fee will be paid to officials in notice through an official (art.4).

The power to determine the fee for notice belongs to PTT. Notice fee must be paid in cash. If the unpaid fee is related to the notice of lawsuit petition, the case will be considered unopened. If other notice fees are not paid, the person in question will be considered to have forsaken his demand (art.5, art.34).

As a rule, notice must be given with an invitation and this invitation must include certain records (art.9). If the notice document is lost, PTT is held responsible except the force majeure. Moreover, in case of a delay, a complaint can be made to the PTT and the PTT is liable to provide the necessary information (art.58).

Notice can be given by air and other fast and specific means used by the post as well as telegram with miscellaneous signs and electronic mail (art.7 and art. 7/A).

⁸ Changes related to the specified companies will take effect on 19 January 2013 (see Law numbered 6099 Article 18).

If there is a proxy or a legal representative, notice is made to them. If there is more than one proxy, one is enough to give notice. In cases like those related to presence of people of sane mind, notice can be given to them in person rather than their legal representatives (art.11).

In legal bodies, notice is given to their representatives in person. If there is no representative, notice is given to other officials who work there permanently. Notice is given to the lawyers, if there are any, of public institutions that have a separate legal body and, if not, to their highest executive officer. Notice is given to lawyers of the treasury in state legal cases (art.12-13).

In cases including privates, notice is given to their immediate commanders whereas in other military personnel, it is given to them in person (art.14).

Also, notice can be given to relatives and other people living permanently at the same address if the addressee who is supposed to receive the notice is not present. For this to happen, they must be competent and not below eighteen years of age in appearance (art.16 and art.22).

If the notice can not be given to the addressee in places such as hotels, hospitals, factories and schools, it is given to the highest authority there (art.18).

Notice is made to detainees and prisoners in person (art.19).

If persons who will be given notice or people who can receive the notice in their place are not at the address or if they are at the address but refrain from taking the notice, the notice officer gives the notice to one of the village headman or a member of board of alderman by signature and sticks the document related to this onto the door of the said address (art.21).

In domestic and international notice, except in some cases⁹, a protocol of notice must be prepared including some information such as who, where and when notice is given (art.23). This protocol is an important document regarding how the notice is given and must be prepared in due form. During notice, other procedures specified in the law must be obeyed. Otherwise, irregular notice occurs and the notice leads to legal consequences from the moment of learning the notice (art.32).

If notice can not be given to the known address of the person in question and if that person's address is not in the address registration system, notice is given through announcement within the principles stated in article 28 and others.

⁹ These exceptions are stated in art.36-37-38. For example: No notice protocol is prepared for notice during hearing or notice in the office, in informing lawyer clerks and interns only of the day and hour of the next hearing and in notice by proxies to each other.

During the application of the Notice Law, fines and prison sentences are stipulated for some acts such as reporting wrong address, not submitting the notice document to the addressee, false statement and the tearing of the notice document (art.52-56) ¹⁰.

Conclusion

Notice is related to the right to legal hearing and the right to fair trial. In the Turkish Notice Law, necessary legal regulations were made in order for the implementation of important principles such as the right to legal hearing in a case, fair trial and procedural economy.

Notice is possible through today's latest technical means such as electronic notice.

Notices not in due form are valid from the time of learning on.

If notice can not be given to the address stated, or if it has never been inhabited or it has been left, notice is given to the address in the address registration system.

If there are clear regulations in other laws regarding notice, priority is given to these specific regulations. This is valid for domestic law.

Bilateral and multilateral agreements are given priority concerning foreign notice. In other cases, provisions of article 25 and so on are enforced. The rule regarding notice about Turkish citizens abroad (art. 25/A) is given priority regardless of bilateral and multilateral agreements.

References:

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¹⁰ The following subjects are codified in the Notice Law: Examples of notice document and giving a receipt (art.8); Notice in case of a war (art.15); Notice in the performance of a profession or an art in a certain place or house (art.17); Notice in case of an addressee moving to a different place temporarily (art.20); Notice when the addressee is not able to sign (art.24); Obligation to notify address changes (art.35); If the addressee is an adversary (art.39); Notice at the Chief Public Prosecutor's Office (art.43); Notice in case of a military accident (art.44); Administrative notice (art.45-49); Financial notice (art.50-51); Notice to the proprietors of independent sections in places subject to the Property Ownership Law (additional clause 1).

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