

THE BANKING BAN ON UISSUING CHEKS ON THE ACCOUNT : HOW EFFECTIVE IS IT ?



FATMA ZOHRA BOUKETTA^{1*}

Faculty of Law and Political Sciences, University of Jijel- Algeria

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Abstract : A check ban is a banking measure imposed by a bank against a customer who has issued a check without sufficient funds and failed to settle it either within the legal deadlines granted by law or settled it in a manner other than those legally specified.

Given the purpose of imposing a check ban on a customer—which is to punish the customer for violating the rules of checks and for harming the beneficiary—with the aim of deterring the customer from engaging in the same behavior in the future, an examination of the legal rules addressing this issue may suggest the opposite result

.Key Words: Bank ban; Bank ; Check; Beneficiary; Bank account

المنع البنكي من اصدار الشيكات على الحساب: أية فعالية؟

ملخص: المنع من اصدار الشيكات تدبير بنكي يوقعه البنك على زبونه الذي أصدر شيكا من دون مقابل وفائه ولم يبادر بتسويته إما في الآجال القانونية التي يمنحها له القانون لذلك، أو قام بتسويته بطريقة أخرى غير تلك الطرق المحددة قانونا . وبالنظر إلى الغاية من توقيع المنع البنكي على الزبون، وهي عقابه الزبون مخالفته لأحكام الشيكات وعلى اضراره بالمستفيد، بغرض ردعه عن القيام بذات التصرف لاحقا، إلا أنّ تقصي القواعد القانونية التي تناولته قد يوحي بعكس هذه النتيجة.

الكلمات المفتاحية: منع بنكي ؛ بنك ؛ شيك ؛ مستفيد ؛ حساب بنكي

L'INTERDICTION BANCAIRE D'ÉMETTRE DES CHÈQUES SUR LE COMPTE : QUELLE EFFICACITÉ ?

Résumé: L'interdiction d'émission de chèques est une mesure bancaire imposée par une banque à un client ayant émis un chèque sans provision suffisante, et omis de le régler dans le délai légal ou d'une manière non conforme aux dispositions légales.

Cette interdiction vise à sanctionner le client pour violation des règles d'émission de chèques et pour le préjudice causé au bénéficiaire, afin de le dissuader de la récidiver. Toutefois, un examen attentif des règles juridiques qui régissent cette mesure peut suggérer le contraire de ce résultat.

.Mots Clés: interdiction bancaire; banque; chèque; bénéficiaire; compte bancaire

* bouketta_fz@yahoo.fr



Introduction:

Issuing a check without sufficient funds is a crime punishable by law; not only because it infringes on the beneficiary's rights, but also because of its other dimensions, particularly on the economic level. It strips the check of its function as a means of payment at sight, acting as a substitute for cash in various financial transactions. This is due to the loss of confidence in it and the reluctance to use it, as a result of the refusal to accept it as a substitute for cash in transactions, especially in the commercial sphere. In order to restore the prestige of this method and encourage people to accept it in settling their various transactions, the legislator amended the Commercial Code in 2005¹, including a number of provisions that cannot be described as new, as they were previously included in the regulatory texts issued by the Bank of Algeria, represented by Regulation No. 92-03, relating to the prevention and fighting the issuance of checks without funds², and Instruction No. 92-71³, which specified the procedures for its implementation. Their provisions were then re-established after their cancellation pursuant to the rules of Regulation No. 08-01⁴, regulating the same subject, amended by Regulation No. 11-07⁵, and Instruction No. 11-01⁶, which specifies how to implement it. Banks are required to impose a bank ban on the issuance of checks on any customer whose account is proven to have a payment objection in the form of a total or partial lack of funds for the check, and whose failure, after being notified by the bank, to settle it within the time limits and in the manner stipulated by law.

Similar to other legislation, the legislator was content to regulate the banking ban in terms of its causes, procedures, duration, and effects only, without clarifying its intended meaning. Islamic jurisprudence has addressed this, defining it as: ***“Depriving the holder of an account with a banking institution or similar or postal institution of his right to deal with, or use checks without restriction or condition***

¹ Order N°.05-02, of February 6, 2005, amending and supplementing Order N°.75-59, dated September 1975, containing the Commercial Code, JORA N°.11, of February 9, 2005.

² Regulation N°.92-03, of March 22, 1992, relating to the prevention and combating of check issuance, repealed, not published in the Official Gazette, published on the Bank of Algeria website: <https://www.bank-of-algeria.dz/stoodroa/2023/02/03-92.pdf>

³ Instruction N°.92-71, of November 24, 1992, determining the procedures for implementing Regulation N°. 92-03, of March 22, 1992, relating to the prevention and combating of the issuance of checks without payment (cancelled), not published on the Bank of Algeria website.

⁴ Regulation N°. 08-01, of January 20, 2008, relating to arrangements for preventing and combating the issuance of checks without funds, JORA, N°. 33, of June 22, 2008, amended and supplemented.

⁵ Regulation N°. 11-07, of October 19, 2011, amending and supplementing Regulation N°.08-01, dated January 20, 2008, relating to arrangements for preventing and Combating the issuance of checks without funds, JORA, N°. 08, of February 15, 2012

⁶ Instruction. N°. 11-08 sets out the procedures for implementing Regulation N°. 08-01, of January 20, 2008 relating to arrangements for preventing Combating the issuance of checks without funds, posted on the Bank of Algeria website:

<https://www.bank-of-algeria.dz/stoodroa/2023/03/11-01.pdf>



for a specific period as a result of his failure to pay due to a lack of funds or their insufficiency”¹.

Since the bank ban on check issuance is a preventive and punitive measure, the legislature has mandated banks to impose it. This measure aims at preventing and combating the crime of issuing checks without sufficient funds. This differs from the judicial ban on check issuance, which is considered a security measure or a discretionary supplementary penalty. The judge has the discretion to impose it on the convicted person².

Furthermore, the ruling is not limited to the person who committed the crime of issuing a check without sufficient funds, but also extends to persons who commit other crimes.

By imposing a bank ban on a customer, he or she is prohibited from issuing checks, both by the bank itself, which must retrieve the check forms still in the possession of that person prohibited from issuing, and by other banks, which are notified of this by the Bank of Algeria, either automatically or upon their inquiry at the Central Office for Unpaid Checks, before opening a new account for the customer. This prohibits them from opening this account or providing him or her with a checkbook.

The purpose of imposing a check ban on a violating customer is to deter him from engaging in such transactions in the future. Therefore, it is conceivable that the ban's scope would not be limited to the ban on dealing with checks alone, but would extend to other payment methods, such as debit cards. Furthermore, the account would be closed to better achieve this outcome. However, an examination of the implications of this measure and its scope of application may cast doubt on this, for two reasons:

First, the banned customer is not stripped of the right to use all types of checks, but rather retains, by force of law, the ability to issue some of them. He also retains the right to manage his bank account using other payment instruments.

Second, the scope of this ban from a personal perspective is, contrary to expectations, limited, so that its application does not extend to certain individuals who, through their own mistakes, caused the issuance of checks without adequate consideration. This raises the question: ***"Is it possible to achieve a bank ban from issuing checks to provide the required protection for the beneficiary and for the check itself as a tool, and to achieve the desired deterrence under the legal rules regulating it?"*** .

Answering this question requires shedding light on the scope of the ban's application from a personal perspective, i.e., identifying the individuals affected by

¹ Ahmed Shukry Al-SIBAI, *The Intermediary in Commercial Papers*, Part Two, Second Edition, New Knowledge Press, Rabat, MOROCCO , 2004, p. 353.

² Jean STOUFFLET, *Payment and Credit Instruments*, 8th Edition, Litec, Paris, FRANCE, 2014, p.349.



the ban, as well as clarifying the limits of its application from a substantive perspective, and the extent to which the banned individual is deprived of the right to use payment methods entirely or retains the right to use some of them.

This is done by relying on descriptive and inductive approaches, as well as analytical approaches.

THE FIRST TOPIC: **Restricting the scope of application of the banking ban in terms of persons**

A bank ban is a security measure intended to deprive a drawer acting in bad faith of the right to process checks¹, on all their accounts, regardless of their type, the bank holding the check, or the person who issued them². They are also supposed to be prohibited from using them, regardless of their capacity, whether as their own agent or on behalf of another. However, the legislator's definition of the persons legally subject to the ban appears somewhat odd, suggesting a contradiction between the legislator's intention behind the ban and the effectiveness of its regulation. A drawer's agent is not prohibited from issuing checks on their own personal account, and the drawer himself can draw checks on the accounts of others as their legal representative.

First requirement: Not preventing the agent from issuing checks on his personal account

The prohibition in the event of issuing a check through an agent who has been authorized to operate the bank account only affects its original owner, whether the latter is a natural or legal person, even though the material act that constitutes the defective issuance is attributed to him. Therefore, it is assumed that the prohibition extends to him as well in all his personal accounts, as a penalty for this action, especially if he was acting in bad faith and knew at the time of issuing the check that his client's balance was insufficient to cover its value.

However, the legislator adopted the material or objective application of the ban, and linked it to the account on which the payment viewer was registered, without considering the person who committed the violation, as preventing the principal, the owner of the account, from issuing leads to depriving his agents of this right as well, but on his accounts only³, without it applying to their own accounts⁴, as they retain the ability to issue on them without being subject to penalties that prevent them from doing so.

¹ André VARINARD, Hervé CROSE, Jacques PROUTAT, "A cause of the attack on January 3, 1975, relative to the prevention and to the pressure of infractions on the surface of the check : risk-free decriminalization trial ?", RTD commercial, edition Sirey, France, 1976, p.328.

² Article 526 bis 10/01 of Order N°.59-75, of September 26, 1975, containing the Commercial Code, JORA, N°.101, of 19, 1975, as amended and supplemented.

³ Article 526 bis 12/01 of the Commercial Code.

⁴ This is in application of the text of Article 526 bis 12/02 of the same Code, which states that:

"...the measure of preventing the issuance of checks taken against a person does not extend to his agents with regard to the conduct of his private accounts."



Although this provision applies the general rules of agency, which stipulate that the effects of the agent's actions in good faith are transferred to his principal¹, however, on the other hand, it ignores the other aspect related to holding the agent in bad faith responsible for the results of his actions that include exceeding the limits of his representation, such as, for example, issuing a check knowing that there is no sufficient amount to cover its value or without receiving an explicit and direct order from the agent to do so.

Whether or not the drawer claims that his agent is acting in bad faith, the bank is obligated in both cases to apply the ban to the drawer's accounts only, and not to extend it to the agent's personal accounts, as the latter remains outside the scope of this ban and is not affected by it, even if it is proven with evidence that the defective act of issuance is attributed to his principal and results from his exceeding the limits of the agreed-upon agency.

If the legislator had adopted the same ruling enshrined in the French monetary and financial law², the French Criminal Court of Cassation had contradicted it and taken a different position, when it decided to extend the measure of prohibition to the account of the representative of the legal entity and its agent in withdrawing checks, despite the fact that the payment viewer had been recorded at the level of the account of its agent, that is, the legal entity being represented³.

Through these provisions, the legislator expresses a strange confidence in the person of the agent who committed the criminal issuance. The matter becomes even stranger when the legislator recognizes the person prohibited from issuing the issuance as an agent for issuing on behalf of others.

Second requirement: Not depriving a person prohibited from issuing checks of the status of agent in drawing checks on the accounts of others:

If the right to issue checks is waived for the person prohibited from drawing checks on his personal accounts, he continues to draw checks on the accounts of others as their agent, as the legislator recognizes his right to represent others in issuing checks on group or individual accounts, provided that the original account holder is not also prohibited from drawing checks⁴.

This ruling contradicts logic and conflicts with the purpose of implementing the ban on issuing checks, as it authorizes the drawer to issue other checks without a balance, in his capacity as an agent for others.

It would have been more appropriate for the legislator to pay attention to this contradiction and work to remove it, by stipulating that the person prohibited from issuing checks is completely prohibited, regardless of the capacity he takes in doing

¹ This is what is stipulated in Article 74 of Order N°. 75-58, dated September 1975, including the Civil Code, JORA, N°. 78, of 30, 1975, as amended and supplemented.

² This is what is stipulated in Article 74 of Order N°.75-58, of 26 September 1975, including the Civil Code, JORA N°. 78, issued on September 30, 1975, as amended and supplemented.

³ See the two judgments of the French Court of Cassation cited by: Michel CABRILLAC, "Check", Repertoire commercial, Dalloz, February 2004, p.17:

-Cass.crim., February 8, 1982; D.1982.412; note Christian GAVALDA

-Cass.crim., October 9, 1989: D.1990.

⁴ This is what Article 526 bis 12/01 of the Commercial Code indicates.



so, whether as a principal or representative of others, in order to achieve the desired goal of the prohibition.

THE SECOND TOPIC :

The limited scope of the application of the ban on issuing bank check

A check-issuing ban is supposed to prevent the customer from using their account using checks, thus preventing them from committing any illegal check-issuing operations in the future. To achieve this goal, the bank must retrieve all remaining unused check forms. The customer is also supposed to be prohibited from using any other means of payment. However, it should be noted that the customer prohibited from issuing checks retains the right to withdraw funds from their account using certain types of checks. Furthermore, allowing them to use other means of payment.

First requirement: Maintaining the right of those prohibited from issuing checks to benefit from basic financial services:

Although the phrase "prohibition from issuing checks" has a general meaning and includes all types of checks, the legislator limited the prohibition on the account holder who was prohibited from issuing checks to withdrawing some of them. This allowed the account holder to withdraw checks designated for withdrawing funds from the drawees or to issue certified checks, and also granting him the right to use the payment or fulfillment card.

First section: Continued prohibition on issuing checks:

This ruling implicitly expresses the legislator's emphasis on the importance of the role played by checks in daily transactions for individuals and the inability to dispense with them completely. It actually comes in the context of recognising a minimum level of banking services for bank customers.

However, this ruling guarantees that those prohibited from issuing checks can manage their bank accounts and comply with regulatory requirements that require the use of checks in settling certain transactions, all of this unless the bank, upon the defective issuance, immediately terminates the account agreement and closes the latter, on the pretext that the client's personal reputation has been affected.

The ban imposed on the customer will not extend absolutely to all types of checks, but is limited to payment checks alone, i.e. those used by the drawer for settlement, such that the beneficiary is a third party, while the prohibited party retains the ability to issue two types of checks:

- Withdrawal checks are also called window checks, because they are given to the person prohibited from issuing them upon his request at the bank window level,



whereby he appoints himself as the beneficiary for the purpose of withdrawing his money deposited with the bank personally¹.

-Certified checks are regular checks presented to the bank on which they are drawn by the account holder to be marked with the evidence that it has sufficient funds to cover the amount. The bank is obligated to guarantee its availability and freeze it until the expiry of the check presentation deadline².

The bank may request that the customer replace the certified check with a bank check, which is a check issued by the bank at one of its branches in the name of a specific person after verifying the existence of a matching balance in the customer's account. If the bank retains the account³, it cannot refuse to allow a customer prohibited from issuing this minimum check service required by law.

However, implementing this provision calls into question the effectiveness of the prohibition, which requires the full implementation of the prohibition and the recovery of the remaining check forms in the customer's possession as soon as they are signed, under penalty of liability for any defective issuance based on these forms that have not been claimed. Meanwhile, withdrawal checks are merely the checks that remain in the customer's possession after the prohibition measure has been taken against them, which constitutes a contradiction.

Second section: **The right of the prohibited person to use the pay card**

While reserving the right to use checks and certified checks, those prohibited from issuing bank checks are free to use other payment methods as an alternative to checks, particularly debit and credit cards.

The Commercial Code and the regulatory texts issued by the Bank of Algeria are devoid of any legal provision prohibiting the use of payment methods other than checks. This is evident in the fact that the card-issuing bank is not obligated to reclaim the card from the customer after they have been prohibited from using checks. Rather, they are only obligated to recover any remaining unused check forms.

Furthermore, the law does not require them to take any other action against the customer, such as automatically blocking the card. The card-issuing bank does not automatically block the card, nor does it confiscate it.

¹ Jean-Louis RIVES-LANGE, Monique CONTAMINE-RAYNAUD, banking law, 6th edition, Dalloz Paris, FRANCE, 1995, p.289.

² Philippe NEAU-LEDUC, Banking Law, 3rd edition, Dalloz, Paris, FRANCE, 2007, p.194.

³ Article 477 of the Commercial Code.



Rather, the customer is free to manage their balance freely, withdraw funds from their various accounts, transfer funds from them via Bank of Algeria ATMs, and use them as a payment instrument via electronic payment devices. The account holder can also benefit from various remote banking services that require entering the card number manually or using QR code technology. In this context, a person prohibited from using bank checks can manage his account using transfer orders, as explicitly stated in Article 29 of Instruction No. 11-01. This calls into question the effectiveness of the check-issuing ban, and even suggests that it is useless as long as the prohibited person continues to benefit from the services associated with his account.

Second requirement: Non-binding closure of a bank account

Neither the provisions of the Commercial Code nor banking regulations stipulate that a bank prohibited from issuing checks must close the account of its prohibited customer as a subsequent measure.

The bank refrains from doing so, even if the violation of issuing checks without sufficient funds is proven to have occurred repeatedly within twelve months following the date of registration of the first settled payment objection. This means that the customer is a repeat offender and legal proceedings have been initiated against him for the offense of issuing a check without sufficient funds. This means that the account will not be closed unless the recognized legal grounds for doing so are met.

Unlike the case of a bank prohibition on issuing checks, issuing a postal check without sufficient funds, under certain conditions, leads to the closure of the postal current account. This closure is usually involuntary, a penalty not provided for in the event of failure to settle a bank check payment objection due to lack of funds or insufficient funds.

Algeria Post, at its sole discretion, will close the account of a customer who has been prevented from issuing postal checks if a number of conditions are met:

- The postal account holder has issued five (05) postal checks without sufficient funds in his account to cover them.
- This issuance must have occurred within three (03) years.
- These checks must have been issued for the benefit of a third party. If it is determined that they were issued for the benefit of the account holder, this does not lead to the account being closed. Algeria Post will simply deduct the applicable fee.



1. Postal checks presented for payment must be subject to the issuance of non-payment certificates by Algeria Post¹.

- Algeria Post must, before implementing the decision to close a postal checking account for those prohibited from issuing checks, notify the account holder in advance and give him/her notice by any appropriate means at least two months prior to the date set for closure².

In addition, it is noted that the legislator was satisfied with organizing the procedures and methods for imposing a bank ban on issuing checks on the bank accounts of its customers, and did not provide any other legal provision regarding the extent to which this ban extends to the rest of his other accounts opened at the level of the Algerian Post Office, as a financial institution.

Conclusion:

Despite the apparent intent of the Algerian legislature to combat the crime of issuing checks without adequate funds, which remains widespread in the banking sector³, this intent is reflected in the adoption of special rules for managing bank check bans and imposing them on any person proven to have committed an illegal check.

For the bank's check-issuing ban to achieve its desired goal, its effects must be fully and comprehensively implemented, both with regard to the persons affected by these effects and with regard to the accounts to which they extend and the methods used to manage them. The comprehensive implementation of these effects requires, in practice, the total deprivation of the banned person's right to dispose of his or her personal accounts as a principal, or of the accounts of others as an agent for their original owner, whether this disposition is through the checks themselves or other payment methods such as debit cards, and the conduct of various transfers to and from them. However, it is noteworthy that the legislator has not regulated this

¹ Executive Decree N°. 14-299, of October 21, 2014, setting the definitions of postal services and postal financial services in the system of privatization and universal postal service, JORA, N°. 63, of October 28, 2014.

² Article 17/6, 4 of Executive Decree N°. 20-295, of October 12, 2020, setting the conditions and procedures for opening, managing and closing postal current accounts, JORA N°. 14, of October 14, 2020.

³ For example, according to statistics provided by the Bank of Agriculture and Rural Development in Jijel, the Jijel branch alone recorded the following cases of bounced checks:

- 17 cases in 2024
- 18 cases in 2023
- 21 cases in 2022
- 34 cases in 2021
- 20 cases in 2020



banking measure with a degree of strictness and has narrowed its scope of application on both the personal and substantive levels, making it impossible to achieve the desired deterrence effectively. This can be demonstrated through the following findings:

- The ban is limited to denying the customer the right to issue checks on his own personal accounts, not on the accounts of others, as he retains the authority to act on behalf of the original owner.

- The person prohibited from issuing checks is not deprived of the right to use certain types of checks, such as withdrawal checks and certified checks, due to the impossibility of issuing them without a corresponding consideration.

- The person prohibited from issuing checks retains the authority to dispose of his bank account using payment methods other than checks, such as bank or postal cards, and to conduct various transfers and deductions.

- The bank is not obligated to close the bank account of the customer prohibited from issuing checks upon taking the ban measure against him, unless other legally stipulated reasons for closure are met.

- The legislator's silence on specifying the extent to which the banking ban applies to the customer's postal accounts, which can be interpreted as meaning that the customer retains the right to use and dispose of them.

To avoid these loopholes and make the bank ban on issuing checks more effective, it is necessary to:

- Extend the scope of the ban's application to the personal level so that it also includes the withdrawal agent, preventing him from disposing of his personal accounts and the accounts of others as well.

- The total deprivation of the person prohibited from issuing the right to use checks, regardless of their nature, even if they were drawn in his favor by appointing himself as the beneficiary, as a form of tightening the punishment against him and achieving better deterrence in the future.

- Explicit reference to the inadmissibility of using the prohibited item for all other payment methods such as payment cards, transfers, and deductions, and the prohibition is not limited to checks only.



-The bank is granted discretionary power regarding the possibility of taking a decision to close a customer's account, especially if several banking violations are recorded in his account, even if they are not related to the issuance of checks.

-The necessity of the legislator's intervention and its challenge to the scope of the accounts concerned by preventing them from being disposed of by issuing checks, and whether this extends to the customer's postal accounts if he owns them, or whether its scope is limited to his bank accounts. The necessity of the legislator's intervention and its challenge to the scope of the accounts concerned by preventing them from being disposed of by issuing checks, and whether this extends to the customer's postal accounts if he owns them, or whether its scope is limited to his bank account.

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3. Legal texts:

A-Legislative texts :

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-Order N°. 05-02, of February 6, 2005, amending and supplementing Order N°. 75-59, of September 1975, containing the Commercial Code, JORA, N°.11 of February 9, 2005.

B – Codes:

- French Monetary and Financial Code, available on the Legifrance Web-site (The Public Service For The Dissemination Of law):

<https://www.legifrance.gouv.fr/loda/id/LEGISCTA000006100807>

C-Implementing texts :

-Executive Decree N°. 14-299, of October 21, 2014, setting the definitions of postal services and postal financial services in the system of privatization and universal postal service, JORA, N°. 63, of October 28, 2014.

-Executive Decree N°. 20-295, of October 12, 2020, setting the conditions and procedures for opening, managing and closing postal current accounts, JORA, N°. 14, of October 14, 2020.

D- Regulatory texts :

1 -Regulations issued by the Bank of Algeria

- Regulation N°.92-03, of March 22, 1992, relating to the prevention and combating of check issuance, repealed, not published in the Official Gazette, published on the Bank of Algeria website:

<https://www.bank-of-algeria.dz/stoodroa/2023/02/03-92.pdf>

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