THE CHEQUE, PAYMENT INSTRUMENT IN DOMESTIC AND INTERNATIONAL TRADE RELATIONS

Brief considerations in light of the changes to the Law no. 59/1934 by GEO 38/2008

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Abstract

As a corollary of the unprecedented development known by information technology in the last decade of the twentieth century and the first decade of the twenty first century, at the global banking system level telematics was implemented. This is a long-distance transmission technology of digital information that combines computer science with satellite communications and public and private web networks.

Consequently, the celerity that characterizes economic changes has imposed the transmission – through this system – of debt instruments in order to settle them quickly. As such, the banking practice required the presentation for payment in order to settle traditional payment instruments, paper-based, by means of computerized process.

For these reasons we can state that electronic payment instruments represent the digital image of paper-based payment titles, of which the presentation for payment is made by using computer techniques.

Key words: payment, payment instruments, debt securities, cheque

Section I
Notion. Form requirements. Particularities

1. *Notion. Form requirements. Particularities.* Unlike the bill of exchange and promissory note, the cheque is not a credit title, although the holder may endorse it and thus delay its presentation for payment, reason for which it was classified as payment instrument.

Similar to the two previously analyzed credit titles, the cheque has also generated much controversy in practice, due to legislative differences between states, which is why was the object of a Convention of uniform regulation in the continental law.

However, its legal regime being different from the credit titles, the cheque experienced a separate regulation in the European continental law system, therefore being the object of the Geneva Convention of 1931.

As in the case of credit titles analyzed, regarding the cheque were also adopted *three conventions*, namely *one on the cheques*, by which signatory states were obliged to introduce into national legislation, without amendment, the text of the Convention accompanied by two annexes, one containing the uniform law text, and the second the points where national laws could depart from uniform regulation; the *second consisted of conflicts of laws in time in terms of cheques*, and the last one had as object the *stamp right in terms of cheques* by which the signatory states were obliged to amend their tax law, in the sense that obligations under cheques or the exertion of rights arising therefrom are not subject to the legal provisions relating to stamp.

Although Romania has also participated in the work of this Convention, it has not ratified it and proceeded as in the case of credit titles when took on the Italian legislation, which transposed into the Italian law the Geneva Convention of 1931 on cheques, under the name of Law no. 59/1934 on cheques.

Since the Geneva Convention of 1931 on cheques does not define the cheque, neither the national legislation include such a *definition*, limited only to indicate its defining elements according to which we can state that the *cheque* is a payment instrument, by virtue of which a person named drawer orders to a credit institution named drawee and where has a corresponding cash available, to pay an amount at the submission of the title to a person named payee[1].

Unlike the uniform regulation of Geneva, in the legal system of common law, the cheque is governed by the bills of exchange law, being considered a species of it. Therefore, the English law[2] states that the cheque is a bill of exchange drawn on a banker and payable on demand, while U.S. law[3] specifies that the cheque is a different bill of exchange than the documentary, drawn on a bank and payable on demand.

Regardless of the legal system that governs it, the parts that contribute to the creation of a cheque are in number of three, similar to the bill legal report, namely the drawer which is the creator of the instrument, the drawee which is a credit institution and the payee which is the recipient of the amount mentioned in the cheque.

Nevertheless, the cheque is different from credit titles on demand in that on its issuance is necessary to have the *provision*, meaning available money in the current account opened at the credit institution from which payment is to be made. It is not relevant if the money comes from the drawer's bank deposit for the drawee or from a loan granted by the drawee to the drawer or cashing operations.

It is worth noting that in light of the Geneva Convention of 1931 on cheques, the mandatory requirement for issuing any cheque is the existence of the provision[4].

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[1] O. Capatana, B. Stefanescu, op. cit., pg. 93;

[2] In the English law the cheque regulation is called the Bills of Exchange Act;

[3] In the American law the regulation is called the Uniform Commercial Code;

[4] Art. 3 of the Geneva Convention of 1931 on cheques states that the cheque is drawn on a bank holding funds available to the drawer, based on the express or tacit agreement of the parties, according to which the drawer has the right to dispose of these funds by check;

National law requires additionally the existence of available funds prior to issuing the cheque and it must have at least the amount stated in the cheque[5].
The mention provided additionally by the national legislation did not imposed an excessive requirement to the issuance of the cheque but complied with the provisions of art. 4 of annex no. 2 of the Geneva Convention on cheques, under which states were allowed to introduce in their national legislation art. 3 of the uniform regulation, adapted to the best conditions necessary for purpose of uniform law on the matter.
Therefore, unlike credit titles, to the issuance of the cheque must be performed a number of requirements, namely the prior existence of the amount in the account opened at the drawee, the amount thereof to be at least the amount stated on the cheque and to exist no legal or material obstacle on its availability.
However, regarding the cheque, the legal relationships between the drawer and drawee do not arise from a fundamental relation as in the case of credit titles, but from a front-office banking service[6] with dual function, by which the credit institution shall authorize the drawer to draw cheques on him and the drawer shall mandate the drawee to make payments from his current account on his behalf, as instructed.
In the same vein we show that unlike the bill procedure, in terms of the cheque the drawee must not accept the instrument prior to payment, as it acts as the representative of the drawer and not as holder of a payment obligation arising from the cheque.
Nevertheless, the drawer – on its own initiative or on payee's demand – may present the cheque to the drawee for confirmation. In such a situation, any mention of certification, of view or other equivalent written in the title and signed by the drawee, has only the effect of confirming the availability in the drawer's account, while preventing him to dispose of the amount before the due date for the payment of the cheque[7].
In the same vein, we note that the Anglo-American law does not establish any mandatory provision, such payment instrument can be drawn also when there is lack of availability in behalf of the issuer, under the condition of a contractual commitment (consideration) between the drawer and drawee[8]. Consequently, the drawer of a cheque governed by the Anglo-American regulation may order the payment from two categories of accounts, an account related to a bank deposit called *deposit account*, in relation to which the issuer of the cheque is called the *depositary* and a current account called simple account, situation in which the drawer is called the *account holder*. In both cases, the drawer receives from the credit institution two books, of which one of account in which the issuer must

[5] Art. 3 par. 2 thesis I of Law no. 59/1934 on cheques;
[6] Art. 3 of the Geneva Convention of 1931 on cheques; Art. 3 par. 2 thesis III of Law no. 59/1934 on cheques;
[7] Art. 4 of Law no. 59/1934 on cheques;
[8] In the Anglo-American law the contractual arrangement between the drawer of a cheque or a bill of exchange, under which the credit institution takes a payment commitment is called *consideration*;

disclose all amounts paid or withdrawn and a second book that contains a number of cheques numbered.

Subsection II
Basic requirements of validity of a cheque

2.1. *Basic requirements of validity of a cheque.* In accordance with the Geneva Convention of 1931 on cheques and also with other relevant national legislation, the conditions of the form of cheques are basically similar to those of credit titles but with the particularities of this payment instrument.
The Anglo-American bill of exchange law states that for the validity of cheques are applicable the same form conditions of bills of exchange, under penalty of nullity.
Therefore, in accordance with provisions of art. 1 of the uniform law of Geneva on cheques and similarly the same article of the national legislation, under penalty of nullity, the cheque should include mandatory the name of cheque, the unconditional order to pay a sum of money, the name or denomination of the credit institution that must pay, place of payment, date and place of issuance and signature of the drawer.
As can be seen, the mandatory mentions of the cheque are fewer compared to those of the bill of exchange. Therefore, in a cheque should not be mentioned any beneficiary or maturity. Hence the indication of the payee arranged by cheque is optional for the drawer, who can issue it either *"on order"* or *"bearer"* which makes irrelevant mentioning the payee in the title, or with *"not on order"* clause, case in which the endorsement is prohibited, but in the same time the transmission path of the cheque is open to voluntary assignment of common law.
If the cheque was drawn on the order of a certain person mentioning on the title also the phrase *„or bearer"* the payment title shall be deemed to have been drawn on bearer.
Regarding the lack of *maturity* of the cheque's mentions, this is justified by the fact that as means of payment in sight, it is no longer necessary to mention its maturity as titles with such maturities are payable on presentation and any such statement inserted on the title is not opposable to the holder who may present it for payment at any time, but in the period of presentation under penalty of forfeiture of the right of recourse.
We believe that also in the case of payment titles represented by cheques, the national law should be amended similar to the amendment proposition of the law on bills of exchange and promissory notes, in the sense of being governed the possibility of payment in instalments of the amount stated in the title, along with immediate chargeability, ope legis without any other formality, of the whole amount to be paid in case of missing a payment at the stipulated deadline.
In relation to these provisions of the regulations relating to cheques, it follows that the drawer's rights in nominating the drawee are limited to the scope of credit institutions[9] and, regardless, the issuer cannot draw it on him unless there are two

[9] Reason for which the doctrine named it bank title; J. P. Le Gall, *Droit commercial [Commercial law]*, 6th edition, Paris, Dalloz, 1983, pg. 24;

separate legal entities and with the conditions not to be *on bearer*, and the failure to indicate the maturity turns it into an instrument payable on demand only.

2.2. Regarding the conditions of validity of a cheque, we note that its *name* should be mentioned in the text of the title, under penalty of nullity and be expressed in the language used for writing the title.

In the Anglo-American law, the cheque is considered a species of the bill of exchange, the lack of name does not affect the validity of the title.

2.3. *Unconditional payment order*. Under penalty of nullity, the cheque should include the order addressed to the drawee, to pay at the presentation title, the amount of money mentioned therein, to the payee or bearer or at their order. The payment order shall not contain any condition affecting payment on title presentation to the credit institution designated for payment.

The amount that is subject to payment should be mentioned both in figures and in letters in the content of the cheque and in the event of inconsistency prevails the entry made in letters, and if there are differences in value between the amount written in words and figures, is given credit to the lower value[10].

Both the regulation of Geneva and the national regulation prohibit the stipulation of interests because the title has the maturity on sight, case in which the lack of diligence by the holder of the title expressed by the failure to be presented for payment may not be covered by stipulating an interest clause[11].

2.4. *Name or denomination of the payer*. Under penalty of nullity, the title must include the name or denomination of the credit institution, of the drawee where cheque must be presented for payment.

Given the title, the drawee is not required to accept it because, *on the one hand*, its maturity is in sight, *and on the other hand*, the drawer of a cheque is kept as a bill of exchange acceptor or issuer of a promissory note, as long as payment obligation incumbes them, although the funds transfer operation is performed by a credit institution authorized for that purpose by the drawee.

The uniform regulation of Geneva and the national regulation expressly provide that any mention of accepting the cheque is counted unwritten[12]. However, the cheque can be presented to the drawer for confirmation[13]. In such a situation, any mention made by the drawee is to certify the existence of the amount stated in the title, and since that time the drawer is prohibited any act that would target the availability in the account up to the amount stated on the title before reaching the deadline for payment.

In the same vein we support the idea that for similar reasons the aval given by the drawee is also excluded because it be equated with acceptance[14]. Consequently it follows that in the absence of acceptance, the drawee nominated in a cheque does

[10] Art. 9 of the Geneva Convention of 1931 on cheques and art. 9 of Law no. 59/1934 on cheques;

[11] Art. 7 of the Geneva Convention of 1931 on cheques and art. 7 of Law no. 59/1934 on cheques;

[12] Idem art. 4 par. 1;

[13] Art. 6 of the Geneva Convention of 1931 on cheques and art. 4 alin. 2 of Law no. 59/1934 on cheques;

[14] O. Capatana, B. Stefanescu, op. cit., pg. 94;

not assume any obligation to guarantee payment derived from the fundamental relation the creation of the title was based on.

Thus the drawee has the only obligation to pay the amount mentioned in the title, within the limit of funds available and without its responsibility for refusing the cheque or paying partially the cheque, because in this case the drawee has only the role of solvens for the drawer[15].

At the same time, the responsibility for refusing the payment of the cheque remains of the drawer as guarantor of the sum payment and any clause that it tends to remove all or part of its liability is counted unwritten[16].

2.5. *Place of payment*. Regarding the place of payment of the cheque, it shall be explicitly stated in the title, given the drawee's quality of representative for payment. However, the omission to mention the place of payment on the title is not sanctioned by its nullity because both uniform regulation of Geneva and national regulation have established a legal presumption of the place of payment, meaning that it will be considered as such the place mentioned beside the name of the drawee[17].

If any place near the drawee's name is not indicated, combined with the lack of mention of the place of payment, attracts the incidence of special provisions[18] under which the title is to be paid at the principal headquarters of the drawee.

However, if several places of payment are mentioned, the cheque is to be paid at the first place indicated. Also, the national legislation on cheques held that such a title can be also paid at the residence of a third party, either in the same place as the drawee or from another place, but the third party must be always a credit institution[19].

Nevertheless, any title created on national territory but payable abroad is valid even if the drawee is not a credit institution[20].

In the same vein we note that the regulation of Geneva on cheques has admitted the possibility – for participating states at the adoption of the Convention or acceded to it subsequently – of stipulating within national laws the possibility to pay the cheque at the residence of a third party other than a credit institution[21].

2.6. *Date and place of issuance.* The date must appear on the title as according to this it is calculated the deadline for payment of the instrument, regardless of the maturity mentioned by the drawer on the cheque.

According to the regulation of Geneva the cheque may be post-dated, making it payable anytime from the day of its issue. This option was removed from the national legislation by art. I, pt. 6 of GEO 58/2008 on the grounds that the date of

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[15] O. Capatana, B. Stefanescu, op. cit., pg. 94;

[16] Art. 12 of the Geneva Convention of 1931 on cheques and art. 13 of Law no. 59/1934 on cheques;

[17] Art. 2 par. 2 of Geneva Convention of 1931 on cheques and art. 2 par. 2 of Law no. 59/1934 on cheques;

[18] Art. 2 par. 3 of Geneva Convention of 1931 on cheques and art. 2 par. 3 of Law no. 59/1934 on cheques;

[19] Art. 8 of Law no.59/1934 on cheques;

[20] Art. 3, par. 1, the IInd thesis of Law no.58/1934 on cheques;

[21] Art. 10 of the IInd annex to the Geneva Convention on cheques;

issue would be treated as of a so-called due date, provided that the cheque is a payment instrument in sight[22].

Regarding the place of issue of the cheque, it has relevance in relation to the payment submission of this title[23]. Under the national legislation, the current text of paragraph 1 of art. 30 of Law no. 59/1934 on cheques provide the presentation for payment of any cheque issued and payable on the national territory within 15 days from date of issue.

Regarding cheques issued outside the national territory but inside the European continent and payable in the country, they should be presented for payment within 30 days from the date of issue and in the situation where issuance is outside Europe and payable in Romania, to be submitted for payment within 70 days from the date of issue[24].

Where there is a difference between the calendar of the place of issue and of the place of payment, the period is calculated by reference to the date of issue at the calendar of the place of payment.

However, if the place of issue is not indicated on the title, is activated the legal presumption under which the place of issuance of the cheque is considered the one shown next to the name of the drawer.

2.7. *Signature of the drawer.* In accordance with the regulations of both bill of exchange law systems, in order to worth as payment title the cheque must be signed by the drawer.

Regarding the signature on the cheque, the uniform regulation of Geneva does not provide its definition but, as in credit titles, mentions that the signature must include the name and surname or the name of the legal entity committed to pay. Hence the signature of any payment title must necessarily include the elements of identification of the drawer that must be associated with the handwritten signature of the individual or the legal entity representative, in order to be achieved the

[22] The modifying normative act respectively GEO no. 38/2008 established a single payment term within 15 days, justifying in the sense that for the payment, cheques are subject to a centralized electronic processing by credit institutions and terms differentiation for presenting to payment according to place of issue and of payment would not be applicable. We do not share this view as the justification of the national legislator is irrelevant as long as it confused the deadline for payment of a cheque, as it was regulated by art. 30 par. 1 of Law no. 59/1934, with the actual payment of this title. We support this opinion because the change affected all professionals in good faith as by this was done only the safeguarding of the interests of the non-diligent holder of the cheque, by doubling the term of drawer's, given that both the drawer and place of payment were located in same locality, with the consequence of affecting the drawer's exclusive interests;

[23] Until the amendment of 2008, art. 30 par. 1 stated that if the place of payment was situated in the same locality as the issue, then the title, under the penalty of loosing the right of recourse, it had to be presented for payment within eight days since its creation, and if the place of payment was located in another place, the cheque had to be presented for payment within 15 days from issuance.

[24] Art. 29 of Geneva Convention of 1930 on cheques and art. 30 par. 2 of Law no. 59/1934 on cheques;

individualization of the drawer, as guarantor of payment of the sum mentioned in the title.

Consequently, the uniform regulation – although it does not expressly specify – allows the drawer to sign the title also by processes other than handwritten, at the standards and procedure laid down by the regulations on information technology, thus meeting the current requirements of economic exchanges characterized by celerity.

Nationally, pending the amendment of Law no. 59/1934 on cheques – conducted by GEO 58/2008 – regarding the signature of the drawer on the cheque, the provisions of the law were similar to those of the uniform law of Geneva. Subsequently, by the changes brought to it, was held that changes the signature[25] must include the name and surname of the individual or the name of the company or entity that commits, as well as the handwritten signature of the individual or company representative or entity representative committed to pay.

In these conditions, according to the mandatory provisions of the law, a payment title, the cheque, cannot be signed under the conditions and procedure laid down by the regulations on information technology because it must necessarily contain the handwritten signature of the person who undertakes to pay the amount in the title. From this perspective, we argue that although amendments to the law on the signature in payment titles was intended to be a modern one, actually represents a decline of quality of regulation in the field.

In such a situation we consider that art. 11 of Law no. 59/1934 on cheques must be adapted to the realities of international banking practice admitting the signature of such titles also by other electronic or mechanical methods that allow the certain identification of the signer.

Regarding the signature on the credit titles of people who were not representative of the drawer, the regulations in the field provide that they are committing personally, and if the cheque has been honoured to payment, they acquire the same rights they would have had if they worked as a representative[26]. The same rule applies also if the representative goes beyond the limits of the mandate that was given by the drawer.

If a power of attorney was granted to a person by the drawer and the mandate was stated in general terms, the issuance of payment titles by it commits the trustee patrimonial because, as general as the terms of the mandate may be, they also include the right to sign cheques. To avoid such situations the mandate should expressly contain the phrase *"cannot issue cheques"*.

However, if the payment instrument shall bear the signatures of people who could not oblige by cheque or forged signatures or belonging to imaginary people or could not force people who signed the title because they were altered for any reason, the obligations of other signatories of the payment title remain valid[27].

Also in case of loss of possession on the cheque for reasons beyond the control of the person who lost it, the owner in whose hand reached the title is not bound to

[25] Art. 11 of Law 59/1934 on cheques, amended by art. I, pct. 1 of the GEO 38/2008;
[26] Art. 12 of Law no. 59/1934 on cheques;
[27] Idem art. 10;

hand to whom claim its loss, regardless whether the title is to bearer or transferable by endorsement, if proofs its good faith[28]. Per a contrario it results that if the new owner is dishonest or has committed a serious mistake in acquiring the title has the obligation to hand it back to the person who lost the title.

Subsection III
Movement of a cheque. Guarantee of a cheque. Payment of a cheque

3.1. *Movement of a cheque*. The transmission of the cheque is in fact its legal movement. Given its nature of payment instrument, the purpose of which is to obtain cash, the movement of this title is narrower than of the credit titles[29].
However, regarding the legal movement of such a title, in the doctrine were outlined two opinions. In the first opinion[30], it was considered that the cheque is at order, to bearer and transferable by assignment, and in the second[31] was told that the cheque is nominative, at order and to bearer.
As can be seen, the divergence of opinion includes only the *cheque transferable by endorsement*, according to the first opinion, respectively the *nominative cheque*, according to the second.
In support of the first opinion was appreciated that the regulations on cheques, *likely to be transmitted by endorsement*, does not establish mandatory formalities required to nominative titles – procedure that is carried out with the mandatory involvement of the issuer of the title or its representative – respectively the enrolment in the issuer's special register of the mention on the transfer of property, followed by confirmation by autographed signature of the alienator and acquirer, as well as mentioning the name of the new owner of the title.
The argument pleading in favour of the second opinion was mentioning the name of the payee on the title, in conjunction with the insertion of the clause *"not at order"*.
As far as we are concerned we agree with the first opinion and additionally we mention that, first, the law regulating the legal status of cheques has the character of special law[32] in relation to the common law, with provisions of which was made the analogy in issuing the second point of view. In such a situation is incident the principle of law expressed by the Latin adage *specialia generalibus derogant*.
In these circumstances we support that it cannot be derogated – by reference to common law – from provisions of the special law – *which in art. 5 par. 3 held that the cheque stipulated payable to a particular person* (nominated n.n.) *containing the clause "or bearer" is considered bearer cheque.* If the legislator had intended to name the cheque where the payee was nominated as nominative, the text of par. 3 of art. 5 would have been the most convincing example as in the regulation referred to, the first alternative would have been preferable. Consequently, in light

[28] Art. 21 of Geneva Convention on cheques and art. 22 of Law no. 59/1934 on cheques;
[29] O. Capatana, B. Stefanescu, op. cit. pg. 95;
[30] Ibidem;
[31] St. D. Carpenaru, op. cit. pg. 519; I. Macovei, op. cit., pg. 356;
[32] Law no. 59/1934 on cheques, with subsequent amendments;

of this regulation and keeping the principle of legal texts symmetry it follows that neither the cheque payable to a person nominated stated *"not at order"* is nominative but *represents a special category of such titles*.

Moreover, in the European continental law is widely acknowledged that, although experienced a separate regulation, the cheque has borrowed many features from the bill of exchange, but with a number of peculiarities that differentiates it, and in the legal system of common-law it is considered a species of it.

We also support that a beneficiary nomination in a payment title stipulated "not at order" was imposed by the legislator not to turn such a title into one nominative but to not facilitate its legal movement and confer the holder the ability to transmit it by way of assignment of debt, knowing the strictness of this procedure due to the solemnity that characterizes it.

Therefore, similar to the bills of exchange stipulated "not at order", cheques with payee nominated transmissible by assignment of debt, represent a distinct category of titles rarely encountered in practice and that comparative law did not likened with nominated titles[33].

The endorsement must be written on the cheque[34] and signed by the guarantor, as its person should be individualized, as it is bound to pay, if there is no contrary clause. The guarantor may prohibit the transmission of the title by a new endorsement, in which case it does not respond to people who have been endorsed the title subsequently[35].

The endorsement has the effect of transferring all rights deriving from the title from the guarantor to endorsees. However, if the endorsement contains one of the words "value coverage", "for power of attorney" or any other expression that suggests a simple mandate, the holder of this title may exercise all the rights that arise from it, but it cannot endorse it only as a proxy. In this case, the mandate contained in the endorsement "for power of attorney" does not end by the death of the principal, or civil incapacity or only its restriction.

3.2. *Payment of a cheque*. Payment of any cheque, drawn and payable within the national territory is always made by a credit institution. Per a contrario, it follows that cheques drawn on national territory but payable abroad may be presented for payment also to an entity or person other than a credit institution.

Regardless of the quality of the person honouring the payment of a cheque, it meets this obligation on behalf of the drawer, because it is not bill of exchange bound but acts as a drawer's representative for payment.

Being an immediate payment instrument, the cheque cannot be accepted and any such written statement counts as unwritten. As an exception, the cheque can be presented to the drawee confirmation, but the statement made by it on the title represents a certification of the existence of available funds in the drawer's account

[33] Hamel, Lagarde, Jauffret, op. cit, pg. 762;

[34] Until the amendment of par. 1 of art. 17 of Law no. 59/1934 on cheques by art. 1, pct. 2 of the GEO no. 38/2008, the law provided the possibility for writing the endorsement on both the cheque and the addition (allonge) thereof;

[35] Art. 19 of Law no. 59/1934 on cheques;

and also a promise to maintain the amount indicated on the title in the drawer's account until the expiry of the presentation term for payment of the cheque.

Thus, if the cheque was drawn on national territory and is payable within the borders of the country, in order to collect the amount stated on the title, cheque must be presented for payment within 15 days from date of issue[36]. If issued in a European country and is payable in the country it should have been presented for payment within 30 days from the date of issue and if issued outside the European continent and is payable in the country must be presented for payment within 70 days after issuance. Payment terms are calculated from the day stated in the title as the date of their issue.

Regarding cheques issued on national territory and payable abroad, terms for presenting to payment are calculated according to the applicable law at the place of payment.

Not presenting the cheque for payment within the deadlines set out above, does not penalizing the owner to forfeiture of the right to demand payment of the drawee but it only decades the right of recourse against the other committed by cheque, if the drawee has not honoured the payment of the cheque. The holder's claim right arising from the quality of legitimate holder of the cheque remains intact throughout the statute of limitations period provided by law, in which it may require payment of the amount stated in the title.

In order to pay, the credit institution is *essentially* required to verify the form conditions of the cheque[37] and to confront the signature specimen filled by the drawer when opening the account with that in the title, and *in subsidiary*, the quality of the legitimate owner of the title by the claimant of payment, by checking the unbroken string of endorsements.

The presentation of a cheque to payment can be made both by presenting the original and by truncation.

Initially, until the amendment of Law no. 59/1934 by the GEO no. 38/2008, presenting cheques for payment was made at the national level, by presenting the original cheque on paper. After the amendment brought by GEO no. 38/2008, with the possibility of presenting cheques for payment by truncation, to the initial conditions were joined a number of new provisions.

Thus, by the new art. 32^1 of Law no. 59/1934 on the cheque, it was held that a cheque can be presented for payment both in original and truncated.

Truncation is a processing technique consisting of transposing electronically the relevant information from the original paper-based cheque, followed by the reproduction of its image electronically and sending them through the information technology of the paying credit institution (where the solvens opened its account) by the accipiens credit institution (payment creditor).

In such a situation, the presentation for payment is considered made on the date on which the solvents credit institution has received the electronic transmission and the responsibility for checking the regularity of sequence endorsements and

[36] Art. 30 of Law no. 59/1934 on cheques;

[37] Art. 35 of the Geneva Convention of 1931 on cheques;

compliance of data collected electronically with those in the original title is of the credit institution that has submitted the title to payment by truncation[38].

After receiving payment, the credit institution who presented the cheque for payment by truncation and in which possession is the original title, is obliged to take all necessary measures to eliminate the risk that title is to be reinstated in service.

However, if the cheque presented for payment by truncation was refused by the solvents credit institution, although initially accepted, the credit institution where is the original title is forced to mention in the title the payment refusal upon electronic notification received from the paying credit institution, which must include date of payment of the title and statement of refusal dated and signed by its legal representatives or assigns[39].

Regardless of the method of presentation of payment title, in original or by truncation, basically the cheque payment is made for the entire amount mentioned in it, but if the available funds were insufficient, payment may be partial and the accipiens owner-creditor cannot refuse it.

In the situation where the full amount was paid, the drawee is entitled to require the holder the original title with the word paid written on it. If payment was made partially, the drawee cannot claim the original title, but can mention it on the cheque, also releasing a proof of this.

However, in accordance with the provisions of cheque regulation, as in the case of bill of exchange, cheques drawn in one country but payable in another may be issued in several identical copies, except bearer securities. In such a situation, when creating the payment title, the drawer should number them because otherwise, each copy is regarded as a separate cheque.

Payment of any copy shall discharge the drawer and drawee even in the absence of express mention in the text of the title, according to which, the payment of any copy invalidates the other.

Also, if each copy of title was sent to different people by endorsement, both initial and subsequent endorsers remain bound under all copies they have signed and were not returned to them.

In the event of the text alteration of such payment title, signers subsequent to its alteration are held responsible for payment under altered text, the previous under the original text and if the title does not show the filling date of signature by subsequent committers, it is presumed that they were committed before alteration.

[38] Art. 32^2 of Law no. 59/1934, as subsequently amended;
[39] Art. 32^3 of Law no. 59/1934, as subsequently amended.

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