

# CRIMINAL CASES RELATED TO CHEQUES IN THE LIGHT OF THE OMANI LITIGATION PROCEDURES FACILITATION LAW PURSUANT TO ROYAL DECREE NO. 125/2020

AHMED O. K. HOSNIA<sup>1</sup>, CHAMI YASSINE<sup>2</sup>

<sup>1</sup>Assistant Professor of Criminal Procedure Law, Collage of Law, Dhofar University, Sultanate of Oman

<sup>2</sup>Assistant Professor of Civil Procedure Law, Collage of Law, Dhofar University, Sultanate of Oman

<sup>1</sup>Email: [dr.ah.hasania@gmail.com](mailto:dr.ah.hasania@gmail.com)

<sup>2</sup>Email: [prof.yassine@yahoo.com](mailto:prof.yassine@yahoo.com)

## ABSTRACT

*The study included the legal nature of the different forms of crimes committed on cheques by highlighting the most important crimes on cheques and how they are dealt with before the judiciary under the law of facilitating litigation procedures. The study was divided into two sections, where the first section dealt with the legal nature of crimes against cheques by dealing with the concept of the cheque and its characteristics in addition to images of crimes against the cheque. To achieve the objectives of the article, doctrinal legal research methodology using a qualitative approach was adopted. The study reached results, the most important of which are the procedures specified the period within which the cheque case must be decided within a maximum period of 60 days, and the legislator limited the litigation stage in this type of case to two levels, primary and appeal only. Therefore, the rulings issued by the Court of Appeal regarding cheque offenses are not subject to appeal before the Supreme Court. The study also recommended that the legislator make a special regulation for the duration of the cheque case in the pre-trial stage, whether before the police station or the public prosecution, in addition to specifying a specific period of time for this case to remain with these authorities, in order to ensure the speedy consideration and decision on it.*

**Keywords:** cheques, crimes, cheque lawsuits, litigation procedures facilitation law.

## 1. INTRODUCTION

Legislation is the only legitimate means to preserve rights and stabilize conditions in society, as laws are still seeking to create a fertile environment for dealing with developments and changes in society, whether in dealings or in the field of criminalization and litigation. And since the Omani legislator is always interested in containing societal issues, the Omani legislator always seeks to find solutions that would lead to facilitating procedures among the public of litigants in a way that guarantees them obtaining and protecting their rights (AlShihi, 2006).

Moreover, with the development of economic life and the expansion of commercial dealings, which was matched by an increase in dealing with cheques due to its characteristics such as the ease of carrying them, as they replace money, in addition to the speed in circulation, individuals have the right to withdraw the value of the cheque from any banking institution that is specified. This is what is supposed to be dealt with cheques within the framework of the legal image that was drawn for them as a commercial paper that replaces money (Shahrokhi, 2008).

This commercial paper requires that its issuance be covered by the drawer's account in a way that enables the beneficiary to get his entitlement on the due date included in the cheque, and that the total money in the account of the drawer with the drawee covers the value of the cheque without any decrease. This is the image drawn by the legislator of the cheque, and accordingly, the legislator organized its provisions, which enhance confidence among customers in this commercial paper.



On the contrary, some practices have lost confidence in the dealing and circulation of cheques, as a result of the spread of fraud and embezzlement crimes against individuals, mainly related to cheques, which forced the legislator to intervene to impose legal and banking protection by criminalizing these practices and imposing the necessary punishment to limit their spread (Van der Woude, & van der Leun, 2017).

In addition, cheque crimes have become a concern for the legislator as a result of the growing number of files presented to the judiciary, which constituted pressure and burden, which negatively affected the guarantee of rights due to the long period during which such crimes are adjudicated. This issue is not a desire on the part of the judiciary to prolong it, but rather the fact that the judiciary is obligated to respect the provisions of the law and apply them properly. And in the face of bad faith in litigation on the part of some, which is difficult to prove, since its essence is the use of legitimate rights, such as the legal periods specified for procedures in cheque cases that did not have the privacy that protects the trust that this commercial paper possesses. This prompted the Omani legislator to ensure that litigation procedures are carried out, facilitated, and quickly decided upon through legislative intervention, according to what will be detailed later (AlShihi, 2006).

This study came in order to investigate the essence of an issue that is considered the most important at the present time, and therefore the need to identify the legal nature of it and to explain the new legislation introduced by the Omani legislator to block the way in front of the manipulators with the trust of this commercial paper as a tool of fulfillment. Also, a legal solution was put in place for the biggest problem that was facing the field of cheque cases, which is the lengthening of the litigation period.

## **2. RESEARCH PROBLEM**

Recently, it has been noticed that the number of cheque cases before courts of various degrees of litigation has increased and that some defendants deliberately prolong litigation, claiming bad faith, by forging cheques issued by them. However, some of the victims file more than one criminal case for a single cheque before several courts, based on the original cheque and copies thereof. In addition to using legal deadlines for appeals before various courts to prolong litigation in a way that threatens the rights and legal positions resulting from the issuance of these cheques by the drawer. Therefore, the following problem arises. To what extent will the Omani Litigation Procedures Facilitation Law contribute to reducing the problems arising from crimes involving cheques?

## **3. RESEARCH METHODS**

This study employed doctrinal legal research methodology (Sun & Zhao 2022). Additionally, this study used the qualitative method of research (Hamilton & Finley 2020). A library-based method was used to collect information. The primary data attained from treaties, national legal statutes, official records, and case law (Al Amaren, Hamad, and Al Mashhour 2020). Whilst the secondary data were collected from relevant sources such as legal textbooks, journal articles, and reputable websites. Both primary and secondary information was critically and analytically scrutinized in this study using the content analysis approach (Cho & Lee 2014)

## **4. DISCUSSION AND ANALYSIS**

### **4.1 The Legal Nature of Cheques Crimes**

#### **4.1.1 Concept of the cheque**

The cheque takes the place of the money as a tool of fulfillment, and the importance of the cheque has increased in light of the rapid pace of development in terms of commercial and economic transactions because of the multiple functions it performs, as the cheque has many characteristics in terms of money and business (Decision No. (1) in Appeals No. 139/140, 2004). Referring to the provisions of the Omani legislation, there was no specific definition of the cheque



in the Omani trade law, and the legislator contented itself with regulating the provisions of the cheque and defining its data and the conditions that must be met in it.

On the other hand, there is a set of definitions of the cheque that the jurists came up with. The first group of jurisprudence defined the cheque as “A written order in accordance with conditions defined by custom, by which the drawer requests the drawee to pay according to it, upon seeing it, an amount of money to a specific person or to the permission of a specific person or to its bearer.” (Hasniyeh, 2022)

The second party also defined a cheque as “An order from the drawer to the drawee to pay upon sight an amount of money to the beneficiary, to his permission, or to the bearer.” (Al-Marsafawy, 2000)

As for the third party, the cheque was defined as “A document containing an order issued by the drawer, and addressed to the drawee, who is usually a bank, to pay a specified amount of money upon request by the beneficiary.” (Hosni, 1984)

It is clear from the definition of the cheque that there are three parties, and they are the drawer, who is the one who issues the cheque and signs it, the drawee, who is often a bank or financial institution, who pays the amount of money determined in the cheque, and the beneficiary, who is the one who issues the cheque for his benefit and maybe the bearer or any other person mentioned his/her name in it. From the foregoing, the authors define a cheque as “an instrument drawn up in a manner specified by the law, through which the drawer orders the drawee to pay the value of the amount specified in this instrument to the beneficiary or to its bearer upon viewing it.”

#### 4.1.2 Characteristics of the cheque

##### **First: The cheque represents a cash right:**

A cheque is a payment tool that takes the place of money, as it represents in its essence cash, and this is what the Omani legislator expressed in the fifth paragraph of Article (523) of the Omani Trade Law by saying “An order that is not dependent on the condition of paying a certain amount of money” (Article 523 of the Omani Trade Law, 1999)

In addition, the Omani legislator confirmed the legislator’s intention to express the cheque as a monetary right when it also stipulated in Article (550) of the same law that “If it is stipulated that the cheque be paid in the Sultanate in cash not circulated in it, then its value must be paid on the date of presentation of the cheque in the currency circulating in the Sultanate according to its price on the day of payment...” (Article 550 of the Omani Trade Law, 1999)

##### **Second: The cheque is payable as soon as it is seen:**

This is what the Omani legislator confirmed in Article (544) of the Omani Trade Law when it stipulated “The cheque is due for payment upon sighting it...” and in the event that the cheque was issued at a later date, it is not permissible to pay it before that date, taking into account the provisions regarding the discount in bank operations in this law (Article 544 of the Omani Trade Law, 1999)

##### **Third: The ability of the cheque to be traded in commercial ways:**

This feature is one of the most important features that a cheque enjoys, which is its negotiability. In fact, it can be said that this feature does not make a cheque without it. The Omani legislator confirmed it in the form of circulation by endorsement within the framework of Article (536) by saying “A cheque that is conditional on its payment to a named person, whether it is stipulated in it expressly on the condition of the order or not stipulated, it is negotiable by way of endorsement....” (Article 536 of the Omani Trade Law, 1999)

Trading is also achieved once the cheque is handed over from the drawer to the beneficiary as cash consideration to complete a sale or purchase.



## 4.2 Forms of Crimes on Cheques

In accordance with the provisions of Article (356) of the Omani Penal Code, it appears that there are different forms of crimes committed on the check, which will be detailed as follows:

### 4.2.1 The crime of issuing a cheque without a balance

The Omani legislator has criminalized the issuance of a cashable cheque that is not matched by balance, according to the first paragraph of Article (356) of the new Penal Code, and in this type of crime, the criminal activity is represented in the process of issuing the cheque, which is a kind of preparatory work that is not punishable by law. Accordingly, this crime is not achieved unless the beneficiary receives the cheque from the drawer who expresses his/ her intention to abandon the cheque permanently. (Alshawabkeh, 2023)

Therefore, if the beneficiary of the cheque submits it to the bank and the bank informs that the drawer has no balance, or that the existing balance does not cover the value of the amount, in this case, there is a crime happens. However, in the event that the cheque is out of the drawer forcibly or in an illegal way, such as fraud, here the moral element of the crime is not achieved, which is the intention to abandon the cheque directly, so the drawer is not criminally liable at that time for the crime (Article 356 of the new Penal Code, 2018).

In line with what has been previously stated, it can be said that the crime of issuing a cheque without a balance is achieved even if there is a balance, but this balance is not sufficient to cover the amount of the cheque, and there is no consideration here for the amount of deficiency because the crime is considered to have been achieved, and this is due to the fact that the criminal intent was provided behind this procedure (Hasniyeh, 2022).

In addition, the balance may be present but seized, or the drawer may have declared bankruptcy, or the drawer may be interdicted, so if the cheque is issued after these cases, the criminal intent is realized, but if the cheque was issued before these cases, the crime does not occur because the time of issuance of the cheque was previously. The wisdom behind the criminalization of such acts is evident in the protection of this commercial paper, as the drawer is responsible for the crime even if he fulfilled part of the value of the check, or if he fulfilled the entire value at a date later than the maturity date (Hasniyeh, 2022).

Thus, the crime of issuing a cheque without a balance is considered one of the intentional crimes that requires the existence of criminal intent, as the drawer's will is to verify the facts of the crime with his prior knowledge that he does not have sufficient funds. The jurisprudence differed on the type of intent that must be present in this crime, whether it is intended by the general intent or the specific intent. And the jurisprudence settled that the general intent is what must be present in the crime, in addition to the presence of the drawer's will to issue the cheque without any compulsion, and by achieving the criminal intent, its moral pillar is available in the crime, and the presumption of bad faith is established by the knowledge of the drawer that the balance is not available, and this is sufficient for the establishment of the general criminal intent.

### 4.2.2 The crime of withdrawing the fulfillment balance in whole or in part after issuing the check

This crime occurs when the drawer withdraws all or part of the balance after issuing the cheque and handing it over to the beneficiary, which prevents the payment of the cheque value. The Omani legislator referred to this crime in the new Penal Code in the second paragraph of Article (356), where it was customary and practiced in commercial transactions and in the circulation of cheques that the issuer of the cheque keeps a balance in his/her account to cover the value of the amounts of the cheques he/she issued, and this gives confidence to the circulation of cheque in commercial transactions (Article 356 of the new Penal Code, 2018).



As soon as the drawer issued a cheque and hands it over to the beneficiary, the ownership of the cheque amount is transferred to the beneficiary, and accordingly, the drawer may not dispose of it as if he/she recovers all or part of it, and if he/she did so after issuing the cheque, it is considered as a legally criminal act. The Omani legislator specified the period during which the drawer is obligated to keep the balance at the disposal of the beneficiary, which is six months, according to the Omani Trade Law of Article (545) (Article 545 of the Omani Trade Law, 1999).

Moreover, in the event that the drawer withdraws the value of the cheque in whole or in part after the period specified by the law so that the value of the cheque becomes non-existent or insufficient for payment, this does not affect the commission of the crime and the punishment of the drawer for his recovery of the amount. This is indicated by Article (421) of the new Penal Code (Article 421 of the new Penal Code, 2018), as the value of the cheque is due for payment upon sighting, and therefore this does not affect the function of the cheque and the nature of the payment even if it is not presented within the period specified in accordance with the law, and this is confirmed by the Omani Trade Law, Article (547) (Article 547 of the Omani Trade Law, 1999)

Since the cheque fulfilled all the conditions upon its issuance, the delay in presenting the cheque to the drawee bank does not negate the responsibility of the accused, because the lesson of fulfilling the conditions for the cheque is at the time of its issuance and delivery, not at the time of its presentation for exchange. This crime is considered one of the intentional crimes that occur with the knowledge and will of the drawer, and the criminal intent is achieved by withdrawing the balance in whole or in part, with the knowledge of the drawer that he/she impedes the fulfillment of the value of the cheque with the bad faith of the drawer that prevents the beneficiary from obtaining the payment for the fulfillment. (Chami, 2020)

#### **4.2.3 The crime of issuing an order to the drawee not to cash a cheque in cases other than those permitted by law**

The order to refrain from cashing is only issued by the drawer to the drawee, and if the cheque fulfills its conditions and was issued correctly, and was delivered to the beneficiary with an existing and withdrawable balance, then the drawer may not issue an order to the drawee through which he/she instructs to refrain from cashing. Thus, this crime is achieved as soon as the order is issued by the drawer.

Moreover, the relationship between the drawer and the drawee is that of a creditor with a debtor, so the debtor is bound by the creditor's order, and the debtor in this relationship is the drawee, and he/she has the obligation to refrain from spending if it was issued by the drawer, otherwise, he/she is responsible for the value of the cheque before the drawer. There is no consideration for the motive that led to the issuance of the order of abstention by the drawer, as the crime is realized as soon as the order is issued by the drawer even if there is a legitimate reason, and the purpose of that is to protect the cheque in circulation on the basis that it runs the course of money in commercial transactions (Al-Marsafawy, 2000).

Nevertheless, the legislator has authorized Article (547) in the Omani Trade Law that the drawer has the right to give an order to the drawee to refrain from paying the value of the cheque to the beneficiary, in the event of the loss of the cheque or the bankruptcy of its bearer. Accordingly, the drawer is not criminally liable in these cases, and the loss, simple theft, described theft, and obtaining the cheque under threat and coercion, in addition to the two cases of wasting the cheque and obtaining it by means of fraud, are included in the rule of loss (Article 547 of the Omani Trade Law, 1999).

In the event that the agent issued an order to refrain from disbursing the drawee, this does not negate the responsibility of the account holder and he/she is tantamount to the perpetrator of the crime, and this is what the jurisprudence went to that the owner of the cheque is considered an original perpetrator in the crime of giving a cheque that does not match the balance.

The crime of the drawer issuing an order to refrain from paying the drawee is one of the intentional crimes in which there is a criminal intent, that is, the drawer has the knowledge and



will, and the criminal intent is achieved once he/she issues the drawee an order not to pay, in addition to the presence of bad faith once he/she issues the cheque and puts it for circulation (Al-Araimi & Al-Fayez, 2008).

#### **4.2.4 The crime of endorsing a cheque or handing over a payable cheque to a third party knowing that it has no consideration that meets its full value or that it is not cashable**

The Omani legislator has criminalized such cases of trading cheques, according to what was stated under Article (356) in the fifth paragraph of the Omani Trade Law. In these cases, the criminal responsibility does not fall on the account holder, but on the person who endorsed of the cheque (Article 356 of the Omani Trade Law, 1999).

What is meant by the endorsement procedure is "The transfer of the cheque from the beneficiary to a new beneficiary, which results in the transfer of ownership of the cheque to the new beneficiary. Therefore, the endorsement is a legal act with a single will, according to which the fixed right in the bond is transferred, which is the payment of a certain amount of money to the endorser to him/her." (Al-Atir, 1998)

That is, the ownership of the consideration for fulfillment is transferred by endorsement, and this is done by signing on the back of the cheque, in addition to the transfer of ownership also by delivery if the cheques for the bearer. And pursuant to the idea of criminal protection for the cheque, the criminalization was not limited to giving the cheque without a balance, but rather this protection extended to the criminalization of endorsement and delivery of the cheque that has no balance or that the existing balance does not meet the value of the amount due, and every such act was considered a crime (Nammour, 2007).

In addition, with the availability of the material element of this crime, which is represented in the positive activity or behavior by the perpetrator, the criminal result is achieved, and accordingly, whoever presents a cheque or hands it over to others knows that there is no balance or that the balance is insufficient is not criminally different from the one who issued a cheque without a balance.

This crime is considered one of the intentional crimes that requires the availability of the two elements of knowledge and will by the perpetrator, with the knowledge of the endorser knowing with certainty that there is no balance, or that the balance does not meet the value of the amount due, or that the cheque is not cashable, yet he endorses the cheque or delivers it to the new beneficiary. It should be noted that the endorser must be aware of this at the moment of endorsement, or that he has prior knowledge of that. But if the knowledge is subsequent to the endorsement or delivery process, then the endorser does not have the criminal intent (Najm, 2006).

The endorsement may be written on the back of the cheque or on a paper attached to it, and the bearer of the cheque is considered the legal beneficiary and the owner of the right to it, with endorsements connected to each other. The endorsement is issued by the beneficiary who issues the cheque in his personal name. The endorsement is then circulated and delivered to the endorser, which results in the transfer of ownership of the cheque from the endorser to the new beneficiary (Nammour, 2007).

If the cheque is payable to its bearer, then its ownership is transferred upon delivery from the bearer to another person by transferring its possession to this beneficiary. In this case, the criminalization is limited to everyone who shows or delivers a cheque to another while knowing that there is no balance that meets the value of the cheque amount or that the cheque is not cashable, and the criminalization does not apply to whoever receives this cheque (Najm, 2006).

This crime is considered one of the intentional crimes that require the availability of the two elements of knowledge and will be the perpetrator, with the knowledge of the endorser knowing with certainty that there is no balance, or that the balance does not meet the value of the amount due, or that the cheque is not cashable, yet he/she endorses the cheque or delivers it to the new beneficiary (Najm, 2006).



It should be noted that the endorser shall be aware of this at the moment of endorsement, or that he/she has prior knowledge of that. But if the knowledge is subsequent to the endorsement or delivery process, then the endorser does not have criminal intent.

#### **4.2.5 The crime of issuing a cheque or signing it in a way that prevents it from being cashed**

In this crime, corrupt faith is present, and that is when the drawer writes or signs the cheque in a way that prevents it from being cashed by the drawee. It does not differ in this regard from other crimes, which implies the removal of the confidence that must be present in the cheque as a tool for payment, which forced the legislator to intervene to criminalize this act in order to ensure the protection of this commercial paper. The criminalization of this criminal behavior came from the Omani legislator according to the fourth paragraph of the new Penal Code, Article (356) (Article 356 of the new Penal Code, 2018)

Additionally, the first pillar of this crime consists in issuing the cheque and putting it into circulation by handing it over to the beneficiary or in any other way through which this cheque is delivered to the beneficiary. As the second pillar in this crime, it is represented by the drawer signing the cheque in a way that does not match his usual signature and proven with the drawee, i.e., the bank, which prevents it from being cashed and paid despite the availability of sufficient funds to fulfill the value of the cheque amount. This crime, like other crimes on the cheque, is an intentional crime that requires the availability of the two elements of knowledge and will. The drawer that was achieved by this behavior (Nammour, 2007).

### **4.3 Procedural Provisions for Cheque Crimes**

Every person has the right to resort to the judiciary and claim his rights. The Omani legislator has defined procedures through which the plaintiff of cheque crimes can resort.

#### **4.3.1 Procedures for filing a lawsuit**

In order to initiate a lawsuit in cheque crimes, a complaint must be submitted by the victim or his representative by a special power of attorney, and a person may not be given a general power of attorney.

This was confirmed by Article (359) of the new Omani Penal Code, and the legislator obligated the complainant to submit it within three months from the date of knowledge of the crime, otherwise, the Public Prosecution will dismiss the complaint if it is submitted after the deadline has passed (Article 359 of the new Penal Code, 2018).

The lawsuit expires as soon as it is waived by the victim, and the Omani legislator also indicated the forfeiture of the general right in cheque crimes in the event that the value of the cheque was fulfilled, which would result in the expiration of the public lawsuit (Hasniyeh, 2022). Therefore, the lawsuit claiming the personal right is based on three options, namely:

1- Claiming the value of the cheque as a result of a common rights lawsuit before the Criminal Court.

2- Filing a lawsuit to claim the value of the cheque with the civil courts before filing a common rights lawsuit.

3- Filing a lawsuit to claim the value of the cheque before the civil court after issuing a criminal judgment.

#### **4.3.2 Proof of fulfillment**

Fulfillment of the value of the cheque is the payment of the amount specified in it by the drawee bank to the beneficiary, and the right in consideration for fulfillment is transferred by law to successive holders of the commercial paper so that the right in consideration for fulfillment devolves to the last legal holder of the commercial paper. While the obligation preoccupied with



the drawee becomes burdened by the latter in favor of this legal bearer so that the former can uphold defenses against the latter that he/she can invoke against the drawer (Al-Shamaa, 2004).

In addition, the drawer of the cheque is considered the only one who is obligated to present the consideration for fulfillment to the drawee, and the endorser of the cheque has no business to present the consideration for fulfillment because the endorser receives the cheque in exchange for presenting its consideration, then recovers its value when re-endorsing it, so after completing the endorsement and endorsement processes, he/she is neither a debtor nor a creditor. Nothing remains in his/her debt except the obligation to guarantee the payment as one of the signatories of the cheque (Karim, 1995).

Moreover, it is the responsibility of the person ordering the withdrawal to find a consideration for the fulfillment, whether in his/her relations with the apparent drawer (the agent) or the drawee, meaning that the drawee or the apparent drawer if the value of the overdraft cheque is paid, is entitled to return what he/she paid to the withdrawal order (Sami & Al-Shamaa, 1988).

As for the endorsers and the last bearer, the apparent drawer is considered responsible before them for finding the consideration for the fulfillment, because these people are usually not aware of the existence of a real, hidden drawer, and the drawer is considered for them the one who signed the cheque.

#### 4.3.3 Defenses in cheque crimes

It is the legal practice that the accused is the one who makes the payment to evade the criminal responsibility that falls on him/her by dropping the elements of the crime or one of them, and there are often substantial defenses, which are those related to the safety and legality of the procedures, and other secondary ones, which are the procedures that are agreed upon between the parties. With regard to the essential defenses in cheque crimes, they are related to the formal conditions, in which the accused pleads that they are not valid or that one of these conditions is absent, such as the cheque being devoid of the signature of the drawer or the date of creation, or the cheque being devoid of the name of the drawee. Or the claim that the cheque was given as insurance, or that the value of the cheque or the consideration for payment in the cheque was signed on something other than money, and therefore the cheque's lack of these mandatory data that have been determined by the law makes it not enjoy penal protection (Al-Tabbakh, 2008).

Therefore, the Omani legislator stipulated penalties for anyone who violated the formal conditions in issuing cheques, as stipulated in Article (569) of the Omani Trade Law (Article 569 of the Omani Trade Law, 1999).

As for the defenses that are related to the procedures of the lawsuit, such as forfeiture of the criminal lawsuit in the cheque, it has more than one form, such as the forfeiture of the lawsuit by prescription, and its forfeiture as if it was a decided case that was heard and decided with a judicial ruling ending it, and the forfeiture of the lawsuit due to its inclusion in the general amnesty or the death of the defendant. In these cases, the personal right of the complainant, which is to claim the heirs for the value of the cheque, is not negated. Also among the defenses in cheque crimes is the defense of the lack of jurisdiction of the court hearing the case, and the plea of lack of spatial jurisdiction is one of the fundamental defenses that are related to public order and may be raised at any stage of the lawsuit (Al-Sharif, 1994).

Additionally, the payment of forgery is one of the defenses that are raised in cheque cases, represented in forging the signature of the drawer, and here the judge's powers interfere, as the judge must prove the validity of the forgery by conformity, and the Omani legislator in the Trade Law referred to this in the text of Article (535) (Article 535 of the Omani Trade Law, 1999).

Moreover, the law permitted making payment in certain cases, such as the drawer's objection to honoring the value of the cheque in cases of loss or bankruptcy, and this was mentioned by the Omani legislator in Article (547) (Article 547 of the Omani Trade Law, 1999).





#### 4.3.4 The penalty prescribed for cheque crimes

The Omani legislator has determined the penalty imposed on the drawer for cheque offenses in accordance with the cases approved by the law.

Article (356) of the new Omani Penal Code referred to the punishment for crimes against cheques that are committed by drawers, and according to it, the penalty was imprisonment for a period of no less than one month and no more than two years, and a fine of no less than 100 Omani Riyals and no more than 500 Omani Riyals for each person who gave a cheque without a balance or the value of the balance does not cover the value of the cheque, or the account was closed, or whoever withdraws after giving the cheque all or some of the consideration so that the remainder does not meet its value, or ordering the drawee not to cash the cheque, or that he wrote or signed the cheque in a way that prevents its cashing, and whoever endorses or delivers a cheque payable to its bearer to a third party knowing that it does not have a consideration that meets its full value or that it is not cashable (Article 356 of the new Penal Code, 2018).

In addition, the legislator indicated that in all cases the court rules, based on the request of the concerned parties, to oblige the person convicted of the crime to pay the value of the cheque and the expenses incurred by the beneficiary.

Furthermore, Article (357) of the Omani Penal Code indicates that anyone who receives a cheque or compels others to receive a cheque shall be punished knowing that there is no consideration for the fulfillment of its full value or that this cheque is not cashable, and in this case, imprisonment for a period of no less than a month and no more one year or a fine of not less than 500 Rial Omani and not more than 1000 Rial Omani (Article 357 of the new Penal Code, 2018).

In the text of Article 358, the drawee is punished with a fine of not less than 500 Rial Omani and not more than 1000 Rial Omani if he/she refuses to pay the value of the cheque, knowing that this consideration is available in cases other than those permitted by law (Article 358 of the new Penal Code, 2018).

#### 4.4 Litigation Procedures for Cheque Crimes, according to the Law of Simplifying Litigation Procedures under Royal Decree No. 125/2020.

In view of the growing phenomenon of cheque crimes in most countries of the world in light of the successive events known to the countries of the world in a way that greatly affected the financial liquidity available in the positive possession of most of the cheque drawers during the last period, especially in the years 2021 and 2022 (Hasniyeh, 2022).

Considering that it was years after the global pandemic that paralyzed the economic and social movement in various countries of the world, and the Sultanate of Oman was not an exception in this regard, as is evident through what was stated by His Excellency Nasr bin Khamis Al-Sawai, the Public Prosecutor of the Sultanate of Oman, where he indicated that cheque cases topped the crimes during the year 2022 AD, at a rate of 14.9%. The issuance of the law regulating cheque crime procedures made a big difference in restoring confidence in the cheque among its dealers. Although the Omani legislator regulated cheque crimes in the new Penal Code, with the issuance of the law regulating cheque crime procedures, cheque crimes will be subject to this law (Hasniyeh, 2022).

##### 4.4.1 Duration of adjudication of cases before the misdemeanor court in cheque crimes

The Law of Simplifying Procedures specified the period within which the cheque lawsuit should be settled in the first instance, and limited it to (30) days from the date of its referral to the court. The legislator also allowed the extension of the period for one similar period, and for one reason only, that the case is not ready for judgment, such as the need to hear the testimony of a witness or wait for a specific investigative procedure in the case, and in all cases, the legislator specified a maximum period for ruling in the cheque case in the first instance that may not be exceeded and specified it to (60) days only from the date of referral of the case to the court (Al-Shamaa, 2004).



In addition, these periods constitute an unprecedented quantum leap for adjudicating the case before the court, as the court was previously not restricted to a specific period for adjudicating this type of case, and of course, this will be reflected positively in the field of dealing with the cheque. However, there is a deficiency in regulating the duration of the complaint in the pre-trial stage, whether in police stations or the public prosecution, so the legislator should have determined the period during which the complaint must remain before these authorities, this is to ensure that it is presented to the court quickly to ensure its decision, especially since such cases are mostly complete (Abbas Karim, 1995).

#### **4.4.2 Adjudication in the civil case related to the criminal case in cheque crimes**

The legislator obligated the competent misdemeanor court to rule in the civil case that follows the criminal case in the event that it decided to convict the accused, and this is what was not present in the previous texts, and this in turn restores the value and legal force of the cheque as a payment tool that takes the place of money in transactions.

In the sense of the violation, if the court does not rule with conviction, such as issuing a verdict of innocence or inadmissibility, then it is not competent to consider the civil case as it is separated from the criminal part, and it may then refer it to the competent court (Muhammad Sami & Al-Shama'a, 1988).

#### **4.4.3 Opposition to default judgment in cheque crimes**

The objection is a normal method of appeal against judgments issued in the event of the accused's absence from the trial procedures taken during the sessions of the criminal trial, even if he attended the verdict pronouncement session, as long as it included a pleading. And since the legislator specified in the new law the deadline for objection and made it limited to a period of (10) days starting from the day following the notification of the convicted person, if a preliminary judgment was issued in absentia, then it is not permissible to appeal it directly before the Court of Appeal before exhausting the way to challenge the opposition, whether by the expiry of the mentioned deadline or by actually appealing (Al-Tabbakh, 2008).

Contrary to the previous text in the Code of Criminal Procedure, the period of objection to a judgment in absentia was two weeks, starting from the date of announcing the judgment. In all cases, the objection is lifted from the accused or the one responsible for the civil right, and the lifting of the objection entails stopping the execution of the judgment in absentia, and there is nothing new in this part. What is new here is that it set a specific date for the consideration of the opposition before the court, and limited it to a period of (10) days only, starting from the date of registering the opposition, which was not regulated in the old law (Al-Sharif, 1994)

It should be noted that the legislator in the new law was permitted to appeal against judgments issued by the misdemeanor court, and used the term "Opposition is permissible in judgments issued by the competent misdemeanor court." Whereas the text in the old law permitted objection to "Judgments in absentia issued in misdemeanors and violations by the court that issued the ruling."

The authors find that there is a big difference in the wording and content of the old text and the new text, and the question arises about the extent to which appeal can be made against appealed misdemeanors in the event that they were issued in absentia, by way of opposition. It raises confusion and it is not possible to accept with certainty the intention of the legislator in this matter, and perhaps the executive regulations of this law chart a clear path that removes doubts.

The authors also hope that there will be a special regulation with regard to the implementation of the civil part of the judgments in absentia in the crimes of checks, as the convict may not be notified of the judgment in absentia for a long time, and there will be a big problem in the issue of the implementation of the judgment by the convict. This, in turn, causes severe harm to litigants, especially in cheque crimes.

#### **4.4.4 Appeal of judgments issued in cheque crimes**



In the new law, the legislator authorized the appeal of judgments issued by the Court of First Instance in the crimes of cheque and made the status of those who have the right to appeal to each of the Public Prosecution, the convicted person, and the claimant of civil rights. In comparison with the old texts of the Code of Criminal Procedures, the status of those who have the right to appeal has been limited to rulings issued in misdemeanors and contraventions for both the Public Prosecution and the convicted person (Al-Sharif, 1994).

The question here is whether the new law simplifying procedures expands the status of those who have the right to file an appeal even in the criminal part, to include the plaintiff with a civil right, according to what is clear from the apparent text. Perhaps the picture will become clearer after the regulation is issued. As for appealing judgments in the civil part, it is limited only to the convicted person, the claimant of the civil right, or the one responsible for him, and it is only in the event that the judgment exceeds the legal quorum that the first instance judge decides finally (Al-Tabbakh, 2008).

What should be noted in this regard is that the Law of Simplification of Procedures has reduced the period of appeal against judgments issued in cheque crimes, making it (15) days for the convicted person, the plaintiff, and the person liable for it, in contrast to the old text, where the appeal period was (30) days (Al-Husseini, 2011).

Additionally, the new law shortened the period for appealing the Public Prosecution for these crimes from 45 days to 30 days. In addition, the new law obligated the court to set a session to consider the appeal within (10) days from the date of filing the appeal, unlike the old text in which the period was (15) days from the date of filing the appeal. With regard to the deadline for deciding the cheque case in the appeal stage, it does not differ from the preliminary stage, so the period is (30) days, and a maximum of (60) days in the event that the case is not ready for judgment (Hasniyeh, 2022).

What is more remarkable about the new law is that the legislator limited the stage of litigation in this type of case to two levels, first instance and appeal only, unlike the old texts that also included hearing the case before the Supreme Court. According to this law, judgments issued by the Court of Appeal regarding cheque offenses are not subject to appeal before the Supreme Court.

#### **4.4.5 Deposit a copy of the verdict in cheque crimes**

In the new law, the legislator imposed the invalidity of the judgment if a copy of it, signed by the judge and the secretary, was not deposited within only (7) days from the date of its issuance, with the exception of judgments of inadmissibility or innocence, as they do not constitute harm to the accused. Contrary to the old text that stipulated nullity in the event of not signing the copy of the judgment within (30) days as a maximum (Hasniyeh, 2022).

The authors find that the new law was not satisfied with merely signing the nullity report as it was found in the old text, but also with the delay in depositing a copy of the ruling as well. In the event that a copy of the judgment was not deposited within the aforementioned deadline, the authors suggest that the general rules in the Code of Criminal Procedure be followed in proving that the judgment was not deposited in order to determine its invalidity, by receiving a certificate from the court secretariat stating that the judgment has not been deposited, and there may be a special means after the issuance of the regulation. For this law, the method of proving that the copy of the judgment was not deposited within the specified date is explained in preparation for determining its invalidity.

#### **4.4.6 Law enforcement**

The Law of Simplifying Procedures set its date of entry into force, so that it will be applied after (3) months from the date of its publication. It is worth noting that the law was published on November 12, 2020. According to Article 1 of Chapter 2 of this law, the provisions of this law apply to cheque crimes that are referred to the competent court after the date the law goes into effect and that are not related to other crimes, such as fraud, forgery or other crimes. As for cases prior



to the entry into force of the law or related to other crimes, they are subject to the same general procedures in accordance with the Code of Criminal Procedures (Hasniyeh, 2022).


## 5. CONCLUSION

From what has been previously stated and dealt with in this study, it is clear that the law of simplifying procedures in cheque crimes will have many positive dimensions, not only on the criminal side but also on the commercial side. The study concluded with a set of results, namely, the Law of Simplifying Procedures specified the period within which a cheque case must be decided, with a maximum period of 60 days. The Omani Legislator, in the Law, to Simplify Procedures, obligated the competent misdemeanor court to rule in the civil lawsuit related to the criminal lawsuit if it decided to convict the accused. In case of opposition, the Legislator set a date for the opposition and limited it to a period of 10 days from the date of registering the opposition. The Legislator limited the stage of litigation in this type of case to two levels, the first instance and the appeal only.

Therefore, the rulings issued by the Court of Appeal in cheque crimes are not subject to appeal before the Supreme Court. The Legislator obligated both the judge and the secretary to deposit a signed copy of the judgment within 7 days from the date of issuance of the judgment, otherwise, the judgment shall be null and void. The study recommends that the Omani Legislator make a special regulation for the duration of the cheque case in the pre-trial stage, whether before the police station or the public prosecution, in addition to specifying a specific period of time for this case to remain with these authorities, in order to ensure the speedy consideration and decided of it. In addition, there should be a special regulation with regard to the implementation of judgments in the civil part in absentia judgments for cheque crimes. The study also hopes that the course of legislation will continue to keep pace with the rapid development in the field of crime and study the effectiveness of traditional penalties in cheque crimes.

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