

EXTENDED SUMMARY

In the first paragraph of Article 160 of the Execution and Bankruptcy Law, it is regulated that the creditor requesting bankruptcy is responsible for the expenses until the first creditors' meeting. In the second paragraph of the same article, it is stipulated that the court shall request these expenses, as well as all the notification expenses required for the legal remedies of the bankruptcy decision, as an advance payment.

One purpose of Article 160 of the Execution and Bankruptcy Law is to protect the state's public resources by securing bankruptcy expenses. In other words, the basis of this provision is the idea of preventing the state from having to undertake bankruptcy expenses. Another purpose of this regulation is to prevent the bankruptcy procedure from being dragged out.

Considering Article 160 of the Enforcement and Bankruptcy Law, it can be said that the expenses until the first creditors' meeting and all the notification expenses required for legal remedies of the bankruptcy decision are included in the scope of the bankruptcy expense advance. However, there is no clear regulation in the Law regarding which expense items the bankruptcy expense advance consists of and the amount of the advance. At this point, it would be appropriate to clearly regulate the expense items and amounts included in the scope of the bankruptcy expense advance. Such a regulation can prevent different practices among courts and increase the predictability of the expenses related to the bankruptcy process for creditors.

The advance on bankruptcy expenses should not be requested at the beginning of the proceedings. This is because the advance payment is not required at this stage, nor is it legally obligatory. The advance on bankruptcy expenses should be requested together with the depository decision in bankruptcies with proceedings, and after the determination of the reason for bankruptcy in bankruptcies without proceedings, before the decision stage. However, in cases where conservative measures are required, the advance on bankruptcy expenses related to these measures may be requested during the proceedings.

The deposit of the advance on bankruptcy expenses cannot be considered as a procedural requirement. The deposit of this advance payment may be considered as a formal condition for the court to make a bankruptcy decision.

The Enforcement and Bankruptcy Law provides for the application of the advance on bankruptcy expenses not only in general bankruptcy proceedings, but also in bankruptcy proceedings specific to bills of exchange (Art. 176, 160 of the EBL) and in bankruptcy without proceedings (Art. 181, 160 of the EBL). However, Article 160 of the Enforcement and Bankruptcy Law, which regulates the advance on bankruptcy expenses, should not apply in cases of direct bankruptcy where the debtor is obliged to request its own bankruptcy. In this case, pursuant to Article 325 of the Code of Civil Procedure, a peremptory term should be given to the relevant person for the deposit of the bankruptcy advance, and if the advance is not deposited within this period, it should be decided to pay the advance from the Treasury.

In order to ensure that people with financial difficulties have access to the court, it is of great importance that the legal aid institution operates effectively in terms of the advance payment for bankruptcy expenses. In this context, individuals who would be in financial difficulty if they could meet the advance payment for bankruptcy expenses and whose bankruptcy request is not clearly unfounded may apply for legal aid.

The court cannot make a bankruptcy decision unless the creditor requesting bankruptcy pays the advance payment for bankruptcy expenses. Therefore, the court must give the creditor a peremptory term to make the advance payment, and if the advance payment is not made within this period, the bankruptcy case must be dismissed. However, if the bankruptcy decision is made without the bankruptcy advance payment or with a partial payment, and the parties do not complete the necessary advance payment, the remaining advance payment must be covered by the State Treasury.

According to Article 160 of the Execution and Bankruptcy Law, expenses covered from the advance deposited by the creditor requesting bankruptcy should be considered as desk expenses. At this point, not only expenses incurred after the bankruptcy decision but also during the bankruptcy proceedings, that is, before the bankruptcy decision, are also considered as desk expenses.