

A BRIEF LOOK AT URBAN REGENERATION LAW IN TURKEY

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GROWING NEED FOR HOUSING AND URBAN DEVELOPMENT

Although earthquakes and other natural disasters affected the cities in Turkey to a large extent, the growing need for housing outweighed such concerns and shaped the legislative and administrative agenda over the past century, mainly in fast-developing areas. The big picture clearly shows that municipalities and other public authorities in charge of making zoning plans, issuing construction permits and monitoring a healthy urban development process have failed to follow technical quality standards and implement necessary safety measures over the years for sake of boosting the housing production. From a social perspective, the quality of buildings has arguably been a secondary issue for people who have sought shelter in urban areas as the demand far exceeded the offer in many instances.

The outcome of the past practices was a complex problem that was a combination of a poorly planned cities struggling with infrastructural problems, a very large number of buildings in need of urgent renovation and scarce resources to undertake a task at this scale.

It is estimated that approximately 6.7 million units nationwide will be demolished and rebuilt within the next 20 years which equates to an average of 334,000 units per year. Accordingly, approximately 44 billion TL (USD 20 billion, approximately) of financing will be required each year.

ISTANBUL, ITS IMPORTANCE FOR THE TURKISH ECONOMY AND THE RISK OF EARTHQUAKE

It is beyond any doubt that Istanbul has a special importance for Turkey ahead of other major cities such as Ankara, Izmir, Bursa, Adana, Gaziantep and Antalya. The city has been the country's center of attraction in terms of real estate investments due to its unique geographical and cultural advantages, thus placing it at the very core of Turkish economy. Home to almost 25% of the Turkish population and generating around 23% of Turkey's GDP, Istanbul's contribution to Turkish economy was approximately 40% of the government's budget in 2014. 35% of the nation-wide deposits in financial institutions are collected from Istanbul and 33% of the credits in Turkey are used by individuals or entities based in Istanbul. Major infrastructural projects are in the pipeline, such as the third bridge over the Bosphorus, a major channel to link Black Sea and Marmara Sea as well as a much controversial airport at the northern outskirts of the city.

In recent decades, major earthquakes have occurred along the North Anatolian Fault – comprising some of the major Turkish cities including Istanbul- in a roughly domino-like fashion, breaking sequentially from east to west. The most recent and “*game changer*” quake occurred in 1999 in the city of Izmit, claiming more than 30,000 lives, just east of Istanbul. Being one of the world’s longest and most energetic earthquake faults, its silence is not a good sign for the inhabitants of Istanbul. Although it is not possible to pinpoint the precise time and place of the next quake, scientists express their concerns about the possible consequences of a seismic activity on the order of a magnitude 7 temblor – or even greater.

Istanbul, among other cities along the lines of North Anatolian Fault, is therefore exposed to a great risk and such risk triggered the governmental action in order to minimize the risk of loss in the likely event of a major earthquake that will affect Istanbul.

THE PARLIAMENT’S ANSWER TO THE COMPELLING NEED FOR URBAN REGENERATION: THE URBAN REGENERATION LAW OF 2012.

Regeneration of residential buildings in the country was not only extremely burdening in terms of economic figures but it also required a pro-active action plan to be implemented by the government. The Condominium Law that mandates unanimous vote of unit owners to make material changes to the building has been an obstacle ahead of developers looking to re-construct existing buildings that completed their useful lives.

Turkish parliament reacted to the compelling need for urban regeneration by enacting the Law No.6306, titled “*The Law on Transition of Areas under the Risk of Natural Disaster*” - commonly referred to as the *Urban Regeneration Law* (the “URL”).

THE URBAN REGENERATION LAW AT A GLANCE

The overall purpose is to support the regeneration efforts put forth by the private sector by facilitating decision making processes, granting large powers to the Ministry of Environment and Urban Works (the “**Ministry**”), transferring certain powers to the local municipalities (the “**Municipality**”) and/or Housing Development Administration (“**TOKI**”) and finally providing property owners certain financial incentives if they choose to voluntarily agree to renew their buildings. The Law introduces several new mechanisms and expedited procedures in the phases of decision-making, planning and reconstruction.

CLASSIFICATION OF RISKY BUILDINGS AND RISKY AREAS

The Law sets three categories of real property in connection to the application of its provisions. **Reserve Building Areas** are vacant areas to be designated by the Ministry and allocated to the creation of new housing projects. **Risky Areas** are areas that are susceptible to loss of human life and/or property due to the geological characteristics or developments thereon. Finally the URL defines **Risky Buildings** as disaster-vulnerable and unsafe buildings that completed their useful lives regardless of whether they are inside or outside of Risky Areas.

DESIGNATION, REGISTRATION AND TRANSFER OF RISKY BUILDINGS

The Law states that property owners may apply to licensed institutions at their own expense for classification of their building as a “*risky building*”. The Ministry may also request owners to make such application for detection of a risky building, can initiate the process itself or request Municipalities to take action for the same ends. Property owners may object to the designation within 15 days for further review by a committee of technical experts.

An annotation on the annotations column of the property’s record at the Land Registry follows the designation process outlined above. The administration will inform the owners and other right-holders in writing upon such annotation. The Law also provides for a similar procedure for transfer of properties held by Treasury for the Ministry’s disposal for purposes indicated in the URL.

DEMOLITION OF BUILDINGS

The URL mandates that the administration shall give 60 days for eviction to the owners of risky buildings or buildings that are located in Risky Areas. In the event owners or users of the said properties fail to evict in accordance within such period, the government will forcibly vacate upon expiration of a grace period. The Ministry has the authority to initiate, follow-up with and complete all procedures itself in the event the local administration fails to finalize the demolition process within the period prescribed by the URL. If the owners voluntarily evict the property for demolition, the government may provide temporary housing or monetary aid within a rental assistance program. The Ministry or local administrations may enforce eviction orders by cutting off electricity, water and natural gas to properties in order to ensure an expedited transition process.

AGREEMENT AMONG OWNERS

In practice, especially in areas where the return of investment is expected to be higher, the classification of the buildings as “*risky*” is usually followed by an agreement between owners and a real estate developer on terms and conditions freely negotiable between the parties. The customary application of a *sui generis* contract –referred to as a *development contract in exchange of owners’ shares in the property*- that entails development of a new property by a developer against a percentage of the owners’ shares -to be transferred to the developer- creates sufficient profit for all parties. The law seeks a qualified majority of 2/3 of shares –in the land on which the property is built- for an agreement in accordance with the URL as opposed to the old regime that required the unanimous vote, where a single owner could block the entire process.

DISSENTING OWNERS’ SITUATION

In areas where the property prices are lower or zoning restrictions limit developers’ profit, it becomes a greater challenge for owners to find a financially strong developer with a solid track record whereby making the voluntary eviction process lengthier, if not impossible in certain instances.

The role of the URL becomes more significant at the stage of agreement among owners. Although the construction process follows the general practice of the *sui generis* construction contract and process referred to above if an agreement is reached by 2/3, such lessened majority requirement of 2/3 -instead of unanimous vote- among owners for the re-development of the risky building gives the majority the right to force dissenting owners to either consent to the developer's offer or have their shares that correspond to their property sold to the majority owners at an auction sale. The Ministry may also step in and buy such shares in order to facilitate the re-development process.

The process briefly outlined above means that the URL does not only come with incentives for property owners but also forces dissenting owners to comply with the decision of the 2/3 majority.

The Ministry also has the right to initiate an expedited expropriation process in the event the qualified majority cannot be reached among owners within 30 days from the date of a written notice to them by the governmental bodies.

MINISTRY'S AUTHORITY WITHIN THE SCOPE OF URL

The URL grants the Ministry –and other governmental bodies by way of delegation of powers- extensive powers during the process of urban regeneration. In Risky Areas, Reserve Building Areas or areas where Risky Buildings are located, the Ministry may;

- Prepare and approve zoning plans at all scales, maps, projects and initiate all processes related to the same.
- Purchase properties, use pre-emptive rights and the right of first refusal in the event of sale of properties to third persons.
- Exchange owners' rights with securities subject to agreement.
- Determine shares in land ownership; apply methods of private-public partnership models for development projects.
- Initiate development of properties by way of *sui generis* development contracts or revenue share agreements.
- Unify or separate shares in land ownership in accordance with the Condominium Law No.634.
- Define and designate zone-planning standards and planning notes at all scales, prepare urban development plans in all areas including those subject to special regulations.

In light of the foregoing, it would not be far-reaching to state that the Ministry enjoys a wide array of unprecedented powers for purposes of ensuring an expedited and efficient application of the URL. Those extensive powers have been subject to much criticism considering their potential effects on ownership rights and the protection of private property in accordance with the Constitution as well as the European Convention on Human Rights, including the First Protocol that protects the right of "peaceful enjoyment of possessions".

EXEMPTIONS AND OTHER INCENTIVES

The main objective of the URL is certainly expediting the urban regeneration process through elimination of bureaucratic and administrative impediments. However, such efforts require further governmental action because of relatively high costs of doing business before administrative authorities in Turkey.

Within this context, the URL creates a tax-exempt class of applications and procedures. In accordance with the URL, all contracts, applications, title transfers and registrations are exempt from notary charges, land registry fees and taxes, stamp tax, taxes levied by municipalities, inheritance tax as well as banking and insurance operation taxes. The Ministry also supports owners by contributing to the interest charges on loans for strengthening existing residential buildings or workplaces.

The creation of a special purpose fund named “*special fund for transition of residences, workplaces, lands and regeneration projects*” provides generous incentives to those owners or other stakeholders intending to voluntarily join the urban regeneration process.

WHERE WE ARE AND WHAT TO EXPECT

The customary Turkish practice of “*revenue sharing*” and “*development against owners’ shares in land*” remain as the mainstream channels of urban regeneration in Turkey in addition to the government’s self-initiated construction projects. Developers always had an appetite for areas where the unit prices have been traditionally high enough for them to renew existing buildings in exchange of a percentage in the ownership in the property.

In the pre-URL era, real estate owners usually consented to such renovation or regeneration projects in view of the expected added value of renewing their properties at no cost. However, the requirement of unanimous vote in the old regime proved to be over-challenging for developers in certain instances, depriving all parties of the chance to reach a mutually beneficial agreement due to just a few –or perhaps even one- objecting owner, regardless of his/her share in the property. The URL has been the right recipe for such difficulties at the –much debated- cost of interfering with the “right of peaceful enjoyment of possession” and “protection of private property”.

The URL was expected to have a greater positive effect in areas that are less attractive for developers seeking to get the maximum profit out of their investments such as places where prices are lower or sales are slower. According to many experts, the URL fell short of filling the gap. Certain courts also have a tendency to value property rights of existing owners over the interests of those who wish to renew their properties in exchange of a percentage of their shares to be transferred to developers. This comes along with the risk of subjecting the regeneration process to the outcome of lengthy trials. In addition to that, the extremely large stock of old buildings that creates a very heavy workload for the Ministry is considered to be another shortcoming of the URL, resulting in lengthier approval and application processes.

The URL certainly is the most remarkable regulation in the recent history of Turkish real estate law and practice with its consequences on different levels. The multi-billion construction business continues to be the country's leading and the most privileged sector in economic growth and the urban regeneration is expected to contribute to the upward trend by creating mainly earthquake-safe housing in Turkish cities, delivering social and economic benefits at the same time amid criticism about the property rights, environmental concerns and fairly sharing of its benefits among different social classes within the community. Therefore, we can expect the URL to be one of the hot topics of Turkish law in the upcoming years.