

Constitutional Court Decision on Annulment of Urban Regeneration Law's Certain Articles

I. Introduction

The Law on the Regeneration of Areas under Disaster Risk numbered 6306 (the “**Law**”), or commonly known as the Urban Regeneration Law, authorizes the public authorities to transform the high-risk areas and buildings. However, this Law has a number of extraordinary provisions, which aim to speed up the procedures for regeneration. For instance, Administrative Courts could not make injunction decisions concerning the administrative actions issued under the Law, or zoning plans made under the Law are not subject to limitations stated under the Construction Law or any other regulation.

The Constitutional Court in Turkey has rendered its decision upon the request of the main opposition party (“**CHP**”) for the annulment of several articles in the Law. The Constitutional Court has partially accepted the annulment request and cancelled a number of provisions. This decision can be categorized in three categories depending on the effectiveness of the annulment decision.

II. Annulled Provisions

a. Effective as of the Decision Date

Among the annulled provisions, the Constitutional Court has decided to suspend the execution of second sentence of article 6/9, article 9/2 and first paragraph of article 9/1. Therefore, implication of these provisions shall immediately cease on the decisions date without waiting for the decision to be published on the Official Gazette. It should be noted that although the decision is given on 27.02.2014, the Constitutional Court has to prepare its detailed judgment before publishing the decision on the Official Gazette.

Although the Constitutional Court decisions are only applicable as of the date when the detailed decision is published on the Official Gazette, the Constitutional Court has decided to issue an injunction decision until the publication to avoid any irreparable damages. Following the declaration on the Official Gazette, these provisions will be completely cancelled.

These annulled decisions used to state that i) Administrative Courts could not issue injunction decisions concerning the administrative actions depending on

the Law and ii) zoning plans made under the Law are not subject to limitations stated under the Construction Law or any other regulation.

As the above-mentioned provisions are annulled, as of 27.02.2014 it is possible for the Administrative Courts to issue injunction decisions. For instance; risky building decisions and demolition decisions are subject to injunctive relief in the event the administrative actions are clearly illegal and they may create irreparable damages.

Secondly, the Law's superior nature against any law concerning zoning plans is not applicable any more since the article 9/2 and first paragraph of article 9/1 are annulled.

b. Effective as of the Publication on the Official Gazette

First sentence of article 3/4, article 3/7, article 6/10 and article 8/1 are annulled by the Constitutional Court and this annulment decision will be effective as of the date detailed decision is published on the Official Gazette.

As a result of the annulment of the mentioned provisions, the most significant changes are as follows; i) it is no longer possible to implement the Law on the other buildings, which are not located within the risky area, for the purposes of application integrity ii) the easiness for notifications is abolished and therefore notifications will be made in accordance with the Notification Law.

c. Effective After Three Months Following the Publication on the Official Gazette

Seventh and eight sentences of article 3/1, article 4/1 and first and second sentences of article 5/5 are annulled and these annulment decisions will be effective 3 (three) months after the detailed decision of the Constitutional Court is published on the Official Gazette.

The abovementioned provisions are related to i) joint liability of the building's shareholders from the expenses made by the public authorities. The concerned authority informs the related title deed office and the title deed office registers a joint mortgage on the building ii) Municipality's or Housing Development Administration ("TOKI") 's authority to suspend any kind of zoning and housing procedure.

As a result of the Constitutional Court decision there will not be any automatic joint liability of the building shareholders through the notification of the public authorities and the suspension right of the concerned municipalities and TOKI will not be applicable.

III. Conclusion

The detailed decision of the Constitutional Court has not been announced and published on the Official Gazette; therefore it not possible to make any further comments on the reasons of the annulments yet.

However, it is clear that the annulled provisions (e.g. no injunction relief) had significant importance for the rapid implementation of the Law. Therefore it is definite that the urban regeneration will become slower. It is also possible to state that after the Constitutional Court's review and decision on the controversial articles; the authorities should not hesitate to implement the provisions of the Law.