

Law Bulletin

Real Estate and Construction | Turkey | January 2024

SIGNIFICANT AMENDMENTS TO URBAN TRANSFORMATION REGULATIONS

On 9 November 2023, the Law on the Amendment to the Law on the Transformation of Areas Under Disaster Risk, Certain Laws and the Decree No. 375 (the "**Omnibus Law**") was published. The Omnibus Law introduces amendments to specific laws regulating urban transformation and related judicial processes. The amendments aim to accelerate the processes related to scanning the building stock in the whole country, identifying, evacuating and demolishing risky buildings, and reconstructing safe buildings, as well as to accelerate the processes related to the buildings located in the regions affected by the 6 February 2023 Pazarçık and Elbistan earthquakes, which could not be demolished due to incomplete judicial proceedings. The Omnibus Law entered into force as of 9 November 2023 with the exception of one article regulating the institutions to be licensed by the Urban Transformation Directorate (the "**Directorate**") for urban transformation practices. The said article will enter into force on 9 November 2024.

In this bulletin, you may find the important amendments introduced by the Omnibus Law to urban transformation practices and ongoing judicial proceedings in the earthquake region.

1. Amendments to the Law on the Transformation of Areas Under Disaster Risk

Decisions affecting ownership rights can now be taken by absolute majority

In the previous practice, the approval of at least two-thirds of the real property owners was required for the urban transformation decision. With the enactment of the Omnibus Law, urban transformation decisions can now be taken with the approval of the absolute majority of the property owners in proportion to their shares. The urban transformation decision taken in this manner will be notified to dissenting property owners through a notary public or by public announcement at the mukhtar's office for a period of 15 days. In addition, transactions such as amalgamation, division, area correction, allocation, formation, deregistration, registration, and similar works and transactions to be carried out before other administrations, institutions and

KOLCUOĞLU DEMİRKAN KOÇAKLI

organizations can be carried out based on the decision taken by the absolute majority of the property owners in proportion to their shares. Similarly, permits and licenses for demolition and construction can be obtained with the absolute majority decision.

One of the most critical amendments to the Law is that the property owners who do not agree with the decision taken by absolute majority can be forced to sell their shares. The relevant land shares will first be offered to other shareholders through an open auction procedure, in which the sale value of such land shares cannot be less than the fair value determined by the Directorate. In cases where the sale of the land shares cannot be realized in this manner, these land shares can be purchased by the Directorate, the administration or TOKİ, which carries out the urban transformation process, by paying the fair value.

The Directorate will be fully authorized for the identification and demolition of risky buildings to accelerate processes

Based on the new regulations, property owners may either delegate institutions and organizations licensed by the Directorate to conduct risk identification, or the Directorate can, ex officio, initiate the identification of risky buildings. If the necessary actions are not taken by the owners within the period given by the Directorate, the identification, eviction, and demolition of risky building can be undertaken by the Directorate. In the cases where the Directorate carries out the process, the buildings will be granted a construction license within 30 days as from the application date, and a building utilization permit within 30 days from the completion of the building, provided that **(i)** they are allocated for that purpose in the zoning plans, **(ii)** the architectural, static, installation and all kinds of scientific responsibilities are undertaken by the Directorate in compliance with the implementation zoning plan and legislation and **(iii)** the ownership is documented.

In addition, if the identification or the eviction of risky building is prevented, these procedures can be conducted by law enforcement officers with the written permission of the authorities. Risky buildings will be indicated in the declarations section of title books. No particular notification will be made to the persons who hold rights in rem or personal rights in the buildings identified as risky. With the enforcement of the new regulation, the minutes regarding the identification, eviction and demolition of the risky building will be posted on the relevant building, the owners will be notified via the e-Devlet system and public announcements will be made in the relevant mukhtar's office for a period of 15 days. On the last day of the announcement made in the mukhtar's office, the relevant transaction will be deemed to have been announced to the right holders.

Property owners, for one time only, will be granted maximum 90 days for the demolition of risky buildings. If the demolition is not realized within this period, the risky buildings can be demolished by the relevant municipalities or provincial administrations. The costs incurred for the identification, eviction and demolition of the risky buildings made or delegated by the Directorate or the administration will be collected from the property owners in proportion to their shares.

Already populated areas can be defined as reserve building areas

Before the amendments, only unpopulated new settlement areas could be designated as reserve building areas by the Ministry of Environment, Urbanization and Climate Change. Definition of "reserve building area" was changed and the requirement for reserve building area to be a new

KOLCUOĞLU DEMİRKAN KOÇAKLI

settlement area was abolished. Accordingly, already populated areas can be determined as reserve building area. Individuals or legal entities can request the designation of their real properties as a reserve building area by approving the transfer of the 30% of the permitted construction area or the value of the said area to the Directorate.

The joint owners of real properties can file a lawsuit for the elimination of joint ownership in the real properties that become land after the demolition of risky buildings. However, such a lawsuit will not prevent the property owners from taking decisions with the absolute majority and actions based on such decisions.

Additional financial support will be provided for reconstruction works related to urban transformation

The Omnibus Law allows for financial support for the reconstruction of buildings in addition to rent allowance. The procedures and principles of the additional support will be determined by the President.

2. Amendments to the Administrative Procedure Law

Provisional Article 11 was added to the law by the Omnibus Law to accelerate the processes related to the disputes concerning the losses and damages occurred in the region defined as "disaster zones affecting ordinary life". With this amendment, the process for the cancellation of administrative actions regarding damage assessment reports have been shortened. Some of the significant changes are as follow:

- The preliminary examination will be held within 10 days, and the statement of claim will be served with its annexes to the parties.
- The statement of defence will be submitted within 15 days from the service of the statement of claim. This period can be extended for a maximum of 10 days for once.
- The pleading phase will be deemed completed upon the statement of defence's submission or the expiration of submission period for the statement of defence.
- Parties cannot make an objection to the decisions regarding the suspension of execution request.
- If necessary, an inspection and expert examination will be conducted within 15 days after the statement of defence's submission or the expiration of submission period for the statement of defence. Expert reports will be submitted to the court within 15 days. Parties will have seven days as of the service of the expert report to object to the experts and/or expert reports.
- A hearing will be held upon the request of the parties and the court's decision. Invitations to the hearing will be sent to the parties at least 15 days before the hearing date.
- Decision will be issued within 15 days as from the pleading date or, if necessary, from the interim decision, inspection, expert examination or hearing.
- The parties will be able to appeal the final decision within 15 days as from the date of service.
- Appeal pleading will be assessed and served within 10 days.
- Statement of defence to the appeal will be submitted within 15 days.
- The appeal application will be decided within two months. The court of appeals delegated by the other court of appeals will conduct the required procedures within 15 days.

KOLCUOĞLU DEMİRKAN KOÇAKLI

- Full remedy actions and cancellation of administrative actions within the scope of this amendment will be subject to separate proceedings. Full remedy actions and cancellation of administrative actions filed together before the effective date of the said amendment will continue as filed.
- Any action without a deadline set forth under the said amendment will be finalized immediately.

Regarding the lawsuits filed before the effective date of these amendments, the abovementioned amendments will apply as of the current stage of the lawsuit.

3. Amendments to the Expert Law

As per Provisional Article 2 inserted to the Expert Law by the Omnibus Law, experts to be appointed for the disputes, investigations or prosecutions taking place in the regions defined as "disaster zones affecting ordinary life" are not required to be in the standard expertise lists provided that they fulfill the criteria set forth under the Article 10/1 of the Expert Law. In addition, completion of expertise training and completion of working hours performed as an expert will not be required. This provision will apply until 1 January 2028.

CONTACT



Elif Şeyda Oluklu

esoluklu@kolcuoglu.av.tr



Fatma Feyza Tosun

fftosun@kolcuoglu.av.tr