



PERMANENT MISSION OF TURKEY
TO THE UNITED NATIONS
GENEVA

2012/BMCO/4037966

17 August 2012

Dear Mrs. Rolnik,

With reference to your letter No: AL Housing (2000-9) TUR 4/2012, dated 29 May 2012, on the request of information regarding the "Law for the Transformation of Areas under Disaster Risk", I have the pleasure to enclose herewith an information note on the aforementioned law received from the Ministry of Environment and Urbanization of the Republic of Turkey.

Please accept the assurances of my high consideration.

Oğuz DEMİRALP
Ambassador
Permanent Representative

Encl: As stated

Mrs. Raquel Rolnik
Special Rapporteur
on adequate housing
as a component of the right to
an adequate standard of living, and
on the right to non-discrimination in this context

OHCHR REGISTRY

21 AUG 2012

Recipients: SLD
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OPINION of the MINISTRY of ENVIRONMENT and URBANIZATION
on
The LAW of TRANSFORMATION of AREAS under DISASTER RISK

Article 56 of Turkish Constitution governs that everybody has the right to live in a healthy, balanced and safe environment and ascribes certain duties to the State, in this regard. Likewise, according to Article 23 of the Constitution, the State is responsible of 'ensuring social and economic development as well as sound and healthy urbanization'. For instance, majority of Turkey is under a natural disaster risk including earthquake. Despite this fact, it is well-known that majority of the existing buildings do not resist against disasters and do even get demolished by earthquakes at a moderate-scale, which causes social and economic problems and the State has to face with unexpected financial burdens, coming up in the aftermath. Within this scope, the Marmara Earthquake of 1999 and the Earthquake of 2011 in Van province established the fact that a series of immediate and logical steps have to be made to create healthy and safe residential areas in Turkey, where tens of thousands of people lost their lives to earthquakes as well as many other natural disasters and the volume of losses reached millions of Turkish Lira. Implementation of the Law no 7269 on Assistance to be Provided Along with Measures Against Disasters Affecting Public Life generates huge costs, makes it difficult to cover, interrupts daily life in locations declared as 'area susceptible to disaster', requires adoption of certain 'extraordinary' measures and paves the way to social problems. For this reason, it is needed to transform primarily the residential units and workplaces in risky areas, without adopting a decision of 'an area susceptible to disasters' in a 'voluntary' way and to create new legislative arrangements to ensure transfer of houses to new residential areas.

According to Law no 6306 prepared considering the duties and obligations of the State derived from the Constitution, the main philosophy is to ensure urban regeneration and transformation through signing an agreement with the owners of the areas susceptible to natural disasters or buildings which bear a risk though they are not located in such areas.

Nonetheless, if the property owners do not evacuate the risky buildings or not ensure their demolition, the Ministry or the public administration shall run the procedures, with this end.

What is aimed through such a legislative arrangement is the public safety. As it is well-known, public safety comes first vis-à-vis all other interests.

Within this context, the allegations mentioned in the letter are explained as follows:

The letter indicates that there is no definition of 'areas under the risk of disasters'. However, Article 2 (ç) of the Law defines the term of 'risky area'.

It is also objected to the allegation saying that the term of economic life was not defined in 'building completed its economic life' under the definition of 'risky building'. However, the meaning of economic life could be easily found in technical literature and the risky building shall be identified by technical staff in the light of scientific and technical data.

It is also objected to the allegation saying that the methods to identify the risky buildings and the criteria on improvement, reinforcement and renovation are not clear. Regulations shall be issued to regulate the assessments regarding how risky structures shall be identified or how damage shall be classified or whether a building shall be destroyed, reinforced or renovated. Currently, the risky structures are identified, according to the provisions of Chapter 7 of the Annex on 'Assessment and Reinforcement of Existing Buildings' in the Regulation on Buildings to be Constructed in Earthquake Zones, published in Turkish Official Journal no 26454 of 06/03/2007.

It is objected to the allegation saying that both the criteria, regarding assignment of residence and provision of support to the owners or tenants of an apartment or a workplace in risky or reserve areas or areas with risky structures, on the basis of an agreement, and under which conditions such criteria shall apply, are not clear. As clearly indicated in the related article in the Law, support and assistance to the people above-mentioned such as rent and workplace subsidy, assignment of new apartments shall be extended within the framework of the regulations which are under preparation nowadays and we do continue the related legislative works.

It is objected to the allegation saying that it is ambiguous for the citizens how to appeal a decision by the public sector or how the provisions of the Law on Expropriation shall be applied since the Ministry is authorized to carry out expropriation through TOKI (Turkish Housing Development Administration) when 2/3 of the owners of the land, the risky structure of which was demolished, do not reach an agreement. The very same Article also explains this issue through the following provision:

'Unless 2/3 of the owners of the land do reach an agreement in 30 days following the written notification made to their parties, immediate expropriation could be employed for real or private legal entities through the Ministry, TOKI or the Public Administration. Such expropriations under this Law shall be deemed as the ones executed to ensure implementation of public settlement projects, according to Article 3(2) of Law no 2942 on Expropriation of 4/11/1983 and the first installment shall be paid to the owners at 1/5 of the overall value, calculated in line with the related paragraph.'

Question number 1)

Are the facts alleged in the above summary of the case accurate?

The allegations mentioned in the summary are irrelevant to the actual situation.

Question number 2)

Did consultations take place with the potentially affected communities, civil society organizations and other relevant stake holders during the drafting process of the Bill? If yes, please give details, date and outcome of these consultations.

Simultaneous consultation processes that took place during the drafting period of the Bill involved both institutional authorities and media (press and TVs) elements. At one stage, the drafting process was suspended to allow further deliberations. Following the

implementations of the Bill, the views of stakeholders will be duly taken into account. As of today, following the implementation of the said Bill, none of the said allegations occurred. During the drafting period of the Bill, a Specialization Commission was established within the Grand National Assembly of the Republic of Turkey (TBMM). The reports of the Specialization Commission and the minutes of the TBMM General Assembly reveal that, both the Government and the opposition mentioned the necessity to have that Bill.

Question number 3)

The Department of Natural Disaster and Emergency Situation Management (AFAD) of Turkey study and prepare assessments in order to alleviate the risk of natural disasters in the country.

Question number 4)

The locations that are under risk are identified according to the annex of the Regulation on the constructions that will be built in the earthquake areas, part 7 "Assessment of the Buildings and their Reinforcement", no 26454 dated 06.03.2007.

Question number 5)

All measures shall be taken to ensure that our citizens have a house or that they will not live in unfavorable houses or bad living conditions. Furthermore, when the law is reviewed at a satisfactory level, what benefits shall be provided to our citizens could be understood. For instance, Article 5 of the Law reads as follows:

'Regarding the demolition of the risky structures and the practices in such areas, areas reserved for settlement as well as risky areas, it is essential to reach an agreement amongst the property owners. Temporary housing or workplace or rent subsidy could be provided to the owners who have evacuated their structures/buildings according to an agreement or tenants or the ones residing at such places as part of their limited estate rights or the ones who have a workplace in such structures.

When required, provisions in the first paragraph could be applied to the ones who use the risky structure though they are outside the scope of this paragraph. Upon the proposal of the Ministry, the Council of Ministers establishes the rules and procedures on how to conclude an agreement with such citizens, how assistance shall be delivered or how the fee for debris removal shall be paid to the parties. When carefully read, it will be noticed that the Law covers not only the property owners but also the tenants and the ones who have no right on that specific property or right to usufruct.

Question number 6) and 7)

A housing certificate, the rules and procedures of which shall be established by the Ministry and shall enable the provision of a loan, ownership or limited rights out of the special account for housing, workplace, land and transformation projects, could be issued to the owners of the properties evacuated, demolished or expropriated on the basis of an agreement or to the tenants living at such locations or the individual(s) benefiting from the

right to limited estate minimum for a year, or the ones having a workplace in such structures. If such parties would like to buy or construct their own property, a loan could be issued to them. A house or workplace which could be given to the ones who are poor or from low-income class according to Law no 775 on Slum Houses of 20/7/1966 could also be provided by the Ministry, the TOKI and the Public Administration, in return for a reimbursable credit, in line with the procedures covered in Law no 7269 on Assistance to be Provided Along with Measures Against Disasters Affecting Public Life.

Current economic conditions in a province, circumstances caused by a disaster, current market value and cost of debris removal as well as assets and income of the individuals shall be considered while assessing the value of a new structure/building constructed in immovable properties (lands) located in a risky area or zones reserved for public settlement. So, such a value could be kept lower than construction expenses upon the decision of the Council of Ministers and social amenities as well as infrastructural costs could be excluded from the valuation.

Therefore within the scope of the rules and procedures to be established by the Council of Ministers, reinforcement loan could be delivered, out of the special account for urban transformation, to the structures falling outside the risky or reserved settlement areas but technically proven that they could be reinforced.