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The Journey of the 'Law on Transformation of Areas at Disaster Risk' in Türkiye: A Critical Assessment

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Abstract

It is widely accepted that Türkiye is at risk of natural disasters and that almost 50% of the building stock in Türkiye needs to be transformed. Therefore, there is an inevitable necessity for a country-wide urban transformation process planning, and Law No. 6306 'Law on the Transformation of Areas under Disaster Risk' was enacted in 2012. The central government has suggested that the purpose of this Law is to transform the areas and structures under disaster risks into healthy, livable, and safe living environments and provide a significant public benefit to society. However, considering the provisions and the implementation processes of the Law, there are severe rights violations, procedural mistakes, and misapplications. Plenty of objections have been raised by opposition sides, and they brought the matter to the Constitutional Court, which has cancelled many problematic items in this Law. However, subsequently, the government modified many of the withdrawn articles and re-enacted them with Bag Law No. 6704 in 2016. Within this framework, this article will first summarize the main reasons behind the decision of the Court and then will discuss the old and new versions of Articles Law No. 6306 in terms of legality and legitimacy.

Keywords: *Law no.6306, urban transformation, the constitutional court, legality, legitimacy.*

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Türkiye'deki Afet Riski Altındaki Alanların Dönüştürülmesi Hakkında Kanun'un Yolculuğu: Eleştirel Bir Değerlendirme

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Öz

Türkiye'nin doğal afet riski altında olduğu ve Türkiye'deki yapı stokunun yaklaşık %50'sinin dönüştürülmesi gerektiği genel kabul gören bir gerçektir. Bu nedenle, ülke çapında bir kentsel dönüşüm süreç planlamasının yapılması kaçınılmaz bir zorunluluktur ve bu amaçla 2012 yılında 6306 sayılı 'Afet Riski Altındaki Alanların Dönüştürülmesi Hakkında Kanun' çıkarılmıştır. Merkezi yönetim, bu kanunun amacının, afet riski altındaki alan ve yapıları sağlıklı, yaşanabilir ve güvenli yaşam ortamlarına dönüştürmek ve topluma önemli bir kamu yararı sağlamak olduğunu ortaya koymuştur. Ancak Kanun hükümleri ve uygulama süreçleri dikkate alındığında ciddi hak ihlalleri, usul hataları ve yanlış uygulamalar söz konusudur. Muhalefet tarafları çok sayıda itirazda bulunmuş ve konuyu Anayasa Mahkemesi'ne taşımış, bu kanundaki sorunlu birçok maddeyi iptalini istemiştir. Ancak daha sonra geri çekilen birçok madde değiştirilerek ve 2016 yılında 6704 Sayılı Torba Yasa ile yeniden kanunlaşmıştır. Bu makale 6306 Sayılı Kanunu'nun ilgili maddelerinin eski ve yeni versiyonlarını yasallık ve meşruiyet açısından ele alacaktır.

Anahtar Kelimeler: *6306 sayılı kanun, kentsel dönüşüm, anayasa mahkemesi, yasallık, meşruiyet.*

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Introduction

Türkiye is a country exposed to a high level of natural disaster risks. Haphazard urbanization and wrong urban planning policies and implementations further increase the impact of natural disasters such as earthquakes, landslides, and floods. For instance, almost 66 percent of the country's lands and 77 percent of its population are at risk of earthquakes (Demirkol and Bereket Baş, 2013). Türkiye, in this regard, has had very bitter experiences in the recent past, such as in the Marmara Earthquake that took place in 1999, approximately 18 thousand people died, and thousands were injured; nearly twelve years later, in 2011, the earthquakes that occurred in Van caused to the death of about one thousand people and thousands of families to become homeless. Various floods and other natural disasters experienced with these earthquakes led to increased sensitivity and awareness of researchers and policy-makers on the risks of natural and people-made disasters.

Türkiye, especially after the Marmara Earthquake, has taken various precautions to eliminate the effects of natural disasters. In this respect, one of the first steps towards eliminating the risks of disasters was reconsidering the laws on urban planning, especially the laws related to urban transformation. In that sense, Law No.5104 on the North Ankara Entrance Urban Regeneration Project entered into force in 2005 and was one of the first steps aiming at urban transformation. This law was generated for a specific area (the North Ankara Entrance) and did not include any decisions to deal with other regions. Law No. 5366 on Usage of Timeworn Historical and Cultural Real Property with Restoration and Protection, defining rules for the natural conservation areas and the renewal process of these areas, was enacted in 2005. After these two necessary legal regulations, Article 73 of the Municipal Law No.5393 was enacted in the same year. With Article 73, the roles and responsibilities of municipalities related to urban transformation have been determined, and the municipalities have been identified as the key local actors in urban transformation projects. Then, Law No. 5998 on Amending Article 73 of Municipal Law was enforced. According to Güzey (2016), Article 73, which enables municipalities to carry out urban renewal projects in every area, is still the most decisive legislative act in force. She also indicates that this law, by intervening in some parts of the cities, serves neo-liberal discourses. Later, Decree Law No.648 dated 2011, which authorizes the establishment of the

Ministry of Environment and Urbanization, has increased the role of the state in the urban planning processes, and even Article 4 of this Decree-Law makes the Ministry as the crucial actor of urban transformation in terms of declaring urban transformation areas, preparing implementation plans and projects for these areas. After the former legal regulation concerning urban transformation, Law No. 6306 on the Transformation of Areas under Disaster Risks was entered into force in 2012. This law started the mobilization of urban transformation in Türkiye.

Law No. 6306 was created mainly due to the insufficiency of the previous laws on urban transformation. The primary purpose of this law is to specify the procedures and principles concerning rehabilitation, demolition, and renewal of areas under risk and the regions, including risky buildings outside these areas, to constitute healthy and safe living environments compatible with the norms and standards of science and art.

The Ministry of Environment and Urbanization has authorized the determination of "areas and buildings under risk" and management of the "rehabilitation, demolition and renewal" of these areas throughout the country. Besides, the Law authorities the Ministry to prepare, approve and monitor all plans and projects concerning areas and structures under risk. The Law also mentioned that if the Ministry delegates, these authorities can be transferred to local authorities (i.e., district and metropolitan municipalities and particular provincial administration) and TOKİ (The Housing Development Administration). Thus, the Ministry of Environment and Urbanization and municipalities and TOKİ (The Housing Development Administration) create a powerful coalition on urban transformation.

Law No. 6306 implies that, if necessary, the Ministry, municipalities, and TOKİ can ignore many laws and regulations to achieve urban transformation in an area. In that sense, Article 9 of this law listed the rules that can be ignored, such as; the Zoning Law No.3194, Law No. 3573 on the Breeding of Olive Cultivation, Forestry Law No.6831, Law No. 2634 on Tourism Encouragement, the Law No. 2863 on Conservation of Cultural and Natural Property, the Coastal Law No. 3621, the Bosporus Law No. 2960, and the Law No.5403 on Protection of Soil and Land Use.

Law No. 6306, equipped with many powers, expectedly became the focus of criticism. Criticisms of the law can be summarized as follows: to restrict the authority of local governments, to give high control to TOKİ, to centralize urban planning, to violate the right of shelter and property,

to eliminate the right to legal remedies, to include arrangement contrary to voluntary, and to remove cultural and historical assets (Demirkol and Bereket Baş, 2013). Considering the public's discomfort and all these criticisms, the opposition party applied to the Constitutional Court for the cancellation. It stopped the execution of many articles of this law. Upon this application, the Constitutional Court cancelled several law provisions in 2014. However, after the decision of the High Court annulled specific articles, the government revised the withdrawn articles and then put them back into effect with particular bag laws.

Within this framework, this article first aims to briefly explain the main reasons behind the cancellation decision of the Court on specific articles by taking into account the possible impact of this significant decision of the Court on urban and environmental planning in Türkiye. The article will then summarize the details of the process of enacting cancelled articles by the Court and evaluate this case under the light of two critical concepts, "the legality" and "the legitimacy" of the political and administrative acts.

The Reasons behind the Cancellation of Several Articles of Law No. 6306 by the Court

The opposition party appealed to the Constitutional Court in 2012 for the annulment of specific articles of Law No. 6306. It was argued that any disaster-based law regulation, which is not prepared following the constitutional property, the immunity of housing and shelter right, the rule of law and social state principles, and the principles of equality, will push the country into big problems. The opposition party also indicated that this law should be emphasized as much as constitutional works. At the same time, a consensus should be reached with the participation of all authorized units, and all authorities should not be left to the Ministry of Environment and Urbanization. Otherwise, urbanization which will be realized without detailed studies on legal, economic, sociological, technical, and many other topics, will lead to more significant social earthquakes and crises. Thus, the opposition party expected that since Law No. 6306 was ignoring the property and shelter right of residents, removing the authority of local governments and collecting all the power in the Ministry of Environment and Urbanization, neglecting many vital laws and contrasting with the Constitution, many existing laws and the International

Treaties, the Court should cancel its some articles. This section, in this context, will briefly summarize the reasons behind the Court's cancellation of several articles of Law No. 6306. The article presents the reasons for the cancelled articles in order.

The Court has annulled the last two sentences of Paragraph 1, Paragraph 4, and 7 of Article 3 of Law No. 6306. The last two sentences of Paragraph 1 of Article 3 say that the expenses of determining risky buildings made by the Ministry or the Administration shall be reported to the related Directorate of Land Registry. And the Directorate of Land Registry will create a joint mortgage by dividing the determination cost by the shares in the title deed, ensuring that the building stakeholders are mutually responsible and will inform the Ministry, the Administration, and the owner of the building. These two sentences were examined in terms of the 13th and 35th Articles of the Constitution. Article 35 of the Constitution stipulates that everyone has a property right, and property right is considered a fundamental right. The property right allows individuals to "use," "benefit," and "save" their products as they wish. However, the right to ownership is not limitless. The 35th Article of the Constitution indicates that as long as the property right cannot be contrary to the common good, it may be used for "the public interest" or restricted by "the law." However, using a property right for public interest or restricting it with a law does not always mean it complies with the Constitution. According to Article 13 of the Constitution, this restriction should follow the requirements of democratic social order and not touch the essence of the right. In this respect, the Constitution indicated that although the actions of the last two sentences of Paragraph 1 are aimed at the public interest, they also damage the property rights of the persons. For instance, because of the joint mortgage, if any of the stakeholders want to remove the mortgage on the land share, it will not be enough to pay only the expenses that fall on its claim if other stakeholders reject or fail to pay their mortgage, they will have to pay the total costs. The Court has said that this is not fair and does not comply with Articles 13 and 35 of the Constitution, and therefore, the last two sentences of Paragraph 1 are cancelled.

The Court has also cancelled the 4th Paragraph of the Article 3 of Law No.6306. This paragraph expresses that the immovable properties of public administrations outside the public land, to be used following the purposes of this Law No.6306, can be allocated to the Ministry of Environment and Urbanization with the proposal of this Ministry and the decision of

the Council of Ministry, after receiving the opinion of the relevant public administrations. Besides, it is also indicated that if the Ministry wants, these immovable properties can be transferred to TOKI and the Administration without charge. The Court has examined this article according to the Article 127 of the Constitution. Article 127 of the Constitution emphasizes that administrative and financial autonomy of local administrations exists and administrative autonomy also includes executive decision-making authority. Thus, the central government's authority over these institutions is limited by the locality[7] and jurisdictional supervision. They do not take executive decision-making authority in place of the local administrations. The Court has argued that as indicated in the first sentence of Paragraph 4, without taking into account any decisions or reasonable opinions of the local authorities, the proposals for the transfer of the immovable properties free of charge are incompatible with the principle of autonomy of local administrations in Article 127 of the Constitution. The Court also indicates that according to the 123 Article of the Constitution, having a public legal personality makes it compulsory to have administrative and financial competence. In this regard, the legal character, in essence, requires central independence. In this case, since the provisions stated in Paragraph 4 ignore legal nature, take the local administration's place under guardianship, and define central government as an absolute authority, it is contrary to Articles 123 and 127 of the Constitution and has been cancelled by the Court.

The Court has annulled the 7th Paragraph of the Article 3 of the Law. This paragraph mentions that if required by the Ministry and to ensure application integrity, the non-risky structures within the boundaries of specified areas will be subject to the provisions of this Law. The Court asserts that the integrity of the application may involve public interest. Still, the association between public interest and the fundamental rights of individuals must be fair and balanced. As indicated in Paragraph 7, there is no specific regulation on the valuation of "non-risky buildings," and reference has been made to the rules on risky buildings. However, the Court indicates that the above principles were arranged for risky buildings (not for non-risky buildings). Thus, the balance between the public interest and the right of the individuals were established following these rules. Therefore, the Court says that since such a balance is incompatible with "the

[7] In Turkish: *yerindelik*

principle of proportionality" in Article 13 of the Constitution and disrupts the balance between the public good and the rights of non-risky building owners, Paragraph 7 of Article 3 is revoked.

Article 4 of Law No. 6306 has been cancelled by the Court. Article 4 maintains that the Ministry, or if TOKI or the Administration carries out the application, may temporarily stop all kinds of zoning and construction operations in risky areas, immovable risky structures, and reserve building areas during the projects and the applications within the scope of this Law. The Court argues that to be able to speak about the interventions and restrictions on the property right, individuals do not have to be wholly deprived of their properties. As mentioned above, the property right is a right that enables persons to "use," "exploit," and "save" what they have. In other words, individuals can construct new buildings on their immovable properties. The Court, therefore, has indicated that there is no doubt that the property right of individuals is restricted by Article 4, which stops the zoning and construction operations on immovable properties belonging to individuals. Besides, it is expressed that since the duration of eliminating all kinds of zoning and construction activities is uncertain, the provision in this article disrupts the balance between the public good and individuals' property right. And the Court has said that as Article 4 is contrary to Articles 13 and 35 of the Constitution, it is cancelled.

Paragraph 5 of Article 5 has been revoked for the same reasons explained in the last two sentences of Paragraph 1 of Article 3. The Court suggests that creating a joint mortgage on building stakeholders damages the property rights of the individuals, and thus Paragraph 5 has been cancelled.

The Court has also annulled the last sentence of Paragraph 9, Paragraph 10 of Article 6 of Law No. 6306. The last sentence of Paragraph 9 indicates that the decision to stop the executive cannot be taken in cases against the administrative proceedings under this Law. However, the Court argues that the first paragraph of the Article 125 of the Constitution demonstrates that "judicial remedy is open to all kinds of actions and transactions of the Administration." In addition, the 5th Paragraph of Article 125 indicates that the irreparable and hard damages resulting from the application of administrative action and the unlawful administrative acts can be shown as the justifications for the decision to stop the executive. In this way, it is aimed to provide effective judicial control against the actions and transactions of the administration. For this reason, the

Court suggests that to protect individuals against the adverse effects of unlawful administrative activities, to prevent difficult situations that cannot be solved in the future, and to rescue the administration from possible compensation, the executive should be stopped until the individual's cancellation case concludes. Hence, due to the above reasons, Paragraph 9 has been revoked.

Paragraph 10 of Article 6 indicates that the notifications regarding works and transactions made under this Law will be made to the addresses specified in the address-based population registration system. The Court, however, suggests that if persons forget to report their address change to the address registration system or the updating of the system is delayed, the addresses of the persons in the registration system will be different from their last addresses. Thus, the institutions that have to notify these persons will be unable to reach them. In such a case, the relevant institution assumes that it has fulfilled its responsibility; on the other hand, because persons are not aware of the significant actions related to them carried out by these institutions, they will lose substantial rights. In this sense, the Court has indicated that the provision in Paragraph 10 is incompatible with the rule of law principle and the right to a fair trial and the 2. and 36. Articles of the Constitution it has been cancelled.

Article 8 of Law No. 6306 has been annulled by the Court. Article 8 specifies that through using public resources, all purchases of goods and services and construction works carried out under this Law shall be counted as the works specified in paragraph (b) of the first paragraph of Article 21 of Law No. 4734 (i.e., to prevent damages and deaths resulting from natural disasters and epidemic diseases, the government authorizes the administration with some special powers to ensure that the works are done quickly). The Court has said that it is clear that there is a public benefit in accelerating the procurement of goods and services and construction works. However, the Court also indicates that considering that this Law aims to transform a large part of the building stock in the country, which requires very high costs. Thus, it is expected that this Law must comply with the principles including transparency, competition, equal treatment, reliability, secrecy, and public interest. Conversely, according to the Court, this Law does not adequately meet the above principles. Also, as noted in the Law, there are no unforeseen events regarding the safety of life and property. Hence, the Court has cancelled Article 8.

Besides the cancellation of the above articles, the Court has revoked the first sentence of Paragraph 1 and Paragraph 2 of the Article 9 of the Law. In the first sentence of Paragraph 1, the Law claims that plans carried out under this Law will not be subjected to Law No. 3194 on Development Plan and other legal regulations related to zoning plans. In this respect, the Court has examined this paragraph in the context of Articles 2, 5, 7, and 56 of the Constitution. According to the Court, the ignorance of the limitations defined by the Development Plan Law by the administration is incompatible with the articles of the Constitution, and this situation is not consistent with the principle of ineligibility of legislative authority.[8] Thus, this paragraph has been cancelled.

Paragraph 2 of the Article 9 asserts that if it is required, the provisions of the other laws contrary to this Law can be ignored during the implementations made under this Law. Article 9 has also been examined in Articles 43, 44, 45, 56, 63, and 169 of the Constitution by the Court. In this context, the Court indicates that the Constitution guarantees the protection for the "coastal" by Article 43, for the "soil" by Article 44, for the "farmland and meadows and pastures" by Article 45, for the "historical, cultural and natural assets" by Article 63, and the "forests" by Article 169. Furthermore, Article 56 of the Constitution determines "the right to live in a healthy and balanced environment." In this framework, the Court suggests that the provisions in the Paragraph of Article 9 of this Law ignore the protection guarantees of the Constitution concerning the issues mentioned above. Also, the implementation boundaries of the administration are not specified in this paragraph. Therefore, since this situation is incompatible with the principle of "certainty," which is a requirement of the state of law, the Court has annulled Paragraph 2 of Article 9.

To sum up, the Constitutional Court has annulled specific provisions of the crucial articles of Law No. 6306. On the one hand, these cancellations restrict the Ministry's superpower. On the other hand, urban transformation implementations should consider the constraints defined in the existing Development Plan Law and other important laws. The decisions of the Court clearly show that although public interest is a fundamental goal of this Law, personal rights are always more important. As indicated in the cancellation reasons, balancing public interest and individual rights

[8] In Turkish: *yasama yetkisinin devredilmezliği ilkesi*

should be fair and comply with the Constitution and International Treaties. The cancellation decision of the Court has prevented uncontrolled urban planning studies in Türkiye. It was also expected that the Court should cancel Paragraph 1 of Article 6, which ignores one-third of the shareholders who did not participate in the urban transformation decision of the Ministry.

The Revised Version of the Revoked Articles of the Law No. 6306

After the cancellation of several provisions of Law No. 6306 by the Constitutional Court, the Turkish Parliament, especially with the intense efforts of the ruling party, tried to revise the revoked articles by entering into force a new law. In this respect, some of the cancelled provisions of the Law No. 6306 have been revitalized with Bag Law No. 6704, dated 2016.

The Article 21 of the Law No. 6704 has recreated Paragraph 7 of Article 3 of Law No. 6306. The new version of Paragraph 7 has considered the Court's objection and indicates that the valuation works on non-risky buildings which remain in the transformation project areas will be made by considering these buildings are not risky. In the previous version of this paragraph, there was no specific regulation about the valuation process of the non-risky structures evaluated as risky structures. According to the Court, such a situation was inconsistent with the property right and could lead to many victimizations. However, the new version of Paragraph 7 also does not respect property right because this provision displaces people from their living areas and prevents them from "using," "exploiting," and "saving" their properties as they wish.

The first paragraph of Article 4 of Law No. 6306 has been regenerated by the Article 22 of Law No. 6704. In the previous version of this paragraph, the Law did not define a duration for stopping zoning and construction works in risky areas, immovable risky structures, and reserve building areas. In contrast, the new version of this paragraph indicates that the Ministry, TOKI, or the Administration may temporarily stop all kinds of zoning and construction works in risky areas and reserve building areas for two years. But if these administrations need more time, the temporary suspension of zoning and construction works can be extended for another year. This Law may have clarified the length of time that zoning and construction works are stopped, but there is no doubt that it has

restricted the property rights of individuals. Because of this Law, people will not be able to touch their property for at least two years, which may lead to extra pecuniary and non-pecuniary costs. For this reason, the Ministry or Administration should take this situation into account and take the necessary precautions to minimize the losses of these people.

The Article 23 of the Law No. 6704 has redefined the first Paragraph of Article 6 of Law No. 6306. This paragraph has described the processes of the urban transformation projects in the risky areas, immovable risky structures, and reserve building areas defined under Law No. 6306. The first part of this paragraph indicates that after the risky buildings have been demolished, the previous condominium ownership and easement on the land will be abandoned, and the land will be registered in the name of the co-owner according to the land shares they own. In addition, it is also indicated that if necessary, the amalgamation and subdivision, as well as the operation of changing the function of the land, will be done by the Ministry, Administration, or TOKİ. The second part of the paragraph says that the owners of the buildings will evaluate all these processes, and regardless of whether they are stakeholders, it is expected that at least two-thirds of the stakeholders must accept these decisions. The Law maintains that the land shares of those who do not participate in these decisions will be auctioned to the other stakeholders after the Ministry has determined the fair value of these land shares. However, suppose the different stakeholders are unwilling to buy these land shares. In that case, the Ministry will buy these land shares at the determined fair value, which will be registered in the name of the Treasury. They will be allocated to the Ministry or transferred to TOKİ or the Administration. Although the first paragraph of Article 6 did not cancel by the Constitutional Court, it has been one of the most discussed and criticized provisions of this Law. This paragraph may aim to provide public interest, but on the other hand, it has seized the property and shelter right of the remaining one-third. The urban transformation works conducted based on the provision specified in the first paragraph of Article 6, which ignores the stakeholders who do not participate in these decisions, have violated the principle of "right to shelter" as defined in the United Nations Declaration of Human Rights and the Constitution. For this reason, the Constitutional Court should re-evaluate this paragraph by considering the victimization of the remaining one-

third. In 2014, because "approved by the Ministry"[9] was the issue of the trial, the Court did not cancel the first Paragraph of Article 6.

Lastly, Article 25 of the Law No. 6704 has added Additional Article 1 to Law No. 6306. The first Paragraph of Additional Article 1 specifies that places where the public order and safety have deteriorated and daily life has stopped or is interrupted; and places that have inadequate planning and infrastructure services, or have structures contrary to the zoning legislation, or have damaged systems or infrastructures; and places where at least 65% of their total building stocks are contrary to the zoning legislation, or constructed without building licenses, can be declared as risky areas with the proposal of the Ministry of Environment and Urbanization and then, by the decision of the Council of Ministries. The second Paragraph of this Article indicates that a lawsuit can be filed against a risky area decision of the Council of the Ministries after the publication of this decision in the Official Gazette. This article has been created mainly due to the recent terrorist attacks in city centres such as Sur, Cizre, Nusaybin, and Şırnak. Through this Additional Article, any place can be defined as a risky area that will cause serious problems concerning individual rights.

In the next section, the decisions of the Court and the new versions of the cancelled articles of Law No. 6306 will be discussed in light of two substantial legal concepts, namely "legality" and "legitimacy.".

Conclusion: Evaluating the Decisions of the Court and the New Versions of the Articles Law No. 6306 in the Context of Legality and Legitimacy

It is widely accepted that a large part of Türkiye's land is at risk of natural disasters and that almost 50% of the building stock in Türkiye should be transformed. Considering these realities and the experiences gained in the past, the necessity of an urban transformation operation covering the whole country seemed inevitable. In that sense, Law No. 6306 on the Transformation of Areas under Disaster Risks was enacted in 2012. The government has suggested that the purpose of this Law is to transform the areas and structures under disaster risks into healthy, livable, and safe living environments and provide a significant public benefit to society. So far, everything seems very ordinary, but when looking at the provisions

[9] In Turkish: *Bakanlıkça uygun görülenler*

and the implementation ways of the Law, there are serious rights violations, procedural mistakes, and misapplications. The opposition party has objected to this situation and brought the matter to the Constitutional Court. The Court has cancelled many problematic items in this Law, but subsequently, the government has modified many of the withdrawn articles and re-enacted them with Bag Law No. 6704 in 2016. This section of the article will discuss the old and new versions of Articles Law No. 6306 regarding legality and legitimacy.

According to Falk (2012), legality is specified by rules, laws and regulations, and legitimacy implies a merger of moral imperatives and political feasibility. Legality implies the rule basis of phenomena, on the other hand, Suchman (1995) describes legitimacy as "*a generalized perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs and definitions.*" Scrutinizing the classification of Weber, it is clear that legitimacy and legality are not the same (Gönenç, 2001). Legality mainly refers to law and compliance with the law. The legality of a policy or an action is understood by looking at the legal texts, case law, and precedents, and thus, an effort is always legal or illegal. It cannot be partially legal (Popovski and Turner, 2008). Conversely, legitimacy changes are dependent on perceptions, norms, and traditions. In other words, legitimacy is a subjective interpretation of what a society desire and wishes to see and wants to do. Popovski and Turner (2008) indicate that legitimate decisions emerge from democratic participation. Therefore, as legitimacy moves away from democracy, it is exposed to ideological discourses and manipulations. The relationship between legality and legitimacy is controversial. Any legal policy, law, or action is not always legitimate, and any legitimate things are not always lawful. However, legitimacy plays a crucial role in strengthening and accepting the law. Hence, without legitimacy, society will never fully embrace the institutions, rules, policies, or processes. In this respect, any legal things should be legitimate, and any legitimate stuff should be legal.

Considering Law No. 6306, the legality and legitimacy of this law are a matter of debate. The Constitutional Court has revoked many Articles of the Law due to the inconsistency of these articles with the Constitution. The Court has partially corrected the legality problem of the Law, but the legitimacy problem of the Law is still there.

The first version of this Law was especially too problematic in terms of legality and legitimacy, and the illegal and illegitimate provisions of this Law can be briefly summarized as follows:

This Law, on the excuse of public benefits, has acted contrary to the Constitution and International Treaties and violated several individual rights and freedoms. Article 3, for instance, forced people to be joint mortgages, and to ensure application integrity, it foresaw the demolishment of all non-risky structures remaining in the project area. Article 4 temporarily stopped all kinds of zoning and construction operations in risky and reserve areas during the projects and applications. The Law with Article 6 closed all legal proceedings and indicated that the executive would not be stopped. Article 6 also pointed out that with the provision of the two-thirds majority, the implementation of urban transformation could be initiated anywhere, and the land shares belonging to the remaining one-third would be expropriated or sold to the other stakeholders. Since all these provisions have violated the property rights of the individuals and prevented individuals from "using," "exploiting," and "saving" their properties, they are both illegal and illegitimate.

By equipping the Ministry of Environment and Urbanization with superpowers, the Law strengthened the central government and inactivated the local administrations. Although the local administrations have administrative and financial autonomy, executive decision-making authority, and particularly public legal personality, this Law ignored all these features and loaded all authorities to the Ministry. As specified in Paragraph 4 of Article 3, the Ministry could use all public properties within the borders of the local administrations without taking into account any decisions or reasonable opinions of these local authorities. This provision is illegal, illegitimate, and contrary to the European Charter of Local Self-Government, which aims to reinforce local government.

This Law, through opening the way for the commercialization of public properties, led to the creation of new rant areas in the cities. Paragraph 4 of the Article 3 indicated that the immovable administrations' public properties could be allocated to the Ministry with the decision of the Council of the Ministry. However, this Law did not clearly explain whether these public properties would remain as public properties served the basic needs of society after the transformation process conducted by the Ministry of TOKİ. This situation raises doubts and criticisms associated with the Law. Several implementations and intentions justified these doubts and

objections. For example, Etiler (Beşiktaş) Vocational High School for the Police Force, as public property, was declared as a risky area and allocated to the Ministry. Then, the approved master plan regarding this area was modified by the İstanbul Metropolitan Municipality, and the area was transferred into luxury residences, business centres, and shopping malls.

Similarly, the Ministry tried to transform Gezi Parkı into artillery barracks (shopping mall), but this intention was postponed to a later time due to increased reactions and protests. Nowadays, Ankara Atatürk Çiftliği, one of the most critical and rare green areas in Ankara, is threatened by this Law. Such examples can be increased. Therefore, it is noteworthy that any public property can be declared as a risky area and allocated to the Ministry or TOKİ. Thus, local administrations' public properties were threatened by this Law. The declaration of public property as a risky area is made for public benefit. Still, the current implementations clearly show that the intention behind the transformation of these areas is entirely different and aims to create a rant.

By excusing public good, this law generally creates new rant areas, and thus, the legitimacy of this law is questioned. Besides, since this law was contrary to the Constitution, the Court cancelled this paragraph.

The first version of the Law No. 6306 saw itself as superior to the many other important law concerning urban planning. Article 9 of this Law determined that the plans and implementations conducted under this Law would not be subjected to the restrictions defined by other laws and regulations. In other words, this means that this Law would not consider the zoning, forestry, military, tourism, conservation, pasture, the Bosporus, and soil laws. Such a provision ignored both the law and the general legal practices. Therefore, it can be said that this paragraph was not both legal and legitimate. In this regard, the Court has revoked this law for the reasons mentioned above.

The last version of Law No.6306 contains a new version of the four Articles annulled by the Constitutional Court and an Additional Article. Considering the latest version of the Law in the context of legality and legitimacy concepts, it can be said that there are significant developments in the sense of legality. Still, the legitimacy of the Law has become even worse. The new version of the Articles cancelled by the Court has been revitalized only by considering the legality issue. For instance, the latest version of the first paragraph of Article 4 has defined the duration of stopping zoning and construction works. This may be legal, but no one can

say it is entirely legitimate. Without asking people, their property right, which is their most legitimate right, has been restricted.

Similarly, the new version of Paragraph 7 of Article 3 meets the objection of the Court but continues to demolish the non-risky structures of the people. In other words, this Law disregards the property right of the individuals and pays only the values of their properties but does not care what sort of social, cultural, psychological, and economic troubles these individuals will face. Hence, this Law, which is formally corrected, still has a legitimacy problem.

The new version of the first paragraph of Article 6 of the Law described the processes of the urban transformation projects in the risky areas, immovable risky structures, and reserve building areas, ignoring the right of the remaining one-third of stakeholders who do not participate in the decision of urban transformation. The Ministry, by forcibly taking over the properties of stakeholders who have not participated in the urban transformation idea, has violated the property and shelter right of these people. Such an action is not legal and legitimate, and the Court should re-evaluate this paragraph and cancel it.

Lastly, Article 1 has been added to the Law with Bag Law No. 6704. This article has extended the definition of the risky area. According to this Article, areas destroyed due to terrorist attacks or areas where at least 65% of their total building stocks are contrary to the Development Law can be defined as risky areas. Since this article is open to subjective evaluations, any place may be declared as a risky area. The declaration of an area as primarily risky depends on the decisions of the administrators in that period, and this decision has no objective qualities. Therefore, this article will cause an increase in the questioning of the legitimacy of this Law.

To sum up, since Law No. 6306 inactivates local administrations, strengths the authority of central government ignores many laws and regulations, restricts or completely takes over the property and shelter rights of the individuals, disregards participatory processes and excludes the other stakeholders in the community, targets only physical transformations and neglects the social, cultural, economic and psychological influences of the urban transformation, lacks control, accountability and transparency mechanism, and uses public properties for creating rants, its legality and especially legitimacy has been seriously questioned.

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