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EVACUATION GROUNDS AS PER TURKISH LAW OF LIABILITIES

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Abstract

What In our study, evacuation grounds that may be imposed on the tenant are reviewed one by one and the terms for the tenant to evacuate the leased property are described. Differences imposed by the evacuation specific provisions of the Law, No. 6098 in comparison with the Law of Liabilities, No. 818 and the Law on the Lease of a Property, No. 6570, are examined in the light of the latest amendments thereof. In this study, in which many references to the Decrees of the Court of Cassation are made, capability of the new law to offer solutions to the existing problems is mentioned as well.

Keywords: *Evacuation, Tenant, Lease Law, Law, Decree of Court of Cession*

INTRODUCTION

The Turkish Law of Liability, No. 6098, which was enacted by TGNA on 11.01.2011 and published on the Official Gazette on 04.02.2011, went into effect on 01.07.2012. Having completely amended the then-current Law of Liabilities, upon enactment of the new Law, No. 6098, the Law on Lease of Property, dated 18.05.1955 and No. 6570, was also repealed and the Turkish Law of Liabilities was started to be imposed for the relations relevant to the lease of immovable and movable assets. While reiterating certain basic provisions of the previous Laws, which it replaced, the Turkish Law of Liabilities, in essence, included then-current developments and certain principles that were adopted by the Court of Cessations, as its new provisions. (Eris, 2012: 1).

A new lease type, namely “residence and roofed workplace leases”, was embodied in detail within the scope of the Law, No. 6098. The most important amendment imposed by the new regulation was that the restriction of the execution area that was imposed under the Article 1 of the Law, No. 6570 was revoked. With places that have municipal organizations, the criterion regarding to piers, ports and stations was abandoned. Notwithstanding the location of the leased property, all residences and roofed workplaces are included in the scope of this Law. Furthermore, the provision of the Law, No. 6570, that dictates that temples of any kind may not be leased and used for any purpose other than worshipping, was not included in the Law, No. 6098 (Oz, 2012: 70).

The term “lessor”, which gave rise to conceptual confusion, was abolished by the Law, No. 6098, the more appropriate term of “lease giver” was implemented instead. The Turkish Law of Liabilities, No. 6098, terminated the arbitrary nature of the freedom of parties to perform regulations as they wish under the principle of liberty of contract in terms of lease relation. Accordingly, the lease increase, deposit, maturity and penal terms, termination, etc., which are essential factors of lease relations and lease contracts, would be implemented within the frame of the criteria specified in the Law. (www.gultekinhukuk.com).

Expiration of Residence and Roofed Workplace Lease Contracts

Residence and roofed workplace leases may be terminated by notification or legal action.

By notification;

Art.347: Unless the tenant makes a notification for termination at least fifteen days before the expiration date, any fixed term residence and roofed workplace lease contract will automatically prolonged for one year under the same terms and conditions. The lease giver may not terminate the contract relying on the expiration date of the contract. However, after ten years of prolongation, the lease giver may terminate the contract without providing a justification by notifying the other party thereof at least three months beforehand.

For indefinite term lease contracts, on the other hand, the tenant is entitled to terminate the contract at any time by making a termination notification pursuant to general provisions, the lease giver, on the other hand, will get this entitlement after ten years from the commencement date of the lease.

The tenant and the lease giver may terminate the contract when the termination right is exercisable pursuant to general provisions.

Another important novelty that was brought in by the Law, No. 6098, is the right of the lease giver to terminate the lease contract by notification after 10 years without providing a justification thereof. Yet, during the effective term of the previous Law, No. 818, the lease giver had no right to terminate the lease contract no matter how long the lease contract stayed effective as long as the tenant fulfilled its contractual liabilities (Yavuz, 2012: 544). This way, the discomfort created by the fact that the lease giver was not the direct possessor of the leased property was eliminated (Government’s Justification).

ARTICLE 349- For immovable properties that are leased as a family housing, the tenant may not terminate the lease contract without explicit consent of her/his spouse.

If obtaining this consent is not possible or the respective spouse unreasonably withholds her/his consent, the final decision may be referred to the court of competent jurisdiction.

In the case the non-tenant spouse becomes a party to the lease contract by making a notification to the lease giver, the lease giver must separately notify the tenant the non-tenant spouse a payment term that is based on the termination notification and the termination caveat.

Article 194 of the Turkish civil code dictates that a tenant may not terminate, transfer the lease contract or restrict any right over the family housing without explicit consent of her/his spouse. According to the abovementioned Article, first clause brought an order parallel to the first clause

of the Article 194 of the Turkish civil code. However, such a provision was not contained in the Law of Liabilities, No. 818 or the Law, No. 6570 (Dinc, 2012: 116).

By Legal Action;

1. Arising from the lease giver;

a. Necessity, reconstruction and redevelopment

ARTICLE 350- The lease giver may terminate the lease contract by filing a legal suit at the end of the respective term for the fixed-term contract; and within the termination period pursuant to the general provisions and by within a month from a date that is determined pursuant to the periods set forth for the termination notification, if;

1. The lease giver is obliged to use the leased property for herself/himself, her/his spouse, relatives or any other dependents;

2. The leased property must be reconstructed or redeveloped, go through a major renovation, expansion or be changed completely and use of the property is impossible due to these.

While evacuation grounds are organized together under the Law, No. 6570, the respective grounds are divided under two headlines under the Law, No. 6098, namely grounds arisen from the lease giver and the grounds arisen from the tenant (Yavuz, 2012: 547).

Another significant new provision is that the number of the persons, who may put forward the necessity as a ground for evacuation is increased in comparison with the Law on Property Leases, No. 6570. While these persons, who may put forward the necessity as a ground for evacuation, are limited to the spouse and the children, with the current law, mother-father, grandchildren and siblings may also put forward necessity as a ground for evacuation (Oz, 2012: 76).

While the term of the legal suit that may be filed pursuant to the abovementioned evacuation grounds, was not defined in the Law, No. 6570, this is corrected with the Law, No. 6098 by setting forth that such a legal suit may be filed within 1 month from the expiration date of the respective contract (Dinc, 2012: 118).

The concept of dependents will be interpreted pursuant to the Article 364 of the Turkish civil code, titled “Alimony Dependents”. (TCL Art. 364: All is liable to provide alimony for its lineal kinship and sibling, who may fall into poverty in the absence of the alimony in question).

b. Requirements of new owner

ARTICLE 351- Any person, who acquires the leased property, may terminate the lease contract by a legal suit filed six months after the acquirement, if the property is needed for the new owner, her/his spouse, lineal kinship or any other legal dependents, on the condition that the tenant is notified thereof within a month from the acquirement.

The person, who acquires the leased property, may, at her/his sole discretion, exercise her/his right to evacuate within a month from the expiration date of the lease contract.

This Article shows parallelism with the regulations in the Law, No.6570. However, provisions related to the persons, who may put forward necessity as a ground for evacuation, are more elaborated – as with the foregoing Article (Demir, 2012: 70).

2. Arising from the tenant

ARTICLE 352- In the case the tenant fails to evacuate the property even though the tenant has undertaken against the lease giver to do so after the leased property was delivered, the lease giver may terminate the lease contract within a month after the predefined evacuation date by referring to the respective enforcement office or filing a legal suit.

If the tenant is reasonably notified twice for not having paid the monthly lease amount for the lease term for the lease contracts with a term lasting less than a year; and for a year or more for the lease contracts with a term lasting a year or more, the lease giver may terminate the lease contract by filing a legal suit on the expiration date or, for lease terms that last for a year or more, within a month from the end of the respective year, in which the abovementioned notifications are made.

In the case the tenant or her/his spouse owns a habitable property that is located in the close vicinity, the same district of municipality of the leased property and the lease giver was not aware of this fact as of the signing date of the lease contract, the lease giver may terminate the lease contract within a month from the expiration date of the lease contract by filing a legal suit thereof.

The first clause is not amended and thus meets the provisions of the previous implementation. When the second clause is reviewed, it can be found that it imposes a different implementation from the Law, No.818. In the scope of the Law, No. 6570, it is admitted that, for the lease contracts with a term lasting more than a year but the time period that exceeds the one year term is actually less than a year, two reasonable notifications are not possible (Yavuz C., 2004: 170). While, for instance, for a lease contract that is effective for 18 months, this evacuation method could not be utilized on a tenant, who failed or delayed to pay the lease amounts for the 6 month term that exceeded the first one year, (Arpaci, 2002: 125-126), now, with the enactment of the Law, No. 6098, it is possible to make two reasonable notifications for the lease contracts with a term lasting more than a year but the time period that exceeds the one year term is actually less than a year. Thus, the lease givers are relieved (Yavuz, 2012: 549-550).

During the effective term of the Law, No. 6570, expiration of the lease contract was required to file an evacuation suit upon two reasonable notifications (Yalcın, 1999: 144). Now, with the enactment of the Law, No. 6098, the lease givers are not required to wait for the expiration of the lease term for the lease contracts with a term that lasts for more than a year. For instance, for a lease contract that lasts for 3 years, if two reasonable notifications are made within the first year, the lease giver may file the evacuation suit at the end of the first year (Yavuz, 2012: 550).

When the third clause is reviewed, it can be concluded that the fact that the lease giver was aware that the tenant or her/his spouse owned a habitable property that is located in the close vicinity, the same district of municipality of the leased property was not of any importance for such a legal suit to be filed pursuant to this clause in the effective term of the Law, No. 6570, and the lease giver was entitled to file an evacuation suit relying onto this ground even though s/he had executed the lease contract being aware of this fact (Yalcın, 149: 1999).

However, this liberty was abandoned with the current practice. Forasmuch as it would constitute a violation of the good faith.

ARTICLE 353- If the lease giver has notified the tenant on the filing of the evacuation suit within the specified term at the latest, the filing term is automatically extended for a year.

While not being included in the Laws, No. 818 and 6570, this provision was a widely accepted practice. It was made into a legal provision with the enactment of the Law, No. 6098 (Demir, 2012: 72).

ARTICLE 354- The provisions on the termination of a lease contract by legal suit may not be amended to the detriment of the tenant.

This new provision, which meets the Article 8 of the Law, No. 6570, emphasize that the evacuation grounds are subject to the numerous clauses principle (Dinc, 2012: 119).

ARTICLE 355- Once the lease giver successes to evacuate the leased property for a necessity, the lease giver may not lease the property in question to the same tenant for three years.

Properties that are planned to be evacuated to be reconstructed and redevelopment may not be leased to a third party in its former shape for three years without a justification. The former tenant has the priority to lease the reconstructed and redeveloped property at the new lease amount. This priority should be exercised within a month after the notification made by the lease giver thereof; the immovable property may not be leased for three years before this priority expires.

In the case the lease giver fails to comply with these provisions, the lease giver becomes liable to pay the former tenant a compensation not less than an amount that equals the last lease year's total lease amount.

The lease amount of the latest term is taken as the basis for the calculation of the abovementioned compensation (Government's Justification)

While showing parallelism with the provisions of the Law, No. 6570, this provision levied the obligation to pay a compensation in case of violation of the last clause. As with the Law, No. 6570, the penal sanction (imprisonment for 6 months to 1 year) was avoided (Oz, 2012: 79).

ARTICLE 356- Partners of a deceased tenant or heirs of these partners, who are active in the same occupation or arts and the persons, who reside in the same residence as the deceased tenant may sustain the preserve the lease contract as long as they comply with the provisions of the respective law.

This provision mirrors the provisions of the Article 13 of the Law, No. 6570.

CONCLUSION

The general provisions of the Turkish Civil Code was reorganized to correct the practical deficiencies and as to include various amendments and additions. When reviewed from the point of the lease givers – as the grounds for evacuation are nor occurred – relieved to an extent from

the hardship they experience in evacuating the tenant. Insomuch as the lease givers may evacuate the tenants at the end of the first year after 10 years.

Yet, the lease givers are also greatly relieved from the hardship they experience in evacuating a tenant on the ground of two reasonable notifications. Insomuch as two reasonable notifications are considered sufficient for evacuation for the lease relations by which a lease term lasts more than a year but the time period that exceeds the one year term is actually less than a year.

The abolishment of the restriction set forth in the Article 1 of the Law, No. 6570 is also appropriate.

Moreover, we also are of the opinion that, with the expansion of the scope for people in need required for evacuation, the Law, No.6098 will eliminate many problems thereof.

When the provisions of the Law, No. 6098 are reviewed, it can be found that the matters, by the settlement of which the Law, No. 818 failed or fell short, but are settled by the decrees of the Court of Cassations, are assured under the Law, No. 6098.

We will see if the developments in the Turkish Law of Liabilities, which, we think, may meet the outgoing needs in many aspects, will be able to offer effective solution for the problems as they emerge.

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