



**The Board of the Unification of Case Laws of the High Court of Appeals Rules that Acquisition of Bona Fide Third Parties from Contractor Must Be Protected in Accordance with the Principle of Trust in the Land Registry**

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## **1. Introduction**

Construction agreements in return for land shares are a common practice whereby landowners obtain completed buildings without incurring additional costs while contractors finance the project and generate profit through the subsequent sale of units to third parties. However, when a construction agreement in return for land shares between a landowner and a contractor is terminated retroactively, the legal position of bona fide third parties who have acquired independent units from the contractor has remained uncertain.

This article analyzes the decision of the Board of the Unification of Case Laws of the High Court of Appeals (“**Board**”) dated May 16, 2025, numbered 2024/1 E. and 2025/2 K. (“**Decision**”) on protection of acquisitions made by bona fide third parties under construction agreements in return for land shares.

## **2. Construction Agreements in Return for Land Shares**

Under Turkish law, a “construction agreement in return for land shares” constitutes a composite-natured agreement, containing both elements of an agreement for work and of a real estate sale agreement. The landowner undertakes to transfer part of their ownership rights in exchange for the contractor’s obligation to construct a building. This contractual relationship is based on the commitments of both parties. On one side, the landowner agrees to transfer their land shares to the contractor, reflecting the nature of a real estate sale agreement. On the other side, the contractor is bound to complete construction of the building on the said land, which corresponds to an agreement for work. Ultimately the landowner obtains complete independent units without additional monetary expenditure, while the contractor profits from the sales of the other units.

It should be noted that the contractor's obligations are not discharged merely by completing the construction of the independent units belonging to the landowner. Full performance requires completion of the entire construction in the whole area subject to the agreement in conformity with the architectural project.

Under Turkish Law, ownership of immovable property arises only upon registration in the land registry. Article 705 of the Turkish Civil Code ("**TCC**") explicitly states that "*immovable property ownership is acquired through registration.*" Further, pursuant to Article 1020 of the TCC, the registry is open to all interested persons, and no one may later plead about not knowing its contents, which is both a reflection and a consequence of the principles of transparency and trust in the land registry. Since the land registry serves as an open registry for the individuals to examine and rely on, Article 1023 of TCC provides that the acquisition of ownership or another real right by relying in good faith to the registry is protected. Such protection of good faith is provided only for third parties, excluding the persons in whose name a real estate has been improperly registered or their universal successors.

In practice, to complete the construction as per the construction agreement in return for land shares, the landowners directly transfer the contractor's fair share of title deeds after the execution of the agreement but before the completion of the construction, and the contractors sell such land, whose construction will soon be completed, to the third parties to provide financing. Such transfer to the contractor by the landowner in the early stage of the agreement is evaluated as an "advance" as it occurs before the completion of the obligations under the agreement. However, in cases where the construction agreement in return for land shares is terminated in a retroactive manner (*rescission of the agreement*), the advance payments made by the parties shall be returned as per Article 125 of the Code of Obligations ("**CoO**").

Since the transfer of the title deeds by the landowner to the contractor is deemed an "advance", the termination of the agreement would lead to the real estate or land sold to third parties by the contractor being regarded as improperly registered. Moreover, Article 1023 of the TCC, which pertains to protection of acquisitions of bona fide third parties, cannot be applied to such third parties in this scenario since they constitute successors who shall bear the risk for the completion of the construction and the contractor, and they knew or they should have known that such transfers were made in accordance with the construction agreement in return for land

shares and that they would be entitled to their acquisitions only if the contractor fulfilled its obligations under the agreement. Subsequently, any third party who acquired the real estate/land is obliged to return these shares.

### **3. Analysis of the Board of the Unification of Case Laws of the High Court of Appeals’ Decision**

In its decision, the Board stated that in practice, landowners frequently transfer title deeds to contractors before the contractor has fulfilled their contractual obligations. By this practice, landowners also help the contractors to provide financing for the construction by selling the transferred land to third parties.

Further, the Board assessed that treating every registration made on behalf of the contractor as “improperly registered” in all cases would harm to the sense of justice in the society. The Board also held that declaring the acquisition of a land share or independent unit, which is purchased in good faith from a contractor who has transferred title deeds based on a construction agreement in return for land share, as invalid is clearly contrary to Article 1023 of the TCC, since the landowner can prevent third parties from claiming good faith by adding annotations to the title deed regarding the contractual transfer. Thereby, the previous approach of the High Court of Appeals was deemed contrary to the principles of transparency to the land registry, reliance on the land registry and the protection of good faith.

### **4. Conclusion**

Construction agreements in return for land shares play a pivotal role in the Turkish real estate market by enabling landowners and contractors to mutually benefit from shared risks and gains. The retroactive termination of such agreements however exposed bona fide third parties to significant legal uncertainty, as the established case law had excluded them from the protection afforded under Article 1023 of the TCC. This judicial stance prioritized landowners’ interests but at the same time, the reliability of the land registry was weakened.

In the Decision, The Board of the Unification of Case Laws of the High Court of Appeals departed from the High Court of Appeals’ long-standing jurisprudence, by ruling that upon termination of the construction in return of land shares agreement in a retroactive manner, the

third parties' claims of good faith due to reliance on the land registry shall be evaluated by the local courts, rather than directly disregarding the protection of their good faith claims under Article 1023 of the TCC since they are deemed as the successors for the contractors. The Board also emphasized that it is possible to evaluate their arguments on bona fide acquisition and if the evidence presented fails to prove that the third party acted in bad faith, the existence of good faith shall be presumed, and the acquired ownership or mortgage shall be protected. The Board further noted that real estate may revert to the landowner if it is determined that third parties did not act in good faith at the time of acquisition, based on the specific circumstances of each case. Ultimately, this approach shifts away from treating bona fide third parties as successors of the contractor bearing the risks and instead aims to safeguard the acquisitions of bona fide third parties.

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