

A Tale of Reciprocity:

MINORITY
FOUNDATIONS IN
GREECE AND TURKEY

DİLEK KURBAN KONSTANTINOS TSITSELIKIS



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A TALE OF RECIPROCITY: MINORITY FOUNDATIONS IN GREECE AND TURKEY

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Authors: Dilek Kurban, Konstantinos Tsitselikis
Prepared for Publication: Serkan Yolaçan
Language Editor: Laurie Freeman

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*Turkish Economic and
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Demokratikleşme Programı
Democratization Program

Bankalar Cad. Minerva Han No: 2 Kat: 3
Karaköy 34420, İstanbul
Tel: +90 212 292 89 03 PBX
Fax: +90 212 292 90 46
info@tesev.org.tr
www.tesev.org.tr

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DİLEK KURBAN- KONSTANTINOS TSITSELİKIS

I. Introduction

The word most frequently uttered by Greece and Turkey with regard to their Muslim¹ and non-Muslim minorities, respectively, is most probably ‘reciprocity.’ For more than half a century, in both countries, virtually all administrations, irrespective of their political leanings and ideological base, resorted to the good old ‘reciprocity argument’ to legitimize their laws, policies, and practices restricting the minority rights of Muslim and non-Muslim communities. Both states have for decades justified their policies on the basis of a theory that argues that Article 45 of the 1923 Treaty of Lausanne provided the legal basis for reciprocity. This provision, the theory went, empowered Greece and Turkey to make the fulfillment of their Lausanne obligations to protect their minorities conditional on the respect of these duties by the other. Deliberately distorting a crystal-clear provision, which simply confers parallel obligations on Greece and Turkey for the protection of the Muslim and non-Muslim minorities, respectively, both states have for decades held their own citizens hostage, pitting them against each other in the name of defeating the other in foreign policy. Disregarding the objections of international lawyers and institutions that the reciprocity principle does not apply to human rights treaties and that states cannot condition the protection of the fundamental rights of their citizens on the policies of other states, both Greece and Turkey have successfully manipulated their national public opinion into believing in the legitimacy of treating minorities as lesser citizens.

The post-Cold War era, which has witnessed the growth of international human rights law and the mobilization of masses across the globe around issues of injustice, inequality, and discrimination, has made it increasingly difficult for both states to continue to deceive the international community and their own societies with the reciprocity tale. The reciprocity argument has been challenged by the legal and political mobilization of the Muslim minority in Greece and the non-Muslim minorities in Turkey, facilitated by advancements in European human rights regime and by the increasing involvement of the international community in minority issues in Europe. In the case of Turkey, the EU accession process also played a critical role in this regard. The post-1999 rapprochement between Greece and Turkey in bilateral economic, trade, cultural, and political affairs also put pressure on these states’ minority policies.

This report aims to analyze the implications of reciprocity policies on the day-to-day lives of Muslim and non-Muslim minorities in Greece and Turkey, specifically their impact on the community foundations² belonging to these minorities. With a specific focus on the property and self-management issues of Muslim and non-Muslim community foundations in Greece and Turkey, the report will try to situate the issue in its historical context and trace the evolution of the ‘community foundation issue’ from Lausanne to the present day. Drawing similarities and differences between the laws, policies, and practices of Greek and Turkish states *vis-à-vis* their minority foundations, the report will critically assess the progress made to this day as well as identify the outstanding issues. In the hope of contributing to efforts to develop a democratic, sustainable, and just resolution of the problems facing community foundations, the report will propose policy solutions to the governments of Turkey and Greece.

* The authors are grateful to Baskin Oran for the invaluable comments and suggestions he has made to an earlier version of this report.

1 The name of this community is a matter of great contention in Greece and also between Greece and Turkey. While they are called “Muslim minorities” under the Treaty of Lausanne and Greek law, the community self-identifies as the “Turkish minority of Western Thrace.” The Turkish state also uses this latter term.

2 In this report, the English term ‘foundation’ will be used in referring to the legal entities governing the educational, religious, charitable and other institutions owned by non-Muslim/Muslim communities to manage their real estates. The original term used in the Ottoman times to refer to these foundations is the Arabic word ‘*waqf*.’ This term has been translated to Turkish as ‘*vakıf*’ and to Greek as ‘*vakoufi*.’

II. Historical Overview of the Foundation System

Muslims in Greece and non-Muslims in Turkey have historically found themselves in an ambivalent, mirrored status of legal protection, one which has often been undermined for political and ideological reasons. Their religious, educational, and other institutions have been subject to distinct legal norms based on a communal perception resembling the autonomy that the Ottoman Empire had reserved for the non-Muslim *millet*s.³ The pre-modern Ottoman *millet* divisions partly found their final expression in the formation of the nation-states of the Balkans during the late 19th and early 20th centuries. The Christian states that seceded from the Ottoman Empire (Greece, Bulgaria, Romania, and Serbia) borrowed from the *millet* system to lay out the institutional and legal framework of Muslim communities that remained within their borders. This model prevailed in Turkey also, and was used to govern the same non-Muslim minorities that the empire had recognized as *millet*s -- namely, Greek-Orthodox (*Rum Ortodoks/Romioi*), Armenians, and Jews.⁴

Since their foundation, state-building in Greece and Turkey went hand in hand with nation-building.⁵ Already, by early 1920s, due to the persecutions of Armenian, Greek-Orthodox, and other non-Muslim minorities by the Ottoman governments and the 1923 mandatory population exchange between Greece and Turkey, the numbers of Muslim minorities in Greece and non-Muslim minorities in Turkey had drastically decreased. Both states were forced by the international community to create separate legal regimes for the protection of remaining Muslim and non-Muslim minorities under the 1923 Peace Treaty of Lausanne.⁶ Muslim and non-Muslim minorities who survived persecution and were exempted from the population exchange in Greece and what became Turkey became subject to special protection regimes under Lausanne, which explicitly cover community foundations and their immovable properties.⁷

Today in Greece and Turkey, minority/community protection coexists with individual rights stemming from citizenship in a hybrid 'neo-*millet*' legal status. Among the domains of protection, the community foundations became of major importance, as their immovable properties were (and still are) able to sustain religious, charitable, social, medical, and educational institutions that are vital for the survival and continuity of minorities.

The institution of the community foundation has roots in Ottoman law and community politics,⁸ where the only means for both Muslim and non-Muslim communities to own property was to establish foundations on land donated by the Sultan. A foundation was privately owned property that, once dedicated under a certain procedure, became the property of God and any use coming from it was to be disposed for charitable purposes in perpetuity. In Islamic law, a foundation is the act of founding a charitable trust, and hence the trust itself. Through its evolution, Ottoman law regulated the establishment of a foundation, its management and the status of its trustees, the possibility of transforming its pious purpose, the allocation of its revenue and assignment of its beneficiaries, the position of the family of the founder, etc. Gradually, foundations were placed under the control and supervision of the state, mainly through the 1839 *Tanzimat* reforms.⁹

3 Autonomous religious communities were granted by the central Ottoman power a certain institutional autonomy from the 15th to the 20th century, which was strengthened by the reforms of the late 19th century. The scope of this autonomy has varied across time and depending on the political context. See Benjamin Braude and Bernard Lewis (ed.), *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*. Vol. I, Holmes and Meier, 1982.

4 As will be discussed below, the Ottoman legacy was so prevalent in Turkey that the state limited the minority protection that the Treaty of Lausanne has provided to all non-Muslim communities to these three groups only.

5 For the processes of nation building and the construction of nationalism in Greece and Turkey, see Umut Özkırmlı and Syros A. Sofos, *Tormented by History: Nationalism in Greece and Turkey*, Hurst & Company, 2008.

6 In Greece, legal protection for Muslim communities was first set up in 1881 (by the Treaty of Constantinople, Art. 4) and was further strengthened in 1913 (by the Convention of Athens, Art. 12 and Additional Protocol No. 3) when Greece almost doubled its territory and more than 500,000 Muslims became Greek citizens.

7 The sole criterion used in the identification of minorities entitled to protection under Lausanne was religion. This determination excluded from the scope of the Treaty the ethnic minorities belonging to the dominant religion in both states.

8 The Ottoman foundation system is in turn based on the principles of Islamic law. See: Murat Çizakça, *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present*, Boğaziçi University Press, 2000; Yuda Reyna and Ester Moreno Zonan, *Son Yasal Düzenlemelere Göre Cemaat Vakıfları*, (Community Foundations in light of the Recent Legal Changes), Gözlem Gazetecilik Basın ve Yayın, 2003; Yusuf Uluç, *Vakıflar Hukuku ve Mevzuatı*, (The Law and the Legal Framework on Foundations), Vakıflar Genel Müdürlüğü Yayınları, 2008; and Dilek Kurban and Kezban Hatemi, *The Story of an Alien(ation): Real Estate Ownership Problems of Non-Muslim Foundations and Communities in Turkey*, TESEV, 2009, p. 9-10.

9 Known as the first attempts towards democratization under the Ottoman Empire, the administrative reforms introduced by Sultan Abdulmecit in 1839 introduced, among others, the principle of equality of all Ottoman subjects and guaranteed the rights to life and property of non-Muslim minorities.

III. Foundations as Legal Entities under the Treaty of Lausanne

Greece and Turkey, in the frame of the finalization of the Eastern Question in 1923, are bound by similar minority protection norms stemming from the Treaty of Lausanne. Articles 37 through 45 of the Treaty set the legal framework of minority protection for both states regarding ‘non-Muslims’¹⁰ in Turkey and ‘Muslims’ in Greece. The Treaty grants positive rights to these minorities in the areas of language rights, freedom of religion, and the establishment and management of foundations. In the Treaty, norms reminiscent of the Ottoman *millet* system merged with the principles of modern minority protection. Minority rights of individuals blended with communitarian rights of institutions in a paradoxical legal amalgam, endorsed by international law, in which the sole ground of minority protection under the Treaty was religion.

Under Lausanne, community foundations constitute *sui generis* legal entities and an exception to the foundations that are governed under Greek and Turkish civil law. The Treaty defines a foundation as “established, managed and controlled” by the minority. Accordingly, there must be a legal linkage between the foundation and the relevant minority community, namely “Muslims” (in Greece) and “non-Muslims” (in Turkey). Thus, the “minority community” is the legal entity tasked with the founding and management of foundations and their property.

The Treaty of Lausanne grants community/minority foundations of pious, social, educational, or religious purpose the right to acquire, make use of, and dispose of real estate. Articles 40 through 44 of the Treaty confer these rights to non-Muslim minorities in Turkey and impose corresponding duties on the Turkish state. Article 45 confers on Greece ‘parallel obligations’¹¹ to grant its Muslim minority the same rights that Turkey is required to grant its non-Muslim minority under the Treaty. In other words, Articles 40 through 44 confer on Muslim minorities in Greece the same rights they grant non-Muslims in Turkey and impose the same duties on both the Greek and Turkish states. The relevant provisions of the Treaty read as follows:

Article 40- Turkish [Greek] nationals belonging to non-Moslem [Moslem] minorities shall enjoy the same treatment and security in law and in fact as other Turkish [Greek] nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.

Article 42(3)- The Turkish [Greek] Government undertakes to grant full protection to the churches, synagogues [mosques, *mescits*, *tekkets*], cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey [Greece], and the Turkish [Greek] Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature.

Moreover, Article 41 (2) of the Treaty confers to the Greek and Turkish Governments the obligation to grant “an equitable share” of the “public funds under the State, municipal, or other budgets for educational, religious, or charitable purposes” where there is a considerable proportion of religious minorities. Both Greece and Turkey have over the years based their decisions as to whether they would provide public funding to Lausanne minorities on foreign policy considerations. For example, while the Turkish government provided public funding to Greek Orthodox, Armenian and Jewish schools after the signing of Lausanne, this assistance abruptly ended with Turkey’s military intervention into Cyprus in 1974. One should note, however, that the funds allocated did not increase at all between 1923 and 1974 and thus were extremely negligible and symbolic.¹²

According to Article 44 (3), the parties may refer any relevant dispute between them to the Permanent International Court of Justice at The Hague, another provision of the Treaty that has never been used.

¹⁰ It is necessary to point out that the Treaty does not enumerate the “non-Muslim” minorities in Turkey and the “Muslim” minorities in Greece. It grants legal protection to all non-Muslim communities in Turkey, including the Syriac, Catholic, and Protestant communities, and all Muslim communities in Greece. In practice, however, Turkey has limited the protection of the treaty to Greek-Orthodox, Armenian, and Jewish communities, in blatant violation of the treaty. In Greece, likewise, Muslims of the Dodecanese Islands (in Rhodes and Kos) have been deemed as not falling under the Lausanne protection system.

¹¹ Turgut Tarhanlı, contribution in *Cemaat Vakıfları: Bugünkü Sorunları ve Çözüm Önerileri* (Community Foundations: Current Issues and Proposals for Solutions), Istanbul Barosu, 2002, p. 37.

¹² Information received from Garo Paylan, administrator of Armenian schools in Istanbul, 15 July 2010. Paylan said that Armenian schools have recently asked the government to restart giving public funds to non-Muslim schools but this time to do so in a meaningful way. The government is currently considering this request.

IV. Inventing ‘Reciprocity’: How Greece and Turkey have Distorted Lausanne

As already said, Article 45 of the Treaty of Lausanne creates parallel legal obligations for Greece and Turkey for the protection of their Muslim and non-Muslim minorities. However, restrictive and often distorted interpretations of this provision by both states have often led to them to violate these obligations. In both Greece and Turkey, community properties, assets and real estate have been targeted by official policies aiming to undermine minority communities’ power over their foundations and to strengthen state control over them. On the basis of the ‘reciprocity principle,’ states have exercised tight control over the selection of the boards of foundations and the management of their properties, undermining the autonomy and property rights these foundations were granted under Lausanne.¹³

Championing reciprocal mistreatment by the two states began as soon as the legal protection system was set up. The ups (1930, early 1950’s) and downs (1955, 1964, 1974) of inter-state relations, which fall beyond the scope of this report,¹⁴ largely explain the divergence of both states’ policies towards Lausanne minorities, particularly community foundations. Critical in the cycle of foreign relations between Turkey and Greece has been the conflict over Cyprus, which has had serious repercussions for minorities in both countries. The endorsement by Greece and Turkey of the negative reciprocity concept, both in law and practice, mainly affected the Muslims of Greece and the Greek-Orthodox of Turkey. However, in many cases, other non-Muslim communities in Turkey also suffered from this political antagonism, which was external to them.¹⁵

Whether legal reciprocity can be applied to states’ obligations towards their minorities has to be considered under modern international law,¹⁶ which is clear on the predominance of human and minority rights over any clauses of reciprocity or bilateral restrictions. In its judgment in the case of *Apostolidi v Turkey*, where it held the confiscation by Turkish authorities of real estate inherited by Greek nationals from their late aunt, a Turkish national, to be in violation of the right to property,¹⁷ the European Court of Human Rights (ECtHR) “reminds that the Convention, contrary to classical international treaties, transcends the frame of simple reciprocity between the contracting parties.”¹⁸ The Parliamentary Assembly of the Council of Europe (PACE) also criticized “the recurrent invoking” by Greece and Turkey of the principle of reciprocity for being “anachronistic” and detrimental to national cohesion.¹⁹ While noting that the two “kin states” may feel responsible for their brethren in the neighbouring country, the Assembly reminded that “it is actually first and foremost the countries in which the minorities live that are responsible for their own citizens, including the members of the respective religious minorities.”²⁰

13 On the application of reciprocity by Greece and Turkey, see Emre Öktem, “Yeni Vakıflar Kanununun Cemaat Vakıflarına İlişkin Hükümleri Hakkında Uluslararası Hukuk Açısından Bazı Gözlemler” (Some Observations on Provisions of the New Law on Foundations Concerning Community Foundations on the Basis of International Law), *Essays in Honor of Ergun Özbudun: Vol. II- Constitutional Law*, Ankara, 2008; Samim Akgönül (ed.), *Reciprocity: Greek and Turkish Minorities; Law, Religion and Politics*, Istanbul Bilgi University Press, 2008.

14 There is ample literature on the negative implications of Turkey-Greece relations on the Greek Orthodox and other non-Muslim minorities in Turkey. On 6-7 September 1955 incidents, see Dilek Güven, *Cumhuriyet Dönemi Azınlık Stratejileri ve Politikaları Bağlamında 6-7 Eylül Olayları* (6-7 September Incidents in the Context of the Minority Strategies and Policies of the Republican Era), *İletişim*, 2006; Ali Tuna Kuyucu, “Ethno-religious ‘Unmixing’ of ‘Turkey’: 6-7 September as a Case in Turkish Nationalism,” 11(3) *Nations and Nationalism*, 2005, p. 361-380. On the extradition of Greek citizens holding a Greek passport in 1964, see Hülya Demir and Rıdvan Aktar, *İstanbul’un Son Sürgünleri* (The Last Exiles of Istanbul), *İletişim*, 2004. For the implications of bilateral relations on the Muslim minorities in Western Thrace in Greece, see Baskın Oran, *Türk-Yunan İlişkilerinde Batı Trakya Sorunu* (The Question of Western Thrace in Turkish-Greek Relations), *Genişletilmiş İkinci Baskı Bilgi Yayınevi*, 1991. See also the contributions of Baskın Oran, Dimitris Kamouzis, Vemund Aarbakke, Konstantinos Tsitselikis, Herkül Millas, Dimostenis Yağcıoğlu, and Elçin Macar in Samim Akgönül (ed.), *Id.*

15 A recent example of the use of the reciprocity argument against Armenians in Turkey is the petition filed by the CHP party to the Constitutional Court for the stay of execution of select provisions of the new law on foundations adopted in 2008. For a discussion of this petition, see Section 8 below.

16 Treaty of Vienna on the Law of the Treaties, Article 60(5).

17 For more on this case, see Section VII-A below.

18 ECtHR, *Apostolidi and Others v. Turkey*, No. 45628/99, 27 March 2007, para. 71.

19 Parliamentary Assembly of the Council of Europe (PACE), *Freedom of Religion and Other Human Rights for Non-Muslim Minorities in Turkey and for the Muslim Minority in Thrace (Eastern Greece)*, Res 1704, 2010, para. 8. (hereafter PACE, Res. 1704).

20 *Id.*, para. 5.

V. Post-Lausanne Policies in the Shadow of Reciprocity

The ‘*millet*-like’ legal perception embraced by Turkey and Greece *vis-à-vis* their Lausanne minorities was embedded in the mono-ethnic political culture of each nation-state in which minorities were long considered by law or jurisprudence as alien elements. Accordingly, non-Muslims in Turkey were deemed “foreigners”²¹ (*yabancılar*) and Muslims in Greece were deemed “of alien descent”²² (*allogeneis*). These legal categories, which were activated by the two governments in critical political circumstances, entailed and implied discriminatory practices, which are discussed at length in the next section of this report.

One area where the two states adopted measures based on reciprocity concerns minority foundations. As the Greek and Turkish legal orders were shaped according to strongly ideological configurations, religious minority communities lost their legal personality and the rights stemming from it. As stated earlier, minority communities in both countries do not have legal personality and their internal organizational structures are invisible in the eyes of national law. What is legally visible is the foundation itself, not the minorities. This has allowed both states to intervene in the management of foundations and the use of their properties in clear contravention of Lausanne.

According to a general pattern in both Greece and Turkey, the state attempts to control as tightly as possible the internal organization of foundations and the management of their property at the expense of the autonomy granted to minority communities under Lausanne. In a rare incident of positive reciprocity, in 1949 both Greece and Turkey allowed their minorities to elect the board members of their foundations. However, things soon changed for the worse. In Greece, Muslim foundations have not been allowed to hold elections since the military *coup d'état* of 1967. Instead, Greek authorities appointed the members of the boards. Even after the restoration of democracy in Greece, the foundation boards continue to be appointed by the government, although the new legal framework (laws of 1980 and 2008) provides for elections. In effect, minority policies are guided by the Ministry for Foreign Affairs, which still has special authority for minority affairs in Western Thrace.²³ In Turkey, board elections were not allowed after the *coup d'état* of 1971 until 1991, as far as the Greek Orthodox foundations are concerned.

A. THE MANAGEMENT OF FOUNDATIONS

Under the Ottoman law, each foundation constituted a legal entity whose property was managed by a manager or board of managers, depending on the legal category to which the foundation belonged (family foundation, state foundation, school foundation, community foundation, etc.). Within the Greek and Turkish legal orders, shaped by the Treaty of Lausanne, foundations became a single category -- the “minority community property foundation” -- the legal autonomy of which had to be protected. However, an inherent legal discrepancy was never solved and therefore still puzzles foundations in both countries: If the ownership of assets by God is impossible to accommodate in a modern legal order, it is difficult to define and regulate by law a religious community and its members as legal entities and recipients of the income of foundation property. In effect, management of foundation property should be undertaken by members of the local community designated through democratic processes under the supervision of the state. Over time, however, both states have demonstrated a tendency to control the management of foundations, curtailing their autonomy and making it difficult for minority communities to ensure that the management of foundation property is internally democratic and accountable.

21 This term was used by the First Civil Chamber of the Court of Cassation in its 1975 judgment regarding the legality of the General Directorate of Foundations’ (*Vakıflar Genel Müdürlüğü*- VGM) confiscation of properties belonging to non-Muslim foundations under the practice 1936 Declarations. For more on this and other similar court judgments, see Section V-B-2 below.

22 Until 1998 the Greek citizenship law divided Greek citizens into two categories: those of “Greek descent” and those “not of Greek descent”. The legal effects of this discriminatory division are still felt by thousands of Muslims who have been deprived from their Greek citizenship and who live abroad.

23 The Greek MFA keeps a special office (the Political Affairs Bureau) based in Xanthi to counterweight the influence exerted by the Turkish consulate of Komotini, although the government has promised on several occasions to transfer minority affairs from the mandate of the MFA to relevant other ministries. The issue has been criticised by PACE. Michel Hunault, *Freedom of Religion and other Human Rights for Non-Muslim Minorities in Turkey and for the Muslim Minority in Thrace (Eastern Greece)*, report presented to the Committee on Legal Affairs and Human Rights of PACE, Doc. 11860, 21 April 2009, para. 35.

1. GREECE

After the adoption in 1920 of Law No. 2345, which was designed for the pre-Lausanne Muslim communities in Greece, the management of foundation estates was placed under the authority of the Muslim community and the supervision of the local *moufti*.²⁴ Gradually through political interventions, the community councils had been losing its legal status and by 1949, Law No. 2345 was activated for the Muslim foundations of Western Thrace. Then, elections were held for the designation of foundation management boards, and the boards gained an important political role *vis-à-vis* the Greek state. Due to their political importance, the boards became a field of antagonism, both internally -- between the modernists against the Islamists -- and externally -- between the Greek administration and the Turkish Consulate in Komotini, with the latter's increasing influence within the Muslim community. As a result, elections for management boards have not been held since 1967. Instead, members of the boards have been appointed by Greek authorities.

Community foundations in Greece are divided into urban and rural. In the urban areas of Komotini, Xanthi and Didimotyho, they are grouped together and managed by one board in each city, whereas one manager (*moutiveli*), often the head of the board, is responsible for each village foundation. Whether board members should be appointed by the government or elected by members of the community was and still is at the center of a political wrestling match between the government and the community. Law No. 1091 of 1980, which was adopted in order to 'modernize' the legal framework of 1920, faced strong reactions by Muslim leaders, and remained inactive. Following the same philosophy, Law No. 3647 of 2008 on the administration and management of Muslim foundations of Western Thrace and their properties replaced the 1980 law, but was once again rejected by minority leaders. So, the situation remains unchanged: the foundations are managed by the boards of Xanthi, Komotini and Didimotyho appointed by the Secretary of the Region of Eastern Macedonia and Thrace (*Genikos Grammateas tis Perifereias Anat. Makedonias kai Thrakis*) (hereafter the Secretary of the Region)²⁵ on the basis of personal confidence. The rural foundations, scattered in the villages, are managed by the *moutiveli* appointed by the moufti until they resign or are replaced by the moufti on the basis of serious grounds for distrust. Since 2001, the *moutivelis* are elected by the inhabitants of villages and then appointed by the moufti. However, this selection is interrelated to the political decision each village makes as to which moufti -- the elected or the appointed one -- in Komotini and Xanthi they will be loyal.²⁶ Moreover, the operation and selection modalities of these boards seem not to be following a homogeneously set pattern throughout Western Thrace.

2. TURKEY

There is not a single body of law governing non-Muslim communities in Turkey. Individuals belonging to these communities, so far as they are citizens, are *de jure* entitled to the same rights under the constitution as any other citizen. The legal status of the *institutions* of these communities, on the other hand, varies. The legal personality of religious communities as such is not recognized by the authorities, despite the absence of a specific law precluding this. For example, the legal personalities of the Greek Orthodox and Armenian Patriarchates in Istanbul are not recognized, which implicates their property rights and prevents them from owning real estate. It is only the smaller religious institutions -- such as churches -- as well as educational, charitable, and health institutions that have foundation status (or, in a few cases, association status,²⁷ as described below), enabling them to own property. The foundations established in the Ottoman era are recognized as 'community foundations' (*cemaat vakıfları*), whereas more recent communities such as Protestants can only organize as associations, since it is no longer possible under the Civil Code to establish new community foundations.²⁸ Since the scope of this report is limited to community foundations, the issue of lack of legal personality for other non-Muslim religious institutions as well as the problems of non-Muslim associations (as opposed to community foundations) will not be addressed.²⁹

24 For a list of foundations belonging to the Muslim foundations in Greece, see Annex D.

25 According to the administrative reform *Kallikratis* of June 2010, the Secretary of the Region is replaced by the General Governor (*Genikos Dioikitis*).

26 The mouftis are appointed as the head of the moufti offices of Komotini, Xanthi and Didimotyho and as a judge for family and inheritance law disputes among Muslim citizens. On the ground that the law did not provide for the election of the mouftis, a small part of the Muslim minority elected in early 1990s one moufti in Komotini and one in Xanthi. The elected moufti exert a strong Turkish political influence and are not recognised by the Greek state. They have been prosecuted and condemned for having usurped the functions of a minister of Islam. This situation was challenged in cases brought before the European Court of Human Rights (ECtHR) which found Greece to have violated Article 9 (religious freedom) of the European Convention on Human Rights. See ECtHR *Serif v. Greece*, Application No. 38178/97, 14 December 1999, and ECtHR, *Agga v Greece*, Applications No. 50776/99 and 52912/99, 17 October 2002. Since then, the elected and appointed moufti operate in parallel.

27 The registry of an institution as an association or a foundation implies difference in legal status and treatment. Associations and foundations in Turkey are subject to different laws and fall within the mandate of different administrative bodies.

28 Article 101(4) prohibits the establishment of foundations "with the aim of supporting...a community."

29 For more on both, see European Commission for Democracy Through Law (Venice Commission), *Opinion on the Legal Status of Religious Communities in Turkey and the Right of the Orthodox Patriarchate of Istanbul to Use the Adjective "Ecumenical"*, 12-13 March 2010.

The Treaty of Lausanne gives non-Muslim minorities the right to manage their own institutions. In practice, however, the Turkish state violates this right in various ways. With the transition to the Republic, foundations of all faiths were made subject to the Law on Foundations (*Vakıflar Kanunu*) of 1935 and to the jurisdiction of the General Directorate of Foundations (*Vakıflar Genel Müdürlüğü*, VGM).³⁰ From then on, the VGM has exercised rigid and tight control over the day-to-day management of community foundations, in violation of Lausanne.

The principal way the VGM has restricted the self-management of non-Muslim communities has been the practice of ‘seized foundations’ (*mazbut vakıf*), whereby the VGM takes over the management of foundations deemed to “no longer be of charitable or practical use.”³¹ Through this practice, the VGM particularly targeted foundations that have lost their communities over time due to the sharp decline in the non-Muslim population in Turkey since 1960s. The migration (forced or otherwise) of non-Muslims has left the vast majority of their schools, hospitals, and churches non-functioning. Instead of allowing non-Muslim communities to make use of their real estate in other ways based on their needs and preferences, the state seized control over the foundations responsible for running these institutions. Since the 1970s, the VGM has seized 16 Greek Orthodox foundations and 24 Jewish foundations, taking over their management and confiscating hundreds of properties belonging to them.³²

The board elections of foundations have played a critical role in the state’s seizure policies. The VGM has used the foundations’ failure to hold regular board elections as a reason for taking over their management and confiscating their properties, on the ground that such foundations were “no longer of use.” However, it has often been state policies that have disabled foundations from holding regular board elections. According to the executive regulation of the Law on Foundations, candidates running for board elections are required to reside in the district where the foundation is located, which effectively precludes elections for many foundations that are located in areas where there are no or very few non-Muslim residents left. While provisional solutions have been developed in the past to grant select foundations city-wide electoral districts, the law makes the enlargement of electoral districts subject to the VGM’s prior authorization. The *ad hoc*, arbitrary, and unpredictable nature of the election system has been criticized by non-Muslim minorities as a serious impediment to the autonomy they have been granted under the Lausanne Treaty. In recent years, the VGM has authorized the enlargement of electoral districts so as to allow non-Muslim foundations to show candidates from across the province for board elections in Istanbul and to enable non-Muslim constituencies to vote for elections of foundations across the country irrespective of their place of residence. This has facilitated the election of a sufficient number of candidates and enabled foundations to establish their boards of directors, a crucial development that saved the Greek Orthodox community’s foundations from further legal complications.

B. PROPERTY ISSUES OF FOUNDATIONS

Under the Lausanne Treaty as well as national laws of Greece and Turkey, minority foundations have a fundamental right to possess property and to dispose of it for their benefit. The foundation consists of the ‘main’ foundation building, which in effect lends its name to the foundation (as a legal entity), such as running a church, a mosque, a synagogue, or a school, or, in rare cases, a water source or an orphanage. The foundations acquire property through purchase or donations by members of the community. In effect, in both Greece and Turkey, foundations have suffered from constraints curtailing their right to acquire and enjoy property due to internal factors (mismanagement and excessive sales by foundation boards) and external ones (excessive expropriation, ‘nationalisation’ or confiscation by the government, the state’s non-recognition of the acquisition of new property, the lack of rule of law and unfair trial).

1. GREECE

According to the law, a foundation property is defined as “the foundation itself, and any other real or tangible property, donated for the functioning of the foundation, implying the aims of the institutions or the institution itself.”³³ Over time, the acquisition and maintaining of property suffered from legal uncertainty and administrative practices, a consequence of the powerlessness of Muslim communities to control their property. This happened during the first years of the implementation of the Lausanne Treaty, when most of the properties belonging to the Muslim community and private individuals were put under the temporary use of Greek (*Rum*) refugees in Western

³⁰ Law on Foundations, No. 2762, 05.06.1935, Official Gazette No. 3027, 13.06.1935.

³¹ A detailed account of these state practices is beyond the scope of this report. For more on these, see Kurban and Hatemi, 2009.

³² For a list of the seized foundations of Greek Orthodox and Jewish communities, see Annex C.

³³ Article 3, Law No. 3647, 27.02.2008, Official Gazette No. A 37, 2008.

Thrace. During the reinstatement of these properties to their legitimate owners, a percentage was expropriated. The most important and symbolic losses were the Mosque of Didimotyho and the Gazi Evrenos Imaret of Komotini. Expropriations resulted in the decline in the number of foundation estates during the urban planning of the cities of Komotini and Xanthi, especially in the 1930s. During the Bulgarian occupation (1941-1944) and the military junta (1967-1974), the expropriation and destruction of mosques, hamams, tekkes, and other foundation assets targeted the Muslim community in the city centers. Lack of accountability over the management of foundations eased the excessive sale of foundation properties by the Muslim management boards and the *moufti* (especially in Xanthi in the period 1958-1963).

In the context of the legislative reform of 1980, a series of decrees and acts ordered foundation managers to declare and register with the state their foundations' estates. The law was never implemented, although the deadline was extended several times. Recently, Presidential Decree 2/2007 authorized the Secretary General to call on foundation management boards to register their real estate properties within two years, but again remained not implemented.

At last, by the completion of the first phase of the land registration process in the urban centers of Western Thrace in 2009, minority foundations started to become visible as legal entities owning property. In Komotini, 35 foundations registered more than 150 estates. In Xanthi, foundations are united in one legal entity, owning about 90 estates. However all mosques in the city of Xanthi lack title deeds. There are few properties belonging to foundations in Alexandroupolis and Didimotiho. The rest of the foundation properties is scattered in villages all over Western Thrace in as yet unknown numbers. The registration of real estates was not an easy task, especially in the mountain areas where title deeds for both private and foundation estates are not available.

New acquisition of property through donation or purchase has to fulfill the fundamental requirements laid out in civil law, namely, that a legal contract must be concluded before a notary and registered in the land registry. So far, no significant problem has been reported regarding the acquisition or use of real estate by foundation board. A delicate issue regarding the taxation of foundation properties was only recently regulated. According to Article 7 of Law No. 3554 of 2007, the foundation properties are exempt from taxation or any other legal burden.³⁴

2. TURKEY

Thousands of immovable properties belonging to non-Muslim school, social, hospital, and church foundations have been confiscated by the state in the past half century. In addition to the seizure of the managements of foundations discussed in the earlier section, another critical tool of this state policy has been the infamous misuse of the '1936 Declarations.' Following the adoption of the Law on Foundations in 1935, the newly established Republic called on all foundations, Muslim and non-Muslim, to declare the real estates they owned. The foundations adhered to this call and submitted to the state lists of real estate they owned at the time.³⁵ Decades later, the lists of properties that non-Muslim foundations had declared to the state in 1936 were interpreted by the VGM to be their 'founding statutes' – with dramatic implications for these foundations' ability to retain properties acquired after that year. On the basis of no legal rule whatsoever, VGM concluded that community foundations were not entitled to own – through purchase, sale or donations- any property that was not listed in their 1936 Declarations, i.e. 'founding statutes.'

The distorted interpretation of mere declarations of property as founding statutes of foundations enabled the VGM to confiscate all properties that non-Muslim foundations had acquired after 1936. It was no coincidence that this policy began in the 1960s, at the height of the conflict between Greece and Turkey over Cyprus. In 1971, the Second Civil Chamber of the Court of Cassation unanimously upheld this unlawful bureaucratic practice, ruling that "legal personalities established by non-Turks are prohibited to own property" under Turkish law.³⁶ The judgment was upheld in 1974 by the General Civil Council of the Court of Cassation based on the same reasoning and expressed in nearly identical terms.³⁷ The use of the term "Turk" in laying out a rule banning non-Turkish nationals, not nationals of different ethnic origin, to own property was certainly more than a slip of the tongue. It displayed a mentality that held the non-Muslim minorities of this country to the same (namely lesser) legal standing as foreigners, rather than

34 Law No. 3554, 12.4.2007, Official Gazette No: A 80, 16.04.2007.

35 It is notable that an Armenian hospital foundation, the Yedikule Surp Pirgiç Armenian Hospital Foundation inserted a disclaimer to the list of properties they declared that it can "acquire additional properties in the future." However, this note did not suffice to protect the Foundation from the confiscation of its properties by the state in following years. The authors are thankful to Etyen Mahçupyan and Luiz Bakar for bringing this to their attention.

36 Court of Cassation 2nd Civil Chamber, Substance no: 4449, Decision no:4399, 06.07.1991.

37 Court of Cassation Civil General Council, Substance no: 1971/2-820, Decision no:1974/505, 08.05.1974.

as full citizens. Indeed, in 1975, the First Civil Chamber of the Court of Cassation went even further and said that “foreigners in Turkey are prohibited from owning property,” clarifying any ambiguity that might have been created by the 1971 and 1974 decisions.³⁸ These court decisions resulted in mass confiscation of real estate belonging to community foundations and their transfer to the state, and in some cases to third parties, in clear contravention of the non-Muslim communities’ rights to property, association, religion, and self-rule under the Treaty of Lausanne, the Constitution, and the European Convention on Human Rights (ECHR).

38 For the discriminatory treatment of non-Muslims in these and other high court decisions in Turkey, see Baskın Oran, *Türkiye’de Azınlıklar: Kavramlar, Lozan, İç Mevzuat, İçtihat, Uygulama (Minorities in Turkey: Concepts, Lausanne, National Legal Framework, Jurisprudence, Implementation)*, TESEV, 2004, pp. 83-87.

VI. The Evolving Laws on Foundations in Greece and Turkey

The implementing law of the Treaty of Lausanne has recently been renewed in both Greece and Turkey, although through different political processes. In Greece, the unspoken *de facto* balance of power between the government and the minority elite often does not respect the boundaries set by the legal framework. In Turkey, while there has been some progress in granting non-Muslim foundations their long overdue rights under Lausanne, significant problems remain in both the substance and the implementation of the new laws, rendering the reforms meaningless in many cases.

A. GREECE

In December 2007, a new law on foundations was discussed in the Greek Parliament and finally adopted in February 2008 as Law No. 3647.³⁹ The discussion did not touch upon substantive issues concerning foundations, such as the uncertainty of the applicability of Islamic law to community foundations, nor did it generate substantial modifications to the draft. Also, the government did not present to the parliament a detailed list of the foundation estates.

For the purposes of the election of the members of the management boards and the registration of the real estates, the law defines a foundation as follows:

A foundation is, according to the Sacred Islamic Law, a donation that consists of real or tangible property or any income in favor of a non-profit, charitable, or generally pious purpose or in favor of a philanthropic, religious, or charitable foundation, which either exists or is established for non-profit purpose.⁴⁰

Law No. 3647 acknowledges the *de facto* division of the foundation properties into three groups: First, in the cities of Komotini, Xanthi, and Didimotiho, where they are centrally managed. Second, the scattered foundation properties of the villages continue to be locally managed. Third, the school foundations (a concept that stems from the Ottoman *mearif* foundation) are classified as a separate group, so that they are not subject to the management boards of the town. For the first time, reference to the reciprocity clause was removed from the law and the foundations are expressly deemed as legal entities of private law. Furthermore, the foundations of communities that no longer existed are put under the management of the nearest management board to ensure they do not vanish. Finally, once again foundations in Rodos and Kos are excluded from the scope of the law, keeping in force an obsolete Italian decree⁴¹ and not allowing the election of these foundations' board members. The law allows the disposal of the foundation income for exclusive and limited purposes it enumerates.

Though the law makes a direct reference to Islamic law as a source of law, it does not clarify the question of applicability. It provides that any future Muslim foundations shall be governed by both the Civil Law on Foundations (*idrymata*), as far as their establishment and administration is concerned, and the Law on Muslim Foundations (*vakoufia*), with respect to their management.

The Law provides for the elections of the management boards, under the tight supervision of the representative of the central government in the region and the local *moufti* and *imams*, whose roles are not clearly defined. The Secretary of the Region has the authority to establish a group of foundations "exceptionally" under a special committee and to organize the elections. In cases where elections are not held, this government representative can appoint board members of his own choice. Such decisive power would hardly comply with Article 40 of the Lausanne Treaty, which gives foundation boards autonomy. The moufti's supervision of the boards raises a further issue, due to the questionable legitimacy the moufti has in the Western Thrace (due to the controversy over their elections) and the legal scope of his supervisory powers over foundation estates.

³⁹ See *Supra* Law No. 3647.

⁴⁰ Article 2.

⁴¹ Decree No. 12, 1925. It has been retained in force by Article 7 of the Royal Decree of 09.05.1947, Official Gazette no. 97 A 1947.

In practice, the provision of Law No. 3647 concerning the election of management boards remains unimplemented. The old (appointed) boards have been kept operational, one in each town of Western Thrace. Drawing attention to this fact, PACE called on Greece to implement Law No. 3647, “the provisions of which should be able to regulate in substantial measure the problems -- awaiting resolution for several decades -- connected with the legal status of foundations.”⁴²

The law was shaped by political considerations that excluded the Muslim minority from the decision-making process. Minority leaders denounced it for not having achieved a satisfactory level of autonomy to check the supervisory powers retained by the appointed moufti and the Greek authorities, declaring that they “reject the act” and therefore “will not implement it.”⁴³

On the other hand, the legally legitimate claims of minority communities for self-administration have not been matched by a discourse of internal accountability based on good governance, transparency, and participatory management. For the time being, neither the government nor the minority’s political elite are ready to reflect on such matters. As the minority elite denounced the law for allowing excessive government involvement in minority affairs, no elections have been held so far and the members of the management boards remain appointed, not elected, ones. The accountability and transparency of management are principles barely, if at all, respected by foundation managers who are not subject to internal or external financial auditing. For instance, the management board of Komotini only started publishing its annual budget and accounts in 2007.

B. TURKEY

The EU’s minority protection conditionality for accession as well as the cases that Greek Orthodox and Armenian foundations filed at the ECtHR obliged the Turkish government to address the property and self-management problems of community foundations in recent years. The Law on Foundations was amended in August 2002 (Law No. 4771), January 2003 (Law No. 4778), and July 2003 (Law No. 4928), granting for the first time the rights to purchase, sell, or use property in any other way.⁴⁴ The executive regulation adopted by the VGM to implement Law No. 4778 listed 160 non-Muslim foundations that were officially recognized as ‘community foundations’ and hence entitled to benefit from the law.⁴⁵ However, the regulation not only did not list the properties belonging to these 160 foundations, but also excluded a number of non-Muslim foundations from the list, preventing them from exercising the rights granted to them under the new laws – rights to which they should have been entitled under the Lausanne Treaty. These issues were the subject of two court cases: 1) when the VGM prevented an Armenian foundation not listed in the regulation from benefitting from the new laws,⁴⁶ and 2) when the application of a Chaldean foundation⁴⁷ which is listed was rejected on the grounds that it lacked legal personality. The example of the Chaldean foundation demonstrates the contradictions in the state’s policy; while a government body recognizes the legal personality of a foundation by including it in the list of officially recognized foundations, the same body rejects the application of that foundation to register its property under the new law on the grounds that it lacks legal personality.

1. LAW NO. 5737: SOME PROGRESS ON PROPERTY AND MANAGEMENT ISSUES

Notwithstanding the limited but nevertheless significant steps introduced by the 2002–2003 amendments, the main issue concerning community foundations -- the return of confiscated properties or the payment of just compensation -- was left unaddressed.⁴⁸ Partially to fill this gap, Law No. 5737 was adopted in February 2008,⁴⁹ the same month

42 PACE, Res. 1704, para. 18.4.

43 High Consultative Committee of the Turkish Minority of Western Thrace, press release of 19.2.2008.

44 These amendments were made through ‘package laws’ which contain amendments to various different laws, including the Law on Foundations. These package laws are: Law No. 4771, 03.08.2002, Official Gazette No. 24841, 09.08.2002; Law No. 4778, 02.01.2003, Official Gazette No. 24990, 11.01.2003; and Law No. 4928, 15.07.2003, Official Gazette No. 25173, 19.07.2003. For more on these laws, see Kurban and Hatemi, 2009.

45 For a list of the 160 foundations that have been officially recognized as community foundations, see Annex B.

46 In its decision of 15 November 2005, the administrative court ruled in favor of the Armenian school foundation based, also, on a no-objection letter from the armed forces. The VGM’s appeal is still pending. For more details, see Kurban and Hatemi, 2009.

47 For more on the case filed by the Chaldean Catholic Church Foundation, see *Id.*, pp.25–26.

48 Legally speaking, community foundations should be able to claim compensation for their properties that passed to third parties from Vakıfbank, a state owned bank which has capitalized the funds that VGM has acquired over the years through the sale of confiscated properties, the rental of real estate belonging to seized foundations. For an argument in favour of claiming compensation from Vakıfbank, see Konstantinos Tsitselikis. *The Foundations of the Greek-Orthodox Communities in the European Road of Turkey*, (Τα βακούφια των ελληνορθόδοξων κοινοτήτων στον ευρωπαϊκό δρόμο της Τουρκίας), Vivliorama Publications, 2010 (forthcoming).

49 Law No. 5737, 20.02.2008, Official Gazette No. 26800, 27.02.2008.

when Greece adopted its new law on foundations. This law replaced all prior laws on foundations (Laws No. 4771, 4778, and 4928). As in Greece, the law was drafted by the government without consulting the non-Muslim minorities or giving due regard to their demands. As discussed below, while the law marks a relatively significant step forward, it falls short of expectations and fails to solve the fundamental problems of non-Muslim foundations.⁵⁰

It was Law No. 5737 that for the first time addressed the issue of returning confiscated properties to the foundations from which they had been seized. Provisional Article 7 allows the return of only those immovable properties which were declared by foundations in 1936 but were subsequently confiscated by and are still in the hands of the state. Arguably, this is a major step towards ending an unlawful and systematic policy of confiscating foundation properties, as well as towards providing remedy to the policy's victims. However, the law's limited scope makes it unfair, discriminatory, and incomplete: It only applies to properties listed in the 1936 Declarations, and does not call for the return of confiscated foundation properties acquired after 1936 nor for the just compensation for confiscated properties that were subsequently sold to third parties. The law also does not provide for the return of immovables that were registered in the name of a member of the community (a pseudonym; *nam-ı müstear*) or to the Virgin Mary or a saint (a fictitious name; *nam-ı mevhum*), but were later taken away from community foundations by court decisions.⁵¹ These restrictions make the real intent of the legislature questionable; if the aim was to remedy a past injustice, then all individuals who suffered harm from such policy should be compensated. It seems, however, that the aim was rather to save the day and ease the pressure coming from the EU and the ECtHR.

The law gave foundations 18 months to complete their applications for the return of their confiscated properties, setting August 27, 2009 as the deadline. Lawyers of non-Muslim foundations emphasized that setting a time limit for claiming back unlawfully seized properties is against the right to property. Pointing out the difficulties in accessing documents proving ownership, they argue that foundations should be able to apply whenever they are able to produce new documents to facilitate their applications.⁵²

Law No. 5737 does not bring an end to the VGM's practice of confiscating foundations. To the contrary, it legitimizes this unlawful bureaucratic practice by providing, for the first time, a legal basis for it. Article 7(2) of the new law reads: "Foundations that were included among seized foundations before the effective date of this law and foundations that may be included among seized foundations in accordance with this law may no longer elect and appoint managers."

On a positive note, Law No. 5737 allows, for the first time, non-Muslim minorities to be represented in the General Assembly of the VGM, though they may only send one common representative from among all of the different non-Muslim communities. Following the announcement of the draft text of Law No. 5737, non-Muslim communities criticized as undemocratic and unfair the requirement that they be represented by only one representative, but the government refused to amend this provision. Non-Muslim communities eventually agreed on Lakis Vingas, a member of the Greek Orthodox community, as the first representative of community foundations at the VGM General Assembly.

If one impact of Turkey's EU accession process has been a gradual softening of the Turkish state's position with regard to the board elections of foundations, another has been the opening of a political space for democratic debate *within* non-Muslim communities. Encouraged by the overall process of democratization in Turkey, civil society groups, newspapers, youth associations, and opinion leaders in the Armenian and, to a lesser extent, Greek Orthodox communities became much more vocal *vis-à-vis* their elites in their demands for intra-community accountability, transparency, and democracy. While publicly criticizing the state for its discriminatory and unjust policies against foundations, non-Muslims simultaneously voiced discontent with the 'old establishment' within their communities, who they held responsible for the mismanagement of foundations and their properties and blamed for lacking the will, vision, or capacity to effectively challenge in courts the state's property policies. The Armenian Patriarchate's resistance to the call for the election of a new patriarch despite the current patriarch's mental incapability and the refusal of the boards of two important Greek Orthodox foundations (Balıklı Greek Orthodox Hospital Foundation and the Langa Aya Todori Greek Orthodox Church Foundation) to hold board elections when the state finally gave them permission to do so are seen by pro-reform non-Muslims as signs of resistance to political change and democratic governance.

⁵⁰ For the criticisms of non-Muslims concerning the substance of the law, see Kurban and Hatemi, 2009.

⁵¹ For a detailed discussion of the kinds of properties that are excluded from the scope of Provisional Article 7, see Kurban and Hatemi, 2009.

⁵² Sebu Aslangil, interview, Istanbul, 31 May 2010.

2. VGM CIRCULAR: BUREAUCRACY RESISTS THE RETURN OF PROPERTIES

These substantive problems were exacerbated by bureaucratic resistance to implementing the already limited improvements to the law. Most significantly, more than two years after the enactment of the law, the VGM has not yet adopted an executive regulation to provide guidance on its implementation. It has, however, adopted an extremely problematic circular specific to Provisional Article 7 of the law, imposing on applicants a high evidentiary burden of proof to be able to reclaim their seized properties.⁵³ A May 13, 2008 circular requires foundations to submit, among other things, the declarations they had filed in 1936, an official document (such as a utilities bill, lease agreement, or property tax document) showing that the property is still in their possession, and the land register records of the property in question – documents that are difficult if not impossible for them to furnish.⁵⁴ Furthermore, requiring foundations to submit utility bills for properties that have been confiscated from them shows how irrational and ridiculous unchecked arbitrary bureaucratic power may become.

In requiring applicants to submit documents that are not mandated by the law, this circular restricts the rights granted to community foundations by Parliament, subjugating them to the arbitrary discretion of the bureaucracy. The circular ignores the fundamental legal principle, that applicants claiming their rights were violated are only obliged to establish a *prima facie* case, namely to present sufficient evidence to support his/her legal claim, after which the burden of proof lies with the party accused of committing the violation. Requiring foundations to present documents they do not possess and cannot obtain makes the return of confiscated properties to their rightful owners practically impossible. It is very difficult to see good faith on the part of the VGM in requiring foundations to present documents for transactions that took place in the 1950s and 1960s or to submit the declarations they made in 1936. Most importantly, the 1936 declarations, land registers, and court decisions are official documents that are -- or should be -- kept in the state's official records. If a document is missing, the state is unquestionably better positioned to find it than a foundation. Indeed, lawyers of non-Muslim foundations point out that they cannot access their clients' 1936 declarations.

Lawyers of Armenian foundations filed a suit to revoke the May 2008 circular; it is pending in administrative courts.

3. THE LAW AND CIRCULAR IN IMPLEMENTATION: STATUS QUO IS PRESERVED

By the end of February 2010, petitions were filed under Law No. 5737 for the return of more than 1,400 immovable properties. Of these, 774 belonged to the Greek Orthodox community and 452 to the Armenian community.⁵⁵ Community foundations in the provinces of Antakya, Diyarbakır, Mardin, and Istanbul filed applications for the return of their real estate. Most of these foundations did not receive a formal reply to their petitions for months. Worried about the prospect of losing their right to go to court within 60 days of the entry into force of the law, some foundations filed cases in administrative courts on the ground that the law is not being implemented. However, lawyers expect that courts will not issue their judgments for at least two years, pointing out the backlog in the courts and the slow legal process in Turkey.⁵⁶

In March 2010, Deputy Prime Minister Bülent Arınç announced the outcome of the applications for the return of 1,410 immovable properties. The VGM agreed to return a mere 96 properties to their rightful owners. Three hundred forty-seven applications were rejected outright; petitioners of the remaining 943 were given an additional two months⁵⁷ to complete the missing documents (575 were rejected for lack of title deeds in the registrar's office and 368 for failure to present the requisite information and documents to prove ownership). The approved petitions were for the return of 68 properties to a total of 11 Greek Orthodox foundations, the return of 25 properties to eight Armenian foundations, the return of two properties to two Jewish foundations, and the return of one property to a Bulgarian foundation. None of the applications by Assyrian foundations has been directly accepted.⁵⁸

That 347 applications were rejected and 943 were returned for additional documents is seriously disconcerting. Lawyers for community foundations state that they have already submitted all the information they possess and

53 "The Communiqué numbered 2008/6 on the Implementation of Provisional Article 7 of the Law on Foundations No. 5737" attached to the letter of Turkish Republic, Prime Ministry, Directorate General for Foundations numbered B.02.1.VGM.0.12.00.00.303/99-8666726 and dated 13 May 2008.

54 For the full list of documents required by the circular, see Kurban and Hatemi, 2009.

55 "Gözler VGM'den gelen dosyalara çevrildi" (All Eyes are VGM's Responses), *Agos*, 5 March 2010.

56 "Azınlık Vakıfları Hâlâ Beklemede" (Minority Foundations are Still Waiting), *Agos*, 26 February 2010.

57 The May 2008 circular gave a one time renewable two month period for the completion of incomplete applications. On 21 April 2010, VGM extended this additional period further until 16 July 2010.

58 "Sonuçlar Tatmin Etmedi" (The Results Failed to Meet the Expectations), *Agos*, 19 March 2010.

it is virtually impossible for them to present additional supplementary documents. Pointing out that the purpose of the new law to be the return of properties confiscated decades ago, they argue that it is impossible to locate documents that no longer exist or to provide information they do not have. Lakis Vingas, the representative of all minority foundations at the VGM's General Assembly, shares the lawyers' disillusionment. Pointing out that the problem mainly stems from the problematic scope of the new law, which does not foresee the return of all confiscated properties, Vingas criticizes bureaucracies for resisting its implementation by requiring foundations to provide title deeds for properties they had already declared to the state in 1936.⁵⁹ The most critical public body for the implementation of the law is the property registry office, which is tasked with issuing community foundations the title deeds for real estate they are entitled to get back under the law. However, registry offices, when "they encounter an Armenian", keep delaying processing the applications on the grounds that said properties do not have title deeds or other required documents.⁶⁰ In other words, the Turkish land registry conditions the implementation of the law, and thus the ability of non-Muslims to exercise a right they were granted by the Parliament, on their ability to produce impossible-to-produce documents.

Community foundations belonging to Greek Orthodox churches in the islands of Bozcaada (Tenedos) and Gökçeada (Imvros) also filed applications under the new law.⁶¹ The Kimisis Teodoku Greek Orthodox Church Foundation in Bozcaada filed applications for the return of 46 immovable properties, including several that were already the subject of legal dispute in local courts, regional courts, and the ECtHR. Twenty-one of these properties had earlier been registered in the name of the Treasury and were already the subject of legal disputes in cadastre courts. Upon the adoption of the new law, the Bozcaada Cadastral Court ruled that 20 properties be returned to the Kimisis Teodoku Greek Orthodox Foundation but rejected the return of one property due to the applicant's failure to prove possessory title. For the remaining 25 properties whose return was sought through bureaucratic mechanisms, the VGM demanded the submission within two months of additional documents such as lease contracts, certificates of donation, or land registry records. Dilek Razlıklı, the lawyer representing the Greek Orthodox foundations of the two islands, pointed out that they had already submitted all the documents they had or could possibly have⁶² and that it was impossible for her clients to produce any others. Left with no other choice, she petitioned the regional administrative court in Çanakkale, although she did not expect anything from it, saying, "I do not believe there will be any positive outcome, but this is all I could do."⁶³

Church foundations in Gökçeada filed a total of 281 applications under the new law for the return of their confiscated properties. The VGM divided these properties on the basis of two categories, rejecting those it deemed to be beyond the scope of the law and asking others to submit additional documents. Razlıklı is planning to bring cases in the Gökçeada Cadastral Court for the return of these properties instead of filing another application with the VGM. She has already opened a case for the return of 15 properties, showing as precedent both the ECtHR judgment and the favorable recent decisions of the Bozcaada Cadastral Court.

The Samandağlı Vakıflı Köyü Armenian Orthodox Church Foundation in the province of Antakya presents a special case, since Antakya was annexed by Turkey from Syria in 1939, *after* foundations in Turkey filed their 1936 declarations. Therefore, even if the VGM were receptive to foundations submitting lists of properties they had declared in 1936, it would not be able to do that for some of the properties belonging to the Vakıflı Köyü Foundation. Indeed, the applications filed on behalf of this foundation for the return of 17 properties have been rejected on the grounds that these properties did not fall within the scope of Provisional Article 7 of Law no. 5737.⁶⁴ While not explicitly stated, this response reads: "on the grounds that these properties were not declared in 1936" since the scope of Provisional Article 7 of the law is limited to properties listed in foundations' 1936 declarations. For the return of the remaining 10 properties whose return was requested by the Vakıflı Köyü Foundation, VGM required submission of additional documents within two months.

59 *Id.*

60 Sebu Aslangil, 2010.

61 The information on the implementation of the law in Bozcaada and Gökçeada have been received through e-mail from Dilek Razlıklı, the legal counsel of the Greek Orthodox foundations in the two islands, in September-October 2009 and updated on the phone on 8 June 2010.

62 Razlıklı has so far been able to locate only three documents belonging to the confiscated properties in the two islands: a lease agreement dated 1810 signed between a monk and a third party for the maintenance of the monastery and vineyards in Bozcaada, and property tax returns filed in 1936 for a land and a house belonging to a monk. Dilek Razlıklı, information received on the phone, 8 June 2010.

63 *Id.*

64 VGM, Assembly of Foundations, Decision No. 592 on the registry request of the Samandağlı Vakıflı Köyü Armenian Orthodox Church Foundation, 28.12.2009.

The additional periods granted by the VGM for the presentation of additional documents expired on 16 July 2010. The VGM's written responses to applicants state that the incomplete applications will be considered as "not having been made"— as opposed to having been rejected. This is not simple wordplay, but rather a calculated policy to deprive applicants of the ability to seek judicial review. Lawyers asked the courts to consider these responses as rejections for the purposes of review.⁶⁵ Thus, before the VGM's conclusion of the assessment of all applications, the implementation of the law has already been challenged in administrative courts.

■ 65 *Id.*

VII. European Supervision of the Foundation Issue in Greece and Turkey

While it can be argued that the political and normative influence of European institutions affected minority affairs in Greece only indirectly, Turkey has been subject to more direct, rigorous, and long-term ‘European supervision.’ Greece’s failure to implement the Lausanne Treaty has not been the object of much international attention, with the exception of the non-binding supervision of Council of Europe organs, such as PACE, which recently adopted a resolution on the problems of minority foundations in Greece and Turkey.⁶⁶ The binding jurisdictional control exerted by the ECtHR on Greece’s Thracian minority has not yet dealt with the foundation issue.⁶⁷

In Turkey, on the other hand, the problems of community foundations have been raised many times by the EU and the Council of Europe’s legal (the ECtHR) and political (PACE, the Venice Commission) organs, which exercise rigorous scrutiny of the alignment of Turkey’s legal framework with European standards for minority and human rights protections. These external pressures resulted in a series of amendments to the relevant legal framework in Turkey, which have gradually normalized the legal discrepancies and given non-Muslim foundations some of the rights to which they are entitled under Lausanne but have never been allowed to enjoy. Nonetheless, serious legal and political problems remain that prevent non-Muslim foundations from fully exercising their property and other rights arising from the Treaty of Lausanne, the Turkish Constitution, and the ECHR.

A. TURKEY

From the 1960s onwards, the Turkish judiciary was complicit in the confiscation of properties belonging to non-Muslim foundations, through universally ruling in favour of the government in cases filed at national courts by Greek Orthodox and Armenian foundations.⁶⁸ Having exhausted domestic remedies, these foundations sought recourse at the ECtHR as a final attempt to seek justice. The Strasbourg court issued its first judgment in January 2007, ruling that Turkey violated the right to property protected under Article 1 of Protocol No. 1 to the ECHR. In the *Fener Rum Erkek Lisesi Vakfi* judgment, the ECtHR ruled that Turkey’s policies under the 1936 Declaration were in contravention with the ECHR.⁶⁹ The Court held that the 1935 Law on Foundations did not bar foundations from owning immovable properties other than those declared in 1936, and justifiably led foundations to acquire property until the Court of Cassation ruled in 1974 that they were not legally entitled to do so. The ECtHR ordered Turkey to return the foundation’s seized property or to pay nearly 900,000 Euros in compensation. Within three months after the judgment, the government paid the amount specified. This precedent-setting ruling, which formally put an end to Turkey’s decades-old policy of seizing non-Muslim properties, was soon followed by other similar judgments. The ECtHR found that Turkey had violated the right to property under the ECHR through the seizures of the orphanage building belonging to the Greek Orthodox Patriarchate in Istanbul,⁷⁰ real estate belonging to an Armenian hospital foundation⁷¹ and an Armenian church, school and cemetery foundation in Istanbul,⁷² and land, cemetery, former monastery, chapel, and other real estate belonging to a Greek Orthodox church foundation in Bozcaada.⁷³ One of

⁶⁶ PACE, Res 1704.

⁶⁷ It seems that the minority’s elite avoids tackling this ambivalent question (see Konstantinos Tsitselikis, *Minority Mobilisation in Greece and Litigation in Strasbourg*, *International Journal on Minority and Group Rights*, 15, 2008, pp. 27-48. On the other hand, the Muslim community has successfully brought a series of cases on other issues before the ECtHR. Those regarding the right to association may be the most important ones (See e.g. ECtHR, *Tourkiki Enosi Xanthis and Others v. Greece*, Application no. 26698/05, 27.03.2008; *Emin and others v. Greece*, Application no. 34144/05, 27.03.2008; and *Bekir-Ousta and others v. Greece*, Application no. 35151/05, 11.10.2007). For the moufti cases, see footnote 26.

⁶⁸ For a list of national court judgments in cases filed by Armenian foundations, see Kurban and Hatemi, 2009.

⁶⁹ ECtHR, *Fener Rum Erkek Lisesi Vakfi v. Turkey* (*Fener Greek Orthodox Boys High School Foundation v. Turkey*), No. 34478/97, 9 January 2007.

⁷⁰ ECtHR, *Fener Rum Patrikliği v. Turkey* (*Ecumenical Patriarchate v. Turkey*), No. 14340/05, 8 July 2008.

⁷¹ ECtHR, *Yedikule Surp Pirgiç Ermeni Hastanesi Vakfi v. Turkey*, No. 36165/02, 16 December 2008.

⁷² ECtHR, *Samatya Surp Kevork Ermeni Kilisesi, Mektebi ve Mezarlığı Vakfi Yönetim Kurulu v. Turkey* (*Board of Trustees of the Samatya Surp Kevork Armenian Church, School and Cemetery Foundation v. Turkey*), No. 1480/03, 16 December 2008.

⁷³ ECtHR, *Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi v. Turkey* (*Bozcaada Kimisis Teodoku Greek Orthodox Church Foundation v. Turkey*), Nos. 37639/03, 37655/03, 26736/04 and 42670/04, 3 March 2009; ECtHR, *Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi v. Turkey*, Nos. 37646/03, 37665/03, 37992/03, 37993/03, 37996/03, 6 September 2010.

the disputed properties for which the ECtHR awarded compensation to the community foundation is a real estate that was subsequently sold to a third party.⁷⁴ This is very significant, since this precedent-setting judgment will allow non-Muslim foundations to bring similar cases in the future, on the ground that Law no. 5737 precludes claiming compensation for confiscated properties that have been sold by the state to third parties. On June 15, 2010, the ECtHR issued its Article 41 judgment in the orphanage case – where, on July 8, 2008, it had found Turkey to have violated the Patriarchate’s property rights but had reserved its judgment on compensation. At last, the Court ordered the government to re-register, within three months, the property in the applicant’s name in the land registry and to pay 6,000 Euros for non-pecuniary damages.⁷⁵

Following the adoption of Law No. 5737, the Turkish Government appealed to the ECtHR to take into account Provisional Article 7, which allows the return to non-Muslim foundations some of their confiscated properties, and reject pending cases on grounds of the applicants’ non-exhaustion of the new domestic remedy created by this law. However, the ECtHR rejected this plea on the grounds that the government failed to present to the court an example to prove that the law does indeed provide an effective remedy in practice.⁷⁶

Initially, the prospect of losing more cases in Strasbourg forced the Turkish Government to avoid further embarrassment by resolving the conflicts amicably with the applicants. Upon the ECtHR’s unfavorable judgment in the case of *Yedikule Surp Pırgiç Armenian Hospital Foundation*,⁷⁷ Turkey offered to return the foundation’s seized properties, and the two parties signed a friendly settlement, resulting in the first-ever return of seized property to a non-Muslim foundation. However, the government seems to have later changed this policy, as evidenced by the fact that it did not settle with applicants in similar pending cases which resulted in rulings against Turkey.

Turkish nationals are not the only ones who petitioned Strasbourg for the return of confiscated non-Muslim properties. Greek nationals who are descendants of Greek Orthodox Christians of Turkish nationality also filed cases before the ECtHR to re-claim the properties their families left behind in Turkey. The applicants in *Apostolidi and Others* are five Greek nationals living in Greece who inherited a flat in Istanbul from their late aunt, a Turkish national.⁷⁸ The flat had been registered in the name of the applicants on the basis of an inheritance certificate issued by Turkish authorities, which was later annulled by the Turkish courts “on the grounds that Turkish nationals could not acquire property in Greece by inheritance and therefore the condition of reciprocity... had not been met.”⁷⁹ The ECtHR held that Turkey had violated the applicants’ property rights protected under Article 1 of Protocol No. 1⁸⁰.

74 ECtHR, *Yedikule Surp Pırgiç...*, supra note 71.

75 ECtHR, *Fener Rum Patriklığı v. Turkey* (Ecumenical Patriarchate v. Turkey), No. 14340/05, 15 June 2010 (Article 41 judgment).

76 ECtHR, *Samatya Surp Kevork...*, 16 December 2008.

77 ECtHR, *Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı v. Turkey* (*Yedikule Surp Pırgiç Armenian Hospital Foundation v. Turkey*), Nos. 50147/99 and 51207/99, 26 June 2007.

78 ECtHR, *Apostolidi and Others v. Turkey*, No. 45628/99, 27 March 2007.

79 *Id.*

80 See similar cases ECtHR, *Agnidis c. Turquie*, No. 21668/02, 23 February 2010; ECtHR, *Nacaryan and Deryan v. Turkey*, No. 19558/02 and 27904/02, 8 January 2008; and ECtHR, *Fokas v. Turkey*, No. 31206/02, 29 September 2009.

VIII. A Move Away from Good Old Reciprocity?

Both Greece and Turkey recently took a step forward in their decades-old reciprocity policies through new laws governing minority foundations. Unlike its predecessor, Greek Law No. 3647 of 2008 does not make a reference to the principle of reciprocity. In fact, for the first time, Law No. 3554 of 2007 overtly denounced the principle of reciprocity. The law's explanatory report declared that "reciprocity is not aligned with the European values that Greece constantly applies." This statement is a welcome step forward, opening the door to a new approach departing from the reciprocity dogma.

In Turkey, on the other hand, the 2002 amendments to the Law on Foundations made the exercise of newly introduced rights conditioned on the reciprocity principle.⁸¹ Law No. 5737 of 2008 still contains an explicit reference to reciprocity, though it seems to apply to foreign foundations only. While government officials ensured that the reciprocity clause would not be used against community foundations, the provision was criticized by the Rapporteur of PACE, who commented that the provision referring to reciprocity "is quite out of place in this Law."⁸² Lawyers representing non-Muslim minorities in Turkey are concerned that this clause may in the future be applied against community foundations.⁸³

Reference to the reciprocity principle has never been limited to the legal framework in Greece and Turkey. On numerous occasions, the issue of reciprocity has been brought up in political debates and media coverage concerning minority issues and still holds considerable salience in public discourse in both countries.

In Greece, the ultra right-wing party LAOS (*Laikos Orthodoxos Synagermos, People's Orthodox Rally*) monopolized the parliamentary debates on Law No. 3647 of 2008 through xenophobic discourse and nationalistic rhetoric, which portrayed Greeks as the victims of Turkish oppression and reciprocity as a useful tool for 'self-defense,' allowing the Greek government to take counter-measures against the Turkish minority.

In Turkey, reference to the reciprocity principle has been the subject of controversy not only between non-Muslim minorities and the state, but also among different organs of the state. The most striking dispute took place between the legislature and former President Ahmet Necdet Sezer, who vetoed an earlier version of the 2008 law⁸⁴ on the grounds that, among other things, the law did not include a reference to reciprocity in accordance with the Treaty of Lausanne.⁸⁵ In February 2008, soon after the August 2007 end of Sezer's term, parliament re-adopted the law, which was in turn immediately adopted by new President Abdullah Gül.

Even the limited improvements introduced by the Justice and Development Party (*Adalet ve Kalkınma Partisi- AKP*) Government in Law No. 5737 provoked a xenophobic and nationalist reaction from the main opposition parties in parliament. During the debates on the draft law, echoing the discourse of LAOS in Greece, members of parliament from both the center-left Republican People's Party (*Cumhuriyet Halk Partisi, CHP*) and the right-wing Nationalist Action Party (*Milliyetçi Hareket Partisi, MHP*) accused the AKP of treason, desiring to establish an 'Orthodox Vatican' in Istanbul, and violating the principle of reciprocity. As soon as the law entered into force upon the president's approval, the CHP petitioned the Constitutional Court to stay the execution of select provisions. The CHP asked the Court to repeal, among other things, the following provisions granting new rights to non-Muslim foundations: Article 6 (3), which allows community foundations to elect their boards of directors; Article 12 (1), (3) and (4), which allows them to purchase, sell, rent, or in any other way make use of property; Article 14, which allows them to make changes in their statutes so as to meet their changing financial needs; Article 25, which permits all foundations to

⁸¹ See *supra* Law 4771.

⁸² Michel Hunault, 2009, para. 35 and 94.

⁸³ See Kurban and Hatemi, 2009.

⁸⁴ Law No. 5555, 9 November 2006 (did not enter into force due to presidential veto).

⁸⁵ For the grounds of the President's veto, see Turkish Republic, "To the Attention of the Presidency of Turkish Grand National Assembly," No. B.01.o.KKB. 01-18/A-10-2006-830, 29 November 2006.

engage in international activities and to receive funds from and give funds to national and international institutions and individuals; Article 26, which allows foundations to establish for-profit corporations; Article 41 (2), which gives all non-Muslim foundations one seat at the Assembly of the VGM. Curiously, the CHP did not ask the Constitutional Court to repeal Provisional Article 7 concerning the return to foundations of confiscated properties.

The CHP relied heavily on reciprocity in its petition to the Constitutional Court. The CHP argued that “any right that is not granted to the Turkish minority in Greece cannot be granted to non-Muslim minorities.”⁸⁶ More strikingly, the petition co-authored by recently elected CHP leader Kemal Kılıçdaroğlu stated that the granting to minority foundations of an unrestricted right to own property would jeopardize the right to “self-defense of the state”⁸⁷ and would be “the biggest concession” to minority foundations at a time when Armenians were making “so-called genocide claims” in the international arena.⁸⁸ Conflating Turkey’s own citizens with the Armenian diaspora abroad as well as the people and government of Armenia, the CHP’s petition revealed a terrifyingly nationalist and xenophobic mentality:

How will it be possible to establish a relationship of reciprocity with Armenia or another state in return for the foundations belonging to the Armenian minority (church foundations)? Just as it will not be possible to do so with [the law’s] current state, granting these foundations the right to own property at a time when we are intensively facing “so-called genocide claims” that Armenians continuously put on the international agenda would be the greatest possible concession. It will also lay the groundwork for the foundation of Great Armenia which has been imposed [on the Ottoman Empire] through the Sevres Treaty which was torn into pieces with the War of Liberation. Armenians have never hidden their land demands from our country and they continue to keep this issue on the world’s agenda together with their demands for compensation. [This is] anything but providing nearly with full submission the results that the Armenian Diaspora has tried to achieve through lobbying and Asala through Terror.”⁸⁹

Nonetheless, on June 17, 2010, the Constitutional Court rejected the CHP’s petition for the stay of execution of Articles 6 (3); 12 (1), (3) and (4); 14, 25, 26 and 41 (2), putting an end to a more than two years of uncertainty regarding the status of Law No. 5737.⁹⁰

⁸⁶ CHP, motion for stay of execution, 2008, p. 11.

⁸⁷ *Id.*, p. 21.

⁸⁸ *Id.*, p. 18.

⁸⁹ *Id.*, p. 18 (grammatical mistakes do not belong to the authors).

⁹⁰ The Court only agreed to repeal a provision of an article which does not concern non-Muslim foundations. Constitutional Court, Decision No. 2008/22, 17 June 2010, available at <http://www.anayasa.gov.tr/index.php?l=gundem&id=293>

IX. Conclusions

Issues regarding the management and property of community foundations in Greece and Turkey are deeply rooted in history and stem from a complex web of political, legal, and administrative practices. The loyalty of the two states to their obligations *vis-à-vis* their Lausanne minorities has varied greatly based on the state of affairs between them. For too long, Muslims in Greece and non-Muslims in Turkey have been held hostage by their governments in the name of an invented tale of reciprocity. Both communities have had to pay a very high price for their governments' 'foreign policy interests' and nationalist policies.

The post-1999 rapprochement between the two countries and the initiation of the EU accession process in Turkey have resulted in a relative improvement for these communities. The legal framework governing minority foundations has been revised, most recently, and nearly simultaneously, in 2008. Just as the two states' mistreatment of their own citizens has been reciprocal, so have their actions to alleviate the problems of community foundations. In this regard, recent mutual visits by the prime ministers of Greece and Turkey and the reconciliatory remarks made to the media are noteworthy. The Turkish Constitutional Court's recent decision to reject the CHP's motion for a stay of execution of select provisions of the 2008 Law on Foundations that aim to expand the scope of rights granted to community foundations is also a positive development.

Nonetheless, notwithstanding the egalitarian, democratic, and peaceful rhetoric of the governments and the limited but significant progress made in the laws of both countries, substantial problems remain that affect the day-to-day lives of Muslim and non-Muslim minorities.

In Greece, the special legal framework governing Muslim foundations in Western Thrace is not implemented as the government maintains an excessive degree of control and the minority elite refuses to comply with the law. A *de facto* political balance of power creates an exceptional situation that allows interventions beyond the rule of law. A similar situation exists in Rodos and Kos, as the local communities have no control over the management of foundation properties and an ambiguous and obsolete legal framework is based on an Italian decree dating back to 1925.

The issue of minority foundations is an inherent parameter of the overall minority issue in Greece, inter-related with the ambiguous position of the moufti and the status of minority school premises. It also needs to be discussed in the framework of the weak position of the minority society in expressing any position that goes against the will of its political and religious leaders. On the other hand, despite the fact that a new law was elaborated after long discussions in 2008, the Greek government seems reluctant to put minority foundations under 'normality,' namely not subject to exceptional political control and administrative mechanisms.

In Turkey, while a nationalistic and hostile attitude towards non-Muslims largely prevails in society, recent steps by the government show that there is a gradual abandoning of this mentality, at least as far as the executive is concerned. In recent months, high-level government representatives, including the Prime Minister, met with the representatives of Greek Orthodox, Armenian, and Jewish foundations to listen to their concerns and demands. However, the idiosyncratic official policy of denying the protection of Lausanne to other non-Muslim minorities remains intact, as evidenced by the fact that the government excluded the Protestant, Catholic, Assyrian, and Chaldean communities from the dialogue.

A more tangible step was the Prime Ministry's issuance of a circular on May 13, 2010, calling on government offices not to discriminate against non-Muslim citizens in the provision of public services. Noting that recent reforms adopted to address the problems of non-Muslim minorities are not being fully implemented, the circular called on all relevant public offices "to show the requisite sensitivity for the eradication of problems that may stem from implementation." Specifically, the circular called on municipalities to carefully protect and maintain non-Muslim cemeteries in their jurisdictions, on registry offices to duly implement court decisions favorable to community foundations, and on prosecutors to speedily initiate proceedings against media organs inciting hatred against

non-Muslims.⁹¹ While this unprecedented circular is indeed a very significant step forward, it can only bring real improvement if it is backed by an enforcement mechanism.

The critical indicator of progress in the situation of non-Muslim minorities in Turkey will be the implementation of the new Law on Foundations, particularly its Provisional Article 7 concerning the return of confiscated properties. While the Prime Ministry's circular is a positive intervention to the bureaucratic process on this matter, the government needs to demonstrate a strong political will by ensuring that the law is implemented, and done so smoothly. The expeditious return of real estate that fall within the scope of the law without creating any red tape for community foundations will speak much more to the government's intent than a circular or speech by the Prime Minister or other high level government official.

In conclusion, although a number of positive steps have been taken, both individually and mutually by the governments of Greece and Turkey, towards addressing the issues of Lausanne minorities, structural problems remain due to an unspoken endorsement of *millet*-like communitarianism and the prevalence of nationalistic perceptions towards minorities in both societies. Minorities continue to be governed by a state of exception whereby the administration and courts in both countries often disregard the rule of law in their decisions and practices concerning community foundations. This practice of illegality is still endorsed by the judiciary and the executive as well as by opposition parties on grounds of 'national interest'. Manifestly unlawful practices which would be deemed unacceptable if they were applied vis-à-vis citizens belonging to the majority are latently or overtly regarded as acceptable when the object of such illegality are the members of minorities. Thus, one can conclude that membership to a minority community is regarded as an *a priori* ground of questionable loyalty to the state and the ideal citizen. On the other hand, the leaders of minority communities as well as a significant number of members of these communities display a reluctance to claim *internal* accountability and democracy vis-à-vis the administrations of community institutions. The multiple questions raised by minority foundations reveal *par excellence* the multi-dimensional deficits in democracy, citizenship and equality in Greece and Turkey.

A. SIMILARITIES BETWEEN THE SITUATIONS OF MINORITY FOUNDATIONS IN TURKEY AND GREECE

1. Both the governments of Turkey and Greece have frequently and unlawfully invoked the principle of reciprocity and held minorities in their countries hostage against each other.
2. The ultra right wing and nationalistic discourse of *CHP* and *MHP* in Turkey and *LAOS* in Greece pushed in parallel for the shrinkage of the normative field of the respective laws on foundations and curtailing minority rights on community property.
3. Both states have been exerting a tight control on community foundations regarding their rights to self-management and property.
4. In both cases the division between private/minority and public/state spheres is not clear, allowing ample space for political and legal interference by the state.
5. In both countries, the media has played a destructive role through antagonistic, nationalist and discriminatory coverage portraying minorities as untrustworthy potential traitors.
6. Minorities in Greece and Turkey attract international concern, but their capacity, will and ability to play an important role in domestic decision making processes are still quite marginal.

B. DISSIMILARITIES BETWEEN THE SITUATIONS OF MINORITY FOUNDATIONS IN TURKEY AND GREECE

1. The inaccurate invocation of the principle of reciprocity by Greece concerns only Muslims, while it affects various non-Muslim minority groups in Turkey. In other words, Turkey's reciprocity rhetoric against Greece also harms those minorities in Turkey that have no affiliation with Greece.
2. While there was no EU political supervision or pressure on Greece's minority policies, the EU accession process has helped lead to important changes and relative progress in Turkey's laws and policies towards its non-Muslim minorities.
3. While non-Muslim foundations in Turkey sought recourse in the ECtHR, Muslim foundations in Greece have not yet litigated in Strasbourg.

91 Prime Ministry's Office, Circular 2010/13, No. 27580, 13 May 2010.

4. While, in Turkey, foundation properties were partially registered through the 1936 Declaration process, in Greece, Muslim foundations never registered their properties under the law, as the administration boards have so far refused to implement the law.
5. Immovable properties of minority foundations are of far higher value in Turkey than in Greece. Similarly, community foundations are of higher importance in Turkey than in Greece, both for the minorities and the government.
6. In Greece, uncertainty over the legal status of properties belonging to foundations due to the non-implementation of the relevant law creates a fertile ground for misunderstanding and manipulations.
7. While the 2008 Greek law on foundations does not refer to the principle of reciprocity, the 2008 Turkish law does, though seemingly with respect to foreign foundations only.
8. The legal category of 'seized foundations' exists only under Turkish law.
9. In recent years, a process of internal democratization has gradually started within minority communities in Turkey (particularly within the Armenian and to a lesser extent the Greek Orthodox community). In Greece however, the Muslim community is yet to initiate a process for internal accountability and democracy.

X. Recommendations

A. TO THE GOVERNMENT OF GREECE:

- A sincere and profound dialogue should be undertaken with the Muslim communities of Western Thrace and Rodos/Kos in order to develop a liberal and democratic legal framework and to establish management and administrative structures that would allow Muslim communities to run their foundations without constraints.
- Law No. 3647 should be amended to align it with both the Treaty of Lausanne and the civil law on foundations, in order to safeguard minority rights and bring community foundations under the rule of law.
- There should be a clearer division between the private and public sphere in which minorities exert decisive and managerial authority and the state exerts supervision as a guarantor of the principles of clarity, fair administration, and accountability, in order to protect the rights of the minority.
- As long as foundations are subjugated to political goals and hidden agendas of any stakeholder, even the most advanced legal solution would fail to heal the problems of Muslim foundations.
- In case they are missing, titled deeds of the main foundations and their real estates should be issued in the names of minority foundations.

B. TO THE GOVERNMENT OF TURKEY:

- There is urgent need for further amendments to Law No. 5737. Provisional Article 7 should be amended to allow the immediate return of *all* confiscated properties to their rightful owners and to pay compensation for those properties that were passed to third parties.
- The government should give due attention to the joint proposal developed by lawyers of the Armenian and Jewish communities for amendments to Law No. 5737.
- An administrative or judicial mechanism should be established to review the VGM's assessment of applications under Provisional Article 7 and to revoke arbitrary rejections and demands that require applicants to submit further documentation.
- The VGM circular on Provisional Article 7 should immediately be revoked.
- A regulation in accordance with Law No. 5737 – as amended on the basis of the above recommendation -- should expeditiously be adopted so as to facilitate, not hinder, the process of property return.
- The government should closely monitor key bureaucratic institutions such as the VGM and the land registry offices to ensure that they abide by the instructions of the Prime Ministry's circular.
- The Prime Ministry should issue a follow-up circular specifically calling on the VGM and land registry offices not to require foundations to produce documents they do not have or cannot obtain.
- The government should take disciplinary sanctions against VGM bureaucrats and land registrars abusing their offices by acting beyond their powers.
- Concurrent with the above recommendations, the government should engage in a real dialogue on equal terms with *all* non-Muslim communities, including Protestants, Assyrians, Chaldeans, and Catholics.

Annex A: A Selected Chronology of Significant Developments with respect to Community Foundations in Greece and Turkey

	Greece	Turkey
1923	Treaty of Lausanne Legal protection for minority foundations Liquidation of the foundations belonging to communities subjugated to the bilateral Population Exchange Treaty	
	Minority foundations are put under the management and administration of minority community councils	
	Decision No. 29979 of the Governorate General of Western Thrace on the foundation boards	<i>De facto</i> recognition of the minority communities and the effects of the 1912 Ottoman arrangements of the foundation property
1930	Greek-Turkish Pact of Friendship	
1935		Law on Foundations No. 2762 Establishment of the General Directorate of Foundations
1936		Minority foundations declare their assets
		Government appoints one manager per foundation
1947	Annexation of Dodecanese. Members of the Organizations of Muslim Properties of the foundations in Rodos and Kos are appointed, the Italian decree is applied	
1949	Law No. 2345/1920 on the supervision of the moufti over the management of foundation properties in Western Thrace. Members of foundation boards (of Western Thrace) are elected	Elections are held for board members of community foundations
1952	Greece and Turkey join NATO	
1955	Pogrom on September 6-7 against Greek Orthodox and other non-Muslim minorities in Istanbul	
1964	Crisis in Cyprus, pogrom against Turkish-Cypriots 12,000 members of Greek Orthodox community holding Greek passports are expelled from Turkey Administrative reprisals against the Muslim minority in Western Thrace	
1967	Board elections for foundations are prohibited; Greek authorities start appointing the board members	Board elections for foundations are not renewed
Late 1960s-early 1970s	Excessive expropriation of main foundation estates	Confiscation of large number of assets community foundations have lawfully acquired after 1936 through a series of court decisions upholding VGM's policy of seizure of properties
1973	Suspension of due taxes of foundation real estates	
1974	Crisis in Cyprus, Turkish military intervention Greek-Turkish relations deteriorate	
	Foundation boards still appointed, not elected	Elections for foundation boards are not renewed
		The Court of Cassation upholds VGM's expropriation of properties pursuant to the 1936 Declarations policy
1974-1999		Excessive expropriation of foundation estates Loss of acquired estates through court decisions
1980	Law No. 1091 on the administration and management of foundations of the Muslim minority in Western Thrace and their property [not implemented]	

	Greece	Turkey
1982	PD 18(FEK A 3) on the registration of foundations [not implemented]	
1991	PD 1 on the election of the members of foundation management boards, under control of state authorities [not implemented]	Elections in all Greek-Orthodox community foundation under the control of state authorities
1999	EU-Turkey rapprochement, Greek-Turkish rapprochement	
2002		Law No. 4771 (amending Law on Foundations) grants foundations the right to acquire, use, and dispose of property, subject to restrictions
2003		Law No. 4778 (amending Law on Foundations) enhances the right to acquire, use, and dispose of property by removing certain restrictions
		Law No. 4928 (amending Law on Foundations) further enhances community foundations' right to acquire, use, and dispose of property
2004		Administrative process of normalization of assets that had been claimed by foundations
2005		Regulation on foundation board elections adopted Law on Foundations No. 5555 grants new rights to community foundations, allowing the return of some confiscated properties [vetoed by the President]
2007	Law No. 3554: Article. 7 exempts foundation property from taxation and denounces reciprocity Presidential Decree 2 Authorizes the Secretary General to call on foundations to register their properties	Elections in Greek-Orthodox foundations First ECtHR judgment against Turkey concerning the confiscation of foundation properties
2008	Law No. 3647 on the administration and management of minority foundations and their properties in Western Thrace [not implemented]	Law on Foundations No. 5737: Provisional Article 7 provides for the first time the legal basis of the return of some of the confiscated properties; non-Muslim foundations for the first time gain a seat at the VGM Assembly
		VGM circular on Provisional Article 7 of Law No. 5737: Introduces significant restrictions on the right to reclaim properties Elections in minority foundations
2009		Elections in minority foundations Implementation of Law No. 5737 with great difficulties: process of reclaiming foundation assets encounters bureaucratic resistance
2010		PM circular on anti-discrimination against non-Muslim minorities Elections in minority foundations The Constitutional Court rejects CHP's request for the stay of execution of a number of provisions of Law no. 5737 concerning community foundations. The ECtHR orders Turkey to return within three months the orphanage building to the Greek Orthodox Patriarchate
	2010	Mutual visits of Greek and Turkish Prime Ministers: significant progress in bilateral relations; reconciliatory messages on minorities

Annex B: Non-Muslim Community Foundations in Turkey

Greek Orthodox Foundations

Altimermer Panayia Greek Church Foundation

Arnavutköy Greek Orthodox Taksiarhi Church and Cemetery Foundation

Ayansaray Aya Dimitri and Aya Vlaherna Churches and School Foundation

Bademliköy Panayia Kimisiz Greek Orthodox Church Foundation

Cibali Aya Nikola Greek Orthodox Church Foundation

Bakirköy Aya Yorgi and Aya Analipsis Churches and Schools Foundation

Balat Aya Strati Greek Church Foundation

Balat Panayia Balino Greek Church Foundation

Balıklı Greek Hospital Foundation

Bebek Aya Haralambos Church Foundation

Beşiktaş Cihannüma Greek Orthodox Church Foundation

Beşiktaş Panayia Church Foundation

Beykoz Greek Orthodox Community Aya Paraskevi Church and Cemetery Foundation

Beyoğlu Greek Orthodox Community Churches and Schools Foundation

Evangelistria Greek Orthodox Church Foundation

Boyacaköy Panayia Evangelistra Church and School Foundation

Bozcaada Kimisiz Teodoku Greek Orthodox Church Foundation

Burgazada Aya Yani Church and Greek Cemetery Foundation

Burgazada Aya Yorgi (Karipi) Monastery Foundation

Büyükada Greek Primary School and Panayia Aya Dimitri and Profiti İliya Churches and Greek Cemetery Foundation

Büyükdere Aya Paraskevi Church And Primary School Foundation

Çengelköy Aya Yorgi Greek Church and Aya Tantalı Holy Spring and Greek Mixed Primary School and Two Old Cemeteries Foundation

Dereköy Aya Marina Greek Orthodox Church Foundation

Eğrikapı Panayia Church Foundation

Fener Maraşlı Primary School Foundation

Fener Panayia [Kanlı] Church Foundation

Fener High School Foundation

Foundation For Aya Yorgi Church, Fener Greek Patriarchate

Hançerli Panayia Greek Orthodox Church Foundation

Fener Vlahsaray Panayia Greek Orthodox Church Foundation

Greek Orthodox Foundations

Fener Ioakeimion Girls School Foundation

Feriköy Greek Orthodox 12 Apostles Church and School Foundation

Galata Primary Greek School Foundation

Gökçeada Merkez Panayia Greek Orthodox Church Foundation

Hasköy Aya Paraskevi Church Foundation

Heybeliada Aya Nikola Church and Greek Orthodox Cemetery and Ufak Aya Varvara Church Foundation In The Cemetery

Heybeliada Aya Triada A.K.A. Tepe Monastery Foundation

Heybeliada Seminary Foundation

Kadıköy Greek Orthodox Community Churches, Schools, and Cemetery Foundation

Kandilli Aya Metamorfosis Church and Primary School Foundation

Belgradkapı Panayia Church Foundation

Samatya Aya Konstantin and Eleni Greek Church Primary School Foundation

Samatya Aya Nikola Church Foundation

Samatya Aya Yorgi Kiparisa Church Foundation

Kumkapı Greek Community Aya Kiriaki and Panayia Elpida Churches and School Foundation

Kurtuluş Aya Tanaş Aya Dimitri Aya Lefter Greek Church and School Foundation

Kuruçeşme Aya Dimitri and Aya Yani Churches Foundation

Kuzguncuk Aya Pandeliimon Greek Orthodox Church Foundation

Ortaköy Aya Foka Greek Church and Aya Yorgi Church, Cemetery and Schools Foundation

Paşabahçe Ayios Konstantinos Greek Orthodox Church Foundation

Salımatomruk Rum Panayia Church Foundation

Samatya Analipsiz Church Foundation

Samatya Aya Mina Church Foundation

Sarmaşık Aya Dimitri Church Foundation

Tarabya Aya Paraskevi Greek Church and Greek Primary School Foundation

Tepeköy Evangelismos Greek Orthodox Church Foundation

Topkapı Aya Nikola Church Foundation

Üsküdar Profiti İliya Greek Church and Holy Spring and Cemetery and Greek Mixed Primary School Foundation

Yeniköy Aya Nikola Church Foundation

Yeniköy Panayia Church and Greek School Foundation

Yenimahalle Aya Yani Greek Church and Primary School Foundation

Yeşilköy Aya Stefanos Church-Primary School and Cemetery Foundation

Beyoğlu Zapyon Greek Girl High School Foundation

Zeytinliköy Aya Yorgi Greek Orthodox Church Foundation

Kınalıada Panayia Greek Orthodox Church Foundation

Aksaray Langa Aya Todorı Greek Orthodox Church Foundation

Greek Orthodox Foundations of the Communities of Hatay
Antakya Greek Orthodox Church Foundation
Altınözü Sarılar Mahallesi Greek Orthodox Church Foundation
Samandağı Foundation
İskenderun Greek Orthodox Church Foundation
İskenderun Arsuz Greek Orthodox Church Foundation
Altınözü Tokaçlıköyü Greek Orthodox Church Foundation
Foundation of the Greek Orthodox Patriarchate of Jerusalem
Yeniköy Aya Yorgi Church and Monastery Foundation
Autocephalous Turkish Orthodox Patriarch⁹²
Armenian Foundations
Yeniköy Surp Ohannes Mıgırdıç Armenian Church Foundation
Bakırköy Surp Astvazazin St. Mary Armenian Church and School Foundation
Balat Surp Hreştegabet Armenian Church and School Foundation
Beşiktaş Surp Astvazazin St. Mary Armenian Church Foundation
Beykoz Surp Nikagos Armenian Church Foundation
Beyoğlu Anarathigutyun Armenian Catholic Nuns Monastery and School Foundation
Beyoğlu Aynalı Çeşme Armenian Protestant Church Foundation
Beyoğlu Ohannes Gümüşyan Armenian Church Foundation
Beyoğlu Surp Gazer Armenian Catholic Mihitryan Monastery and School Foundation
Beyoğlu Üç Horon Armenian Church Foundation
Boyacıköy Surp Yeris Mangas Armenian Church Foundation
Büyükkada Surp Astvazazin Verapohum Armenian Catholic Church
Büyükdere Surp Boğos Armenian Church
Diyarbakır Armenian Surp Small Church Hıdır İlyas Surp Gregos Churches Foundation
Eyüp Surp Astvazazin Armenian Church and Arakelyan School and Cemetery Foundation
Eyüp Surp Yeğiya Armenian Church Foundation
Feriköy Surp Vartanaş Armenian Church Foundation
Galata Surp Lusavoriç (Cerçiş) Armenian Church and School Foundation
Gedikpaşa Armenian Protestant Church Foundation
Gedikpaşa Surp Hovhannes Armenian Church Foundation
Halicioğlu St. Mary Surp Astvazazin Armenian Church and Kalfayan Orphanage Foundation
Hasköy Surp İstepanos Armenian Church and School Foundation
İskenderun Karasun Manuk Armenian Catholic Church Foundation

⁹² The 'Autocephalous Turkish Orthodox Patriarchate' was established by the state in 1923 in order to undermine the Istanbul Greek Patriarchate, to damage its ecumenical capacity and create a counterbalance. Selçuk Erenerol, who was made patriarch by the state confiscated the Panayia Kafatiani, Ayios Ioannis ton Hion, and Ayios Nikolaos churches in Galata in 1965, and registered these churches in the name of the 'Foundation for the Turkish Orthodox Church' with the consent of the state, thus confiscating churches of the Istanbul Greek Patriarchate de jure and de facto. The Greek Orthodox Patriarchate continues its struggle to regain its rights on these churches. For more information on the subject, see Kurban and Hatemi, 2009, p. 13.

Armenian Foundations

Kadıköy Surp Levon Armenian Catholic Church Foundation
Kadıköy Surp Takavor Armenian Church Aramyan Uncuyan School and Cemetery Foundation
Kandilli Surp Arakelos Armenian Church Foundation
Karaköy Surp Pırgıç Armenian Catholic Church Foundation
Kartal Surp Nişan Armenian Church and School Foundation
Kayseri Surp Kirkor Armenian Church Foundation
Kınalıada Surp Kirkor Lusavoriç Armenian Church, School and Cemetery Foundation
Koca Mustafa Paşa Anarathigutyun Armenian Catholic Church Foundation
Koca Mustafa Paşa Surp Kevork Armenian Church, School and Cemetery Foundation
Kumkapı St. Mary Church Foundation
Kumkapı Dışı Surp Harutyun Armenian Church Foundation
Kuruçeşme Surp Harç Church Foundation
Kuzguncuk Surp Kirkor Lusavoriç Armenian Church Foundation
Mardin Armenian Catholic Church Foundation
Narlıkapı Surp Hovannes Armenian Church Foundation
Ortaköy Surp Astvazazin St. Mary Armenian Church and School Foundation
Ortaköy Surp Kirkor Lusavoriç Armenian Church Foundation
Pangaltı Armenian Catholic Mihitaryan Monastery and School Foundation
Rumeli Hisarı Surp Sanduth Armenian Church Foundation
Sakız Ağacı Armenian Catholic Church Foundation
Samandağı Vakıflı Köyü Armenian Orthodox Church Foundation
Şişli Karagözyan Armenian Orphanage Foundation
Taksim Surp Agop Armenian Hospital Foundation
Tarabya Surp Andon Armenian Catholic Church
Foundation for Surp Nikagos Armenian Church and School in Topkapı
Üsküdar Surp Garabet Church School and Cemetery Foundation
Foundation for The Surp Haç Armenian Church School and Cemetery in Üsküdar
Foundation for The Surp Pırgıç Armenian Hospital in Yedikule
Yenikapı Surp Tetaos Patrigimeos Armenian Church Foundation
Yeniköy Küd Dipo Surp Astvadzadzin Armenian Church Foundation
Yeşilköy Surp İstepanos Armenian Church School and Cemetery Foundation
Beyoğlu Surp Yerurtutyun Armenian Catholic Church Foundation
Kumkapı St. Mary (Drasular) Armenian Catholic Church Foundation
Büyükdere Surp Hripsimyans Armenian Catholic Church Foundation
Kırıkhan Armenian Orthodox Churches Foundation

Jewish Foundations

Ankara Jewish Synagogue Foundation

Antakya Jewish Synagogue Foundation

Balat Ahrida Jewish Synagogue Foundation

Balat Or-Ahayim Jewish Hospital Foundation

Beyođlu Jewish Rabinat Synagogue Foundation

Beyođlu Seferadimi- Nevešalom Jewish Synagogue Foundation

Bursa Turkish Jewish Community Foundation

Büyükada Hased Leavram Jewish Synagogue Foundation

Çanakkale Mekor Hayim Jewish Synagogue Foundation

Galata Yüksek Kaldırım Eşkenazi Jewish Synagogue Foundation

Hasköy Mealem Jewish Synagogue Foundation

Hasköy Turkish Karaim Jewish Foundation

İskenderun Jewish Synagogue Foundation

Kadıköy Hemdat İsrail Synagogue Foundation

Kırklareli Jewish Synagogue Foundation

Kuzguncuk Bet-Yaokov Synagogue Foundation

Ortaköy Jewish Etz-Ahayim Synagogue Foundation

Sirkeci Jewish Synagogue Foundation

Syriac Foundations

Beyođlu Syriac Orthodox St. Mary Church Foundation

Diyarbakır Syriac Orthodox St. Mary Church Foundation

İdil Syriac Orthodox Church (Mar Dodo) Foundation

Mardin Syriac Orthodox Deyrulzafaran Monastery and Churches Foundation

Mardin Syriac Catholic Church Foundation

Mardin Syriac Protestant Church Foundation

Midyat Syriac Orthodox Deyrulumur Mar Gabriel Monastery Foundation

Midyat Syriac Orthodox Mar Borsoum and Mart Şmuni Churches Foundation

Midyat Syriac Protestant Church Foundation

Chaldean Foundations

Diyarbakır Chaldean Catholic Church Foundation

Chaldean Catholic Church Foundation

Mardin Chaldean Catholic Church Foundation

Other Foundations

Antakya Greek Catholic Church Foundation

Bulgarian Ekzarhlığı Orthodox Churches Foundation

Mersin Tomris Nadir Mutri Church Foundation

Şişli Georgian Catholic Church Foundation

Edirne Sveti Gorci Church Foundation

Annex C: Non-Muslim Community Foundations Seized by the State in Turkey

Greek Orthodox Foundations
Burgazada Hristos Greek Monastery
Büyükada Aya Nikola Greek Monastery
Büyükada Aya Yorgi (Koudouna) Greek Monastery
Büyükada Hristos Greek Monastery
Vefa Panayia Church and Holy Spring
Edirnekapı Aya Yorgi Greek Orthodox Church
Kınalıada Hristos Greek Monastery
İstinye Taksiarhi Greek Orthodox Church
Gökçeada Aya Marina Kaleköy Church
Gökçeada Aya Varvara Greek Church
Heybeliada Aya Spiridon Monastery
Heybeliada Hristos Monastery
Fener Agios Georgios Potiras Church
Tarabya Aya Yorgi Greek Church
Salkımsöğüt Aya Terapi Holy Spring (Ayiasma Ag. Therapontos)
Special or Irregular Cases
Büyükada Greek Orphanage ⁹³
Heybeliada Panayia (Kamariotisa) Monastery ⁹⁴
Beyoğlu Yenişehir Evangelistria Greek Primary School ⁹⁵
Central Girls School [Kentriko/Merkez] ⁹⁶
Other Greek Orthodox Foundations
Aya Yani Church and Monastery of St Catherine of Sinai Great Monastery
Heybeliada Aya Yorgi Greek Monastery of the Patriarchate of Jerusalem
Fener Aya Giorgi Church of the Patriarchate of Jerusalem
Doka Veledi Petro Sofyanos Tahta Minare District Foundation of the Patriarchate of Jerusalem

93 The Orphanage has been regained by the Greek Orthodox Patriarchate through a decision of the ECtHR. The “demazbutisation” process of the foundation is ongoing before the Turkish courts.

94 The monastery has been conceded by the Greek Orthodox Patriarchate to the Turkish State in 1942.

95 It was not originally a foundation but according to a court decision it has been “mazbtutised” as such.

96 Its legal status as a foundation (community or not) is ambiguous.

Jewish Foundations

Amasya Jewish Synagogue Foundation

Aydın Jewish Synagogue Foundation

Balat Karabaş District, Fulyaşon Synagogue

Balat Karabaş District, Selaniko Synagogue

Bergama Jewish Synagogue Foundation

Bodrum Jewish Synagogue Foundation

Çorlu Jewish Synagogue Foundation

Edirne 2nd Synagogue Foundation

Edirne Great Synagogue Foundation

Gaziantep Jewish Synagogue Foundation

Gaziantep-Kilis-Yusuf Biçaço Synagogue Foundation

İstanbul Salmatomruk Jewish Community Foundation

İstanbul Silivri Kal Kadoş Bohor Maryo Binyamin Synagogue Foundation

İstanbul Jewish Community Foundation for the Palace of Constantine Porphyrogenetus

İzmir Nesim Levi(Loy) Bayraklı Foundation

Lüleburgaz Jewish Synagogue Foundation

Milas Jewish Synagogue Foundation

Nazilli Jewish Synagogue Foundation

Ödemiş Jewish Synagogue Foundation

Tekirdağ Jewish Community Foundation

Tire Jewish Synagogue Foundation

Tokat Jewish Synagogue Foundation

Unkapanı Jewish Synagogue Foundation

Urfa Jewish Synagogue Foundation

Annex D: Muslim Community Foundations in Greece

Western Thrace	
Location	Foundation
Xanthi/İskeçe	The foundation of Xanthi [Under a unified legal entity: 10 mosques, one school, four cemeteries]
Yenisea/Yenice	The foundation of Yenisea [two mosques, one tekke, one school, one cemetery (?)]
Komotini/Gümülcine	35 foundations [16 mosques, six cemeteries, five mescits, eigh schools]
1	Yeni cami
2	Eski cami
3	Tabak hane cami
4	Osmanyen cami
5	Mestanai cami
6	Kayalı cami
7	Tekke cami
8	Serdar cami
9	Yenice cami
10	Kırmahalle cami
11	Kesikbas cami
12	Şehreküştü cami
13	Yeni Şehreküştü cami
14	Alan Kuyu mescit
15	Kırmahalle mescit
16	Süppüren mescit
17	Arifhane mescit
18	Yüksek mescit
19	Kalkantza cami
20	Sohtalar-Hayriye
21	Cemetery Pos-pos
22	Cemetery yenice
23	Cemetery kahveci
24	Cemetery Osmanyen

Western Thrace	
Location	Foundation
25	Cemetery mestanli
26	Cemetery Alan Kuyu
27	Idadiye
28	2d minority school
29	3d minority school
30	4d minority school
31	Mestanli school
32	Osmanye school
33	Edirneyolu cami
34	Boy's boarding school
35	Kadikoy arasi cami
Evros	The foundation of Didimotiho/Dimetoka: [one mosque, one school, two cemeteries]
	The foundation of Alexandroupolis/Dedeğaç [one school, two cemeteries, one mosque]
<p>In each village of Thrace there is a local foundation, often comprising a mosque, a cemetery and a school building. Approximately there are about 250 foundations of this kind in Thrace</p>	
The Dodecanese Islands	
Rodos	
The Muslim community foundation of Rodos	
"Fethi vakfı" [family/private]	
"Melek Mehmet paşa vakfı" [family/private]	
Kos	
The Muslim community foundation of Kos	

About the Authors

DİLEK KURBAN

She received her bachelor's degree in Political Science and International Relations from Boğaziçi University, Istanbul. She received her Master's in International Affairs (MIA) in human rights from Columbia University's School of International and Public Affairs, and her Juris Doctor (JD) degree from Columbia Law School. Between 1999 and 2001, she worked as an Associate Political Affairs Officer at the Security Council Affairs Division of the United Nations Department of Political Affairs in New York. Currently, she is the Program Officer for the Democratization Program of the Turkish Economic and Social Studies Foundation (TESEV) and an adjunct professor of law at the Political Science Department of Boğaziçi University. She is an editor for Agos, a Turkish-Armenian bilingual weekly. She published in the areas of minority and human rights in Turkey, internal displacement in Turkey and European minority and human rights law.

KONSTANTINOS TSITSELIKIS

Assistant professor at the Department of Balkan, Slavic and Oriental Studies, University of Macedonia (Thessaloniki, Greece), lecturing human and minority rights and international law. He has worked for the Council of Europe, the OSCE, the UN, the EU in human rights and democratisation field missions. He is a member of scientific groups and research teams on minorities and human rights. Co-director of the Series of Studies of the Research Centre of Minority Groups at Vivliorama publishers (Athens). Author of a series of books, articles and studies on human rights, international law and minorities. Special research interests: Legal position of Muslim minorities/communities in Europe, Islamic foundations and Islamic courts in Greece, Greek Orthodox minorities in Turkey and Albania.

