

The Story of an Alien(ation):

**REAL ESTATE
OWNERSHIP PROBLEMS OF
NON-MUSLIM FOUNDATIONS AND
COMMUNITIES IN TURKEY**

DİLEK KURBAN KEZBAN HATEMİ



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I. Introduction

Turkey's 'minority problem,' which is contemporary with the Republic, has been among the fundamental political issues of the country since 1923, when the Treaty of Lausanne was signed. Non-Muslim Turkish citizens were given minority status, and gained a series of individual and collective rights, under the Treaty of Lausanne. These rights were not implied by this minority status or based on prerogatives, but were based on the principle of equality with Muslim citizens. The Treaty of Lausanne provided non-Muslims with various rights such as establishing and managing their own educational, healthcare, religious and charitable institutions and giving education in their own languages in private schools they would establish and administer. The main reason of signing the Treaty was to protect the non-Muslim population which declined drastically during the transition from the Empire to the Republic. Non-Muslims, which represented a significant portion of the population during the Ottoman period, lost many of its members during the 1915 Incidents, and especially after the 1923 Population Exchange. The victorious western states of the First World War pressured the emerging republican administration to protect the remaining small non-Muslim population, and urged Ankara to grant its non-Muslim citizens legal privileges.

Consequently, the Republican Administration that was established only three months after the signing of the Treaty of Lausanne, gave minority status to the non-Muslim population living within its territory, albeit involuntarily. The government also offered binding legal undertakings that it would safeguard rights arising from the Treaty. For non-Muslims, who also lost their economic power to a great extent because of the dramatic decline in their population, minority rights arising from the Treaty of Lausanne was a lifeline that would enable them to continue living in these lands and to sustain their cultures, religions and languages. However, only a short while after the Treaty of Lausanne, it became evident that the state did not intend to implement the rights it was forced to give. Upon the enactment of the Civil Code in 1926, the rights arising from the Treaty of Lausanne were pruned off with various exceptions, restrictions and conditions imposed through a series of laws, acts and practices. Finally, it became almost impossible in practice to benefit from most of these rights. This became a state policy after the 1960s Cyprus crisis between Greece and Turkey, and compliance with the Treaty of Lausanne rather than violations of it became an exception.

In the 1930s, it became evident that pushing or directly forcing the few non-Muslims left in Turkey to abandon the country was an explicit state policy. The aim of the several discriminatory laws and practices, including the 1934 Western Thrace Incidents to the 1942 Wealth Tax, the 6-7 September 1955 Incidents and the 1964 extradition of Greeks with Greek passports, was to clear the country of non-Muslims. Non-Muslim foundations played a critical role in this process. Non-Muslim foundations, which were the legacy of Ottoman law and state tradition, had a crucial function as institutions that regulated the social lives of non-Muslims and supported their religious, educational, healthcare and charitable institutions. These foundations also managed an immense wealth in the form of real estates. This wealth caused non-Muslim foundations to become an important element of state policies geared towards non-Muslims. The bureaucracy, especially the Directorate General for Foundations (DGF) played a crucial role in designing and implementing repressive policies imposed on non-Muslim foundations. On the other hand, the 1936 Declaration and the 'seized foundations' practice aimed at seizing from non-Muslim foundations their registered immovables might have been designed and implemented by the bureaucracy, but they were given legal legitimacy by the judiciary. The entire judiciary system from the lowest administrative courts to the highest "General Board of the High Court of Appeals," played an active and influential role in this process by providing a legal cover to the unlawful practices affecting non-Muslim foundations.

When Turkey became a candidate for the European Union (EU), it became clear that it was not possible to sustain this state policy towards non-Muslim communities. The real estate ownership problems of non-Muslim foundations were brought to the attention of the government in annual progress reports issued by the European Commission. The

problem became even more urgent when non-Muslim foundations, encouraged to claim their legal rights with the new democratization trend in Turkey, filed lawsuits with the European Court of Human Rights (ECtHR). It was not easy for the bureaucracy anymore to take over the assets of non-Muslim foundations, and the government was expected to take effective legal steps to return or pay indemnity for seized assets. The Justice and Development Party (*Adalet ve Kalkınma Partisi* - "AKP"), which came to power in 2002, made several amendments to the Law on Foundations in order to bring a solution to the various problems of non-Muslim foundations, especially for the real estate ownership problem. Finally, in February 2008, a new Law on Foundations came into force. The reforms provided non-Muslim foundations with vital new rights such as acquiring and disposing assets and registering assets in their possession to themselves. However, at this point of time, this problem has still not been solved completely. The most important problem that remained unsolved is the failure to return all of the assets that have been seized, and the failure to pay indemnity for assets that have been transferred to third parties.

The purpose of this report is to tell the story of the real estate ownership problem experienced by non-Muslim foundations since the Ottoman period, and to discuss to what extent laws enacted during the EU accession process have been effective in solving this problem. The second section of this report, following this introduction, explains the historical background of the ownership problems of non-Muslim foundations. Following brief information about the foundation system of the Ottoman Empire and the establishment of non-Muslim foundations, which constituted a part of this system, the minority regime created under the Treaty of Lausanne in 1923 are discussed, and rights and freedoms of non-Muslim foundations arising from this Treaty are evaluated. In the third section, the impact of minority policies adopted by Turkey since the Treaty of Lausanne regarding the property rights of non-Muslim foundations are considered, and various laws and practices such as the 1926 Civil Code, the 1930 Municipalities Law, the 1935 Law on Foundations, the 1936 Declaration, and the inclusion of non-Muslim foundations among seized foundations are analyzed. Policies of taking over the immovables of non-Muslim foundations implemented since the 1960s pursuant to the so-called the 1936 Declaration and the 'seized foundation' practice are discussed, by giving concrete examples. The legislation developed to solve the problems of non-Muslim foundations during Turkey's accession to the EU is evaluated in the fourth section, and lawsuits referred to the ECtHR because of the inadequacy of these reforms are reviewed in the fifth section. After discussing, in the sixth section, the reasons of the inadequacy of the reforms made within the context of harmonization with the EU in solving problems of non-Muslim foundations, concrete proposals are made for solving continuing real estate ownership problems of non-Muslim foundations in the seventh and last section. The list of immovables taken from non-Muslim foundations and the list of non-Muslim foundations included among 'seized foundations' are given in the annexes.

II. Historical Background of the Ownership Problem of Non-Muslim Foundations

A. THE 'FOUNDATION' SYSTEM IN THE OTTOMAN EMPIRE

In settled populations, there have always been legal entities composed of a group of assets, and these are called 'foundations' today. Foundations did not exist in nomad populations. Mutual aid and solidarity relations were simpler and they were mostly in the form of holding feasts or donating movable assets. However, in settled populations, in addition to sporadic charitable acts such as donating consumption items, there is a need for allocating a group of movable or immovable assets for a permanent purpose. This is because social needs that cannot be met by individuals, are met only by the efforts of groups of individuals coming together to serve a certain purpose or through donations of assets to legal entities composed of a group of individuals to serve a certain purpose.

In Roman law, typically groups of individuals were made conditional donations (*donatio sub modo*). However, in German Law there was the *Stiftung* concept, which was similar to the concept of foundation in Islamic law. In Islamic law, there was the 'current alms' concept before the concept of 'alms' in Jewish and Christian religious law. 'Current alms' meant immovable assets allocated permanently for a certain purpose. When the Islamic State tended to deviate from its fundamental legal and moral principles, Caliph Ali introduced the principle of 'untouchability of current alms' and attempted to prevent his successors from disposing of immovables set aside for the public benefit to promote their personal interest. A century later, during the Abbasid Caliphate, attempts were made to benefit from the immunity of foundations in the area of private law in order to bypass Islamic rules that gave right of inheritance to women. The *hile-i şer'iyye* (deception against law) practice resulted in the term '*sadaka-i mevkufe*' (temporary or reversible alms), which was used for allocations in public law, being also used in private law. Foundations established before death enabled bypassing the sharing rules of Islamic legislation. In the end, in addition to foundations serving the public good, '*zürri vakıflar*' (adopted foundations) emerged, but these foundations will not be discussed in detail in this report. In countries that adopted Islam, *tolerance* and *vested right* status descending from the era of the Prophet and based on principles of the Koran was applied to existing Jewish and Christian charitable institutions.

'Non-Muslim foundations' is the name given to foundations managed by churches, monasteries, schools and hospitals owned by non-Muslim communities. Foundations established during the Ottoman period did not have a grantor or a statute because these were established through imperial edicts. These foundations, which were not capable of acquiring land or immovable assets, met their educational, health and religious needs only through the allocation of lands or immovables by the Sultan. Under the influence of Islamic law, the Ottomans did not damage Jewish and Christian institutions in cities they took control of. The Ottomans recognized their existence with new edicts, or if the city was previously under an Islamic administration, protected their existing rights under earlier edicts. With the permission of the Sultan, who was the head of State, the income of an agricultural land could be allocated to a charitable foundation, which was similar to the establishment of a 'fund.' However, in practice, there were certain exceptions to the principle of recognizing vested rights. Yet, in general, the rights granted to non-Muslims during the Ottoman period were much superior and advanced compared to how non-Christians were treated in the West.

Still, it was difficult to establish new religious and charitable institutions. There were various legal reasons for this difficulty. First of all, agricultural lands called '*miri arazi*' (state land) were considered the property of the public treasury. The Sultan's permission required for allocating such a land to a foundation served as a tool of control. Except for institutions such as monasteries that existed on *miri arazi* and whose existence was recognized with edicts, the income of an agricultural land could not be allocated to a non-Muslim foundation.¹ It could be difficult to obtain a 'registration decision' from a sharia court when a foundation was desired to be established. A non-Muslim should not have experienced any difficulty in establishing a foundation for poor members of its community, because helping the

poor was considered ‘alms’ regardless of their religion, therefore the *kurbet* requirement (being closer to God, gaining the consent of God) for alms was met. However, the registration of a new foundation of a church could be denied by saying ‘building a church means *kurbet* according to your belief, however, since your belief is not the correct one, there is no *kurbet* intention here.’ Therefore, an ‘imperial edict’ was required for the establishment of institutions such as churches.²

During the Ottoman period, neither Muslim nor minority foundations could acquire any real estate, and the legal existence of foundations was not legally recognized until 1912.³ Non-Muslims overcame this legal obstacle by registering immovables donated to charitable organizations in the name of a member of the community (a pseudonym) or to Virgin Mary or a saint (a fictitious name). Thus, they could continue using immovables that were not registered in their name in the land register. Pursuant to the “Provisional Law on the Possession of Immovables by Legal Entities” enacted in 1912, the legal person represented by non-Muslim foundations was recognized like all other foundations and they were included among ‘*mülhak vakıflar*’ (affiliated foundations). Thus, it became possible to re-register in the name of the legal entity of the foundation the immovables that were previously registered to pseudonyms and fictitious names. In this Provisional Law enacted in 1912, it was stated that if there was an immovable used by a foundation and “if any natural person or inheritors in whose name such immovable was registered declared that such immovable belonged to that foundation, it had to be re-registered to that foundation.”⁴

B. THE TREATY OF LAUSANNE, 1923

The legal status of minorities in Turkey was regulated with the Treaty of Lausanne signed in 1923. The Treaty of Lausanne was made at the time of the League of Nations and therefore embraced the basic characteristics of the minority rights regime prevailing after World War I. Unlike the treaties signed with other states that lost the WWI and brought protection to ethnic, linguistic and religious minorities, the Treaty of Lausanne only recognized non-Muslims as a minority.⁵ By excluding Alevi and other sectarian Muslim minorities and ethnic and/or linguistic minorities such as Kurds, Arabs, Circassians, Bosnians, and Romans, the Treaty of Lausanne fell short of the international legal standards of its period. The Treaty was the product of the minority rights regime of the League of Nations. However, the new international human rights regime adopted under the United Nations after the Second World War, provided protection to minorities through universal treaties ratified by states that granted equal rights to all minorities within their national territories, or through constitutional solutions that aimed real equality among citizens by embracing racial, linguistic, religious and other differences within the framework of the ‘multiculturalism principle.’

The Treaty of Lausanne adopted the principle that the status granted to Muslim Ottoman citizens in terms of religious rights and liberties should also be granted to non-Muslim citizens. Without mentioning the reciprocity principle, it was stated that the Ottomans would grant the same rights to Muslims and non-Muslims⁶, while the Greeks would grant same rights to Christians and Non-Christians.⁷ Thus, the Treaty imposed ‘parallel obligations’ on the Greek and Turkish States.⁸

The Treaty of Lausanne granted various comprehensive negative and positive rights to non-Muslim citizens and imposed important duties on the Turkish State to ensure that minorities could exercise these rights. The principal minority rights recognized in the Treaty included equality before the law, protection against discrimination, right to establish private schools teaching in their own language, religious freedom and public financial support for education in their own language in public primary schools under certain conditions.⁹ The most important articles of the Treaty for non-Muslim foundations are as follows:

1 Non-Muslims were entitled to property rights on residential lands, just like Muslims.

2 In the Ottoman territory, ‘foreign’ individual groups such as Catholics were allowed to establish certain organizations with edicts. The problems of Catholic foundations will be discussed in the following sections of the report.

3 Murat Bebiroğlu, “Cemaat Vakıfları,” (Non-Muslim Foundations) (Hye-tert, 2001), <<http://www.hyertert.com/yaziz.asp?s=1&Id=16&DilId=1>>.

4 *Ibid.*

5 Rıza Nur, *Hayatım ve Hatıratım, My Life and My Memoirs, Volume III*, (1967), p. 1044.

6 Articles 42-44.

7 Article 45.

8 Turgut Tarhanlı’s declaration, *Cemaat Vakıfları, Bugünkü Sorunları ve Çözüm Önerileri* (Non-Muslim foundations, Current Problems and Recommended Solutions) (Istanbul Bar Publications, 2002), p. 37.

9 Articles 39-42.

Article 40:

Turkish nationals belonging to non-Muslim minorities shall enjoy the same treatment and security in law and in fact as other Turkish 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 41:

As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Muslim nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Muslim minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes.

...

Article 42(3):

The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorization will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish 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.

Thus, autonomy was granted to non-Muslim foundations established by non-Muslim citizens to meet their educational, religious, social, health-related and charitable needs. The immunity of these rights was guaranteed by the principle of supremacy.

Article 37:

Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognized as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

III. Minority Policies Adopted After the Treaty of Lausanne

Turkey denied all its citizens in general, and citizens speaking languages other than Turkish in particular, their language rights recognized in the Treaty of Lausanne¹⁰ and also failed to completely fulfill its duties to protect the rights granted to non-Muslim citizens. Although the Treaty only mentioned “non-Muslims” and did not specifically mention any non-Muslim group, in practice only Armenians, Greeks and Jews were given minority rights. Since the Treaty mentioned non-Muslim citizens, failing to officially recognize Chaldeans and Assyrians as ‘minorities’ was not in compliance with the Treaty. Therefore, Assyrians’ Chaldeans’ and other non-Muslim minorities’ rights secured under Turkish laws were systematically violated although they were also entitled to establish their religious, educational and social institutions as much as Armenian, Greeks and Jews.¹¹ Even Armenians, Greeks and Jews, who were the only groups recognized as minorities in practice in Turkey, could never exercise their rights arising from the Treaty of Lausanne fully and freely.

The section below contains major laws and practices that are contrary to the Treaty of Lausanne.

A. THE CIVIL CODE

Two-and-a-half years after the signing of the Treaty of Lausanne, the Swiss Civil Code was adopted in February 1926. The code, which approved the establishment of new foundations, excluded non-Muslim foundations from this arrangement.¹² By excluding non-Muslim foundations from the Civil Code, non-Muslims were legally prevented from establishing new foundations and had to make do with their existing foundations. A similar obstacle was created by the new Civil Code that came into force in 2002.¹³ Therefore, Armenians, Greeks, and Jews still cannot establish new foundations for their communities despite legal reforms undertaken during the EU process. The restriction imposed by the Civil Code on non-Muslims’ freedom of association is explicitly incompatible with the Treaty of Lausanne, the Turkish Constitution and the European Convention on Human Rights.

It was stated that another law would be enacted to eliminate the legal loophole that occurred when the Civil Code covered only new foundations and excluded existing ones.¹⁴ Said law was enacted as the “Law on Foundations” in 1935. In the meantime, a certain portion of the assets of the foundations established by Muslims were disposed of by transferring them to public legal entities.¹⁵ According to Baskin Oran, this indicates that the Law on Foundations was actually enacted to weaken the economic power of Muslim foundations.¹⁶ Before non-Muslim foundations were officially recognized through the Law on Foundations, the cemetery foundations of non-Muslims were denied legal recognition with the 1930 Municipalities Law.

10 Article 39(4): “No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.”

Article 39(5): “Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts.”

11 On the other hand, reforms undertaken during the EU process raised hopes that this actual policy of the state was becoming more flexible. A regulation was issued on 24 January 2003 to implement the amendments to the Law on Foundations. A list attached to this regulation contains “active non-Muslim foundations.” Assyrian, Chaldean, Bulgarian and Georgian churches are listed among the 160 foundations. For more information on this regulation, see Section III-A.

12 Article 74(2): “Foundations that are against the law, ethics and customs or national interests or aim to support members of a certain race or a community cannot be registered.”

13 Article 101(4): “No foundation can be established as long as it is against the certain qualities specified in the Constitution of the Republic, fundamental principles of the Constitution, law, morals, national unity and national interests or aims to support members of a certain race or a community.”

14 Law on the Validity and Implementation of the Civil Code, Article 8(2): “An implementation law will be issued (enacted) on foundations established before the Civil Code came into force. Foundations to be established after the Civil Code comes into force shall be subject to the Civil Code.”

15 Hüseyin Hatemi, *Medeni Hukuk Tüzel Kişileri* (Civil-Law Legal Entities), Volume I (Istanbul University Law School, 1979).

16 Baskin Oran, *Türkiye’de Azınlıklar: Kavramlar, Lozan, İç Mevzuat, İçtihat, Uygulama* (Minorities in Turkey: Concepts, Lausanne, Internal Legislation, Case Law, Practice) (İletişim, 2004), p. 100.

B. MUNICIPALITY LAW

The 1930 Municipality Law was another legal arrangement that was incompatible with the Treaty of Lausanne. This law provided for the transfer of cemeteries to municipalities,¹⁷ and was applied to non-Muslim foundations despite Article 42 of the Treaty of Lausanne, and constituted the basis for taking over non-Muslim cemeteries from non-Muslim foundations in later years. Although the control of cemeteries was left to their communities, non-Muslims could not be completely independent from the political will when exercising this control. Even individuals excommunicated by the religious administration of their communities were buried in community cemeteries with the decision of municipal administrations, which completely ignored the will of the churches.

An interesting case in point is the allocation of a place in Şişli Greek Orthodox Cemetery to Selçuk Erenerol, the 'Autocephalous Turkish Orthodox Patriarch.'¹⁸ 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. Erenerol, who was made patriarch by the state, was excommunicated by the Istanbul Greek Patriarchate like other members of his family. Thus, Erenerol lost his right to be buried in cemeteries of the Istanbul Greek Patriarchate. However, with the intervention of the Ministry of Internal Affairs, he was buried in the community cemetery. The Istanbul Metropolitan Municipality decided to allocate a place to Erenerol in Şişli Greek Orthodox Cemetery upon the request of the Governor's office¹⁹. As a result, a person who had been excommunicated by the Greek Orthodox community was buried in a cemetery of this community despite the objections of the Patriarchate.²⁰

C. LAW ON FOUNDATIONS

Prof. Leeman was invited from Switzerland and asked to prepare a draft law on foundations. However, many amendments were made to this draft law, and finally the Law on Foundations was enacted in 1935.²¹ Instead of treating foundations of Muslim and non-Muslim citizens equally, the law placed Muslim foundations under a kind of guardianship, thus providing an 'equality' in terms of the restriction of rights of all foundations. The Law on Foundations contained provisions that were incompatible with the Treaty of Lausanne. With this law, non-Muslim foundations were also given the status of affiliated foundations²², which later enabled including these foundations among 'seized foundations'.

Nevertheless, especially during the democratization process after the 1950s, non-Muslim foundations were allowed to acquire real estate by various court decisions. For example, the land of the Tuzla Camp, where Armenian orphans including Hrant Dink spent their summers, was purchased during this period. Another example was the establishment of an Armenian theological school in Üsküdar during the Menderes government. This was quite surprising because although Greeks had a theological school in Istanbul at the time of signing of the Lausanne, Armenians did not have such an institution²³. Thus, the Armenian community was granted a new right. However, upon the enactment of the 1961

17 Municipality Law No. 1580, 3 April 1930, Official Gazette No. 1471, 14 April 1930, Article 160.

18 The 'Autocephalous Turkish Orthodox Patriarchate' was founded in 1922 in Kayseri by priest Efthim Karahisaritis, who was called 'Pope Efthim I.' A Council of Ministers' Decree of the Ankara government in 1921, during the occupation of Anatolia was the legal basis of this foundation. When Orthodox people left Capadoccia in 1923 during the Population Exchange, the patriarchate, which did not have a community anymore, was moved to Istanbul in 1924 with another decision of the government. Papa Efthim and his family were exempted from the Population Exchange and were allowed to settle in Istanbul. Efthim changed his Greek name into Zeki Erenerol, and with the support of the Galata Greek community that had conflicts with the Istanbul Greek Patriarchate, he confiscated the Phanar Church in Galata and declared himself 'patriarch.' Erenerol was excommunicated by the Greek Orthodox Patriarch on 19 February 1924. Later on, he confiscated the Ayios Ioannis 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*. Upon Zeki Erenerol's death in 1968, his sons and grandchildren succeeded him. This church does not have any followers since 1968 and has not been recognized by any church. It never met the minimum requirements for being an Orthodox church, did not follow the rules of the Greek Orthodox religion and remained only an instrument used by the state to undermine the Istanbul Greek Patriarchate. See. Elçin Macar, *Cumhuriyet Döneminde İstanbul Rum Patrikhanesi* (Greek Patriarchate in Istanbul during the Republican Era) (İletişim, 2004).

19 Istanbul Police Department's letter on "Request for a burial place" dated 30 July 2002 and numbered B.05.1.EGM.4.34.00.12.09.2.02. Complete text of the letter is given in Annex 5-A.

20 Istanbul Metropolitan Municipality, Health Affairs Department, Cemeteries Directorate's letter on "Şişli Greek Orthodox community." letter dated August 2002 and numbered 12734-35-230-150-573/2347. Complete text of the letter is given in Annex 5-B

21 Law on Foundations No. 2762, 5 June 1935, Official Gazette No. 3027, 13 June 1935.

22 In Ottoman legislation, following the administrative reforms of 1839, a 'seized foundation' did not mean a foundation that was seized as it happened after the declaration of the Republic. It meant that a different supervision authority appeared on its statute and it especially meant that supervision of the dynasty's pious foundation assets was transferred to *Evkaflar*. The 1935 Law on Foundations expanded the meaning and scope of the term 'seized foundation.' With the decision of the Directorate General for Foundations, it became possible to seize foundations that lost their private legal existence under the Law on Foundations and that were not considered as seized foundations described therein. In practice, this is called 'to be included among seized foundations' (*mazbutaya alınma*). This practice is also wrongly called '*mazbataya alınma*'. *Mazbata* means report in Turkish. Unlike seized foundations, affiliated foundations maintain their individual legal existence. In other words, unlike seized foundations, they were not made fully incapable legal entities represented by the DGF. They are in a sense 'partially incapable' legal entities. The term 'affiliated foundation' defined Muslim foundations that were established before the enactment of the Civil Code and non-Muslim and artisan foundations, although there was an attempt to conceal them and to avoid mentioning them in the law. The new Law on Foundations adopts the same attitude and does not mention facts explicitly. According to Article 3, non-Muslim and artisan foundations seem to be excluded from the scope of 'affiliated foundations' at least by definition. However, financial arrangements show that, in addition to its inspection powers, the DGF has other powers over non-Muslim foundations.

23 However, this theological school in Halki was closed in 1971 and the Istanbul Greek Patriarchate was prohibited from training clerics in Turkey. For the story of the theological school, see Elçin Macar and Mehmet Ali Gökçaftı, *Heybeliada Ruhban Okulunun Geleceği Üzerine Tartışmalar ve Öneriler* (Discussions and

Constitution, non-Muslim foundations' authorization to acquire real estate was revoked. Non-Muslims lost what they gained during the Menderes period. The Armenian theological school was closed on 27 May.

With the Law on Foundations, the administration of all the institutions of non-Muslim minorities became subject to the DGF. This allowed the state to directly intervene with the functioning and internal relations of these institutions. This practice violated non-Muslims' right to govern and control their own institutions that was granted in Article 40 of the Treaty of Lausanne. Moreover, vital institutions such as churches, schools and hospitals were given 'foundation status' so that they were governed by the Law on Foundations, which was an archaic, complicated and restrictive law. This resulted in practices restricting the ownership rights of these institutions. The 1936 Declaration and the 'seized foundations' practice discussed in the following two sections were among the major examples of such restrictive practices.

D. THE 1936 DECLARATION

Non-Muslim foundations were given the status of an affiliated foundation and placed under the guardianship of the DGF without any legal basis. This was again incompatible with the Treaty of Lausanne. The capacity of these foundations to acquire real estate was limited to their 1936 Declarations, with a 'precedent' that stands in stark contradiction to the principle of a state governed by the rule of law. With this practice commonly called the '1936 Declaration,' the state took over several immovables of non-Muslims and registered them in the name of the Treasury or the DGF.

Here is a short description of this practice: In 1935, foundations were asked to file a declaration of property, which listed all their immovables, pursuant to the Law on Foundations. The apparent reason of this call for property declaration was to organize the land register records of the new republic. However, Baskın Oran believes that the real purpose was to "make arrangements that would eradicate the economic resources of Islamists."²⁴ Like other foundations, non-Muslim foundations answered this call and filed their lists of immovables with the competent authorities.

Non-Muslim foundations did not experience any ownership problem until the mid 1960s. Especially during the Democratic Party government, Article 46 of the Civil Code was fully implemented, and non-Muslim foundations either purchased or were bequeathed or donated real estate with a certificate issued by the governor's office certifying that they had a legal existence.²⁵ They did not need any authorization for these acquisitions. However, this started to change after the mid 1960s when the Cyprus crisis occurred between Greece and Turkey. The bureaucrats 'remembered' the 1936 Declarations that were forgotten in archives, and the Greek Community in Turkey was used as an instrument to overtop Greece. The DGF asked foundations to present their statutes to prove that they were legal owners of the immovables in their possession. When it was stated that this was impossible, the DGF decided that 1936 Declarations could substitute the statutes of non-Muslim foundations.²⁶ However, as the DGF knew or should have known very well, non-Muslim foundations were established with imperial edicts during the Ottoman period and did not have any statute.

The reasoning of this practice was tragically wrong. Legal entities should not be considered to be limited with their 'capacity to acquire rights.' On the contrary, they should be considered to be limited with their 'capacity to act,' and even this limitation should be interpreted as 'rules limiting the representation power of the body.' However, these principles were completely ignored, and with an incomprehensible logic, these declarations, which were only inventories of assets, were regarded as statutes. Of course, these printed declarations did not contain any provision such as "this non-Muslim foundation can acquire real estate in the future." The DGF used this inherent natural deficiency and concluded that non-Muslim foundations did not have the capacity to acquire any real estate.

As a result of this unlawful interpretation, non-Muslim foundations' right to acquire property was limited to immovables they declared in 1936, and the properties they purchased or acquired through inheritance, donation, testament or gratification after 1936 and properties that were not included in their 'statutes' were seized. Seized immovables were returned to their original owners or their inheritors, and if the original owners were not alive or did not have any inheritors, they were taken over by the DGF, the Treasury or the National Real Estate. Besides, non-Muslim foundations were not made any payment in either case.²⁷

Non-Muslim foundations took legal action, claiming that this practice violated the Law on Foundations, Turkey's Constitution and the Treaty of Lausanne, and filed several lawsuits requesting the return of their seized immovables. When the courts always decided that the DGF was right, the issue was referred to the High Court of Appeals. The High Court of Appeals made its first ruling in the lawsuit filed by the Foundation of the Balıklı Greek Hospital against the

Recommendations on the Future of the Theological School of Halki) (TESEV, 2006). For a diploma given by the theological school, which provided education services until 1971, see Annex 6.

24 Oran, *Türkiye'de Azınlıklar...* (Minorities in Turkey...), p. 100.

25 Diran Bakar's declaration, "İnsan Haklarında Gri Alanlar Konferansı" (Conference on Grey Areas in Human Rights), TESEV, 26 May 2006.

26 *Ibid.*

27 For a detailed list showing assets taken over from the Greek Community, see Annex 2.

Treasury. In 1971, the 2nd Civil Law Chamber of the High Court of Appeals unanimously approved the decision of the lower court with the following argument: “Legal entities formed by non-Turkish individuals are prohibited from acquiring real estate.”²⁸ Thus, non-Muslim foundations established and managed under Turkish laws by Turkish citizens and audited under Turkish law were treated as ‘foreign foundations’ that were established and managed by individuals who were not Turkish citizens.

This interpretation of the 2nd Civil Law Chamber of the High Court of Appeal, which was incompatible with Turkey’s Constitution, was unanimously approved in 1974 by the General Board of the High Court of Appeals.²⁹ The General Board adopted the discriminatory approach of the lower court and qualified non-Muslim Turkish citizens as “non-Turkish” individuals. The decision of the General Board created the legal basis of the practice that regarded the 1936 Declarations as the statutes of non-Muslim foundations. The General Board indicated that non-Muslim foundations did not expressly state that they would continue acquiring property when they declared their assets in 1936, and concluded that these foundations did not have the right to acquire any property. However, it was not possible for 1936 Declarations to include an article that declared ‘the right to acquire property,’ because these declarations were not statutes. They were simple declarations of property. The General Board of the High Court of Appeal used the following justification to provide a legal cover for treating these declarations as statutes: “The capacity of legal entities is limited to their status. Non-Muslim foundations do not have statutes. Therefore, it is necessary to consider 1936 Declarations as statutes. If there is no provision in these declarations providing that new immovable properties may be acquired, this means that these foundations do not have the capacity to acquire any property.”³⁰

The justification of the General Board of the High Court of Appeals for its 1974 decision was as follows:

Legal entities established by non-Turkish individuals are prohibited from acquiring immovables. Legal entities are more powerful than natural persons, therefore the state may face certain dangers and various problems may occur if their right to acquire immovables is not restricted. Although foreign natural persons are allowed to purchase or inherit immovables in Turkey, provided that this is reciprocal, legal entities do not have this right.

By describing non-Muslim citizens of Turkey as “non-Turkish individuals” the High Court of Appeals revealed that the description and implementation of citizenship had an ethnical and religious basis in Turkey. With this decision, the High Court of Appeals discriminated against citizens alleged by the state to be equal before the law, and prevented non-Muslim foundations from recovering the immovables that were seized from them. It also prevented non-Muslim foundations from purchasing property or acquiring property through donations, testaments or gratuity.

This decision of the High Court of Appeals removed all legal obstacles to the state’s seizure of immovables from non-Muslim foundations. Encouraged and authorized with this decision, the DGF started to file subsequent lawsuits requesting the cancellation of the land registry records of immovables acquired by non-Muslim foundations after 1936. This “steady practice shows that the real purpose was to seize the properties of minority foundations, and that treating the 1936 Declarations as ‘statutes’ was only a legal cover. Thus, by ‘legalizing’ an explicitly unlawful practice, the state brought the Ottoman concept of ‘discretionary confiscation’ to the Republic.”³¹ The DGF was unconditionally supported by the judiciary in these lawsuits. The High Court of Appeals approved the decisions of administrative courts and returned immovables to their previous owners, citing the 1936 Declarations as reason. “In other words, the state avoided the law for a while, but when it had to face the law, it did not hesitate adopting and insisting on an unlawful position.”³² The majority of the immovables ordered to be returned to their previous owners was handed over to the Treasury and the National Real Estate because their previous owners were dead or did not have any inheritors.

The 1936 Declaration inflicted the most serious damage on the Armenian community. More than 30 immovables of this community were seized, claiming that they were acquired after 1936.³³ The Tuzla Armenian Children’s Camp is one of the most striking and heartbreaking examples of the seizure of the properties from the Armenian non-Muslim

28 2nd Civil Law Chamber of the High Court of Appeals, decision dated 6 July 1971 and numbered E. 4449, K. 4399.

29 General Board of the High Court of Appeals, decision dated 8 May 1974 and numbered E. 1971 /2–820, K.1974/505. See Yuda Reyna and Ester Moreno Zonana, *Son Yasal Düzenlemelere Göre Cemaat Vakıfları (Non-Muslim Foundations According to Most Recent Regulations)* (Gözlem Yayınları, 2003), pp. 554-557.

30 To read more about the wrongness of this reasoning and a criticism of the unlawful acts of the High Court of Appeals towards non-Muslim foundations relying on the difference of legal entities’ capacity to act and capacity to acquire rights, see Hüseyin Hatemi, *Kişiler Hukuku Dersleri (Lectures in the Law of Persons)* (Filiz Kitabevi, 2001) 2nd Edition, pp. 139-148. Also see Hüseyin Hatemi, Rona Serozan and Abdülkadir Arpacı, *Eşya Hukuku (Property Law)* (Vedat Kitapçılık, 1991), p. 367, pp. 500-512. For an evaluation of the relevant legislation following EU reforms, see Hüseyin Hatemi, *İntikal (Geçiş) Dönemi Hukuku (Transition Period Law)* (Vedat Kitapçılık, 2004), p. 33.

31 Etyen Mahçupyan, *Türkiye’de Gayrimüslim Cemaatlerin Sorunları ve Vatandaş Olamama Durumu Üzerine (Problems of Non-Muslims in Turkey and their Inability to Become Citizens)* (TESEV, 2004), p. 5.

32 *Ibid.*

33 List of properties lost by the Armenian community, Hrant Dink’s archive. For the full list of immovables seized from Armenian foundations through the 1936 Declaration, see Annex 2.

TUZLA ARMENIAN CHILDREN'S CAMP

“The story of the Tuzla Armenian Children’s Camp is the story of finding a way to legalize the seizure of a land that was purchased lawfully and the camp built on this land with hard labor.”³⁴

In the 1950s, the orphanage located on the first floor of the Armenian Protestant Church in Gedikpaşa, Istanbul, was accommodating orphaned or poor Armenian children coming especially from Anatolia. The children were staying at the orphanage and studying at the Gedikpaşa İncirdibi Protestant School close to the church. Later, the school building was seized and a parking lot was built in its place. The children did not have a place to spend the hot summer months. The managers of the church foundation purchased the empty and green land in Tuzla in order to build a summer camp for the children. In 1962, the land was purchased from Sait Durmaz and registered in name of the Gedikpaşa Armenian Church Foundation. The transaction was completed after receiving approvals and certifications from the DGF and the Governor’s Office. 30 children between the ages 8 and 12 staying at the orphanage worked three summers under the supervision of a master builder, and built a camp building. This camp known as the “Tuzla Armenian Children’s Camp” accommodated 1,500 Armenian orphans for 21 years until it was seized in 1983.

The story of the seizure of the Tuzla Camp started in 1979. The DGF filed a lawsuit with the 3rd Civil Court of First Instance of Kartal on 23 February 1979, and the lawsuit was concluded in 1983. The court decided to cancel the land register record of the Gedikpaşa Armenian Protestant Church Foundation and to return the camp to its previous owner. The High Court of Appeals approved this decision. The justification was the same as those given for similar lawsuits. The Tuzla Camp was not among the properties declared by the Gedikpaşa Armenian Protestant Church Foundation in 1936 and the foundation was not entitled to acquire new properties since then. Therefore, the acquisition was considered unlawful.

The foundation of the church, which purchased the land in 1962 in compliance with the law from a third party by paying money, had to return it to the same person free of charge. “Thus, Sait Durmaz took back the barren land it sold in 1962 with camp buildings on it, without paying a dime.”³⁵ In subsequent years, the property with the camp building was sold a few more times. However, the fate of the camp did not change with its new owners. The camp, which was built brick by brick by Armenian children, was not used again and was left in ruins.

Hrant Dink was among the first group of children who built the camp. He spent his summers there, he married his wife there, he raised his children there and he managed the camp with his wife for many years. These are the words of Hrant Dink on this story of seizure:

I went to Tuzla when I was eight. I worked there very hard for 20 years. I met my wife Rakel there. We grew up together. We married there. Our children were born there (...) One day, they gave us a paper from a court... ‘You, minority institutions are not entitled to buy any property! It turns out that we made a mistake when we permitted you to do so back then. Now, this place will be returned to its previous owner.’ We lost after fighting for five years... Unfortunately, we were opposed by the state. Hear my cry humanity!... They threw us away from the civilization we created. They took away the labor of one thousand and five hundred children who were raised there. They took away our labor, children’s labor. If they had made there an orphanage for poor children, if they had used it as a camp for poor or handicapped children of whatever identity, I would have given my blessing. But I do not give now (...)³⁶

Orhan Pamuk summarizes Turkish state’s “policy of taking over assets of non-Muslim foundations” based on the story of the Tuzla camp: “It seems that our state is declaring certain individuals who are Turkish citizens exactly like us, ‘second class citizens’ or ‘potential enemies’ on behalf of us and is blatantly taking over their properties, vineyards, orchards, shops, homes and churches. A policy called ‘Turkification’ is underlying these acts. The state is not proud anymore of doing things it used to do blusterously and with pride in the past. Therefore, today, an underhand game is being played and everything is being done in silence.”³⁷

34 Human Rights Association (İHD), *Tuzla Ermeni Çocuk Kampı: Bir El Koyma Öyküsü* (Armenian Children’s Camp of Tuzla: The Story of a Seizure) (2000), p.7.

35 *Ibid.*, p. 46.

36 *Ibid.*, pp. 55-56.

37 *Ibid.*, pp. 5-6.

foundations.

The exact number of immovables that have been seized until today is not known. Non-Muslim communities, the press and the state are giving conflicting figures. For example, representatives of the Istanbul Greek Patriarchate state that the number of immovables that were taken over is around 1,000, but according to a newspaper report, more than 100 immovables of Greek foundations and almost 40 immovables of Armenian foundations were taken over as of 2002.³⁸ According to the same report, there are 165 non-Muslim foundations in the aggregate: 75 Greek, 52 Armenian, 19 Jewish, 10 Assyrian, one Bulgarian, two Georgian, three Chaldean, and one tradesman foundation.

E. THE PRACTICE OF ‘SEIZED FOUNDATIONS’

As mentioned before, with the 1935 Law on Foundations, non-Muslim foundations were included among ‘affiliated foundations’ and this created a legal basis for including these foundations subsequently among ‘seized foundations’ and for taking over their immovables. Among non-Muslim communities, the Greek Orthodox community has been hit hardest by the ‘seized foundation’ practice. As of October 2007, 24 foundations of this community were included among ‘seized foundations’³⁹, and hundreds of real estates registered to these foundations were taken over. According to information provided by the Greek Orthodox Patriarchate, the number of seized immovables is 990.⁴⁰ Not only the immovables but also the management of these seized foundations were taken over by the DGF.

The ‘seized foundation’ practice is continuing even during the EU accession process, despite certain improvements introduced by the government regarding the ownership rights of non-Muslim foundations. One of the most recent examples is the taking over of a school building of the Greek Orthodox community in 2007. The Aya Yorgi Greek Church and Greek Co-Ed Primary School Foundation in Edirnekapı were included among ‘seized foundations’ in 1991 by the DGF. The foundation was included among ‘seized foundations’ claiming that the church was not holding any religious ceremonies and did not have any followers, and that the primary school did not have any students. However, according to the representatives of the Patriarchate, the church had almost 50 followers. In May 2007, the DGF leased the school building, which shares its garden with the church, to a third party for being used as a coffeehouse and poolroom. The representatives of the Patriarchate sent a letter to the Istanbul Governor’s Office on 21 May 2007 and explained the unlawful treatment they had been subject to: “Aya Yorgi Church is almost 200 years old... This region, close to Edirnekapı city walls and the Chora Museum will become an important tourist center in the long run. Given that our city

BÜYÜKADA ORPHANAGE

The story of taking over of the Greek Orthodox Patriarchate’s orphanage building in Büyükkada shows how unlawful and discriminatory the state’s ownership policies on non-Muslim citizens can get. The Patriarchate purchased the land of the building in January 1902.⁴² There is a five-storey main building and a two-storey annex on the 23,255 m² land located on top of the highest hill in Büyükkada. In 1903, the Patriarchate gave the right to use the property to the Foundation for Greek Boys in Büyükkada. The 1935 Law on Foundations officially recognized the legal existence of the orphanage. In 1936, the foundation declared this orphanage building to the DGF. In 1964, at the time of the Cyprus crisis, the orphanage was evacuated by the state for safety reasons. The orphanage building, which is the largest timber building in Europe and the second largest in the world, is a Class 1 historical monument. However, after eviction, it was abandoned to its fate and left in ruins. The DGF dismissed the management of the foundation in 1995, included the foundation among ‘seized foundations’ and took over its management and assets. The foundation filed a lawsuit with an administrative court and requested staying and annulment of decision, but its request was denied and the High Court of Appeals approved the decision of the lower court in November 2003.

The DGF won the lawsuit it filed on 16 March 1999 for the cancellation of the registration of the orphanage to the Patriarchate, and the administrative court ordered the re-registration of the building to the DGF in December

38 Mehmet Zarif, “Cemaat Mülkleri 66 Yıl Sonra İade Ediliyor” (Community Property Returned After 66 Years) *Bianet*, 3 August 2002.

39 The list of Greek Orthodox churches and monasteries included among ‘seized foundations’, e-mailed by the Istanbul Greek Patriarchate, 2 March 2009. For a complete list of Greek Orthodox foundations that have been included among ‘seized foundations’, see Annex 1.

40 The list e-mailed by Metropolitan Meliton (Istanbul Greek Patriarchate) containing immovables seized from the Greek foundations, despite existing title deeds, 26 October 2007. For a complete list of these immovables, see Annex 2.

41 The letter sent by the Istanbul Greek Patriarchate to Istanbul Deputy Governor Fikret Kasapoğlu on 21 May 2007 (the authors have a copy of this letter).

42 Some of the information regarding the orphanage building has been taken from the decision of the European Court of Human Rights (ECtHR). See. ECtHR (2008) *Fener Greek Patriarchate (Ecumenical Patriarchate) vs. Turkey* No. 14340/05, 8 July.

2002. One of the justifications of this ruling was the Patriarchate's failure to maintain the building, which was a historical building of international importance. However, the building was not left in ruins by the Patriarchate, whose right of ownership on the building was completely ignored by the DGF, but it was the state who failed to repair the building and who did not allow it to be repaired. In September 2003, the decision was annulled by the higher court for procedural reasons, but in its second decision dated February 2004, the administrative court once again ordered the cancellation of the register record. By approving this decision, the High Court of Appeals broke new ground in terms of the legal interpretation of the 1936 Declaration. The High Court of Appeals, which approved taking over properties of the Armenian foundations claiming that they were not declared in 1936, designed a very creative solution when the property in question was already declared in 1936. The High Court ruled that the Patriarchate did not have any rights on the immovable because it was declared by the Orphanage Foundation, not the Patriarchate in 1936.

However, this creative 'legal interpretation' of the domestic court was dismissed in Strasbourg. The ECtHR made its judgment on 8 July 2008 in the lawsuit filed by the Patriarchate on 19 April 2005, and ruled that Turkey violated the Patriarchate's property right by taking over the orphanage building.⁴³ The judgment of the ECtHR revealed how unlawful this practice was.

The ECtHR noted that there was no dispute that the property composed of the building and the land were purchased by the Patriarchate and that even if the Patriarchate allotted the property to a foundation of the community for a special purpose, it has always been considered as the legal owner of property. Moreover, no objection has been raised against legal ownership of the Patriarchate on the building and the land during the 33 years between 1964, when the orphanage building was evacuated, and 1997, when the foundation was included among 'seized foundations'. Moreover, the Orphanage Foundation, which had the right to use the property in 1903, never claimed that the building belonged to it. This claim was made 'on behalf of the foundation' by the DGF, i.e. by the state relying on the 1936 Declaration.

Thus, with this short decision, the ECtHR revealed how far the Turkish State could go in distorting the law in order to take over properties of non-Muslim foundations and how ineptly this could be done.

will be the Culture Capital of Europe in 2010, instead of repairing these historical items and using them in accordance with their purpose, the administration is acting against justice, legal rules and international treaties."⁴¹

The Jewish community has also been hit by the 'seized foundations' practice, although they rarely publicize their problems compared to other non-Muslim communities. According to the Legal Department of the Chief Rabbi's Office, 24 foundations of the Jewish Community have been included among 'seized foundations' because of "ceasing to serve a charitable and actual purpose."⁴⁴ The dates and numbers of the decisions declaring 12 of these foundations as 'seized foundations' are known, but there are no records regarding the remaining 12. The first Jewish foundation was included among 'seized foundations' in 1974, and the last one in 1995 according to existing records.

F. OTHER DISCRIMINATORY LAWS AND APPLICATIONS REGARDING NON-MUSLIMS

During the 86 years since the execution of the Treaty of Lausanne, non-Muslims' rights were systematically violated not only by ignoring the ownership and management rights of foundations with the Law on Foundations, but also through a series of policies adopted since the 1960s. The Greek community in Turkey paid a heavy price for the diplomatic crisis that emerged between Turkey and Greece because of Cyprus. The Greek Orthodox community's schools giving religious education in Turkey were closed, so that Greeks were prohibited from training their clerics. Bringing clerics from outside Turkey was prevented by requiring them to be Turkish citizens in order to work in Turkey.

Thus, the religious freedom given to non-Muslim citizens in Turkey under the Treaty of Lausanne and the Constitution became substantially meaningless. There have been other incidents that made it difficult for non-Muslims to exist

43 *Ibid.*

44 The e-mail by the Istanbul Jewish Chief Rabbi's Office containing a list of Jewish Synagogue foundations included among 'seized foundations', 11 February 2009. For a complete list of these foundations, see Annex 1.

45 These discriminatory laws and practices, repressive policies and exclusionary social incidents will not be discussed in this report, but there exists a comprehensive literature on these. For instance, for the 1934 Thrace Incidents see Rifat Bali, *Devletin Yahudileri ve 'Öteki' Yahudi* (Jews of the State and the 'Other Jew') (İletişim, 2004); Ayhan Aktar, *Varlık Vergisi ve 'Türkleştirme' Politikaları* (Wealth Tax and 'Turkification' Policies) (İletişim, 2000). For the 1942 Wealth Tax, see Aktar, *Varlık Vergisi* (Wealth Tax); Rifat Bali, *Bir Türkleştirme Serüveni: 1923-1945* (A Turkification Journey: 1923-1945) (İletişim, 2005). For the 6-7 September 1955 incidents, see Dilek Güven, *Cumhuriyet Dönemi Azınlık Stratejileri ve Politikaları Bağlamında 6-7 Eylül Olayları* (6-7 September Incidents in

in Turkey. Requiring a “Turkish” deputy headmaster in Armenian and Greek schools who do not report to Armenian/Greek headmasters, the 1934 Western Thrace incidents, the 1942 Wealth Tax, the 6-7 September 1955 incidents, and the extradition of Greek citizens with a Greek passport in 1964...⁴⁵

Moreover, the ‘parallel obligation’ principle imposed by the Treaty of Lausanne on Greece and Turkey to protect Muslim and non-Muslim minorities respectively, was officially misinterpreted, and this mistake was not corrected. For example, according to a governmental decree issued after 1980, inheritance rights of Turkish citizens of Orthodox Greek religion were limited relying on the ‘reciprocity principle’ although they were not Greek citizens.⁴⁶ The practices introduced for individuals holding a Greek passport in 1964 were expanded to cover Turkish-citizen Greeks after 1980. Although this wrong practice was discontinued in 1989 during Turgut Özal’s government, nothing changed for non-Muslim foundations. Even the new Law on Foundations that will be discussed in detail below contains a provision that may lead Turkey to impose on its citizens the principle of reciprocity that should have been imposed on citizens of foreign states.

Since the 1930s, non-Muslim citizens’ rights enshrined in the Treaty of Lausanne have become defunct through various laws, regulations and policies. Moreover, creating a discriminatory legal regime for non-Muslims encouraged and legitimized existing prejudice in the collective subconscious. Thus, the society believed that being a member of a

GÖKÇEADA (İmroz) AND BOZCAADA (Tenedos)

Gökçeada (Imbros) and Bozcaada (Tenedos) are important in terms of the violations of the rights of non-Muslim citizens in Turkey. These two islands were part of the Byzantine Empire until the Ottomans took control in 1455/56. Since then, these islands have been first part of the territory of the Ottoman Empire, and then Turkey. These two islands were excluded from the 1923 population exchange between Greece and Turkey and were given a special status with the Treaty of Lausanne signed during the same year.

Article 14:

The islands of *Imbros* and *Tenedos*, remaining under Turkish sovereignty, shall enjoy a special administrative organization composed of local elements and furnishing every guarantee for the native non-Muslim population in so far as concerns local administration and the protection of persons and property. The maintenance of order will be assured therein by a police force recruited from amongst the local population by the local administration above provided for and placed under its orders. The agreements which have been, or may be, concluded between Greece and Turkey relating to the exchange of the Greek and Turkish populations will not be applied to the inhabitants of the islands of *Imbros* and *Tenedos*.

However, Turkey never implemented Article 14 of the Treaty of Lausanne: It did not ensure the establishment of a special administrative organization or protect non-Muslim persons living on the islands and their property. On the contrary, it adopted discriminatory and repressive policies to force non-Muslims abandon the islands and to Turkify them.

A law enacted on 26 January 1927 to implement Article 14 of the Treaty of Lausanne provided for a semi-autonomous administrative structure for these two islands.⁴⁹ It was decided that the islands would be administered by a district council composed of ten members, all of whom would be elected by and from among the islanders and all civil servants and municipal police officers employed by the district administration would be from among the islanders as well.⁵⁰ Moreover, Article 14 provided that the education system on the islands should be arranged in accordance with the national educational system, thus, island schools were prohibited from giving education in Greek. The

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), pp. 361-380. For the extradition of Greek citizens holding a Greek passport in 1964, see Hülya Demir and Rıdvan Aktar, *İstanbul’un Son Sürgünleri* (Last Exiles of Istanbul) (İletişim, 2004). For more information on the transfer of non-Muslims’ economic assets to Muslims as a result of these laws, policies and social incidents aiming to remove non-Muslims from Turkey directly or indirectly, see Ayhan Aktar, *Türk Milliyetçiliği, Gayrimüslimler ve Ekonomik Dönüşüm* (Turkish Nationalism, Non-Muslims and Economic Transformation) (İletişim, 2006).

46 However, as mentioned before, Article 45 of the Treaty of Lausanne is not about ‘reciprocity’. It is about ‘parallel obligations’.

47 According to Baskın Oran, this prejudice derived from the ‘millet’ system created by the Ottoman Empire in 1454. Oran, *Türkiye’de Azınlıklar* (Minorities in Turkey), pp. 48-49.

48 For more information on making non-Muslims accept second-class citizenship in consideration of the ‘minority’ status they were given under the Treaty of Lausanne, see Dilek Kurban, “Unraveling a Trade-off: Reconciling Minority Rights and Full Citizenship in Turkey,” *European Yearbook of Minority Issues*, Vol. 4, 2004/5 (2006), pp. 341-371.

49 Local Administrations Law, No. 1151, 26 June 1927.

50 Elif Müyesser Babül, *Belonging to Imbros: Citizenship and Sovereignty in the Turkish Republic*, graduate thesis, Bosphorus University (2003), p. 33. Also, see, Alexis Alexandris, “Imbros and Tenedos: A Study of Turkish Attitudes Toward Two Ethnic Greek Island Communities Since 1923,” *Journal of the Hellenic Diaspora*, pp. 5-31.

provisions of the law regarding the establishment of a semi-autonomous administrative structure on these islands have never been implemented.⁵¹ When the Democrat Party came to power in the 1950s, the educational institutions on the islands gained a semi-autonomous status as specified in the Treaty of Lausanne. But in 1964, with the emergence of the Cyprus crisis, Article 14 of the Law was implemented once again, and schools providing education in Greek were shut down.⁵² Thus, Article 14 of the Treaty of Lausanne was violated.

The population and settlement policies based on Turkification mostly focused on *Imbros*, and great efforts were made to Turkify this island since 1946. The first group of Muslims brought to the island by the government was comprised of around ten households from the Black Sea region. Villages from Trabzon (1973), Muğla, Isparta and Burdur (1984) and Çanakkale and Biga (2000) were relocated to *Imbros*.⁵³ Moreover, the government provided incentives to attract voluntary settlers to the island such as agricultural assistance in kind and special loans.⁵⁴ Settlement and population policies bore fruit in a very short time, and the number of non-Muslim islanders decreased substantially.⁵⁵ In 1950 there were 6,125 Greeks and 200 Turks on the island, and in 1970 there were 2,576 Greeks and 4,029 Turks. In 1985, the figures reached 472 Greeks to 7,183 Turks. Finally, in 2000, there were only 300 Greeks left and the number of Turks reached 7,200.⁵⁶ Not only the proportion of Greeks to Turks, in other words non-Muslims to Muslims, but also the number of Greeks living on the island had decreased. Rights violations, repressive policies and discrimination against Greeks that were adopted after the military coup in 1960 and that gained momentum with the 1974 military operation in Cyprus contributed much to this decrease. In 1964, the most fertile lands of the Greeks were expropriated and a military base and an airport were constructed on these lands. Fishing was prohibited for environmental purposes, while meat export was prohibited for public health purposes. Thus, the islanders, who made their living from agriculture, animal husbandry and fishing had to emigrate.⁵⁷ In 1965, an open prison was built on the island and inmates convicted for homicide, theft and rape were allowed to wander around the island freely. The islanders suffered from crimes committed by these individuals and many Greeks who did not feel themselves safe anymore emigrated.⁵⁸ On 29 July 1970, the island was renamed “Gökçeada” with a governmental decree, and the Greek names of villages and areas were replaced by Turkish ones.⁵⁹ In 1974, Turkey’s landing in Cyprus following Greece’s military coup on the island was a turning point in terms of the Greek population in *Imbros*. The majority of the Greeks emigrated from the island as a result of the ‘safety measures’ taken by the government on the island and the attacks against islanders.⁶⁰

As a result of these repressive and discriminatory policies, the Greek population in *Imbros* almost disappeared. When the open prison was closed in 1991, most of the Greeks had already left the island.⁶¹ In 1993, a special visa was no more required for visiting *Imbros* and public funds were allocated to develop tourism on the island.⁶²

‘minority’ was not an ideal and desired legal status, but meant being labeled as a feared and undesired second-class citizen.⁴⁷ Non-Muslim citizens of Turkey have never fully exercised their minority rights and turned into victims of legal and social discrimination because of being labeled as a ‘minority.’⁴⁸

There was an hesitation about the establishment of new foundations between 1926 and 1967, and during this period, only a few benefited from the rules of the Civil Code regarding ‘establishment’. In 1967, when the term ‘foundation’ reappeared with an amendment to the Civil Code, a ‘rush for foundations’ started.⁶³ In those years, the capacity of foundations to acquire immovables was not restricted like associations; moreover, a rather flexible attitude was adopted in the beginning regarding qualifications, and these factors contributed to this ‘rush’.

51 *Ibid.*, p. 34.

52 Andreas Gross, *Gökçeada (Imbros) and Bozcaada (Tenedos): preserving the bicultural character of the two Turkish islands as a model for co-operation between Turkey and Greece in the interest of the people concerned*, Council of Europe, Parliamentary Assembly, Legal Affairs and Human Rights Committee, 28 June 2008, para. 14-15.

53 Babül, *Belonging to Imbros...*, p. 35.

54 *Ibid.*, p. 36.

55 *Ibid.*, pp. 34-35.

56 *Ibid.*, p. 38.

57 Gross, *Gökçeada (Imbros)...*, para. 15.

58 *Ibid.*

59 Babül, *Belonging to Imbros...*, p. 35.

60 *Ibid.*, pp. 36-37.

61 Gross, *Gökçeada (Imbros)...*, para. 24.

62 *Ibid.*, para. 28.

63 Law Amending Section Three, Chapter Two, Book One of the Turkish Civil Code, Adding Certain Articles and Paragraphs and Providing Tax Exemption to Certain Foundations (Law on Foundations), No. 903, 13 July 1967, Official Gazette No. 12655, 24 September 1967.

MUSLIM FOUNDATIONS

Although Muslim foundations are not covered by this report, it is important to mention that they also faced similar real estate ownership problems. Some of the assets of foundations established by Muslims were registered in the name of a public authority or legal entity and transferred to private property like mosques that were 'excluded from classification.' Old buildings that were registered in the name of the Treasury, municipalities or the Private Administration and had historical or architectural value were transferred to the DGF pursuant to the law enacted in 1957.⁶⁴ Muslim foundations were subject to political pressures during various periods. Especially, the association rights of these foundations arising from the constitution and laws were violated after the military intervention in the political government through the National Security Council (NSC) on 28 February 1997. During this period called 'the 28 February process,' lawsuits were filed against many new Muslim foundations to dissolve such foundations or dismiss their management for their alleged reactionary nature. A communiqué was imposed to allow the filing of such lawsuits, which should only have been filed pursuant to the law and the Constitution and without damaging the freedom of association.

While historical buildings of Muslim foundations that have been taken over were kept in good repair by the DGF, historical buildings of non-Muslims were not treated similarly. Historical buildings left by Christians who emigrated during the 1923 Population Exchange were not protected, and sanctuaries, schools and other historical buildings of these communities were destroyed. The control of certain buildings that were important for tourism, like the Sümela Monastery, was transferred to the DGF by interpreting the Civil Code more broadly.

SACRÉ CŒUR CHURCH: A STORY OF THE SEIZURE OF OWNERSHIP RIGHTS

State policies on the ownership rights of non-Muslim communities have never been the same for all communities. On the contrary, the foundations of Armenian, Greek, Jewish, Catholic and Assyrian communities have quite different stories. This is because, although the same minority rights were granted to non-Muslim communities under the Treaty of Lausanne, the state limited the scope of the Treaty to Armenian, Greek and Jewish communities. Moreover, the Republican administration ignored and violated treaties that granted residence and judicial discretion rights to foreign foundations established by non-Muslim and non-Turkish citizens during the Ottoman era.

Ownership rights of the Assyrian Catholic and Jesuit Catholic communities, which were established by non-Muslims who were not Turkish citizens excluded from the Treaty of Lausanne, were seized in a similar manner through the same church. This church was the Sacré Cœur church. It was purchased by Jesuit Catholics who were not Ottoman citizens, from private persons, and was taken over in 1963 after its land register record was cancelled. In 1998, a foundation of the Assyrian Catholic community composed of Turkish citizens leased the church from the Treasury for 99 years. However, the church was taken over once again in 2003 based on a decision of the High Court of Appeals. The church located just behind the German consulate in Gümüşsuyu is now subject to a lawsuit pending before the European Court of Human Rights.

SEIZURE OF THE CHURCH FROM THE JESUIT CATHOLIC COMMUNITY

During the Ottoman era, Catholics were given the right to establish religious institutions, and religious and charitable institutions established relying on this right were considered as foreign institutions. Although there is no explicit provision on these institutions in the Treaty of Lausanne, it was decided to give them a 'vested' status under the Residence and Jurisdiction Treaty. By introducing a legal conversion with the 1934 Title Deeds Law, the institutions of the Catholic community were given a status similar to the status of non-Muslim foundations. On the other hand, although the legal existence of these institutions was implied to be the same as non-Muslim foundations, it was not mentioned whether they were subject to the principle of reciprocity. However, in a practice that has been continuously expanding since the 1970s, the properties of institutions established by Catholic orders

64 Law on the Transfer to the Directorate General for Foundations of Ancient Monuments of Historical and Architectural Importance that were Originally Foundations, No. 7044, 10 September 1957.

such as the Jesuit order, which should have had the legal existence of a foundation, have been taken over, claiming that these institutions did not have any legal existence.

The land of the Sacré Cœur Church was sold during the Ottoman era by Ottoman subjects Brodi Aynacıoğlu and Haralonbos Efendi to French citizen Jean Etienne d'Autume. The land was purchased by French Jesuits after the First World War and allocated to the Catholic Church. This land was collusively registered in the name of Jean Etienne d'Autume (pseudonym) by the Ayazpaşa Jesuit Priests Institution since legal entities were not allowed to acquire any real estate during the Ottoman era. Later on, the institution filed a lawsuit for the allocation and registration of the real estate in its own name, and in 1953, it was registered in the name of the institution.⁶⁵ The priests, acting in accordance with the legislation, built a Catholic church on the land they purchased.

The registration of the land in the name of the Jesuit Priests was completely regular and relied on the 1934 Title Deeds Law. At the time of the purchase of the real estate, it had to be registered to a pseudonym according to legislation that was in force back then. However, after the Treaty of Lausanne, these Catholic institutions were given the same status as non-Muslim foundations as a result of a legal conversion, and they were granted legal existence as foundations. Therefore, this registration was made in 1953 by court order pursuant to Article 3 of the Title Deeds Law. The Title Deeds Law did not only grant legal existence to the foundations of Greek and Armenian communities; with the legal conversion it introduced, it also granted legal existence to institutions that offered religious or charitable services to Armenians, Assyrians and Chaldeans who were Turkish citizens, even if they were established by a group of priests who were not Turkish citizens. Thus, the legal existence of the Jesuit Priests Institution relies directly on the Title Deeds Law, the legal conversion that took place under this law, and the Lausanne Treaty signed before this law.

Although the registration was a legal act under the provisions of the Title Deeds Law, the Treasury attempted to take over the property. In its letter dated 1960, claiming that the Jesuit order did not have any legal existence in Turkey and that the initial registration was made collusively in the name of Jean Etienne d'Autume and that the land and real estate did not have any owner, the General Directorate of Security of the Ministry of Internal Affairs requested the registration of the property in the name of the Treasury.⁶⁶ Thus, the Treaty of Lausanne and the Residence and Jurisdiction Agreement made under this Treaty were ignored, and it was claimed that sects did not have any legal existence in Turkey. Relying on this opinion, the DGF claimed that the land register records of the church in Taksim were invalid, and won the lawsuit it filed for amending the register records in favor of the Treasury.

With a decision made *in absentia*, an administrator was appointed and the procedure was continued in the absence of defendant's administrator. Later on, the motion of defendant's counsel (administrator) was granted, and on 15 July 1963, it was decided to register the property in the name of the Treasury. On 25 December 1963, it was decided to cancel the existing register record in the name of the Jesuit Priests Institution in the absence of administrator Edip Gökseki, and to register the property in the name of plaintiff Treasury.

However, pursuant to Law No. 7044, it is not possible to transfer the ownership of this immovable to the DGF. This law applies to taking over historical buildings from foundations. However, in this case, the immovable was not a building, but land. A church was constructed on the land that was purchased, and ownership of the building and the land was transferred to the Jesuit Priests Institution, which had the status of a non-Muslim foundation under the Lausanne Treaty and the legal conversion introduced by the 1934 Title Deeds Law. There was no historical building that had to be included among seized foundations or transferred to the DGF. This immovable was a church built after 1921 and it was not a historical building of a foundation. Terminating the legal existence of the Jesuit Priests Institution, which was a non-Muslim foundation, and taking over a church from this institution, was a grave violation of the Treaty of Lausanne and those provisions of the Constitution regarding land registers and foundations.

65 For details on legal proceedings and court decisions regarding the church, see Annex-2.

66 The letter dated 21 March 1960 and numbered 42237-50 by the Ministry of Internal Affairs, General Directorate of Security.

THE SEIZURE OF THE CHURCH FROM THE ASSYRIAN CATHOLIC COMMUNITY

The issue regarding the church in Gümüşsuyu came up once again when the Assyrian Catholic Community, which does not have a sanctuary in Istanbul because it is not recognized as a 'minority' by the state, filed an application with the Treasury. When the community requested permission to use the church, the Treasury claimed that it could only address a legal entity. Thereupon, the representatives of the community drafted a statute and referred the matter to the Civil Court of First Instance of Beyoğlu to establish the Assyrian Catholic Foundation. The court appointed Prof. Dr. Hüseyin Hatemi as expert and approved the establishment of the Assyrian Catholic Foundation when Hatemi reported that there was no constitutional obstacle. When the foundation filed another application with the Treasury relying on the court decision, a 99-year usufruct was given for the church building. Thus, the building was registered in name of the Assyrian Catholic Foundation.

Yet, after the property was lawfully allocated to a non-Muslim community, the state attempted to take over this property once again. A while after unlawfully taking over the church from the Catholic Jesuit Community, this mistake was implicitly admitted and the building was allocated to another Catholic community. However, the building was once again taken over unlawfully from the Catholic Assyrian Community. The DGF filed a lawsuit claiming that the property was a foundation property and requested it to be re-registered to the Treasury. However, the lawsuit should have been considered unfounded since the immovable was not used for charitable purposes, even if it belonged to a foundation. However, the DGF won the case and the church was registered in the name of the Treasury. Not satisfied with this decision, the DGF filed another lawsuit to amend the registration in the name of the Assyrian Catholic Foundation, which held the usufruct, claiming that this foundation did not act in good faith. When the DGF won this case, the Assyrian Catholic Foundation had to refer the matter to the ECtHR.

The majority of the immovables of the Catholic and Assyrian communities were taken over, claiming that they did not have any legal existence, although their existence was accepted during the Ottoman era, they were given minority status under the Treaty of Lausanne and their names were mentioned in Article 3 of the Title Deeds Law. Almost all of the immovables that were not used for charitable purposes and allocated to create income for religious organizations were taken over from these communities. This practice explicitly violates existing principles and standards of international law and the spirit of the Treaty of Lausanne. The secondary texts made under the Treaty of Lausanne recognized the vested rights of foundations established by non-Muslims who were Ottoman-Turkish citizens, as well as by religious communities that were considered foreign during their establishment. Therefore, in the 1934 Title Deeds Law, it was stated that these institutions would also be recorded at the land registry. It may be claimed that the Residence and Jurisdiction Agreement, which is a secondary text of the Treaty of Lausanne, has expired, but pursuant to Article 3 of the Title Deeds Law, vested rights should not have been intervened with. This article must be interpreted as a legal conversion, and through this article, the institutions of the Catholic Community gained a status similar to the status of non-Muslim foundations. The status of these institutions should not have been intervened with and their management should have been similar to non-Muslim foundations. The institutions that were not sanctuaries might have been deemed as 'foreign foundations,' not as 'non-Muslim foundations,' still, they could have acquired new immovables through the reciprocity condition. The immovables they acquired before the Treaty of Lausanne should not have been taken over. In fact, respecting vested rights is a basic principle of a state governed by the rule of law.

IV. Legal Reforms Regarding the Ownership Problem: The EU Process

In 1999, a new process called ‘harmonization with the EU’ started, when the EU recognized Turkey as an official candidate. Although certain major reforms were made by the coalition government between 1999 and 2002⁶⁷, comprehensive constitutional and legal regulations could be made only after 2002, when the AKP came to power.

Certain laws enacted during the EU harmonization process introduced improvements in terms of the ownership problems of non-Muslim foundations, albeit limited. On the other hand, the state continues to perceive the communities’ ownership problem not as a human rights and citizenship issue but as a national security and foreign policy issue. The AKP government demonstrated political will in solving this problem because it wanted to meet another requirement for EU membership and to take preventive measures against applications pending before the ECtHR. An intelligence report prepared at the beginning of the reform process is one of the most striking indicators of the fact that the state believes that the problem of seized immovables is a ‘security’ issue, not a human rights issue.⁶⁸

A. AMENDMENTS TO THE LAW ON FOUNDATIONS: LAWS NO. 4771, 4778 AND 4928

The first reform on protecting the ownership rights of non-Muslim foundations was made in August 2002.⁶⁹ The law granted non-Muslim foundations the right to acquire and dispose immovables and to register them in their name regardless of “whether they had any statute or not.”⁷⁰ At first glance, this law aimed to give an end to the unlawful practices that were legitimized with the 1936 Declaration, arguing that these foundations could not acquire property because they did not have any statute. However, a foundation could exercise this right only after receiving a permission from the Council of Ministers. This meant that the exercise of the property right, which is a fundamental right protected by Turkey’s Constitution and laws, was at the discretion of the executive. The government, which came under criticism for this issue, amended the Law on Foundations once more in its subsequent reform package in January 2003⁷¹, but it only replaced the Council of Ministry with the DGF as the authority to give the permission, and maintained the permission requirement.⁷² The DGF has been the first and foremost actor in violating the rights of non-Muslim foundations for decades, and authorizing this institution meant strengthening its control over non-Muslim foundations. As a result of a third amendment to the Law on Foundations in July 2003, the time given for registration applications of non-Muslim foundations was increased by eighteen months.⁷³

Law No. 4778 introduced certain favorable regulations for non-Muslim foundations regarding the acquisition and disposal of immovables and their registration in their name, but it also imposed restrictions and conditions on the exercise of the rights granted to them. These restrictions were reinforced with a regulation that came into force on 24 January 2003 to implement the law.⁷⁴ The regulation intends to perfect the Parliament’s efforts to have administrative control on the ownership rights of non-Muslim foundations, and provides the DGF with the authority to seek the opinion of the “relevant Ministry, public institutions and organizations, if necessary” when evaluating the applications filed

67 Elimination of capital punishment and State Security Courts are among the major reforms made with the constitutional amendments, especially in the area of human rights.

68 Mithat Yurdakul, “Azınlık vakıfları için düzenleme tamam” (The regulation is ready for minority foundations) *Milliyet*, 2 February 2008.

69 Law No. 4771 Amending Various Laws, 3 August 2002, Official Gazette No. 24841, 9 August 2002.

70 *Ibid.*, Article 4.

71 Law No. 4778 Amending Various Laws, 2 January 2003, Official Gazette No. 24990, 11 January 2003.

72 *Ibid.*, Article 3(2).

73 Law Amending Various Laws, No: 4928, 15 July 2003, Official Gazette No: 25173, 19 July 2003.

74 Regulation on Acquisition and Disposal of Immovables by Non-Muslim Foundations and Registration of Immovables in their Possession to their Names, Official Gazette No. 25003, 24 January 2003.

with it.⁷⁵ The regulation does not specify the names of these “public organizations and institutions,” but, according to Baskin Oran, “these are of course security and intelligence organizations as usual.”⁷⁶ According to Etyen Mahçupyan, “this creates a legal framework that can lead to the adoption of preventive practices, including confiscation, relying on secret investigations to be conducted on non-Muslim minority foundations.”⁷⁷ The regulation requires non-Muslim foundations to complete laborious bureaucratic procedures whenever they purchase an immovable property or carry out transactions regarding real rights⁷⁸, and entitles the foundations to acquire property only to “meet their religious, charitable, social, educational, health-related, and cultural needs.”⁷⁹ Moreover, only 160 foundations listed in the attachment of the regulation as “active non-Muslim foundations” are entitled to benefit from the law and non-Muslim foundations excluded from the list are not granted the right to register their immovables in their names.⁸⁰

New lawsuits were filed when the regulation listed only 160 non-Muslim foundations that were entitled to benefit from the laws numbered 4771 and 4778. The lawsuits filed by foundations, whether on or off the list, are interesting since they reveal how the state policy to minority foundations is based on safety and nationalism and how inconsistently this policy is implemented. For example, the Surp Harç Tibrevank Armenian High School Foundation filed an application with the DGF in order to register its immovables in its name pursuant to Law No. 4771. However, this application was rejected claiming that its name was not included in the list attached to the regulation. With its decision dated 15 November 2005, the 10th Chamber of the Council of State cancelled the DGF’s act, given that the Surp Harç Tibrevank Armenian High School Foundation was a non-Muslim foundation and entitled to benefit from Law No. 4771.⁸¹ The DGF’s appeal is still pending before the General Board of Administrative Law Chambers of the Council of State. The decision of the 10th Chamber of the Council of State is in favor of the foundation, but it is interesting in that it demonstrates how the state perceives non-Muslims. The administrative documents and practices that were taken into account by the court when deciding that the Surp Harç Tibrevank Armenian High School Foundation was a non-Muslim foundation included a letter issued by the 1st Army and the Martial Law Commandership of the General Staff on 9 April 1973, stating that “they had no objection for the foundation to elect its members of the board of directors.”

It is understood that the Turkish Army, responsible for maintaining the security of Turkey, closely monitors the reform laws involving non-Muslim foundations and even makes certain ‘recommendations’ to executive bodies regarding implementation. The ‘confidential’ letter sent by the National Security Council to relevant public agencies through the Prime Ministry on 7 April 2003 reads as follows: “The two-month period given to the Directorate General for Foundations for evaluating the applications is very short, but it is difficult to legally extend this period. Therefore, the DGF may use this period more efficiently through certain administrative practices. It is more appropriate to answer applications after taking the opinions of the Ministry’s organizations and institutions and evaluating them in detail.”⁸² It is not known why the registration of the immovables of non-Muslim foundations involved the National Security Council, why recommendations of the National Security Council should be taken into account and what the meaning and purpose of the “certain administrative practices” for using the period more efficiently could be.

It should also be emphasized that this 2003 regulation raised doubts over the continuity of Turkey’s official minority policy. Since 1925, the state has mentioned consistently that only Greeks, Armenians and Jews were recognized as minorities in Turkey, but the “active non-Muslim foundations” list attached to the regulation contains 9 Assyrian, 3 Chaldean, 1 Bulgarian and 1 Georgian foundations.⁸³ The Chaldean Catholic Church Foundation in Istanbul filed a lawsuit for recovering a seized property relying on the fact that it is on this list. The foundation filed a lawsuit with the 2nd Civil Court of First Instance of Beyoğlu in 1984, requesting the return of its real estate in Siraselviler which was registered in the name of Debağzade Elhaç İbrahim Efendi in 1975. However, the court denied its request on 16 March 1989, noting that the foundation did not have any legal existence because it did not submit a declaration in 1936, that the issue had been time-barred, and that the center of the Chaldean Patriarchate was in Iraq. The conclusion of the

75 *Ibid.*, Article 6.

76 Oran, *Türkiye’de Azınlıklar ...*, (Minorities in Turkey..) p. 125.

77 Mahçupyan, *Türkiye’de Gayrimüslim Cemaatlerin...*, (Problems of Non-Muslims..) pp. 7-8.

78 *Ibid.*, Article 5(2). Documents required for registration applications include information on current use of the immovable and why it will be acquired, the balance sheet and income statement of the last year demonstrating financial status of the foundation and an appraisal report on the immovable.

79 *Ibid.*, Article 4.

80 *Ibid.*, Annex 2.

81 The decision of the 10th Chamber of the Council of State numbered 2003/2272 E. and 2005/6741 K. and dated 15 November 2005.

82 Oran, *Türkiye’de Azınlıklar*, (Minorities in Turkey), p. 126.

83 Foundation for St. Mary’s Assyrian Apostolic Church in Diyarbakır, Foundation for St. Mary’s Assyrian Apostolic Church in Beyoğlu, Foundation for Assyrian Catholic Church in Mardin, Foundation for Assyrian Apostolic Deyrulzafaran Monastery and Churches in Mardin, Foundation for Assyrian Deyrulmur St. Gabriel Monastery in Midyat, Foundation for Assyrian Apostolic Community Marborson and Mart Şemuni Churches in Midyat, Foundation for Mardodo Assyrian Apostolic Church in İdil, Foundation for Chaldean Catholic Church in Diyarbakır, Foundation for Chaldean Catholic Church, Foundation for Chaldean Catholic Church in Mardin, Foundation for Bulgarian Ekzarh Orthodox Church, Foundation for Georgian Catholic Church in Şişli.

court that a foundation did not have legal existence because it had not declared its assets in 1936, is an example of the inept and ridiculous reasoning of the Turkish legal system, which becomes customary when the issue is non-Muslims. This foundation has a legal existence and has been active uninterruptedly since its establishment with an imperial edict during the Ottoman period, and it has been officially recognized by the state. Moreover, on 24 January 2003, the state must have had a change of heart over the status of the Chaldean Catholic Church in Istanbul since the name of the foundation was among the active non-Muslim foundations listed in the attachment of the foundation regulation. Relying on this list, the foundation filed an application with the DGF to register its Siraselviler building in its name, and filed another lawsuit when its application was rejected. The lawsuit filed by the foundation against the Prime Ministry and the DGF is still pending before the Council of State.⁸⁴

New laws can be deemed to have brought relative improvements despite their unfavorable aspects mentioned above, but, in practice, non-Muslim foundations faced bureaucratic obstacles whenever they attempted to benefit from the restricted and conditional rights granted to them. According to the information provided by the DGF, as of November 2008, only 29 percent of all applications filed with the DGF by non-Muslim foundations to register their immovables in their own name were accepted.⁸⁵ Out of the 1,262 property registration applications filed by 121 non-Muslim foundations, 365 were accepted and 898 were rejected because they were “registered in the name of public institutions and organizations or natural persons.”⁸⁶ Moreover, there are conflicts between the records of the DGF and non-Muslim institutions regarding the outcome of the registration applications. For instance, according to the Istanbul Greek Patriarchate, as of April 2003, the number of applications made only by foundations of the Greek community under the January 2003 regulation for registration of their immovables was 1,704. 59 of these applications were approved, while the registration of the remaining 1,113 was rejected for various reasons.⁸⁷

The outcomes of applications made for purchasing property, acquiring property through donation and selling property seem to have been more favorable. As of November 2008, 7 foundations were allowed to acquire 38 immovables through donation, five foundations to purchase 12 immovables and five foundations to sell 11 immovables, while three foundations were allowed to receive flats from a contractor erecting a building on four tracts of land they owned.⁸⁸

On the other hand, the state bureaucracy, which took over the immovables of non-Muslims for decades, and the judiciary, which provided legal legitimacy to this policy, could not easily adapt to the new legislation and implementation. Despite the enactment of laws granting new, albeit limited, rights to non-Muslim foundations, the Treasury did not abandon its old habits and insisted on taking over properties of non-Muslim foundations, and the judiciary resisted the new laws it had to implement. The most striking example is the decision the 1st Civil Law Chamber of the High Court of Appeals made on 14 October 2004, i.e. 26 and 15 months after Laws No. 4771 and 4778 came into force, respectively.⁸⁹ The Treasury filed a lawsuit for canceling the land register record of a property bequeathed to the Yedikule Surp Pırığıç Armenian Hospital Foundation in 1965, on the grounds that it was not declared in 1936. The 8th Civil Court of First Instance of Bakırköy denied the request based on Law No. 4771. The Treasury appealed the decision before the High Court of Appeals. Even in Turkey, where the rule of law is ignored in lawsuits involving non-Muslim foundations, the High Court of Appeals should have denied a request based on the argument that “non-Muslim foundations do not have any legal existence and thus cannot acquire any property,” given that the Parliament passed a law entitling non-Muslim foundations to acquire new property only two years ago. On the contrary, the High Court of Appeals decided to determine whether the Yedikule Surp Pırığıç Armenian Hospital Foundation filed an application with the DGF pursuant to Laws No. 4771 and 4778 in order to acquire such immovable. In other words, the High Court of Appeals ordered the foundation, which had registered the property in its name in 1965, to re-register it despite the existing land registry records of the state.

Notwithstanding the obstacles faced in practice, Laws No. 4771, 4778 and 4928 can be considered to have introduced relatively favorable solutions to the problems non-Muslim foundations faced in acquiring immovables through sale, donation and testament and in using the immovables in their possession. However, no arrangement has been made regarding the return or indemnification of seized properties that constitute the most basic ownership problem of non-Muslim foundations. Faced with non-Muslim foundations’ referring their requests to the ECtHR and intensive suggestions of the EU, the AKP government had to draft a new law on foundations. As in previous reform packages, instead of making a series of amendments to the Law on Foundations regarding non-Muslim foundations, a new law was enacted covering all foundations. The draft law was on the agenda of the Parliament in 2004, but waited for a

84 10th Chamber of the Council of State, File No: 2003/2693.

85 Information e-mailed from the DGF, 28 November 2008.

86 *Ibid.*

87 Information e-mailed from Istanbul Greek Patriarchate, 2 March 2009.

88 Information e-mailed from the DGF, 28 November 2008.

89 Decision of the 1st Civil Circuit of the High Court of Appeals numbered 2004/8622 E. and 2004/9589 K. and dated 14.10.2004.

long time because the Parliament failed to act with due care and speed. The AKP government did not demonstrate the necessary political will and the Republican People's Party and the Nationalistic People's Party adopted an opposition policy based on shallow nationalistic and discriminatory discourses. The government sent the first draft law to NGOs in the autumn of 2004⁹⁰, but Law No. 5555 could only be enacted in November 2006.⁹¹

B. ANOTHER ATTEMPT: LAW ON FOUNDATIONS, NO. 5555

Despite all shortcomings and problems⁹² Law No. 5555 on Foundations introduced some improvements in favor of non-Muslim foundations, albeit restricted and conditional. This law was sent back by former president Ahmet Necdet Sezer⁹³ for further deliberation on nine articles⁹⁴. Sezer vetoed nine articles involving non-Muslim foundations, claiming that granting new rights and privileges to existing foundations would violate the Treaty of Lausanne, fundamental principles of the Republic, the ban on discrimination, national interests and public benefit.⁹⁵ However, the main goal of the law was to establish those rights of non-Muslim foundations that were violated although they were given them with the Treaty of Lausanne and Turkey's Constitution, and to give an end to the discrimination against these foundations. The idea that granting new rights and privileges to foundations established and managed by Turkish citizens would be against national interests and the public good is quite striking, because it demonstrates how deep the discriminatory mentality accepting non-Muslim citizens as 'foreigners' runs into the upper echelons of the state. This mentality was demonstrated once more with Sezer's following words:

...with these arrangements, existing non-Muslim foundations will be given new rights and privileges that will provide them with economic and social power although there is no change in their nature, and their "seized foundation" status will be removed and they will participate in the social life as legal entities representing new foundations, therefore, it is not possible to consider these arrangements to be in compliance with the Treaty of Lausanne, the constitutional principles that represent the fundamental principles of the Turkish Republic, the existing legal system, Article 10 of the Constitution, which prohibits discrimination, and with national interests and the public good.⁹⁶

C. NEW LAW ON FOUNDATIONS FINALLY ENACTED: LAW NO. 5737

The main obstacle to the Law on Foundations was removed when Abdullah Gül was appointed the new President in August 2007 upon the expiration of Ahmet Necdet Sezer's term. In the general elections of 22 July 2007, AKP received almost half of the national vote and the new Parliament immediately brought the law on its agenda and passed it in February 2008 without making any amendment to the articles vetoed by Sezer. Law No. 5737 approved by the new president Abdullah Gül came into force in the same month.⁹⁷ The regulation regarding the law came into force when published in the Official Gazette on 27 September 2008.⁹⁸ However, Law on Foundations was opposed once again by the Republican People's Party and the Nationalistic People's Party. These two parties asked the Constitutional Court to annul the Law on Foundations, claiming that this law was contrary to the Constitution. The Constitutional Court had still not made a decision at the time of writing this report.

Like Law No. 5555, the Law on Foundations No. 5737 envisaged limited reestablishment of some of the rights of non-Muslim foundations that were systematically violated since the 1960s although they were enshrined in the Treaty of Lausanne, Turkey's Constitution and international human right conventions ratified by Turkey. The law gives the following rights to non-Muslim foundations: to acquire new property, to dispose of existing properties, to replace existing properties and rights with more useful ones under certain conditions (Article 12); to allocate to another foundation of the same community immovable properties that are not used for charitable purposes or to convert them into rent-yielding immovables (Article 16); to collect cash and in-kind donations and assistance from domestic and foreign institutions and organizations, provided that the DGF is informed (Article 25); to establish economic organizations and companies, provided that the DGF is informed (Article 26). The most significant and radical change is the return of some of the seized properties of the non-Muslim foundations under certain conditions (Provisional Article 7).

90 TESEV was among these NGOs. For the legal opinion containing TESEV's views and recommendations on the draft law, see, Dilek Kurban, *TESEV's Opinions on the Provisions of the Draft Law on Foundations Involving Non-Muslim Foundations*, (TESEV, December 2004).

91 Law on Foundations, No. 5555, 9 November 2006.

92 For a legal opinion based on the views, recommendations and criticism of the legal representatives of non-Muslim foundations on Law No. 5555 on Foundations, see Dilek Kurban, *Vakıflar Kanunu Tasarısı Gayrimüslim Cemaat Vakıflarının Sorunları İçin Çözüm Getirmiyor* (The Draft Law on Foundations Does Not Solve the Problems of Non-Muslim Foundations) (TESEV, December 2007).

93 The law sent to the Presidency on 14 November was returned to the Parliament on 29 November 2006, when Sezer vetoed certain articles.

94 Sezer vetoed Articles 5, 11, 12, 14, 16, 25, 26, 41 and 68 of the law.

95 For the full text of Sezer's veto, see Turkish Republic, "To the Attention of the Presidency of Turkish Grand National Assembly," No. B.01.0.KKB.01-18/A-10-2006-830, 29 November 2006.

96 *Ibid.*, p. 15.

97 Law on Foundations, No. 5737, 20 February 2008, Official Gazette No. 26800, 27 February 2008.

98 Regulation on Foundations, Official Gazette No. 27010, 27 September 2008.

Despite these improvements, Law No. 5737 did not bring any solution to the most basic and urgent problems of non-Muslim foundations, and even a regression in certain matters such as the ‘seized foundation’ practice. Moreover, it enables the return of only some of the properties taken over by the state and does not specify any indemnification for properties transferred to third parties.

1. THE ‘SEIZED FOUNDATION’ PRACTICE

Law No. 5737 did not change the fact that non-Muslim foundations are under the guardianship of the DGF, which is a public legal entity. It has become even easier to take over the management and assets of non-Muslim foundations by including them among ‘seized foundations’ represented by the DGF, and a legal basis has been created for these practices. The most concrete indicator is Article 7(2): “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 more elect and appoint managers.” This arrangement did not provide for the return of the management and assets of non-Muslim foundations that were previously taken over by the DGF by including them among ‘seized foundations,’ and ensured the continuation of the unlawful and arbitrary bureaucratic practice of taking over non-Muslim foundations. In other words, the Parliament offered legal and democratic legitimacy for an unlawful administrative practice that is seriously in breach of Turkey’s Constitution and laws, as well as the country’s obligations under international treaties on human rights. As such, this law violates the principle of a democratic state based on the rule of law.

While taking over the management and assets of a considerable number of non-Muslim foundations in accordance with the ‘seized foundation’ practice, the Directorate General for Foundations has relied on Article 1(d) of the Law on Foundations No. 2672, which has been repealed a short while ago. This article provides that “foundations that were not anymore engaged in charitable activities either *de jure* or *de facto*” shall be managed by the Directorate General for Foundations. Although it was enacted for foundations that existed before the effective date of the Civil Code (4 October 1926), the Directorate General for Foundations applied this article to non-Muslim foundations in violation of the legislature’s intent. According to this practice, which is still in use today, the decision of whether or not a seized foundation is engaged in charitable activities is taken at the sole discretion of the Directorate General for Foundations, without being based on any legal criteria or court decisions.

2. PRINCIPLE OF RECIPROCITY

The second problem with Law No. 5737 is the adoption of the principle of reciprocity in implementation (Article 2). Reciprocity is a principle of international law and basically states that a state may grant, to those citizens of another state who live within the territory of the first state, those rights and privileges as are granted by the latter state to the citizens of the former state who live within the territory of the latter state. For instance, citizens of another country may purchase property in Turkey only if Turkish citizens are allowed to purchase property in that country. However, non-Muslim foundations are legal entities established and managed by Turkish citizens in accordance with Turkish law. It is against international human rights law to include the principle of reciprocity in a law specifying the rights and obligations of non-Muslim foundations. A state should not define the rights of its own citizens by reference to the attitudes and policies of other states. The principle of reciprocity does not apply to fundamental rights and freedoms, because the Vienna Convention on the Law of Treaties prohibits introducing the principle of reciprocity in the implementation of human rights conventions.⁹⁹ Moreover, it is a discriminatory practice and violation of human rights for a state to apply the reciprocity principle to some of its citizens based on their religion, and deny them certain rights and privileges other citizens enjoy and is therefore in conflict with the Turkish Constitution, the Treaty of Lausanne and the European Convention on Human Rights.

3. ESTABLISHMENT OF NEW NON-MUSLIM FOUNDATIONS

The third problem posed by Law No. 5737 for non-Muslim foundations is its requirement for new foundations to be established and operated in accordance with the Turkish Civil Code (Article 5(2)). Moreover, non-Muslim communities are prevented from establishing new foundations for the purpose of sustaining and supporting their communities with Article 101(4) of the Civil Code which provides that “no foundations may be established to support the members of a certain race or community.” As seen in court decisions, in the past, the Civil Code was interpreted in this manner.¹⁰⁰

⁹⁹ The Vienna Convention on the Law of Treaties was ratified on 23 May 1969 and came into force on 27 January 1980.

¹⁰⁰ Based on Article 101(4) of the Turkish Civil Code, the 18th Civil Law Circuit of the High Court of Appeals refused to register the Turkish Seventh-Day Adventists Foundation, stating that the purpose of the foundation was to “meet the religious needs of Turkish citizens who adopt the beliefs of Seventh-Day Adventists, and foreigners of the same belief who are domiciled or temporarily staying in Turkey.” Decision of the 18th Civil Law Circuit of the High Court of Appeals, dated 5 April 2005, numbered 2005/1467 E., 2005/3270 K..

The law provides that new foundations shall be established according to the Civil Code, and this will prevent non-Muslims from establishing new foundations for the purpose of meeting the religious, social and other needs of their communities. This restriction does not comply with the freedom of association, which is guaranteed by Article 11 of the European Convention on Human Rights and Article 33 of the Turkish Constitution, and non-Muslim communities' right to establish and manage their own organizations, which is guaranteed by Article 40 of the Treaty of Lausanne.

4. INTERNATIONAL ACTIVITIES

In general, the new law introduces a very favorable arrangement in terms of freedom of association by allowing foundations to engage in international activities and cooperation efforts in accordance with their purpose or activities, to establish branches and representation offices abroad, to set up umbrella organizations and to become members of organizations established abroad.¹⁰¹ However, the law does not give this freedom to non-Muslim foundations. This is because foundations are allowed to engage in international activities if only these are mentioned in their statutes. As mentioned before, non-Muslim foundations were established during the Ottoman era by imperial edicts and do not have statutes. Therefore, it is not possible for them to meet this legal requirement to engage in international activities. This provision is an example of the discrimination against non-Muslim foundations and it is the fourth problem this law poses for these foundations. This means that non-Muslim foundations will not be able to engage in international activities and cooperation efforts, establish branches and representation offices abroad, set up umbrella organizations and become members of organizations established abroad. Preventing a foundation from engaging in such activities in this globalized information age is tantamount to disabling that foundation. Today, especially considering Turkey's accession to the EU, it is inconceivable for a foundation to operate in isolation from the world. Moreover, such an all-encompassing and arbitrary restriction is incompatible with the principle of freedom of association, which is guaranteed by the European Convention on Human Rights, the Constitution, and the Treaty of Lausanne.

5. RETURN OF SEIZED ASSETS

As mentioned above, Law No. 5737 provides for the return of *some of the assets* of non-Muslim foundations seized since 1960 and therefore introduces a significant improvement. However, the law does not envisage the return of *all assets* held by the DGF or the Treasury after they had been taken over, or the payment of indemnity for assets transferred to third parties after takeover. This is another important problem the law poses for non-Muslim foundations.

Provisional Article 7 reads as follows:

Non-Muslim foundations shall be entitled to the following deeds:

- a) Immovables that were included in the 1936 Declaration, are registered to pseudonyms or fictitious names, and *are still in the possession of the non-Muslim foundation in question*¹⁰²,
 - b) Immovables that were acquired by the non-Muslim foundation after the 1936 Declaration, or are, despite having been bequeathed or donated to a non-Muslim foundation, currently registered to the Treasury, the Directorate General, the testator or the donor *due to the impossibility of acquiring assets*¹⁰³,
- if their applications are made to the corresponding local land registry authorities within eighteen months of the effective date of this law, provided that the Turkish Grand National Assembly approves the provisions set forth by this law.¹⁰⁴

This provision states that some of the immovables that were unjustly taken away from the non-Muslim foundations for various reasons shall be returned to their owners, subject to certain conditions. In other words, the new provision will result in an improvement, albeit limited. However, Provisional Article 7 does not envisage the return of all illegally seized immovables of non-Muslim foundations. First of all, the expression "still in possession" in Paragraph (a) is highly problematic. In a law that is allegedly drafted to ensure the 'return' of seized property, requiring that the property to be returned be in the "possession" of the very foundation who is asking for such return is incompatible with the meaning of the term "return." Natural or legal persons do not demand the return of a property that is already in their possession. In other words, a property that has been taken away and is now being asked to be returned is, by definition not in the possession of the person asking for such return.

In this particular case, the non-Muslim foundations in question naturally do not currently possess the immovables that were unjustly taken away from them in accordance with subsequent court decisions, despite being registered to *pseudonyms or fictitious names* according to the 1936 Declarations (in other words, immovables that were possessed by the foundations at that time). This is why the non-Muslim foundations are calling for a law that would ensure the return of

101 Article 25(1).

102 Emphasis added.

103 Emphasis added.

104 Provisional Article 7.

these seized properties. However, Article 7(a) of the law does not provide for the return of any assets that were included in the declarations made by the non-Muslim foundations in 1936 and were subsequently taken away in accordance with certain court decisions. This is because these assets were transferred from non-Muslim foundations to the state, under court decisions for the seizure of immovable assets. As a result, their possession was transferred from the non-Muslim foundations to the state. This arrangement exacerbates the problem rather than solving it, and leads to regression instead of improving the current situation. The right thing to do would be to return the unjustly seized immovables of non-Muslim foundations if they are still held by the Directorate General for Foundations or the Treasury (even if there exists a court decision), or to ensure that indemnity is paid for those immovables that have come into the possession of third parties. Furthermore, charitable organizations such as churches, which non-Muslim communities have not lost with the legislation on population exchange, should be nationalized and returned to the non-Muslim communities in question, even if these are currently possessed by third parties.

The phrase “impossibility of acquiring assets” in Paragraph (b) is highly problematic as well. This provides for the return of only some of the assets that were purchased by or donated or bequeathed to non-Muslim foundations after 1936 and were unlawfully seized and registered in the name of the Treasury, the DGF, the testators or the donors in accordance with the 1974 decision of the General Board of the High Court of Appeals. However, several other immovables have been seized from these foundations, citing other reasons and using other methods. These include the following: 1) Immovables that were registered to a non-Muslim foundation and re-registered to their previous owners in accordance with a court order canceling the registry record; 2) immovables that were registered to a non-Muslim foundation, re-registered to their previous owners in accordance with a court order canceling the registry record, managed by a receiver for ten years since the previous owner could not be reached, and finally registered to the Treasury or the Directorate General for Foundations; 3) immovables that were registered to a non-Muslim foundation and re-registered to the Treasury in accordance with a court order canceling the registry record; 4) immovables that were registered to a non-Muslim foundation and were re-registered to the DGF in accordance with a court order canceling the registry record; 5) immovables that were bequeathed to a non-Muslim foundation under a will that was later cancelled by court order; and 6) immovables that were taken away from a non-Muslim foundation and registered to third parties. No legal arrangement whatsoever has been made to ensure the return of all these immovables that were seized unjustly and illegally.

CIRCULAR ON THE IMPLEMENTATION OF PROVISIONAL ARTICLE 7

Almost three months after the Law on Foundations No. 5737 came into force in February 2008, the DGF sent a circular to the District Office for Foundations.¹⁰⁵ The circular dated 13 May 2009 lists the documents that non-Muslim foundations have to attach to applications they will file under Provisional Article 7 of the Law in order to take back their seized immovables. According to this circular, non-Muslim foundations have to present the following documents in addition to the application form attached to it:

For immovables requested to be registered under Paragraph (a)

- 1) The justified decision of the board of trustees of the foundation for filing the request, and information on immovables mentioned in the 1936 Declaration and existing land register records;
- 2) the declaration filed in 1936;
- 3) a document issued before 27 February 2008, demonstrating that the immovable is still in the possession of the foundation (lease agreement, property tax return, electricity-water-natural gas bill or an equivalent document);
- 4) information on whether the immovable is subject to any litigation, if yes, final court decision, or if there is a pending lawsuit, the relevant statement of claim.

For immovables requested to be registered under Paragraph (b):

- 1) The justified decision of the board of trustees of the foundation for filing the request;
- 2) the document justifying why the immovable is requested by the foundation (donation-will);
 - if the justification of the request is a donation:
 - a) If the donator is alive, a notarized document containing the desire of the donator;
 - b) if the donator is not alive, a document certifying the donation;
 - if the justification of the request is a testament; that testament, and the decision of execution, if any;
- 3) the decision of the board of trustees of the foundation related to the acquisition of the immovable, if any;

¹⁰⁵ “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.

- 4) a document, if any, related to the registration of the acquired immovable (a copy of the relevant page of the real estate inventory book certified by the board of trustees of the foundation or an equivalent document);
- 5) a document showing the method of transfer of the immovable to the Treasury of the Directorate General for Foundations (such as a final court order);
- 6) information on whether the immovable is subject to any litigation, if yes, a final court decision, or if there is a pending lawsuit, the relevant statement of claim.

As is quite common in Turkish bureaucracy, with this circular dated 13 May 2008, rights that are given in a law enacted by the Parliament are restricted and made meaningless under the arbitrary discretion of the bureaucracy, which is not subject to democratic control. Unlike regulations that have to be published in the Official Gazette, when a circular is opted for, it is possible to adopt bureaucratic practices in breach of the letter and spirit of the law without the knowledge and control of the public.

This circular ignores fundamental principles of the law by requiring non-Muslim foundations to present too many documents to take back the legitimate assets they lost through unlawful practices. In case of legal conflicts between natural or legal persons and the state, there is a great asymmetry between the parties in terms of their power, authority and means. However, if the party claiming that its rights were violated submits *prima facie* evidence to support this claim, the burden of proof is on the other party. This may not be a court proceeding but a bureaucratic mechanism that has been created with a law aiming to eliminate the violation of rights by the state. Therefore, should non-Muslim foundations demonstrate with minimum evidence that their legitimate immovables were taken over, the burden of proof must be on the state. If there is a doubt that the claims of any foundation are groundless, the state, which already has or is capable to have all necessary information and documents, should be responsible for disproving those claims.

However in practice, this circular makes the return of seized assets very difficult and even impossible, by imposing an obligation on non-Muslim foundations to present documents that they cannot obtain. Annex 2 to this report lists several assets that have been bequeathed and donated, and most of these transfers occurred in the 1950s and 1960s. It is not possible to see any good faith in requiring documents for transactions that took place 50 years ago. Given that most of the non-Muslims who bequeathed or donated these assets to non-Muslim foundations had to leave Turkey together with their families in those years, it is against justice to expect foundations to present testaments made in the 1950s. Moreover, as explained in Annex 2, all testaments have been executed by court order and donations have been recorded in the land register. Therefore, the state already has all legal documents among its records. In this case, expecting non-Muslim foundations to present documents that they cannot obtain in order to take back the assets they acquired legitimately but lost unlawfully means ‘this law will not be implemented, and the assets will not be returned.’ Requiring an electricity bill from non-Muslim foundations for immovables that have been possessed and used by the state for decades is a merciless practice that is beyond irony. Lawyer Diran Bakar, who is the legal representative of Armenian non-Muslim foundations and who has engaged in a legal warfare with domestic courts for decades and recently with the ECtHR on their behalf, says that the DGF is “making all kinds of excuses” not to return the seized assets.¹⁰⁶

Sometimes, even the DGF’s approval of the application of a non-Muslim foundation is not enough for the registration of the immovable in question. Non-Muslim foundations that overcome the DGF obstacle are hindered by other bureaucratic obstacles. Despite the approval of the DGF, land registers demand for the registration of immovables various documents that cannot be provided by non-Muslim foundations and raise difficulties and prevent the exercise of legal rights. Lawyer Diran Bakar states that they applied for the return of all seized immovables that were bequeathed and registered to foundations, that they took back some of them and were “struggling with the Land Register” to take back some of them.¹⁰⁷ Bakar adds that if there was an ECtHR ruling involving an immovable, the state sent a letter to the land register and that immovable was returned in three months, but it was very difficult to register it if there was no ECtHR ruling. Bakar summarizes the situation as follows: “The DGF says ‘register this to the foundation,’ but the Land Register does not do it. They want us to present a testament made 40 years ago. How can I find that? Fifty years have passed and now they say ‘bring us the testament to lift the injunctions.’”¹⁰⁸

It has been one year since Law No. 5737 came into force in February 2008. According to official information provided by the DGF, as of 2 February 2009, its district offices received applications requesting the return of 128 immovables under Provisional Article 7 of the law envisaging the return of seized immovables.¹⁰⁹ District offices are still reviewing these applications. There is no application that has been referred to the Directorate General.

¹⁰⁶ Interview with Diran Bakar, Istanbul, 28 January 2009.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ Information e-mailed by the DGF, 2 February 2009.

V. EU Reforms Insufficient: The ECtHR Process

Non-Muslim foundations have engaged in a legal war for many years in Turkey against policies violating their property rights. However, Turkish courts provided legal legitimacy to unlawful practices by approving discriminatory laws and policies that violated the fundamental rights they were responsible for protecting.¹¹⁰ The DGF, the Treasury and the National Real Estate have always been supported by the national judiciary in every lawsuit they has been filed for canceling land register records or testaments in order to take over the immovables non-Muslim foundations' purchased or were bequeathed or donated to them. Immovables that were taken from non-Muslim foundations and registered to donators or testators were transferred to their inheritors since they were not alive, and to the DGF or the Treasury if no inheritors were found.¹¹¹ The justification of courts in deciding to take over immovables from non-Muslim foundations was the incapacity of these foundations to acquire assets. However, when these decisions were made, excluding non-Muslim foundations, all other foundations' right to acquire real estate was recognized and protected by law and in practice.

Upon the exhaustion of domestic remedies, non-Muslim foundations recently moved their legal struggle to Strasbourg. Foundations of the Greek and Armenian communities started to file complaints after 1999 when Turkey's EU candidacy was announced. Since 2007, decisions are being made in these cases. The first ruling was made in a case filed by the Fener Greek High School Foundation of the Greek Orthodox Community, and the ECtHR decided that Turkey violated Article 1 of Protocol No. 1 of the European Convention on Human Rights, which secured property rights.¹¹² The court did not discuss the foundations' claim that Turkey's policy of taking over only immovables of non-Muslim foundations was a discriminatory policy and therefore violated Article 14 of the European Convention on Human Rights prohibiting discrimination.¹¹³

With its *Fener Greek High School Foundation* decision dated 9 January 2007, the ECtHR ruled that Turkey's real estate policies towards non-Muslim foundations, and especially its 1936 Declaration practice, were unlawful. According to the foundations' attorney Gülten Akan, this historical judgment became the "death sentence" of the High Court of Appeals decision dated 1974, which ruled that the 1936 Declaration was in compliance with Turkey's constitution and laws.¹¹⁴ The ECtHR ordered Turkey to return the seized property to the foundation or to pay almost 900,000 Euros to the foundation's management within three months. The government executed the decision by paying the specified indemnity within the relevant legal period.¹¹⁵ The ruling in the first case won by non-Muslim foundations in Strasbourg created a precedent for similar complaints pending before the ECtHR.

¹¹⁰ For these court decisions, see the list of immovables seized from the Armenian community (Annex 2).

¹¹¹ When there was no inheritor, any immovable registered by a foundation was re-registered to the DGF and other immovables were re-registered to the Treasury deemed as the 'ultimate inheritor.'

¹¹² ECtHR (2007) *Foundation for Fener Greek High School vs. Turkey* No. 34478/97, 9 January.

¹¹³ It is not specific to this case for the court not to discuss complaints of applicants under Article 14. Most of the time, the ECtHR did not discuss alleged violations of Article 14 in its caselaw regarding Turkey and other member states of the European Council, and even if it discusses these, it mostly decides that the article was not violated. This subject is not covered by this report. For an evaluation of this matter within the context of the European human rights regime, see S. Spiliopoulou Åkermark, "The Limits of Pluralism- Recent Jurisprudence of the European Court of Human Rights with Regard to Minorities: Does the Prohibition of Discrimination Add Anything?," *Journal on Ethnopolitics and Minority Issues in Europe (JEMIE)* No. 3 (2003). For an evaluation of how the ECtHR handles Article 14 in its caselaw involving Turkey, see, Dilek Kurban, Ozan Erözden, Haldun Güllalp, *Supranational Rights Litigation, Implementation and the Domestic Impact of Strasbourg Jurisprudence: A Case Study of Turkey*, report prepared for the JURISTRAS project funded by the European Commission, DG Research, Priority 7, Citizens and Governance in a Knowledge Based Society, <http://www.juristras.eliamap.gr/wp-content/uploads/2008/10/casestudyreportturkeyfinal.pdf>.

¹¹⁴ Interview with lawyer Gülten Alkan in TESEV's documentary on immovables seized from non-Muslim foundations, .SUFilm, 'vatandaşlık' halleri (states of 'citizenship') (TESEV, April 2008).

¹¹⁵ Interview with members of the board of trustees of the foundation in TESEV's documentary on immovables seized from non-Muslim foundations. *Ibid.*

Shortly after this ruling, the complaint filed in 1999 by the Foundation for the Surp Pırgiç Armenian Hospital in Yedikule for the return of the old İGS building in Beyoğlu and a building in Kadıköy that were taken over by the Treasury, was concluded against Turkey.¹¹⁶ When the parties decided to resolve the conflict amicably, a friendly settlement declaration was signed on 26 June 2007 by the foundation management and the government. Although the ECtHR recommended the government to pay 2 million Euros to the foundation as a condition of friendly settlement, the government proposed returning the immovables to the foundation instead of making this payment. Thus, for the first time, the Turkish state returned a seized immovable to a non-Muslim foundation. Six months after this decision, the Foundation for the Surp Pırgiç Armenian Hospital in Yedikule filed another complaint requesting the return of another immovable transferred to the Treasury. This case was also resolved amicably when the government proposed returning the seized immovable to the foundation.¹¹⁷ The government fulfilled the friendly settlement decisions within three-month legal period, and returned the immovables to the relevant foundations.

The second conviction of Turkey in Strasbourg for immovables taken from non-Muslim foundations was on 8 July 2008, when the case filed by the Istanbul Greek Patriarchate for return of the orphanage building in Büyükkada was concluded.¹¹⁸ The ECtHR ruled that taking over the orphanage for Greek Orthodox children, built over a portion of the land purchased in 1902 in Büyükkada, breached Article 1 of Protocol No. 1 of the European Convention on Human Rights, which protected property rights.

On 16 December 2008, five months after the orphanage decision, Turkey was convicted for a third time by the ECtHR for taking over immovables of non-Muslim communities. The first conviction in cases filed by the Armenian foundations with the ECtHR was secured on the same day in two different lawsuits.

The complaint filed by the Foundation for the Surp Pırgiç Armenian Hospital in Yedikule in 2002 for the return of a seized flat in Beyoğlu was followed by another complaint filed by the Board of Trustees of the Samatya Surp Kevork Armenian Church, School and Cemetery in 2003 for the return of three adjacent houses in Şişli. The ECtHR ruled that Turkey violated property rights, and awarded the foundation in Samatya EUR 600,000, and the foundation in Yedikule EUR 275,000 for immovables that could not be returned to their original owners since they were sold to third parties.¹¹⁹

¹¹⁶ ECtHR (2007), *Foundation for the Armenian Surp Pırgiç Hospital in Yedikule vs. Turkey*. No. 50147/99 and 51207/99, 26 July (friendly settlement).

¹¹⁷ ECtHR (2007), *Foundation for the Armenian Surp Pırgiç Hospital in Yedikule vs. Turkey*. 14 December (friendly settlement).

¹¹⁸ ECtHR (2008) *Fener Greek Patriarchate (Ecumenical Patriarchate) vs. Turkey*. No. 14340/05, 8 July.

¹¹⁹ ECtHR (2008) *Foundation for the Armenian Surp Pırgiç Hospital in Yedikule vs. Turkey*. No. 36165/02, 16 December; ECtHR (2008) *Board of Trustees of the Samatya Surp Kevork Armenian Church, School and Cemetery vs. Turkey*. No. 1480/03, 16 December.

VI. Evaluation and Conclusion

Turkey has introduced some improvements in terms of protecting the property rights of non-Muslim foundations during the EU accession process, but it failed to achieve any progress in making a 'reform of a state governed by the rule of law.' On the contrary, in the past there was no obstacle in the legislation in terms of the 'capacity to acquire immovables' and problems encountered in practice were due to unlawful and wrong precedents. But instead of improving existing legal arrangements, there has been a regression, and non-Muslim foundations now have to obtain a permission in order to exercise their capacity to acquire immovables. Limited rights given in laws are restricted in practice with bureaucratic regulations and circulars that are not published to the public.

There is no fair solution that would ensure the return or indemnification of the seized assets in accordance with Turkey's obligations arising from international treaties and its own Constitution. No payment of indemnities is envisaged for non-Muslim foundations for immovables that were seized from them and transferred or sold to third parties. Although it provides for the return of certain assets that were seized from these foundations and registered in the name of the state, this return is made contingent upon the non-Muslim foundation's 'possessing' said assets. This arrangement is in conflict with the meaning of the term 'return.' Making the return of these immovables conditional to their being in the possession of the relevant non-Muslim foundations does not reflect good faith on the part of the legislature.

Although it was concealed that non-Muslim foundations were considered 'affiliated foundations' by changing terminology over time, the practice of including non-Muslim foundations among 'seized foundations' has not been abandoned. On the contrary, the new Law on Foundations provides legal legitimacy to this 'seized foundation' practice, which is an unlawful bureaucratic act. Finally, applying Article 101(4) of the Civil Code to the establishment of new foundations prevents non-Muslim communities from establishing new foundations. Given that Muslim Turkish citizens are allowed to establish new foundations, failing to give the same right to non-Muslim citizens is an explicit discrimination. These facts demonstrate that even the most recent arrangements failed to give non-Muslim foundations a status compatible with the Treaty of Lausanne.

Moreover, the introduction of improvements in favor of non-Muslim foundations in the face of regulations made under EU harmonization has led the DGF to adopt an attitude that completely violates the principle of a state governed by the rule of law. Acting as the supervisory authority and presenting itself as the legal representative of the Treasury or previous owners, the DGF filed lawsuits requesting amendments to the land register records of immovables that were acquired before the precedent regarding the 1936 Declaration. Thus, it managed to re-register in its own name some of the immovables that were taken over from non-Muslim foundations and were artificially associated with another foundation.

At a time when Turkey is engaged in accession talks with the EU, the basic duty of the government and the Parliament is to make legal arrangements that are compatible with the *acquis communautaire*. Otherwise, international actors will continue to raise issues left unsolved by national authorities. The friendly settlements and rulings of the ECtHR since 2007 demonstrate that the ECtHR will not be satisfied with legal arrangements that do not require the return of seized immovables to their real owners, i.e. non-Muslim foundations or the indemnification of such immovables, and Turkey will continue paying indemnities. These indemnities are being paid by the taxpayers of Turkey, and it is the democratic duty of the government and the Parliament to solve this problem through national legislation. Moreover, the legislature and the judiciary are obliged to enact laws in compliance with national and international legislation.

The legislation regarding non-Muslim foundations is a complete chaos. The 1935 Law on Foundations which applies to old foundations; the regulation which is still to be issued under this Law; the Civil Code which applies to new foundations;

the regulation issued when the previous Civil Code was in force; the communiqués issued after 28 February, the regulations and circulars regarding EU harmonization laws... The legislation on foundations is chaotic if one considers social solidarity foundations, personnel assistance foundations, foundations for supporting public agencies and legal entities, uncertainties and disagreements regarding university foundations, problems of the dissolution of foundations subject to *icareteyn*¹²⁰ and *mukataa*¹²¹, foundation ‘*gediks*’¹²², and special problems of foreign foundations.

What must be done at this point is to enact laws that will eliminate existing antidemocratic and unlawful practices in accordance with the Treaty of Lausanne, the European Convention on Human Rights, other international treaties to which Turkey is a party, and the Turkish Constitution. This will facilitate the process of democratization and allow Turkey to become a respected member of the European Union and help non-Muslim citizens trust their state.

120 As a rule, foundation property could not be sold and could only be ‘exchanged’ and cashed by court order. Therefore, foundation properties that were destroyed by fire or otherwise did not bring any revenue. When an application was filed with the court for an ‘exchange transaction,’ barren land was sold at low prices, and the proceeds of the sale did not meet the expenses of the foundation. Therefore, as a ‘legal remedy,’ it was decided not to exchange foundation property, but to pay a base rent (*icare-i muacccele*) to the foundation in the form of a down payment, which equaled sales value. Also a second rent (*icare-i müecccele*) was paid to the foundation every year. This system was called ‘double rent’ (*icareteyn*). In Islamic law, this rent was a voidable rent because there was no time limit and the rent did not end upon death. *İcareteyn* was a system applied to residential and commercial immovable property of foundations. See the Law on Foundations No. 5736, Article 3.

121 *Mukataa* is the name of an agreement granting an unlimited ‘right of construction’ on foundation property in consideration for a lump-sum rent payment. According to Article 3 of the Law on Foundations No. 5737, a foundation subject to *mukataa* means ‘an immovable foundation property whose rent is paid annually.’ The land of this property belongs to the foundation, whereas the building and trees on the land belong to the user.

122 An immovable where a tradesman practiced his trade or art was called a *gedik*. These immovables created a right of construction in consideration for a continuous rent.. During the Second Constitutional Monarchy, a provisional law was enacted to dissolve ‘*gediks*’ in Istanbul. In Ottoman legislation, the Hanefi rite was the fundamental law applied to transactions. Since there was no legal transaction concept that is similar to the act of disposal creating limited real rights as it is today, contracts creating limited real rights such as rights of construction were not different from lease contracts. In practice, practicing any trade and art was subject to *gedik* procedures. In other words, unless a *gedik* was vacated, no other person was given the freedom of practicing that trade and art (*numerus clausus*). In such a case, even if there was an underlying lease agreement, this was a voidable lease as in *icareteyn* and *mukataa* contracts, and the *gedik* leasing right could be transferred to another person without removing the *gedik*-holder. Thus, the right of the owner, which was called the right of ground, was transformed into a honorary property right. In 1960, 50 years after the provisional law enacted for Istanbul and its surroundings, a law was enacted for the dissolution of *gediks* and grounds in Bursa. Later on, these dissolution provisions were referred to the Zoning Law. In practice, the concept of *gedik* became more complicated.. This is because the foundation that held the right on the land and the *gedik* right were typically not the same. Moreover, during the reign of Sultan Mahmud II, a regular *gedik* procedure was introduced in the form of a continuous tax in order to provide revenue to foundations established by the sultan. Moreover, in the Aegean Region, there is a *gedik* called *Paftos* or *Örfü Belde gediği* in the form of a continuous right of construction where the land was owned by a person and the vines by another person.

VII. Proposed Solutions for the Real Estate Ownership Problems of Non-Muslim Foundations

- The main goal of introducing new regulations for solving the problems of non-Muslim foundations must be to protect justice and the rule of law, not to meet EU accession requirements quickly and perfunctorily.
- Justifications such as those based on the 1936 Declaration are fictional arguments that cannot be advocated with any legal reasoning and technique, let alone universal principles of a democratic state governed by the rule of law. Such arguments must be abandoned immediately.
- The 'seized foundation' practice, which is against the principles of a democratic state governed by the rule of law, must be abandoned immediately.
- Non-Muslim foundations and foundations that have been established during the Ottoman era, especially by some Catholic orders that are deemed to have converted into non-Muslim foundations, must be removed from an 'affiliated foundation' status and should not be subject to the DGF anymore. These foundations must be treated just like the foundations established after the enactment of the Civil Code and should be governed by higher bodies of their own communities and supervised by the Ministry of Internal Affairs and the Ministry of Finance.
- Foreign foundations whose existence has been recognized during the Ottoman era must be treated as non-Muslim foundations pursuant to the Title Deeds Law enacted after the Treaty of Lausanne, and their unlawfully seized assets must be returned to them.
- The sphere of Civil-Code legal entities must be reviewed in accordance with the principles of democracy and the universal rule of law, and an 'inflation of laws' must be avoided, except in the case of certain foundations for which special laws are required or desirable.
- Fundamental provisions on foundations and associations must be included in the Civil Code, and secondary legislation such as by-laws, which deal with implementation problems, should not contain any issue that must be regulated by laws, which specify the superior rule. Disregarding this point would mean a transfer of legislative power in violation of Turkey's Constitution.
- Attempting to create substantive law through communiqués, which are neither by-laws nor regulations, as has been the case after 28 February 1997, is 'usurpation of the legislative power,' which is an explicit violation of Turkey's Constitution, the constitutional rule that fundamental rights cannot be regulated with governmental decrees, let alone with by-laws, regulations, or communiqués.
- In line with the equality principle of the Constitution, non-Muslim foundations and Muslim foundation must be granted equal freedoms and rights in terms of establishment, capacity and ownership, provided that they do not disturb public order and violate general moral rules.
- Given that the principle of reciprocity can only apply to 'foreign' legal entities' right to acquire immovables, the requirement for a permission before the acquisition of new property by non-Muslim foundations must be annulled.
- Violated vested rights of non-Muslim foundations and foreign foundations must be compensated in such a way as to provide justice.
- The argument that the Treaty of Lausanne gives the minority status to members of the Jewish, Armenian and Greek communities only and secures only their foundations must be abandoned and all non-Muslim citizens must be

granted their rights under the Treaty of Lausanne.

- All immovables that have been seized from non-Muslim foundations and that are in the possession of the state must be returned to these foundations. Non-Muslim foundations must be indemnified for assets that have been transferred to third parties.
- The new status of non-Muslim foundations must be regulated with a special law on non-Muslim foundations, which will be completely independent from the Law on Foundations. Instead of the DGF, a different higher supervisory agency must be assigned to supervise non-Muslim foundations. For instance, the Orthodox Patriarchate must act as the supervisory authority for the Orthodox Greek Community, the Armenian Patriarchate for the Armenian Community, and the Chief Rabbi's Office in Turkey for the Jewish Community, and their legal existence must be recognized. The draft law prepared by Prof. Hüseyin Hatemi for non-Muslim foundations and published in French, English and German by the Catholic Missio organization in Germany (translated by Dr. Otmar Oehring) must be taken into account.¹²³
- Agreements between the German government and Catholic and Protestant Churches should be taken into account, and a new legal regulation must be issued to provide autonomy and legal personality to such institutions for the public good. The draft law prepared by Prof. Hüseyin Hatemi for the Orthodox Patriarchate must be taken into account as a guiding document.¹²⁴
- Instead of a state ministry responsible for the Presidency of Religious Affairs, a Ministry of Religious Affairs must be established, which will regulate the government's relations with all religious communities including non-Muslims and Alevi and ensure harmonious coordination among these communities.
- A special law should be adopted to address the particular situation in Bozcaada (*Tenedos*) ve Gökçeada (*Imbros*) and to reinstitute the constitutional rights of non-Muslims who had been forced to leave these islands.

123 Otmar Oehring, *Türkiye'de İnsan Haklarının Durumu- Laiklik = Din Özgürlüğü mü?* (Human Rights in Turkey – Is Secularism Equal to Religious Freedom?) (Missio, 2004) For the complete text of the draft law, see Annex 3.

124 For the complete text of the draft law, see Annex 4.

Annex 1

List of foundations of the Jewish and Greek communities that have been included among 'seized foundations'

A. JEWISH COMMUNITY

As of November 2008, 24 foundations of the Jewish community were included among 'seized foundations', claiming that they ceased to serve their charitable and actual purpose.¹²⁵ The dates and numbers of the decisions that included 12 of these foundations among 'seized foundations' are known, but there are no records regarding the remaining 12. The first Jewish foundation was included among 'seized foundations' in 1974 and the last one in 1995 according to existing records.

Jewish synagogue foundations that have been included among 'seized foundations' are listed below:

1. Istanbul Jewish Community Foundation for the Palace of Constantine Porphyrogenetus
Decision dated 30 April 1991 and numbered 331/391
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"
2. Balat, Karabaş District, Selaniko Synagogue
Decision dated 7 January 1979 and numbered 664/687
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"
3. Balat, Karabaş District, Fulyaşon Synagogue
Decision dated 7 January 1979 and numbered 664/687
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"
4. Unkapanı Jewish Synagogue
Decision dated 7 January 1979 and numbered 664/687
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"
5. Istanbul Salmatomruk Jewish Community Foundation
Decision dated 5 October 1984 and numbered 554/550
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"
6. Istanbul Silivri Kal Kadoş Bohor Maryo Binyamin Synagogue Foundation
Decision dated 24 April 1974 and numbered 257/251
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"
7. Tekirdağ Jewish Community Foundation
Decision dated 20 April 1993 and numbered 310/338
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"
8. Edirne 2nd Synagogue Foundation
Decision dated 13 April 1973 and numbered 167/164
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"
9. Edirne Great Synagogue Foundation
Decision dated 2 September 1995 and numbered 897/941
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"

¹²⁵ E-mail by the Istanbul Jewish Chief Rabbi's Office containing a list of Jewish Synagogue foundations included among 'seized foundations', 11 February 2008.

10. Gaziantep-Kilis-Yusuf Biçaço Jewish Foundation
Decision dated 20 April 1975 and numbered 284/261
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"
11. Gaziantep-Jewish Synagogue Foundation
Decision dated 14 June 1983 and numbered 387/397
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"
12. İzmir Nesim Levi (Loy) Bayraklı Foundation
Decision dated 3 September 1982 and numbered 397/410
Reason for inclusion among 'seized foundations': "It ceased to serve its charitable and actual purpose"

The dates and numbers of the decisions to include the following foundations for Jewish synagogues among 'seized foundations' are not known:

13. Bergama Jewish Synagogue Foundation
14. Tire Jewish Synagogue Foundation
15. Ödemiş Jewish Synagogue Foundation
16. Aydın Jewish Synagogue Foundation
17. Nazilli Jewish Synagogue Foundation
18. Bodrum Jewish Synagogue Foundation
19. Milas Jewish Synagogue Foundation
20. Çorlu Jewish Synagogue Foundation
21. Lüleburgaz Jewish Synagogue Foundation
22. Urfa Jewish Synagogue Foundation
23. Amasya Jewish Synagogue Foundation
24. Tokat Jewish Synagogue Foundation

B. GREEK COMMUNITY

As of 2 March 2009, 24 foundations of the Greek Orthodox Community were included among 'seized foundations'.¹²⁶ Following their declaration as 'seized foundations', the DGF took over their control and seized their immovables.

Foundations of the Greek Orthodox Community that have been included among 'seized foundations':

1. Salkımsöğüt Aya Terapi Holy Spring and Primary School
2. Edirnekapı Aya Yorgi Greek Orthodox Church
3. Fener Katip Muslahattin Aya Yorgi Greek Church
4. Edirnekapı Greek Primary School
5. Vefa Panayia Church and Holy Spring
6. Aya Yani Church and Monastery under the Turi Sina Great Monastery
7. Deko Veledi Petro Sofyanos Tahta Minare District
8. Büyükada Aya Yorgi Greek Monastery
9. Heybeliada Aya Yorgi Greek Monastery
10. Heybeliada Panayia (Çam) Monastery
11. Burgazada Hristos Greek Monastery
12. Kınalıada Hristos Greek Monastery
13. Büyükada Hristos Greek Monastery
14. Büyükada Aya Nikola Greek Monastery

¹²⁶ The list of Greek Orthodox churches and monasteries included among 'seized foundations'. Information e-mailed by the Greek Patriarchate, 2 March 2009.

15. Tarabya Aya Yorgi Greek Church
16. İstinye Taksiarhi Greek Orthodox Church
17. Beyoğlu Yenişehir Evangelistra Greek Primary School
18. Büyükada Greek Orphanage
19. Gökçeada Aya Marina Kaleköy Church
20. Gökçeada Aya Varvara Greek Church
21. Heybeliada Hristos Monastery
22. Heybeliada Aya Spiridon Monastery
23. Tarabya Aya Eleni Greek Church
24. Heybeliada Girls Orphanage

Annex 2

List of seized immovables of the Armenian, Greek and Assyrian Communities

A. ARMENIAN COMMUNITY

As of November 2007, more than 30 real estates of the Armenian community were seized through the practice called the '1936 Declaration'.¹²⁷ Almost all of these real estates were registered to the foundations of the Armenian Community before they were taken over.

IMMOVABLES THAT HAVE BEEN TAKEN OVER ARE LISTED BELOW:

1. GÜLBENKYAN SELAMET COMMERCIAL BUILDING (SELAMET COMMERCIAL BUILDING)

Arpacılar Road, Şeyh Mehmet Ceylani District, Eminönü, Istanbul

Rightful Owner: Foundation for the Surp Pırgıç Armenian Hospital in Yedikule

Acquisition method: Donation by will (Kalust Gülbenkyan's will dated 18 June 1953)

Decision to execute the will: Decision of the 14th Civil Court of First Instance of Istanbul, dated 14 November 1958

Seized on: The decision of the 1st Civil Court of First Instance to cancel the will dated 30 November 1992. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 28 January 1994.

Status of the immovable: Transferred to the DGF.

ECtHR: The European Commission of Human Rights dismissed the foundation's complaint on 27 July 1994 on procedural grounds.

2. GEDİKPAŞA ARMENIAN PROTESTANT PRIMARY SCHOOL

Şakir Efendi Çeşme Road, No. 1-3, Kumkapı, Istanbul

Rightful Owner: Gedikpaşa Armenian Protestant Church Foundation

Acquisition method: Donation by purchase (donated by Arusyak Papazyan in 1940)

Registered on: 14 June 1948

Seized on: The decision of the 1st Civil Court of First Instance to cancel the title deed in May 1980 became final when it was approved by the 1st Civil Law Circuit of the High Court of Appeals on 16 September 1980.

Status of the immovable: Returned to the British Charitable Society, who had sold the immovable to Papazyan. However, it was transferred to the National Real Estate since this society was not represented in Turkey anymore and did not have inheritors. The school building has been demolished, and is still used as a park.

3. REAL ESTATE OF THE GEDİKPAŞA ARMENIAN PROTESTANT CHURCH (HOUSE)

Şakir Efendi Çeşme Road, No. 2, Kumkapı, Istanbul

Rightful Owner: Gedikpaşa Armenian Protestant Church Foundation

Acquisition method: Donated after being purchased (donated by Arusyak Papazyan in 1940)

Registered on: 16 November 1946

Seized on: The 18th Civil Court of First Instance of Istanbul decided on 25 June 1981 to cancel the title deed. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 8 December 1981.

¹²⁷ List of properties lost by the Armenian community, Hrant Dink's archive. For the full list of immovables seized from Armenian foundations through the 1936 Declaration, see Annex 2.

Status of the immovable: Returned to the British Charitable Society, who had sold the immovable to Papazyan. However, it was transferred to the National Real Estate since this society was not represented in Turkey anymore and did not have inheritors.

4. REAL ESTATE OF THE GEDİKPAŞA ARMENIAN PROTESTANT CHURCH (DINING HALL AND PLAYGROUND)

Şakir Efendi Çeşme Road, No. 4, Kumkapı, Istanbul

Rightful Owner: Gedikpaşa Armenian Protestant Church Foundation

Acquisition method: Donated after being purchased (donated by Arusyak Papazyan in 1940)

Registered on: 16 November 1946

Seized on: The 4th Civil Court of First Instance of Istanbul decided on 7 July 1981 to cancel the title deed. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 17 December 1981.

Status of the immovable: Returned to the British Charitable Society, who had sold the immovable to Papazyan. However, it was transferred to the National Real Estate since this society was not represented in Turkey anymore and did not have inheritors.

5. REAL ESTATE OF THE GEDİKPAŞA ARMENIAN PROTESTANT CHURCH (APARTMENT BUILDING)

Şakir Efendi Çeşme Road, No. 5, Kumkapı, Istanbul

Rightful Owner: Gedikpaşa Armenian Protestant Church Foundation

Acquisition method: Donated by purchasing (donated by Arusyak Papazyan in 1940)

Registered on: 16 November 1946

Seized on: The 8th Civil Court of First Instance of Istanbul decided on 23 December 1980 to cancel the title deed. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 3 November 1981.

Status of the immovable: Returned to the British Charitable Society, who had sold the immovable to Papazyan. However, it was transferred to the National Real Estate since this society was not represented in Turkey anymore and did not have inheritors.

6. REAL ESTATE OF THE GEDİKPAŞA ARMENIAN PROTESTANT CHURCH (HOUSE)

Şakir Efendi Çeşme Road, No. 25, Kumkapı, Istanbul

Rightful Owner: Gedikpaşa Armenian Protestant Church Foundation

Acquisition method: Donated by will (Arusyak Papazyan's will dated 9 July 1941)

Registered on: 17 February 1954

Seized on: The 3rd Civil Court of First Instance of Istanbul decided on 16 April 1982 to cancel the title deed. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 8 September 1982..

Status of the immovable: Transferred to the National Real Estate since Papazyan, the previous owner, was not alive and did not have inheritors. The building is in ruins and is not used.

7. TUZLA CAMP

Tuzla Üçmeşe Mevkii, Istanbul

Rightful Owner: Gedikpaşa Armenian Protestant Church Foundation

Acquisition method: Purchased (from Sait Durmaz in 1962)

Registered on: 15 November 1962

Seized on: The decision of the 3rd Civil Court of First Instance of Kartal dated 6 March 1983 to cancel the title deed. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 16 January 1983.

Status of the immovable: Returned to its previous owner who sold it to the foundation. The inheritors of the previous owner sold the camp to third parties. The building is in ruins and is not used.

ECTHR: The complaint filed by the foundation is still pending before the ECTHR.

8. REAL ESTATES OF THE YEDİKULE SURP PIRGİÇ ARMENIAN HOSPITAL (6 PIECES)

Tarakçılar road, Dayahatun district, No. 22-24, Eminönü, Istanbul (shop)

Tarakçılar road, Dayahatun district, Çinili Commercial Building, Ground Floor No. 1, Eminönü, Istanbul (room), Upper Floor No. 10 (36/84 of the room), Upper Floor No. 9 (room), Camii Şerif Road, No. 20, Büyükdere, Sarıyer, Istanbul (land), Canfes Road, No. 29, Büyükdere, Sarıyer, Istanbul (house)

Rightful Owner: Yedikule Surp Pırgıç Armenian Hospital Foundation

Acquisition method: Donation by will (Mıgırdiç Alyanakoğlu's wills dated 3 June 1946 and 23 August 1965)

Decision to execute the will: The decision of the Civil Court of Peace of Sarıyer dated 21 February 1969. The decision became final when affirmed by the 2nd Civil Law Circuit of the High Court of Appeals on 20 March 1969.

Reason for not registering: The decision of the General Board of the High Court of Appeals dated 1974.

Status of the immovables: Transferred to the Treasury. The Treasury appointed an administrator.

9. REAL ESTATES OF YEDİKULE SURP PIRGİÇ ARMENIAN HOSPITAL (HOUSE)

Şair Nef'i Road, No. 14, Caferağa District, Moda, Istanbul

Rightful Owner: Yedikule Surp Pırgıç Armenian Hospital Foundation

Acquisition method: Donation by will (Şuşanik Babikyan and Siranuş Babikyan's wills dated 8 May 1967)

Decision to execute the will: The decision of the 2nd Civil Court of Peace of Kadıköy.

Seized on: The decision of the 2nd Civil Law Circuit of the High Court of Appeals to cancel the will in 1999.

Status of the immovable: Transferred to the Treasury since the testators did not have any inheritors.

ECtHR: The complaint filed by the foundation with the ECtHR was concluded with friendly settlement on 26 June 2007. The immovable was returned and re-registered to the foundation.

10. REAL ESTATE OF KURUÇEŞME (YEREVMAN) SURP HARÇ CHURCH (HOUSE)

Beyaz Gül Road, No. 18, Arnavutköy, Istanbul

Rightful Owner: Kuruçeşme (Yerevman) Surp Harç Church Foundation

Acquisition method: Donation by grant (donated by a benefactor called Ağavni)

Registered on: 15 August 1962

Seized on: The decision of the 10th Civil Court of First Instance of Istanbul dated 18 June 1979 to cancel the title deed. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 15 November 1979.

11. REAL ESTATES OF YEDİKULE SURP PIRGİÇ ARMENIAN HOSPITAL (2 HOUSES)

Sıracevizler Street, No. 18 and 18/1, Şişli, Istanbul

Rightful Owner: Yedikule Surp Pırgıç Armenian Hospital Foundation

Acquisition method: Donation by will (Öjeni Azak Vartanyan's will dated 21 January 1960)

Decision to execute the will: The decision of the 3rd Civil Court of Peace of Istanbul.

Registered on: 5 December 1964

Seized on: The decision of the 16th Civil Court of First Instance of Istanbul dated 24 June 1975 to cancel the will. The decision became final when affirmed by the 2nd Civil Law Circuit of the High Court of Appeals on 29 June 1976.

Status of the immovables: Transferred to the Treasury since the testators did not have any inheritors.

12. REAL ESTATE OF YEDİKULE SURP PIRGİÇ ARMENIAN HOSPITAL (SHOP)

Varakçı Han Road, No. 35, Kapalıçarşı, Istanbul

Rightful Owner: Yedikule Surp Pırgıç Armenian Hospital Foundation

Acquisition method: Donation by will (Öjeni Azak Vartanyan's will dated 21 January 1960)

Registered on: 3 December 1964

Seized on: The decision of the 16th Civil Court of First Instance of Istanbul dated 24 June 1975 to cancel the will. The decision became final when affirmed by the 2nd Civil Law Circuit of the High Court of Appeals on 29 June 1976.

Status of the immovable: Transferred to the Treasury since the testators did not have any inheritors.

13. REAL ESTATE OF YEDİKULE SURP PIRĞIÇ ARMENIAN HOSPITAL (HOUSE)

Hamam Road, No. 5, İcadiye District, Üsküdar, Istanbul

Rightful Owner: Yedikule Surp Pırğıç Armenian Hospital Foundation

Acquisition method: Donation by will (Mıgırđıç Azak Vartanyan's will)

Registered on: 4 December 1964

Seized on: The decision of the 16th Civil Court of First Instance of Istanbul dated 24 June 1975 to cancel the will. The decision became final when affirmed by the 2nd Civil Law Circuit of the High Court of Appeals on 29 June 1976.

Status of the immovable: Transferred to the Treasury since the testators did not have any inheritors.

14. REAL ESTATES OF YEDİKULE SURP PIRĞIÇ ARMENIAN HOSPITAL (4 PIECES)

Akağalar Street, No. 287 and No. 120, Kurtuluş Istanbul (an apartment building that includes the usufruct of two apartments, one basement and a shop on the ground floor)

Kurtuluş Street, No. 285, Istanbul (warehouse)

Kurtuluş Street, No. 225 Flat 2, Istanbul (house)

Rightful Owner: Yedikule Surp Pırğıç Armenian Hospital Foundation

Acquisition method: Donation by grant (granted by Kişmo Dinçtosun in 1963)

Seized on: The decision of the 5th Civil Court of First Instance of Istanbul to cancel the title registration dated 11 January 1976.

Status of the immovables: Transferred to the Treasury since the testators did not have any inheritors.

15. REAL ESTATE OF YEDİKULE SURP PIRĞIÇ ARMENIAN HOSPITAL (BUILDING)

Şehit Muhtar District, Taksim Fırını Road, Section 9, Lot 419, Plot 15, Beyoğlu, Istanbul

Rightful Owner: Yedikule Surp Pırğıç Armenian Hospital Foundation

Acquisition method: Donation (granted by Maritza Tekfur in 1954)

Seized on: The decision of the 3rd Civil Court of First Instance of Beyoğlu dated 19 December 2000 to cancel the will. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 19 April 2001.

Status of the immovable: Transferred to the Treasury since the testators did not have any inheritors.

16. REAL ESTATE OF YEDİKULE SURP PIRĞIÇ ARMENIAN HOSPITAL (BUILDING)

Tercüman Çıkmazı, No. 25, Tomtom District, Beyoğlu, Istanbul

Rightful Owner: Yedikule Surp Pırğıç Armenian Hospital Foundation

Acquisition method: Donation by will (Hatun Arşaluys Lusinyan's will dated 15 March 1967)

Seized on: The decision of the 16th Civil Court of First Instance of Istanbul dated 24 June 1975 to cancel the will. The decision became final when affirmed by the 2nd Civil Law Circuit of the High Court of Appeals on 24 May 1976.

Status of the immovable: Transferred to the Treasury since the testators did not have any inheritors.

17. REAL ESTATE OF YEDİKULE SURP PIRĞIÇ ARMENIAN HOSPITAL (HOUSE)

Dünder Road, No. 41, Çamlıca Street, Üsküdar, Istanbul

Rightful Owner: Yedikule Surp Pırğıç Armenian Hospital Foundation

Acquisition method: Donation by will (Mari Siranuş Cıknavoryan's will dated 8 August 1969)

Seized on: The decision of the Civil Court of Peace of Üsküdar to cancel the will.

Status of the immovable: Transferred to the Treasury since the testators did not have any inheritors.

18. REAL ESTATE OF KUMKAPI DIŞI SURP HARUTYUN SCHOOL FOUNDATION (SHOP)

Arapzade Road, Behram Çavuş District, Kumkapı, Istanbul

Rightful Owner: Kumkapı Dışı Surp Harutyun Church Armenian School Foundation

Acquisition method: Purchased

Seized on: The decision of the 6th Civil Court of First Instance of Istanbul to cancel the title registration dated 19 November 1986 and reinstitute the previous registration. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 16 March 1988.

Status of the immovable: Transferred to the DGF.

19. REAL ESTATE OF KUMKAPI ST. MARY CHURCH (HOUSE)

Kulluk Road, No. 36, Şehsuvar District, Eminönü, Istanbul

Rightful Owner: Kumkapı St. Mary Church Foundation

Acquisition method: Purchased (on 2 November 1962)

Seized on: The decision of the 1st Civil Court of First Instance of Istanbul to cancel the title deed dated 26 June 1978 and to reinstitute the previous title deed. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 28 November 1978.

Status of the immovable: Transferred to the Treasury since the previous owners were not alive and did not have inheritors.

20. REAL ESTATE OF KUMKAPI DIŞI SURP HARUTYUN ARMENIAN CHURCH FOUNDATION (HOUSE)

Beyazleyek Road, No. 11 Floor 2 Flat 4, Osmaniye District, Kadıköy, Istanbul

Rightful Owner: Kumkapı Dışı Surp Harutyun Armenian Church Foundation

Acquisition method: By lottery (bank lottery in 1967)

Seized on: The decision of the 5th Civil Court of First Instance of Kadıköy dated 7 December 1995 to cancel the title deed. The decision became final when affirmed by the Civil Law Circuit of the High Court of Appeals.

Status of the immovable: Returned to the previous owner.

21. REAL ESTATE OF YENİKÖY KÜD DIPO SURP ASTVADZADZİN ARMENIAN CHURCH (LAND)

Kapalı Bakkal Road, İstinye District, Sarıyer, Istanbul

Rightful Owner: Yeniköy Küd Dipo Surp Astvadzadzin Armenian Church Foundation

Acquisition method: Donation (Donated by Karabet Semercioğlu and Ms Hayganuş on 26 May 1956)

Seized on: The decision of the 1st Civil Court of First Instance dated 14 August 1997 to cancel the title deed. The decision became final on 14 January 1999 when affirmed by the High Court of Appeals.

Status of the immovable: Transferred to the Treasury since the previous owners were not alive and did not have inheritors.

22. REAL ESTATE OF FERİKÖY SURP VARTANANTS CHURCH FOUNDATION (APARTMENT BUILDING)

Uyulubağ and Şahap Road Develi Apartment Building, Duatepe District, Şişli, Istanbul

Rightful Owner: Feriköy Surp Vartanants Church Foundation

Acquisition method: Donation by grant (granted by Nişan Mınakyan)

Registered on: 7 February 1961

Seized on: The decision of the 1st Civil Court of First Instance of Şişli dated 20 November 1984 to cancel the title deed and reinstitute the previous title deed. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 15 April 1985.

23. REAL ESTATES OF FERİKÖY SURP VARTANANTS CHURCH FOUNDATION (LAND)

Çobanoğlu Road, Duatepe District, Şişli, Istanbul

Rightful Owner: Feriköy Surp Vartanants Church Foundation

Acquisition method: Donation by grant (granted by Mıgırđıç Sayian on 12 September 1969)

Seized on: The decision of the 1st Civil Court of First Instance of Şişli dated 20 November 1984 to cancel the title deed and reinstitute the previous title deed. The decision became final when affirmed by the 1st Civil Law Circuit of the High Court of Appeals on 15 April 1985.

Status of the immovable: Returned to its previous owner.

24. BOMONTİ MIHİTARYAN SCHOOL - CATHOLIC

İzzetpaşa and Arpasuyu Road, No. 45, Cumhuriyet Street, Şişli, Istanbul

Rightful Owner: Surp Gazar Foundation

Acquisition method: Purchased (on 4 June 1958)

Seized on: The decision of the 1st Civil Court of First Instance of Şişli dated 17 February 1984 to cancel the title deed and reinstitute the previous title deed. The decision became final when affirmed by the High Court of Appeals on 14 March 1985.

Status of the immovable: Returned to the previous owners.

25. İGS BUILDING (SEVEN-STOREY BUILDING ON İSTİKLAL STREET)

İstiklal Street, Şehit Muhtar District, Section 10, Lot 404, Plot 9, Beyoğlu, Istanbul

Rightful Owner: Yedikule Surp Pırgıç Armenian Hospital Foundation

Acquisition method: Donation by will (Öjeni Dındes Roman's will dated 1952)

Seized on: The decision of the 2nd Civil Court of First Instance of Beyoğlu dated 24 February 1998 to cancel the title deed and reinstitute the previous title deed. The decision became final when affirmed by the High Court of Appeals on 26 January 1999.

Status of the immovable: Transferred to the Treasury since its previous owner did not have an inheritor. When the foundation was waiting for the outcome of its complaint to the ECtHR, the National Real Estate operating under the Treasury sold the building on 1 March 2005 for YTL 4,160,000 using the closed proposal procedure. Later on, the sale was cancelled upon reaction.

ECtHR: The complaint filed with the ECtHR by the foundation was concluded with friendly settlement on 26 June 2007. The immovable was returned and re-registered to the foundation.

26. EFTİK MANYAS' WILL (ENTIRE ASSETS)

Keseciler Road, No. 112, Çarşı District, Eminönü, Istanbul

Müneccimbaşı Road, No. 48, İcadiye District, Üsküdar, Istanbul

Akkarga Road, No. 13, İnönü District, Şişli, Istanbul

Rightful Owner: Yedikule Surp Pırgıç Armenian Hospital Foundation

Acquisition method: Donation by will (Eftik Manyas' will dated 12 January 1962)

Decision to execute the will: The decision of the Civil Court of Peace of Üsküdar dated 6 March 1967

Seized on: The decision of the 2nd Civil Court of Peace of Üsküdar in 1976 to cancel the will.

Status of the immovables: Transferred to inheritors.

27. THREE ADJACENT HOUSES OF THE SAMATYA SURP KEVORK ARMENIAN CHURCH

Bilezikçi Road, Bozkurt District, Şişli, Istanbul

Rightful Owner: Samatya Surp Kevork Armenian Church School and Cemetery Foundation

Acquisition method: Donation (granted on 11 October 1955)

Seized on: The decision of the Civil Court of First Instance of Şişli dated 21 November 2000 to cancel the title registration. The decision became final when affirmed by the High Court of Appeals on 25 September 2001. The appeal of the foundation was denied on 29 April 2002 by the High Court of Appeals.

Status of the immovable: Transferred to the Treasury since there were no inheritors.

ECtHR: Turkey was convicted on 16 November 2008 in the case filed by the foundation with the ECtHR. The ECtHR awarded a EUR 600,000 indemnification to the foundation.

28. VAHRAM KARABET MADAT'S WILL (ALL IMMOVABLES)

Türkbeyi Road, Ergenekon Street, Bozkurt District, Şişli, Istanbul (shops)

Türkbeyi Road, ground floor No. 1, Ergenekon Street, Bozkurt District, Şişli, Istanbul (shops)

İlk Belediye Road, Şahkulu District, Beyoğlu, Istanbul

Molataş Road, Sururi District, Eminönü, Istanbul

Rightful Owners: Yedikule Surp Pırgıç Armenian Hospital Foundation, Kalfayan Orphanage Foundation, Karagözyan Orphanage Foundation

Acquisition method: Donation by will (Vahram Karabet Madat's will dated 14 August 1968)

Seized on: The decision of the 8th Civil Court of Peace of Istanbul to cancel the will dated 1974.

Status of the immovables: Transferred to inheritors. The foundation filed an application for re-registration of the immovable under Law No. 4771. The application is still pending.

29. IMMOVABLE OF THE YEDİKULE SURP PIRGİÇ ARMENIAN HOSPITAL (HOUSE)

Kocatepe District, Beyoğlu, Istanbul

Rightful Owner: Yedikule Surp Pırgıç Armenian Hospital Foundation

Acquisition method: Donation (granted by Vahran Kaprielyan on 14 July 1964).

Status of the immovable: The lawsuit filed by the Treasury with the 4th Civil Court of First Instance of Beyoğlu was dismissed on 28 November 2006 stating that Law No. 4771 was enacted. The immovable has been registered to the foundation.

30. IMMOVABLE OF YEDİKULE SURP PIRGİÇ ARMENIAN HOSPITAL (FLAT)

Kocatepe District, Recep Paşa Road, No. 49, Flat 3, Lot 523, Plot 17, Beyoğlu, Istanbul

Rightful Owner: Yedikule Surp Pırgıç Armenian Hospital Foundation

Acquisition method: Donation (granted by Virkinya Başreisyan on 14 March 1962)

Seized on: The decision of the 3rd Civil Court of First Instance of Beyoğlu on 9 May 2001 to cancel the title deed in the lawsuit filed by the Treasury on 2 November 1998. The decision was affirmed on 13 November 2001 by the 1st Civil Law Circuit of the High Court of Appeals and became final when the appeal was denied on 11 February 2002.

Law No. 4771: The application filed by the foundation on 26 March 2003 pursuant to Law No. 4771 was rejected by the DGF.

Status of the immovable: Put up for auction by the inheritors and sold by court order on 21 July 2005 for YTL 771,000.

ECTHR: The ECtHR convicted Turkey on 16 December 2008 in the case filed by the foundation. ECtHR ordered Turkey to pay a EUR 275,000 indemnification to the foundation.

B. GREEK COMMUNITY

As of 26 October 2007, almost 1,000 immovables of 81 foundations of the Greek Orthodox Community were seized. Moreover, the property of individual members of the Greek Orthodox community were seized. The list below contains information on the immovables that were taken over from foundations and individuals.¹²⁸

I) SEIZED IMMOVABLES OF FOUNDATIONS

1. BALIKLI GREEK HOSPITAL FOUNDATION

Type and number of immovables: 157 houses, 26 garden houses, 21 apartment buildings, 3 buildings, 6 flats, 66 shops, 2 commercial buildings, 1 nail plant, 1 soft drink plant, 2 hotels, 1 meeting venue, 1 nightclub, 1 cabaret, 2 music halls, 2 warehouses, 1 workshop, 26 pieces of land, 1 field, 2 vineyards, 2 vegetable gardens, 1 orchard, 3 cemeteries

Location of immovables: Fatih, Beyoğlu, Şişli, Beşiktaş, Eminönü, Kadıköy, Üsküdar, Adalar, Bakırköy, Zeytinburnu.

2. FOUNDATION FOR THE AYA YORGİ CHURCH, FENER GREEK PATRIARCHATE

One cistern and timber warehouse in Heybeliada, one timber house with garden, one piece of land and stone houses, ¼ of a house in Eminönü, consulate building in Beyoğlu.

3. FENER GREEK HIGH SCHOOL FOUNDATION

19 pieces of land in Kadıköy, Göztepe; 2 pieces of land, 2 shops and 1 house in Kadıköy, Osmanağa District; 1 building in Bakırköy; 1 house in Eyüp Hamam Muhittin District; 2 pieces of land in Göztepe Ege.

4. YENİMAHALLE AYA YANİ CHURCH AND PRIMARY SCHOOL FOUNDATION

2 houses, 2 pieces of land and 1 holy spring in Sarıyer Yenimahalle.

5. FENER YOAKİMİON GREEK GIRLS SCHOOL FOUNDATION

1 flat on Ölçek Road in Şişli.

¹²⁸ The list e-mailed by Metropolitan Meliton (Istanbul Greek Patriarchate) containing immovables seized from the Greek foundations despite existing title deeds, 26 October 2007. The Istanbul Greek Patriarchate may be contacted for more detailed information on the addresses of these immovables.

6. KURTULUŞ GREEK COMMUNITY FOUNDATION

2 houses in Beyoğlu Hacı Ahmet and Çatma Mescit districts, 1 house in Kadıköy Zühtü Paşa district, 6 pieces of land, 1 in Ahmet Bostanı and 3 in Çınar.

7. VEFA HOLY SPRING FOUNDATION

4 houses in Fatih Hamamımuhittin District; 1 church in Fatih Küçük Mustafa Paşa District

8. YENİKÖY AYA NİKOLA CHURCH FOUNDATION

2 holy springs, 1 vineyard, 1 apartment building, 1 piece of land in İstinye Neslişah Sultan and Aya Efstratios Holy Spring

9. BEBEK AYA HARALAMBOS CHURCH AND BEBEK AYA YANİ CEMETERY FOUNDATION

1 house in Beşiktaş, Bebek District; 1 piece of land in Tayyareci Suphi; 1 piece of land in İnşirah Road; 1 piece of land in Sepedi; 1 house on the Dere Road; 1 cemetery in Aycırına Mevkii

10. AYVANSARAY AYA DİMİTRİ AND AYA VLAHERNA CHURCHES AND SCHOOL FOUNDATION

3 houses in Fatih (2 garden houses); city wall strip along Fatih Karabaş Sinabi Road; 2 pieces of land along Fatih Karabaş Ağaçlıçeşme Road; 1 piece of land in Fatih Karabaş Mahkeme; 1 piece of land in Fatih Mustafa Paşa; 1 workshop in Fatih Karabaş District; 1 plant at Yandavut District Pier, 1 piece of land on Bostan Road.

11. FENER ST. MARY A.K.A. KANLI CHURCH FOUNDATION

3 houses, 1 piece of land, 1 building in Fatih Tevkii Cafer District.

12. PARASKEVİ GREEK ORTHODOX CHURCH FOUNDATION

3 pieces of land, 1 building and shops in Fatih İmrahor District; 1 holy spring and pieces of land in Zeytinburnu.

13. KUMKAPI GREEK COMMUNITY AYA KİRİAKİ AND PANAYİA ELPİDA CHURCHES AND SCHOOL FOUNDATION

1 shop in Beyazıt Kapalıçarşı; 1 fountain in Çadırcı Kadirga Port.

14. KURUÇEŞME AYA DİMİTRİ AND AYA YANİ CHURCHES FOUNDATION

2 pieces of land, 1 garden house, 1 holy spring, 1 cemetery in Beşiktaş Kuruçeşme District; Analipsis Holy Spring; 1 house in Çınarlı Asma; 1 piece of land in Kırba and Alay Emni, 1 piece of land in Çınarlıçeşme Çıkmazı; 1 piece of land in Kireçhane; annexes to the church in Alay Beyi.

15. HASKÖY AYA PARASKEVİ CHURCH FOUNDATION

1 piece of land, 1 cemetery and 2 shops in Beyoğlu Pirimehmet Paşa District; 5 shops in Beyoğlu Keçeci Piri District; 1 piece of land and cemetery in Sütlüce; 2 pieces of land in Eski Yağhane; 2 pieces of land in Bastar; 1 piece of land in Vapur İskelesi; 1 piece of land in Çançan.

16. BÜYÜKDERE AYA PARASKEVİ CHURCH AND PRIMARY SCHOOL FOUNDATION

2 houses in Sarıyer Çayırbaşı District (one with garden)

2 houses in Sarıyer Büyükdere District (one with garden), 1 warehouse and apartment buildings in Taksim Yağhane.

17. BÜYÜKADA GREEK PRIMARY SCHOOL AND PANAYİA AYA DİMİTRİ AND PROFİTİ İLİYA CHURCHES AND GREEK CEMETERY FOUNDATION

3 houses in Büyükada (1 with garden).

18. EVANGELİSTRİA GREEK ORTHODOX CHURCH FOUNDATION ON BEYOĞLU YENİŞEHİR CHURCH (HACI İLBEY) ROAD

1 shop in Şişli Eskişehir District; 1 auxiliary building and 1 shop in Miniran.

19. YENİKÖY PANAYİA CHURCH AND GREEK SCHOOL FOUNDATION

2 houses, 1 piece of land, 1 cemetery in Sarıyer Yeniköy District; 1 stone house in Ecadı; shops with rooms in Köybaşı; 1 workshop and pieces of land in Sarıyer Yeniköy District

20. ARNAVUTKÖY GREEK ORTHODOX TAKSİARHİ CHURCH AND CEMETERY FOUNDATION

1 field, 1 church, 2 holy springs, 2 pieces of land.

21. YENİKÖY AYA NİKOLA CHURCH FOUNDATION

2 houses, 1 piece of land.

22. TARABYA AYA PARASKEVİ GREEK CHURCH AND GREEK PRIMARY SCHOOL FOUNDATION

4 houses, 2 pieces of land, 1 holy spring, 1 cemetery.

23. HEYBELİADA AYA NİKOLA CHURCH AND GREEK ORTHODOX CEMETERY AND UFAK AYA VARVARA CHURCH FOUNDATION IN THE CEMETERY

3 houses, 3 shops, 1 piece of land, 1 cemetery; 1 piece of land in Ayyıldız.

24. BOYACIKÖY PANAYİA EVANGELİSTRİA CHURCH AND SCHOOL FOUNDATION

10 pieces of land (one on Necip Paşa Road and one in Toraman), 3 buildings, 1 church, 3 holy springs, 1 school building, 1 cemetery, 2 school buildings, 3 houses.

25. AYA TODORİ GREEK ORTHODOX CHURCH LANGA GREEK COMMUNITY PRIMARY SCHOOL FOUNDATION

2 workshops.

26. ÜSKÜDAR PROFİTİ İLİYA GREEK CHURCH AND HOLY SPRING AND CEMETERY AND GREEK MIXED PRIMARY SCHOOL FOUNDATION

9 pieces of land, 2 houses, 1 shop, 1 fountain; 1 piece of land in Fıçı; 1 house in Fıstık; 1 warehouse on Trablus Road, 2 pieces of land on Allame Road, 1 house and shop in Altunizade.

27. ORTAKÖY AYA FOKA GREEK CHURCH AND AYA YORGİ CHURCH-CEMETERY AND SCHOOLS FOUNDATION

1 piece of land, 1 shop

28. HEYBELİADA AYA TRİADA A.K.A. TEPE MANA FOUNDATION

2 pieces of land, 6 vineyards, 2 shops, 1 theological school, 1 orchard, 1 stable, 1 monastery, 1 house, 1 music hall, 1 house and 1 church.

29. BURGAZADA AYA YANİ CHURCH AND GREEK CEMETERY FOUNDATION

1 house, 1 shop, 1 holy spring and cemetery

30. SAMATYA AYA MİNA CHURCH FOUNDATION

1 house in Fatih Abdi Çelebi District; 1 piece of land in Fatih Koca Mustafa Paşa District.

31. ÇENGELKÖY AYA YORGİ GREEK CHURCH AND AYA TANTALİ HOLY SPRING AND GREEK MIXED PRIMARY SCHOOL AND TWO OLD AND NEW CEMETERIES FOUNDATION

1 cemetery, 1 piece of land in Üsküdar Çengelköy District

32. SAMATYA AYA YORGİ KİPARİSA CHURCH FOUNDATION

1 house in Fatih Koca Mustafa Paşa District.

33. BURGAZADA GÖNÜLLÜ ROAD AYA YORGİ (KARİPİ) MONASTERY FOUNDATION

1 monastery, 1 night club, 1 house, 1 piece of land, 10 vineyards, 2 nurseries, 1 cabbage field, 1 monastery, 2 residences, 1 piece of land, 1 country music hall, 4 pieces of land in Burgazada; 6 pieces of land in Kalpazankaya; 1 old movie theater in Yeni Yalı.

34. GALATA BEYAZIT DISTRICT PRIMARY GREEK SCHOOL FOUNDATION

1 school building, 7 shops in Beyoğlu Hacımimi District.

35. KADIKÖY GREEK ORTHODOX COMMUNITY CHURCHES, SCHOOLS AND CEMETERY FOUNDATION

1 church, 1 school building, 1 shed, 3 shops in Kadıköy, Kalamış Zühtüpaşa District; 1 cemetery in Hasanpaşa District; 1 shop in Osmanağa District; 1 garden house in Caferağa District; 1 house and shops on Kiremit Street; Aya Triada Church, pieces of land in Hacı Şükrü; Aya Yani Church and 1 community school in Kalamış.

36. BEBEK AYA HARALAMBOS CHURCH AND BEBEK AYA YANI CEMETERY FOUNDATION

1 cemetery, 1 house in Beşiktaş Bebek District.

37. BELGRADKAPI ST. MARY CHURCH (PANAYIA) FOUNDATION

2 houses, 2 shops, 1 church in Edirnekapi Kariye-i Atik Paşa District.

38. PAŞABAHÇE AYİOS KONSTANTİNOS GREEK ORTHODOX CHURCH FOUNDATION

1 cemetery, 1 community school in Beykoz Paşabahçe District.

39. SARMAŞIK AYA DİMİTRİ CHURCH FOUNDATION

1 house in Fatih Hatice Sultan District.

40. YEŞİLKÖY AYA STEFANOS CHURCH-PRIMARY SCHOOL AND CEMETERY

1 cemetery in Bakırköy Şevketiye District.

41. SAMATYA AYA KONSTANTİN GREEK CHURCH PRIMARY SCHOOL AND KAZLIÇEŞME AYA PARASKEVİ GREEK ORTHODOX CHURCH FOUNDATION

1 house in Fatih İmrahor District; 1 shop and house in Tabacı; 1 immovable in Kalancı Bedri

42. KUZGUNCUK GREEK CHURCH

1 piece of land, garden houses, cemetery and building in Üsküdar Kuzguncuk District.

43. KANDİLLİ AYA METAMORFOSİS CHURCH AND PRIMARY SCHOOL FOUNDATION

2 houses in Üsküdar Kandilli District.

44. ARNAVUTKÖY GREEK ORTHODOX TAKSİARHİ CHURCH AND CEMETERY FOUNDATION

1 cemetery, 1 holy spring, 3 pieces of land, 2 building.

45. BALAT MAHKEMEALTI STREET GREEK BALİNO CHURCH FOUNDATION

2 workshops, 1 immovable, 3 pieces of land in Hacı İsa Sulu, 1 piece of land in İsa Çıkmazı and Ayvalı; 1 piece of land on Hacı İsa Road Çeşme.

46. TARABYA AYA PARASKEVİ GREEK CHURCH AND PRIMARY GREEK SCHOOL FOUNDATION

5 houses (two with gardens), 3 pieces of land, 1 cemetery, 1 school building, 1 church, 2 springs (one Aya Kiriali holy spring).

47. PANAYIA CHURCH GREEK CEMETERY FOUNDATION OF THE GREEK ORTHODOX COMMUNITY ON HAMAM ROAD IN KINALIADA

1 church, 1 cemetery, 1 garden house in Teffikkiye.

48. ORTAKÖY AYA FOKA GREEK CHURCH AND AYA YORGİ CHURCH-CEMETERY AND SCHOOLS FOUNDATION

4 shops, 1 piece of land, 1 school building.

49. SALMATOMRUK GREEK PANAYÍA CHURCH FOUNDATION

1 house in Fatih Sultanhamam District.

50. EDİRNEKAPI AYA YORGİ GREEK ORTHODOX CHURCH FOUNDATION (SEIZED)

Shops on Hocaçakır Road, 1 shop and houses on Kariye Vaiz Road, 1 house on Kariye Neşter Road, 1 house on Bostan Road.

51. TARABYA AYA YORGİ GREEK CHURCH (SEIZED)

2 holy springs; 1 church, pieces of land, school on Ahiçelebi Road; 1 piece of land in Kerelköy; 1 house on Yeniköy Street; 1 house in Arkar; 1 old kindergarten on Dere Road; 1 holy spring in Tarabya Köprü; 1 timber house on Kalpakçihüseyn Road; 1 piece of land, houses and restaurant on Kefeliköy Road; 1 holy spring and pieces of land on Kireçburnu Road.

52. FENER AYA YORGİ POTİRA GREEK ORTHODOX CHURCH FOUNDATION (SEIZED)

5 houses (four stone houses), 1 stone church, 3 houses, 1 piece of land in Murat Molla, 2 houses on Kiremit Street.

53. BÜYÜKADA AYA YORGİ KUDUNA MONASTERY FOUNDATION (SEIZED)

1 house, 2 pieces of land.

54. KINALIADA METAMORFOSİS HRİSTOS MONASTERY (SEIZED)

1 holy spring (Ag. Fotini.), 1 monastery, 15 pieces of land; 29 pieces of land (10 in Bahçesi Mevkii)

55. BÜYÜKADA AYA NİKOLA GREEK ORTHODOX CHURCH FOUNDATION (SEIZED)

1 monastery in Neden District

56. HEYBELİADA AYA SPİRİDON MONASTERY FOUNDATION (SEIZED)

1 monastery.

57. BÜYÜKADA HRİSTOS MONASTERY FOUNDATION (SEIZED)

1 monastery and vineyard.

58. HEYBELİADA AYA YORGİ KRİMNU MONASTERY (SEIZED)

1 monastery.

59. HEYBELİADA METAMORFOSİS SOTİROS MONASTERY (SEIZED)

1 monastery.

60. BURGAZ METAMORFOSİS SOTİROS MONASTERY (SEIZED)

1 monastery, 1 forest land (180,000 m²); garden houses on Cemetery Road; 1 house on Yalı Road.

61. HEYBELİADA PANAYÍA KAMARİOTİSSA (MONASTERY)

1 monastery.

62. İSTİNYE TAKSİARHİ GREEK ORTHODOX CHURCH FOUNDATION (SEIZED)

Church and houses on İstinye Street; cemetery at the backyard of the church; 1 house and pieces of land on Balyemez Street; 1 piece of land on Çapari Street, 4 pieces of land in Kayıkçı Hüsni.

63. BÜYÜKADA GREEK BOYS ORPHANAGE – HEYBELİADA GREEK GIRLS ORPHANAGE FOUNDATION (SEIZED)

1 orphanage, 2 apartment buildings, 5 houses, 4 pieces of land, 2 houses in Sabancı Ali and Ömer Hayyam.

64. VEFA HOLY SPRING FOUNDATION (SEIZED)

1 holy spring and shops; 2 houses in Hacı Cafer District and İmam Road.

65. AYA TERAPON HOLY SPRING FOUNDATION (SEIZED)

1 holy spring in Mola Paşa.

66. KALEKÖY AYA MARİNA CHURCH FOUNDATION (SEIZED)

Church and 10 fields in Kardamos; 5 chapels, church, church office, community office, primary school, shops, houses in the village, chapels in Vigla and Arida, 1 building and pieces of land on Barbaros Street 2 warehouses and pieces of land.

67. AYA VARVARA CHURCH İMROZ (SEIZED)

2 pieces of land, 1 church, holy spring, church office in the village; 2 chapels in Kaniaris, 1 chapel each in Mila, Metala Dam, Ahlakia, Plakia, Limni, Kalamnia, Tobani, Palaval, Lazarada, Turlos, Burnion, Frukotion, Glaros, Ayia Sofia, Plumnia, Ksiyado and Sarafido; fields and olive orchards in Kapsamionan and Kamaration, 1 field in Faskarnia.

68. GALATA COMMUNITY FOUNDATION (SEIZED)

1 butchery, 3 churches, 10 shops, 3 pieces of land.

69. BÜYÜKADA GREEK ORPHANAGE FOUNDATION

2 apartment buildings, 1 shop, 2 houses, 2 pieces of land in Beyoğlu; 2 houses (1 with garden) 2 pieces of land in Büyükada.

70. FERİKÖY GREEK ORTHODOX 12 APOSTLES CHURCH AND SCHOOL FOUNDATION

1 house.

71. SAMATYA AYA KONSTANTİN AND ELENİ GREEK CHURCH PRIMARY SCHOOL

1 house on İlsay Bey Road.

72. SAMATYA AYA NİKOLA CHURCH FOUNDATION

2 houses, 3 pieces of land on Muallim Fevzi Road.

73. HANÇERLİ PANAYİA GREEK ORTHODOX CHURCH FOUNDATION (PALACE OF CONSTANTINE PORPHYROGENETUS)

1 house and pieces of land on Ulubatlı Hasan Road; 2 houses in Kazmaca.

74. BAKIRKÖY AYA YORGİ AND AYA ANALİPSİS CHURCHES AND SCHOOLS FOUNDATION

1 shop on Istanbul Street.

75. BEŞİKTAŞ PANAYİA ST. MARY CHURCH FOUNDATION

1 house on Peri Çıkmazı Road.

76. BEYOĞLU GREEK ORTHODOX COMMUNITY CHURCHES AND SCHOOLS FOUNDATION

1 house in Kalyoncu Kulluğu; 3 shops in Yüksek Kaldırım.

77. BÜYÜKADA GREEK PRIMARY SCHOOL AND PANAYİA AYA DİMİTRİ AND PROFİTİ İLİYA CHURCHES

1 house in Zağanos Paşa, 2 timber houses in Çelebi Eğri, 1 cemetery in Büyükada Maden district.

78. YEŞİLKÖY AYA STEFANOS CHURCH – PRIMARY SCHOOL AND CEMETERY FOUNDATION

2 pieces of land (one in Liman)

79. FATİH HOLY SPRING

1 holy spring in Bizanti Çeşme

80. MERKEZ GREEK CHURCH FOUNDATION

1 piece of land in Maç.

81. BÜYÜKADA AYA YORGİ KUDUNA MONASTERY FOUNDATION

2 pieces of land

II) SEIZED IMMOVABLES OF INDIVIDUALS

ZARIFI FAMILY

1 piece of land and building on Çarkıfelek Road in Büyükada; 1 piece of land and building on Aydoğdu Zeytinlik Road in Büyükada; 1 piece of land and building in Alpaslan Sanatorium, Büyükada; 2 pieces of land and 1 building on Aya Nikola Road in Büyükada; 1 building and 2 pieces of land on Büyüktur Road in Büyükada; 1 piece of land and building on Yılmaztürk Road in Büyükada; 4 pieces of land on Mansur Road in Beyoğlu; 3 pieces of land on Dere Road in Beyoğlu; 1 piece of land on Saçlı Kır Road in Beyoğlu; 1 clergy school in Tarabya.

1 piece of land on Aya Nikola Road in Büyükada transferred to the state between 1989 and 1991, and 1 piece of land and building on Cami Çıkmazı Road in Büyükada, transferred to the state on 12 January 1991.

III) IMMOVABLES TRANSFERRED TO THE STATE BY COURT ORDER, WHOSE OWNERS ARE NOT KNOWN

1 monastery, 2 coffee houses, 13 pieces of land, 2 stone buildings in Burgazada, 2 pieces of land in Tarabya.

3 foundation immovables in Burgazada, whose owners are not known, were also transferred to the state.

C. ASSYRIAN AND CHALDEAN CATHOLIC COMMUNITIES

1. IMMOVABLE (CHURCH) OF THE ASSYRIAN CATHOLIC COMMUNITY

Gümüşsuyu District, Saray Arkası and Selime Hatun Camii Road, Section 83, Lot 726, Plot 41, Beyoğlu

The story of the seizure of the church first from Jesuit Catholics then from Assyrian Catholics is discussed in detail in section II.C.3 of the report.

2. REAL ESTATE OF THE CHALDEAN CATHOLIC COMMUNITY (BUILDING)

Katip Mustafa Çelebi District, Hocasade Road No. 16 (previous No. 18), Section 21, Lot 461, Plot 9

Rightful owner: Istanbul Chaldean Catholic Church Foundation

Seized on: Registered on 21 August 1975 to Debağzade Elhaç İbrahim Efendi.

Litigation: 2nd Civil Court of First Instance of Beyoğlu denied the foundation's request for the return of the immovable in 1984. The lawsuit filed by the foundation in 2003 with the 10th Chamber of the Council of State is still pending.

Annex 3

Draft Law on Community Foundations

Hüseyin Hatemi

16 January 2004

ARTICLE 1: FIELD OF APPLICATION

This Law shall apply to community foundations.

For the purposes of this Law, the term “community foundations” shall refer to all foundations that were regarded to have a status of a community foundation in 1935 when the Law on Foundations numbered 2762 entered into force, and to foundations that were established by members of the Jewish or Christian religions for religious purposes after that date and vested with a legal entity status.

ARTICLE 2: COMMUNITY FOUNDATIONS FOR SOCIAL RELIEF

In order for a foundation established for providing social relief in cash or in kind to be regarded as a community foundation, the social relief provided by that foundation must be limited to the religious community of which its founder or founders are members. Social relief foundations in other cases shall not be included in the scope of community foundations.

Healthcare institutions that were established as community foundations or are regarded as having transformed into a community foundation pursuant to Paragraph 2, Article 8 of this law shall be considered community foundations regardless of whether or not they were established with the purpose of providing services to patients of a specific community.

ARTICLE 3: EDUCATIONAL COMMUNITY FOUNDATIONS

Educational community foundations are only those foundations among school foundations that were regarded to have the status of a community foundation under the Law on Foundations numbered 2762, the sole objective of which is not to educate religious functionaries.

These community foundations shall be supervised by the Ministry of Education under the framework of the general provisions of the legislation governing the supervision of private schools.

The status of institutions whose sole objective is to educate religious functionaries as a community foundation with a legal existence shall cease as of the effective date of this law, and such institutions shall become members of federations that have a legal entity status, as provided in Article 9 hereunder.

After the effective date of this law, the permission to open schools for educating religious functionaries shall be granted to federations, by the Council of Ministers, upon an application to be filed by the federation as a legal entity through the ministry that is in charge of religious public services.

In cases where a basic or secondary education institution whose sole objective is not to educate religious functionaries is operating under a religious community foundation in the strict sense, such educational institution shall not be required to be segregated from the community foundation as a legal entity after the effective date of this law, where supervision shall be conducted in the same manner, under the provisions of this law. However, the rights of the Ministry of Education to conduct general supervision with respect to the content and scope of the education shall not be prejudiced.

ARTICLE 4: ESTABLISHMENT

Establishment of community foundations after the effective date of this law shall be subject to the provisions of the Civil Code in accordance with basic constitutional principles.

ARTICLE 5: CAPACITY

Community foundations shall have the capacity to acquire rights and the capacity to act at the level of other foundations that are subject to the Civil Code.

ARTICLE 6: BAN ON POLITICAL ACTIVITIES

Community foundations shall not enter into solidarity or support relationships with any political party and shall not run publicity campaigns in favor of any party or candidate.

Community foundations shall not receive from or make donations to any foreign or domestic political party.

ARTICLE 7: AUDITS

After the effective date of this law, Community Foundations shall be subject to audits by the Ministry in charge of religious public services and the federations specified in Annex 1, rather than the Directorate General for Foundations.

The federation with which the community foundation is related shall audit the community foundations that are under its responsibility, and shall notify the results of such audits to the Ministry through a report issued every two years.

The power of the Ministry to conduct audits directly, upon the request of the Ministry of Interior Affairs or the Ministry of Finance shall not be prejudiced.

ARTICLE 8: FOREIGN COMMUNITY FOUNDATIONS

No foreign community foundation with religious purposes may be established within the territory of the Republic of Turkey under the scope of this law, after the effective date of this law.

Foundations that have been established until now under this law, with purposes specific to community foundations, shall be deemed to have been transformed into community foundations subject to this law.

Places that do not have a legal entity status but are allocated for the religious service needs of members of diplomatic agencies such as embassies or consulates shall be beyond the scope of the provisions of this law.

ARTICLE 9: FEDERATIONS AS LEGAL ENTITIES

The federations listed in Additional Article 1 are vested with a Public-Interest Private Legal Entity Status, and shall enjoy the rights and opportunities granted to legal entities having this status.

Those institutions with the objective of religious education in the strict sense that educate religious functionaries shall not have the status of a community foundation as a legal entity individually, and shall function directly under the respective federation.

These federations shall be entitled to receive lucrative or gratuitous gifts *causa mortis* or *inter vivos*.

The political activity ban in Article 5 shall apply to federations as well.

Whereas community foundations shall be entitled to engage in commercial activities to serve their charitable purposes, federations shall not be vested with a capacity in the commercial field.

Due to the above-mentioned nature of federations, they shall be audited through the Ministry of State in charge of religious public services.

ARTICLE 10: DISSOLUTION OF COMMUNITY FOUNDATIONS

Community foundation as a legal entity shall be dissolved upon a decision to be made as a result of the final judgment on and establishment of the fact that it had become impossible for its objective to be achieved, by the Court of First Instance, upon an application to be filed by the respective federation for that purpose.

A lawsuit for dismissal to be filed by the respective ministry or federation after criminal acts that require the dismissal of executives are established by virtue of a decision made by a criminal court shall not lead to the dissolution of the legal entity.

Until the conclusion of the trial upon the decision for temporary suspension from office made by a criminal court as a measure, and upon the application filed by the federation, the management of the foundation shall be delegated to a board of receivers comprised of three members chosen from among the officials of the federation.

ARTICLE 11: ALLOTMENT

Following the finalization of the decision establishing that the status of the community foundation as a legal entity is terminated, a dissolution board comprised of three members to be assigned from among the officials of the federation

shall finalize the dissolution procedure, and the assets remaining after the dissolution shall be transferred to the legal entity of the federation. The legal entity of the federation shall be entitled to transfer these assets to another community foundation with a similar objective.

ARTICLE 12: EFFECTIVE DATE

This Law shall become effective 3 months after its date of publication.

ARTICLE 13:

This Law shall be enforced by the Council of Ministers.

ADDITIONAL ARTICLE 1: TRANSITION RULES

The following bodies shall have a legal entity status as a public-good federation as of the effective date of this Law:

a- Istanbul Orthodox Patriarchate for all Orthodox community foundations around the country:

The Heybeliada (Halki) Seminary is not a separate community foundation and shall be opened to education as a school under the Patriarchate.

Institutions registered in the name of the Patriarchate in the Ottoman Era such as the Büyükada Greek Orphanage are not separate community foundations and shall be deemed to be included in the estate of the Patriarchate.

Immovable properties that perform pious acts or are revenue-yielding real estate, were left outside the scope of population exchange treaties or population exchange legislation, and regarded to be part of an Orthodox community foundation under Law No. 2762, and subsequently transferred to the legal entity of seized foundations, the Directorate General for Foundations, the Treasury or to another public legal entity without paying any consideration in return for expropriation by virtue of the law or by any other means shall be returned to the Orthodox Patriarchate representing the federation of Orthodox community foundations as a legal entity, by the respective public legal entity until the effective date of this law, or to the respective community foundation if the status of such foundation as a legal entity is deemed to be maintained, regardless of whether or not a final court order has been issued against them.

The Patriarchate shall return these immovable properties to community foundations whose status as a legal entity is maintained, and shall be entitled to allot the assets of community foundations whose status as a legal entity was ceased, to other community foundations or to retain such assets.

Immovable properties that were entered in their 1936 Declarations under aliases or fictitious names shall be transferred to the Patriarchate under the same conditions or may be transferred to the respective community foundation if the status of such foundation as a legal entity is maintained.

Immovable properties that were transferred to the ownership of a community foundation or the patriarchate through a gift *causa mortis* or *inter vivos* during the Civil Code era and were disposed of against their consent apart from an act of expropriation shall be returned as long as they are held by a public legal entity, regardless of whether or not a final court order has been issued against them.

The lump-sum price to be assessed for immovable properties transferred to the ownership of private-law entities or individuals shall be paid to the Patriarchate by the Treasury in installments in a period of 5 years.

b- Istanbul Armenian Orthodox (Gregorian) Patriarchate

c- Chief Rabbinate of Turkey

d- Deputy Patriarch of Ancient Assyrians in Turkey

The rules provided for the Orthodox Patriarchate and Orthodox Community Foundations in Paragraph (a) above shall apply, *mutatis mutandis*, to the immovable properties of community foundations related with the federations listed in Paragraphs (b-d) above.

e- A legal entity having the status of a public-good legal entity, called the “Catholic Community Foundations Association” shall be established for Turkish citizens of the Catholic sect, by virtue of a special law, upon agreement to be reached between the Ministry in charge of religious services and the Vatican representative, and the rules provided above for the Orthodox Patriarchate shall apply, *mutatis mutandis*, to the relationship between this legal entity and the Catholic community foundations.

The church allotted to the Istanbul Assyrian Catholic Foundations shall be deemed to have been transferred to the assets of the Assyrian Catholic Community Foundations upon the publication of this law.

Shrines and institutions which are directly governed by the Vatican representative shall be subject to the last paragraph under article 8 of this Law.

Chaldean, Assyrian and Armenian Catholic Foundations shall be subject to supervision by the legal entity named the “Catholic Community Foundations Association of Turkey.”

The rules provided for Orthodox community foundations above shall apply to the immovable properties of Catholic community foundations that have been transformed into a community foundation pursuant to Article 3 of the Title Deeds Law numbered 2644 and subsequently transferred to a public legal entity.

In cases where the Catholic Community Foundations Association has the capacity of a federation, when a transfer is made to a community foundation with a similar objective pursuant to Article 11, priority shall be given to community foundations related with any of the subunits, such as the Chaldean Deputy Catholic Patriarch, Assyrian Deputy Catholic Patriarch and Armenian Deputy Catholic Patriarch, which are subject to supervision by this association.

- f- Unless a general Protestant Community Foundations Association is established, this Law and the rules under the additional articles shall apply only to the Armenian Protestant Church and to Armenian Protestant Foundations, and the Ministry of State in charge of Religious Public Services shall be considered as the federation for other Protestant community foundations.

ADDITIONAL ARTICLE 2:

The phrase “or community members” in the last paragraph of Article 101 of the Civil Code is hereby abolished.

ADDITIONAL ARTICLE 3:

This law grants the status of a public-good Turkish private-law legal entity only to the institutions listed in the text of Additional Article 1, as federations for community foundations, where the institutions among those federations whose names are stated in Paragraphs a-d and the federation for the Armenian Protestant Church, which is referred to in Paragraph f, shall be subject to the general rules of international law and the domestic laws that were in force until today, unless their domestic order and international relationships are regulated by virtue of a special law.

NOTE:

- 1- A verbal memorandum by the Armenian Patriarchate stated that it would be appropriate to use the term “*patriklik*” rather than the term “*patrikhane*.” As a matter of fact, the phrase “*Rum Patrikliđi ve Ermeni Patrikliđi Nizamatrı*” (Regulations for the Greek Patriarchate and the Armenian Patriarchate) is used in volume two of edition one of the **CODE**. However, while the term “*patriklik*” is used in the index, the term “*Rum Patrikhanesi*” (Greek Patriarchate) is used on page 902. It is observed that care was not exercised regarding the use of such terms in the text, and the terms “*patriklik*” and “*patrikhane*” were used interchangeably. Similarly, the term “*Hahamhane Nizamatrı*” (Rabbinat Regulations) is used in the index. The title reads “*Hahamhane Nizamatrı*” (Rabbinat Regulations). I believe that these compound words which are made by adding the suffix “*hane*” to the end, were used to refer to the institution also, rather than the building only, just like in Western languages. Therefore, I believe that using the term “*patrikhane*” shall not create any problems. Yet, the term “*patriklik*” may be preferred if it is found to be more appropriate with respect to the language.
- 2- Upon the memorandums provided by the Armenian Patriarchate, a paragraph has been added at the end of Article 3, since the concern of maintaining the current status of mixed community foundations with religious and educational purposes was found appropriate in view of the new law.
- 3- In accordance with the opinion provided by the Armenian Patriarchate, a sub-paragraph has been added to Paragraph (e) under Additional Article 2, regarding the priority of subunits when allotments are made within the Catholic Community Foundations Association.
- 4- Considering the doubts of various communities, a second paragraph was added to Article 2 above, stating that institutions established as a community foundation to provide services shall be regarded as community foundations, and the requirement to provide services to a specific religious community only shall not be sought.
- 5- The necessary changes will be made as required in case of doubt on any rule, provided that such doubt is notified before the date of the general discussion. For those articles that are not amended before the date of the general discussions, additional justification shall be provided on the date of the general discussion and these shall be submitted for deliberation.

Annex 4

Istanbul Orthodox Patriarchate

Draft Law

Hüseyin Hatemi

1 February 2004

ARTICLE 1: LEGAL EXISTENCE

The Istanbul Orthodox Patriarchate shall have the status of a public-good private-law legal entity, which is entitled to supervise Orthodox Community Foundations in Turkey.

ARTICLE 2: BODIES OF THE LEGAL ENTITY

a- The Patriarch: The Patriarch is the representative and president of the legal entity.

b- Deputy Patriarch: The Patriarch shall assign a metropolitan who is a member of the Council of Saint Synode as deputy patriarch, and shall notify the Ministry in charge of religious public services.

The deputy Patriarch shall deputize the Patriarch in case of a vacancy in the office of the Patriarch, illness of the Patriarch to an extent to prevent him from attending office, or during his visits abroad.

In case the deputy Patriarch is also away from office, the eldest member of the Council of Saint Synode shall be regarded as the deputy Patriarch temporarily.

The capacity of the Deputy Patriarch as the deputy shall cease upon the election and assignment of a new Patriarch, unless he is assigned by the new Patriarch also. A new deputy Patriarch shall be elected and notified to the Ministry.

c- The Council of Saint Synode: This is an advisory, consultation and decision-making body comprised of metropolitans, the members of which are elected by the Patriarch pursuant to the rules of the Orthodox Church.

ARTICLE 3: ELECTION AND IDENTIFICATION OF THE BODIES:

a- The Patriarch:

The Patriarch shall be elected with the votes of spiritual officials who have the title “**metropolitan**” pursuant to the rules of the Orthodox Church.

At the latest within forty-five days following the evacuation of the office of the Patriarch, the votes cast by metropolitans who are abroad and who will not be present in Istanbul for the elections and submitted to Turkish embassies or consulates in a sealed envelope, which are delivered to the Ministry in charge of religious public services, or the votes delivered to the patriarchate by the own organization of the Orthodox Church and the votes cast by metropolitans, which shall be inside sealed envelopes in Istanbul on the date of the election, shall be collected by the deputy patriarch, and the envelopes shall be opened and counted before the Council of Saint Synode. The result of vote counting shall be established by an official report and notified to the Ministry in charge of religious public services.

The date of the election shall be determined by the Patriarch.

The President of the Republic shall make the assignment within 10 days in case a metropolitan who is a Turkish citizen is elected patriarch.

In case a metropolitan who is not a Turkish citizen is elected, the deputy patriarch shall continue his office if the President of the Republic vetoes the election, and the election shall be renewed within one month of the first

election. The Council of Ministers shall naturalize the metropolitan who was elected patriarch at the latest within one month, in case he is not vetoed, and his assignment shall be made within 10 days following this procedure.

b- Members of the Council of Saint Synode:

The Patriarch shall be authorized to choose the Members of the Council of Saint Synode among metropolitans who were appointed by the Office of the Patriarch, and to replace such members.

A special private statute shall be issued by the Patriarchate on the establishment, convention and discussions of the Council of Saint Synode pursuant to Article 9 of this Law and delivered to the Ministry in charge of religious public services.

This private statute shall become effective after being published in the Official Gazette. Amendments shall be subject to the same rule.

The name of the metropolitan elected to the Council of Saint Synode shall be notified to the Ministry in charge of religious public services by the Patriarchate. If the elected metropolitan is not a Turkish citizen, the election shall be renewed if both the Prime Minister and the President of the Republic veto within 10 days of the notification of the election.

The Council of Ministers shall, within 1 month, naturalize a metropolitan who is a foreign citizen, who was elected to the Council of Saint Synode, and whose election was not vetoed.

ARTICLE 4: VACANCY IN THE OFFICE OF THE PATRIARCH

An election shall be made for the Office of the Patriarch pursuant to Article 3 and the deputy Patriarch shall deputize until a new Patriarch is assigned.

a- in case of death; or

b- if the Council of Saint Synode unanimously establishes the existence of a condition preventing the duty of the Patriarch from being performed and notifies the Ministry.

ARTICLE 5: TERMINATION OF MEMBERSHIP IN THE COUNCIL OF SAINT SYNODE:

Termination of membership in the Council of Saint Synode shall be determined by virtue of the statute issued by the Office of the Patriarchate and published in the Official Gazette.

ARTICLE 6: HEAD OFFICE OF THE PATRIARCHATE:

The Head Office of the Patriarchate shall be located in the historical building of the Orthodox Patriarchate in Fener, Istanbul.

This head office is the place of residence of the Patriarch and the meeting place of the Council of Saint Synode.

ARTICLE 7: ACTIVITIES OF THE PATRIARCHATE INSIDE THE COUNTRY:

The Patriarchate shall be authorized to decide on the competence of the religious officials of Orthodox communities that are religiously connected to the Patriarchate. Moreover, the Patriarchate shall be the body of supervision of the Orthodox community foundations under its rule.

The capacity, powers and duties of the Patriarchate regarding community foundations shall be regulated in the Law on Community Foundations.

ARTICLE 8: RELATIONSHIPS OF THE PATRIARCHATE OUTSIDE THE COUNTRY:

The Patriarchate, which is a public-good Turkish private-law legal entity, is authorized to assign metropolitans outside Turkey.

Metropolitanships and institutions outside the country shall not have the status of a separate legal entity inside the country and their activities shall be subject to the laws of the country in which they are located and to international laws.

The Patriarchate shall be entitled to contact Orthodox metropolitanships outside the country, strictly limited to spiritual duties, and may contact other churches in this context.

It shall be entitled to accept donations from foreign metropolitanships that are spiritually connected to itself or from other churches, and shall also be entitled to accept donations or gifts *causa mortis* from foreigners, individual Turkish citizens or private-law legal entities. However, it shall not be entitled to accept donations from foreign states without the permission of the Council of Ministers.

ARTICLE 9: HEYBELIADA SEMINARY:

The Heybeliada Seminary shall not have a legal entity status apart from the Patriarchate and shall be subject to the Patriarchate.

Orthodox spirituals who are not citizens of the Republic of Turkey may be allowed to lecture in the Seminary and a residence permit upon the application to be filed by the Patriarch through the Ministry in charge of religious public services.

Supervision of the school by the Ministry of Education shall be subject to the mandatory rules of the legislation on private educational institutions.

ARTICLE 10: PRIVATE STATUTE AND REGULATIONS:

The Patriarchate shall be authorized to issue private statutes and regulations regarding its internal management and spiritual jurisdiction, provided that these do not violate this Law, the Law on Community Foundations and general mandatory rules of Law.

ARTICLE 11:

This Law shall become effective 3 months after its date of publication.

ARTICLE 12:

This Law shall be executed by the Council of Ministers.

ADDITIONAL ARTICLE 1:

The Patriarch shall be entitled to use the honorary title of “Ecumenical Patriarch” in domestic and external correspondence. This title has a honorary and spiritual meaning only. This shall not empower the Patriarch to be a superior body over other churches outside their will and shall not be construed as granting powers that extend beyond the framework of this Law.

ADDITIONAL ARTICLE 2:

The Patriarch and the metropolitans who reside in the country shall be provided with an official duty passport for their trips abroad.

Annex 5

Official correspondence regarding the burial of Selçuk Erenerol, the 'Autocephalous Turkish Orthodox Patriarch'

ANNEX 5-A

T.C.
İSTANBUL VALİLİĞİ
Emniyet Müdürlüğü



SAYI: B.05.1.EGM.4.34.00.12.09.2.02/
KONU: Mezar yeri talebi

30/07/2002


180011

İSTANBUL BÜYÜKŞEHİR BELEDİYE BAŞKANLIĞINA

İ L G İ : İçişleri Bakanlığı'nın 12.07.2002 gün ve 149557 sayılı yazısı.

İçişleri Bakanlığı koordinatörlüğünde ilgili kurum temsilcilerinin katılımıyla 20.05.2002 tarihinde yapılan toplantıda Bağımsız Türk Ortodoks Patriği Selçuk ERENEROL'un Patrikhaneye ilişkin sorun ve taleplerinin görüşülmesi sonucunda Bağımsız Türk Ortodoks Patrikhanesinin müstakil bir mezarlık yeri veya Büyükdere Caddesi No:41 adresinde bulunan Şişli Ortodoks Mezarlığından bir yer tahsis edilmesine karar verildiği ilgi sayılı yazı ile bildirilmiştir.

Makamı İlimiz Beyoğlu Karaköy Değirmen Sokak No:2 adresindeki Bağımsız Türk Ortodoks Patrikhanesinde bulunan Patrik Selçuk ERENEROL (Tel:0212 244 28 10) ile irtibat kurulup mezarlık yeri talebinin biran önce sonuçlandırılarak İçişleri Bakanlığı'na arz edilmek üzere neticeden bilgi verilmesini rica ederim.


Osman DEMİR
Vali a.
Vali Yardımcısı

İSTANBUL
BÜYÜKŞEHİR BELEDİYE BAŞKANLIĞI
Sağlık İşleri Daire Başkanlığı
Mezarlıklar Müdürlüğü

Fen-Kadastro Bürosu

SAYI : 12734-35-2010-150 273/2347

../09/2002

KONU :Şişli Rum. Ortadoks mez.

ŞİŞLİ RUM-ORTADOKS MEZARLIĞI
Büyükdere cad. NO :41

İLGİ : 30/07/2002 tarih ve B.05./ EGM.4.34.00 12/09/2002 sayılı İstanbul valiliği,
Emniyet Müdürlüğü yazısı.

İlgi yazıda Bağımsız Türk ortadoks patriği Selçuk ERENEROL'un talebi doğrultusunda mezarlıktan yer tahsis edilmesine karar verildiği belirtilmektedir.

Tarafınızca tetkik edilerek mezarlık girişi sol kısımda bulunan alanın tahsis edilmesihususunda gereğini rica ederim.


Doç.Dr.A.Z.ŞENGİL
Sağlık Daire Başkanı

EK: 1 İlgi Yazı Fotokopisi

Annex 6

A diploma issued by the Heybeliada Seminary

JANAJ AV KOLBAJ HADGELI

F-129
P-001
T-272

**TÜRKİYE CUMHURİYETİ
MAARİF VEKÂLETİ
HEYBELİADA RUM RAHİPLER
OKULU TEOLOJİ BÖLÜMÜ
DİPLOMASI**

38/08/2005 09:40 ZAT 0030-31-412228

Öğrencinin:

Adı ve Soyadı	
Baba adı	
Doğum yeri ve yılı	Heybeliada 28.5 1943
Okul No.	568
İmtihani bitirme ders yılı ve dönemi	1967-1968 Haziran

Diploma No: 363

Oğlu
Heybeliada Rum Rahipler Okulunun Teoloji Bölümünde dört yıllık tahsilini tamamlayıp, geçirdiği bitirme imtihanı sonunda 1. Yİ derece ile mezun olmuştur.

29/6/1968

Maarif Müdürü
REKİTUNİ

Okul Müdürü vekili
Lise Bölümü Müdürü
A. NÖRİCİ K. RENOLOLOU

15.05.1968

2004 11:17

Pul

Talim ve Terbiye Kurulunun 25/9/1951 tarih ve 151 sayılı kararıyla tasdik edilen yönetmeliğe göre, Teoloji Bölümünü bitirenler, Lise üzerine en az bir yıllık mesleki tahsil ve ren okullar derecesinde öğrenim görmüş sayılırlar.

DRANİDİS ALBİ.



TESEV

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