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ORDER OF SAINT ANDREW
ARCHONS OF THE ECUMENICAL PATRIARCHATE

The Status of the Ecumenical Patriarchate

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Tolerance and Non-Discrimination II **Combating Racism, Xenophobia and Discrimination, Also Focusing on Intolerance and** **Discrimination Against Christians**

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Introduction

The intent of this paper is to highlight the pattern of discrimination faced by the Ecumenical Patriarchate and all Christians in the Republic of Turkey today. Other non-Muslim and some Muslim religious groups also suffer from similar discriminatory practices. The focus, however, will be the Ecumenical Patriarchate as the members of the Order of St. Andrew the Apostle (the Order) are committed to preserving and protecting the Ecumenical Patriarchate.

In this paper, the Order discusses three issues: (1) confiscation of properties belonging to the Ecumenical Patriarchate and Orthodox Christians; (2) closure of the Halki Theological School; and (3) interference in the election of a new Ecumenical Patriarch.

Confiscation of Property

During the twentieth century most of the properties belonging to the Ecumenical Patriarchate and its Orthodox Christian parishioners in Turkey were confiscated or destroyed by overt government decrees, confiscatory taxes,¹ and even a state-orchestrated pogrom in 1955.² Today these wrongs remain largely uncorrected.

¹ Vladtepesblog.com/2008/04/05

² The Mechanism of Catastrophe, Speros Vryonis, Jr., GreekWorks.com, NY, 2005

In 1936 the Ecumenical Patriarchate, its churches and institutions owned approximately 8,000 properties, many of them income producing. In 1998 only 2,000 remained. Today that number is less than 500, many of which are churches or other property which produce no income.

The 2011 Decree

In its landmark 2008 decision, the European Court of Human Rights (the Court) held that the Pringipos Orphanage property on Buyukada Island should be returned to the Ecumenical Patriarchate.³ The following year the Court held that property which had once belonged to the Koimisis Theotokou Church Foundation on Tenedos Island (Boscada) should be returned to that foundation. In the second case, the Court said that refusal of Government authorities to register the property as belonging to the church foundation amounted to a violation of the European Convention of Human Rights, Article I, Protocol I (protection of property), to which Turkey has subscribed.⁴

Following these two decisions, on August 27, 2011, Prime Minister Erdogan (now President) promulgated what seemed to be a promising new decree (the Decree) that communities whose properties had been expropriated by the state could apply for their properties to be returned or to receive compensation for properties that had been sold to third parties. The Decree also permitted the formation of new religious community foundations to account for oversights in the 1935 foundations law and the reopening of foundations that previously had been closed and administered by the General Directorate of Foundations (the GDF).⁵ The Decree did not apply to many of the properties expropriated from the Ecumenical Patriarchate, but it was a step in the right direction.

Unfortunately, the manner in which the Decree has been administered is challenging and flawed, and its results have disappointed.

Applications for 1,252 pieces of property associated with the Ecumenical Patriarchate were timely submitted. Of these 1,252 applications, only 352 were accepted, and 900 were rejected. Of the 352 applications that were accepted, only a handful have resulted in the return of property.

Most of the applications that were accepted have never been acted upon. As detailed in our papers presented to this forum the past several years, administration of the Decree process has been slow, flawed and conducted in an arbitrary fashion. The August 27, 2012 deadline did not afford applicants sufficient time to submit the required voluminous paper work. Properties that are

³ www.echr.coe.int, Case of Fener Rum Patrikligi, case no. 14340/05, 8/7/2008

⁴ www.echr.coe.int, Case of Bozcaada Kimisis Theodoku, case nos. 37639/03, 37655/03, 26736/04, 3/3/2009

⁵ U.S. International Freedom Report, Turkey, 2011, page 4

returned tend to produce no income. For example, in early 2013, 190 hectares of forested land surrounding the Halki School of Theology (Halki) on Heybeliada Island were returned to the Ayia Triada Monastery Foundation (the foundation holding legal title to the property), and earlier this year, a small school on the island of Gokceada was returned to its minority foundation. For properties that are returned, an additional overriding issue remains. Elections of foundation board members, none of whom may be clergy, have been delayed by the Turkish Government. These delays create a troubling concern as to how returned properties will ever be effectively managed, especially with the dwindling number of Orthodox eligible to be elected Board members. If elections are delayed much longer, it means that minority foundations may not be able to sustain returned properties.

Absence of Legal Standing Results in Loss of Property

An underlying impediment to the return of property is that the Ecumenical Patriarchate and other religious institutions lack legal standing in Turkey. Therefore, they are precluded from owning property. The Ecumenical Patriarchate cannot own the churches in which its parishioners worship or the cemeteries in which they are buried. Because it lacks legal standing, the Ecumenical Patriarchate cannot seek legal redress to recover its lost properties.

Without a legal personality, the Patriarchate cannot apply for permits to repair deteriorating property. When a commercial building or even a church deteriorates sufficiently, the Government declares the building to be abandoned and can seize it without compensation.

All church properties are owned by government-denominated minority foundations, which are under the jurisdiction of the GDF, established pursuant to the 1935 Law on Religious Foundations. The GDF can seize a minority foundation when the GDF arbitrarily deems the foundation to “no longer be of charitable or practical use.” In fact, the GDF has seized 17 Greek Orthodox foundations since 1970, thereby confiscating almost 1,000 properties. Many of the properties produced income upon which the Ecumenical Patriarchate relied. The GDF can also unilaterally prevent the foundation boards from holding elections.⁶ Effectively, there is no appeal when the GDF closes down a minority foundation or seizes its property.

The GDF today regulates activities of all religious community foundations and their affiliated properties. The number includes 75 Greek Orthodox, 42 Armenian, and 19 Jewish foundations.⁷

While it can be argued that the majority Sunni Muslim religious facilities also lack legal standing, their financial survival is secure because the Directorate of Religious Affairs is

⁶ “A Tale of Reciprocity,” Dilek Kurban and Konstantinos Tsitsalakis, Research Center for Minority Groups, Testev Publications, July 2010, page 11.

⁷ U.S. International Freedom Report, Turkey, 2011, page 5

responsible for the operation of all registered mosques and Muslim institutions. Imams and other religious workers are civil servants paid by the Government,⁸ whereas the Ecumenical Patriarchate must rely on income producing property. By accelerating the loss of such property because of the deleterious way in which the GDF has managed the minority foundation system, the Turkish Government has in a subtle manner effectively denied to the Ecumenical Patriarchate and other non-Muslim religious institutions a viable means of financial support otherwise available to Muslim religious institutions.

The 1923 Treaty of Lausanne, to which Turkey has subscribed, explicitly grants minorities the 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 religion freely therein.⁹

Halki School of Theology

The closure of Halki is another instance of discrimination. Founded in 1844, Halki served the Orthodox Christian community worldwide until 1971 when it stopped admitting new students because of a law banning private higher education institutions. Throughout the years, almost a thousand students graduated from Halki, including many distinguished clerics, theologians, and most of the Ecumenical Patriarchs elected since the School's founding.

Following its closure, the Ecumenical Patriarchate has had to send young men from its community, desiring to enter the priesthood or study theology, abroad, to one of the theological schools in Greece, and in many instances they do not return to Turkey after their studies. Since the closure of Halki, the Ecumenical Patriarchate also has had difficulties in finding the staff needed to carry out its many administrative responsibilities and its world-wide mission.

For many years, urgent petitions by the Ecumenical Patriarch, the Order and many others, to allow the reopening of Halki have gone unheeded.

Every president of the United States (beginning with President Carter and all his successors, including President Obama), Vice President Biden, many U.S. Secretaries of State (including Hillary Clinton and John Kerry), a host of European Union officials, and many international bodies also have repeatedly urged the Government of Turkey to allow the reopening of Halki.

Ecumenical Patriarch Bartholomew tirelessly has met and discussed this issue many times with high ranking officials of the Turkish government, including President Erdoğan. The President

⁸ ibidem

⁹ The Treaty of Lausanne, 1923, Article 40. See also Article 42.

of the Directorate of Religious Affairs, Mehmet Gormez, publicly supported the reopening of Halki when he met with the Ecumenical Patriarch in July 2012. On that day Professor Gormez embraced the Patriarch and proclaimed:

As the Religious Affairs Directorate, we see non-Muslim citizens living in Turkey as an integral part of this country. Regarding religious freedoms -- freedom of religion, freedom to receive an education and the sacredness of places of worship -- we demand for them the same rights that we demand for ourselves. We think it is a fundamental right for people from every ethnicity and religion not only in our country but also in every part of the world to practice their religion freely, educate their children in accordance with their beliefs and raise their own theologians.¹⁰

Notwithstanding the above, Halki today remains closed.

The U.S. Commission on International Religious Freedom (USCIRF) has issued the following statement:

the (Turkish) Government's continued failure to follow through on the long promised reopening of the Halki Seminary is a disturbing indication of a lack of genuine will to resolve this *longstanding religious freedom issue*. (Emphasis added.)¹¹

The Process for the Election of a New Ecumenical Patriarch

In 1923 and 1970 the Governors of Istanbul issued decrees imposing restrictions on the election of the Ecumenical Patriarch and the metropolitans who elect him. These decrees stated that the Ecumenical Patriarch and the hierarchs who vote for him must be Turkish citizens. These decrees pose a serious problem for the Ecumenical Patriarchate because the number of Turkish born Orthodox clerics qualified to succeed or vote is dwindling. The canons of the Orthodox Church state that the Ecumenical Patriarch is to be elected freely from all hierarchs of the Ecumenical Patriarchate throughout the world, not just those in Turkey. (The Patriarchate accepts that candidates for the office will become Turkish citizens following their election as Ecumenical Patriarch, if they are not already Turkish citizens.)

There has been some progress concerning this issue, but not enough. In 2011, President Erdoğan (the Prime Minister at the time) issued a decree (reported as an “executive reform statement”), which waived the five year residency Turkish citizenship requirement for Orthodox hierarchs wishing to apply for “exceptional” Turkish citizenship. This decree was a positive step forward, but several problems remain. First, the decree is discretionary and, therefore, quickly can be rescinded by a subsequent national government. Secondly, it is not clear under the present

¹⁰ www.parikiaki.com, July 9, 2012

¹¹ 2014 USCIRF Report, page 146. See also 2015 USCIRF Report, page 186.

Constitution (or the proposed new Constitution) whether an executive decree from Ankara overrides local Istanbul mandates. Third, there is no rational reason why an Orthodox hierarch must be a Turkish citizen simply in order to cast a vote for the election of a new Ecumenical Patriarch.

We look forward to the day when no interference whatsoever will be exerted on the internal proceedings of the Ecumenical Patriarchate or of any other religious group.¹²

Recommendations

The Order recommends the following:

First, the Government of Turkey should reopen and extend the August 27, 2012 Decree deadline for the submission of applications to recover seized property, which did not give applicants sufficient time to respond. The Decree should be expanded to include all seized properties that were excluded. The Government should also revamp the manner by which the Decree is implemented. A Public Advocate, who is not a Government bureaucrat, should be employed to ensure that the Decree is implemented in a fair and expeditious manner.

Second, the Government of Turkey should allow the Halki School of Theology to reopen and operate with its own theologians and in a manner consistent with its own Christian beliefs.

Third, the Government of Turkey should refrain from interfering in the internal affairs of the Ecumenical Patriarchate. The 1923 and 1970 directives of the local Istanbul Government, relating to the citizenship of those who are entitled to vote for, or be elected as, a new Ecumenical Patriarch, should be rescinded.

In closing, the Order joins our fellow Christian, Jewish, Muslim and other brothers and sisters of all faiths condemning barbaric acts of intolerance in the Middle East. As the Ecumenical Patriarch has proclaimed, we cannot remain indifferent or silent before such irrational persecution, cultural intolerance and appalling loss of life. We ask world leaders to take whatever steps necessary to end this calamity.

¹² 2015 USCIRF Report, page 186.