



Tolerance and Non-Discrimination II

The Status and Issues of the Greek-Orthodox Minority in Turkey

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by

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A. Introduction

1. As a companion to a paper given in Session 11, on Freedom of Thought, Conscience, Religion or Belief, the Order of St. Andrew, the Apostle is pleased to make a second presentation in Session 14, on Tolerance and Non-discrimination II. In this session we wish to focus on the continuing need for protection of the rights of the Greek-Orthodox minority of Turkey which constitutes mainly the flock of the Ecumenical Patriarchate of Constantinople, and, by extension, of all religious minorities in Turkey. We are fully cognizant, and indeed appreciative, that a process of reform has been initiated and is proceeding toward completion, most importantly in the context of a process to write a new Constitution for the Turkish state.

B. Violations of the Human Rights of Minorities

2. Serious violations of the human rights of minorities have been reported in past years, whereas the constitution of the Turkish state explicitly prohibits discrimination on religious grounds. The U.S. Congress-mandated United States Commission on International Religious Freedom (USCIRF), in its 2012 report, conducts a most thorough, professional, and objective account of the status of religious freedom in Turkey and provides a detailed account of the multitude of egregious violations of the rights of minorities; the Order of St. Andrew fully associates itself with the thrust and findings of this report.¹

3. More specifically, while giving credit to actions by the current Government of Turkey, including constitutional and other legal reforms, we are painfully conscious that a practice of property confiscation, under various pretexts, was evident in the past 100 years, especially

¹ U.S. Commission on International Religious Freedom (USCIRF), 2012 Annual Report, March 2012 (Covering 1-April-2011 to 29-February-2012).

against the Ecumenical Patriarchate and its associated Greek-Orthodox foundations, thus depriving it of the resources to adequately fulfill its role in the world. The following highlights are but the most egregious violations of the rights of the Ecumenical Patriarchate as well as of the Greek-Orthodox and other religious minorities:

- The Ecumenical Patriarchate, together with other churches and faiths, including the Roman Catholic Church, the Armenian Church, and the Jewish faith, have not been able to gain recognition as legal personalities in Turkey, rendering them unable to own property. The Venice Commission, a consultative body to the Council of Europe, at its 82nd Plenary Session, in Venice, 12-13 March 2010, stated its formal opinion on this matter in the following way:²

“In view of the strict requirements established in the case-law of the European Court of Human Rights, the Venice Commission sees no reason which would justify not granting to religious communities as such the possibility to obtain legal personality. It therefore recommends that Turkey should introduce legislation that would make it possible for religious communities as such to acquire and maintain legal personality.”

- For almost 100 years, the government has imposed a variety of onerous restrictions on all religious minorities affecting their ability to own, maintain, and transfer communal and individual property; in addition, heavy interference with their internal governance and even outright prohibition in the training of clergy was applied. These restrictions have contributed to a sharp fall in the membership of these communities, thus threatening their sustainability.
- Members of religious minorities continue to face threats and societal discrimination and occasional violence,³ on the basis of their religious and/or ethnic minority status.

The Fate of the Greek-Orthodox minority of Turkey

4. The plight of minorities has been exposed in detail in the USCIRF Report.⁴ Suffice it for us to state here that a continuous policy of harassment, over the past sixty (60) years, has driven down the Greek-Orthodox population of Turkey, from over 100,000 in the 1950's to less than 3,000 at present. Today, the Turkish citizens belonging to the Greek-Orthodox minority (and by extension the entire Christian minority) in Turkey are an endangered species. This systematic plan of attrition has resulted in its members representing no more than 0.03% of the total population. The recorded demographic and economic decline, as well as the dramatic reduction in property owned by minorities over the years, offer unequivocal proof of the deep and persistent strategy of oppression and persecution of the Greek-Orthodox and other

² The document was issued in Strasbourg, 15 March 2010, Opinion no. 535/2009, CDL-AD (2010) 005 Or. Engl.

³ In June 2010, Bishop Luigi Padovese, the Vicar Apostolic of Anatolia, was murdered in the city of Iskenderun while en route to join the Pope in Cyprus. Currently, the alleged assassin is awaiting trial. The motive and any connection to the alleged Ergenekon group are not clear.

⁴ USCIRF 2012 Report, Op. Cit.

ethnic/religious minorities by the Turkish Government. However, in this paper, we will focus our attention on the positive developments that have taken place in the past year.

C. Positive Developments

5. During the past year, the Government of Turkey has continued its path toward reform and strong, albeit incomplete, measures to strengthen democracy and the rule of law. The main accomplishments, from our perspective, have been: (i) decisive measures to establish civilian authority over the military; (ii) changing the government's attitude toward ethnic and religious minorities in Turkey and paying attention to their issues; (iii) a decisive move against the clandestine, ultranationalist group, known as Ergenekon, which has threatened religious leaders, including the Ecumenical Patriarch; and (iv) announcements to return confiscated properties or provide fair compensation, a topic to be addressed in more detail below. These moves clearly illustrate the Government's enhanced self-confidence and underpin its bold moves to take further steps, unheard of until this time, to restore the rights of ethnic and religious minorities, as will be elaborated in the following paragraphs. We recognize that P.M. Erdoğan, has had to face down a recalcitrant opposition and a hardened mind-set imbedded over almost 100 years that presented formidable obstacles to his reformist policies. His bold moves have positive, strong implications for the respect of international human rights norms, including religious freedom and the rights of minorities.

6. The Order of St. Andrew is in the position to note specific positive moves and gestures by the government in recent years although these have generally been *ad hoc* moves rather than permanent legal reforms (with some exceptions, i.e., the 2008 Law on Foundations), thus opening the possibility that they could be easily reversed, say, by a successor government that may not share the views of the current one. We cite below briefly a few of these positive developments:

- The Return of the Prinkipos (Büyükada) Orphanage building, following much litigation and judgments by the European Court of Human Rights (ECtHR) to which Turkey is a contracting party. The ECtHR judgment was implemented by the issuance of an order by the Court of Büyükada which produced, in late November 2010, a deed for the property in the name of Rum Patrikhanesi.⁵
- In March 2011, Turkey implemented the ECtHR judgment of March 2009 on the property rights of the Greek-Orthodox minority foundation of the island of Bozcaada ("Kimisis Theodokou Greek Orthodox Church" of Tenedos) by transferring the property titles to its name.
- Permission for the performance of religious ceremonies. During 2012, as in 2011 and 2010, the Government allowed the conduct of annual religious worship services at the

⁵ This is the official name for the Patriarchate used by the Government of Turkey, referring to its origins in the Roman Empire.

Sümela Monastery near Trabzon, on the Black Sea, as well as in other religiously significant sites. However, it is time that religious shrines of all faiths should be returned to their rightful owners and services should be conducted as frequently as desired without interference, but rather with the protection of the state against interference.

- The Decree of 27-August-2011⁶ on property return or compensation. This decree is a major development on which we shall devote the balance of this paper.

D. The Decree on Property Return or Compensation

7. As background on this issue we state that **massive property confiscations** have been among the top grievances of minority Greek-Orthodox foundations as well as of other religious minorities. These confiscations concerned mainly churches, monasteries and cemeteries.

8. An important event took place on 28-August-2011; Prime Minister Erdoğan announced a Decree, issued the previous day, 27-August-2011, adding a new transitional article (No. 11) to the 2008 Foundations Law in force. The new article enables minority foundations to **apply for return of their** properties that had been expropriated by the state. The new article also allows application for their return, or for fair compensation in the case that properties were sold to a third party. The Decree also provided for the formation of new religious community foundations in order to correct oversights in the 1936 law. The Decree came to remedy minority foundations property questions that had not been addressed by the 2008 Law of Foundations. Parties interested in the return of confiscated properties were invited to submit the relevant documentation to the Directorate General of Foundations (DGF, or VGM, by the Turkish initials) within 12 months.

9. The Decree provided: (i) the restitution of properties as they were surveyed and registered in 1936 and subsequently confiscated from the religious foundations by the various administrations of the Republic of Turkey; (ii) the return of cemeteries belonging to non-Muslim foundations which had been improperly placed **under the control and management of** various towns and municipalities; (iii) the restitution of undefined deeded property (such as monasteries, parishes, and schools), which were never recognized as legal entities by the Turkish Republic; and (iv) in the event that these properties have been sold or disposed of in various ways by the Turkish state, the Minister of Finance of the Republic of Turkey will establish, with the owners, a just compensation.

10. We do not wish to delve into the details of the Decree, which is the rightful object of legal analysis and detailed knowledge of the facts on the ground; such analysis and commentary are actually being done in the field by the VGM Assembly⁷ which includes a member elected by

⁶ The Decree is dated 27-August-2011 but the announcement by P.M. Erdoğan was made on 28-August-2011.

⁷ The Assembly is the highest VGM decision-making organ, with fifteen members, one of whom is chosen by the non-Muslim community foundations (since the beginning of 2009, Mr. Lakis Vingas, from the Greek-Orthodox Community, was elected to the Assembly and re-elected at the end of 2011 for a 3-year term, by the majority of the 165 non-Muslim community foundations).

the non-Muslim minorities. Here, we wish to point out deficiencies that should be obvious to the plain citizen:

- **A deadline for the submission** of restitution applications was set as one year from the Decree's announcement. Given that the Decree Regulations were issued only on 1 October 2011, and that many of the required documents are old and need extensive research, this deadline could result in the inability of many foundations to make applications on time; we are not aware of any extension to the original deadline.
- **The Decree applies to foundations only and not to religious organizations and/or institutions.** This deficiency harkens back to the issue of legal personality which is lacking for these latter bodies.
- The administration of the process, including the approval of applications and the valuation of properties (in case compensation is called for) is left up to VGM, the body that was the main arm of the government performing the confiscations in the first place. This is clearly a case of **“conflict of interest”** that should have been avoided through the appointment of an independent Commission dedicated to this important task. Furthermore, our information indicates that much of the documentation needed for the applications is in the possession of VGM and it would be up to their goodwill and spirit of cooperation to cede them to the applicants; is there any guarantee they will do so?
- **The appeal process is flawed.** Applicants are provided with the right to appeal an unfavorable decision but the final arbiter is again the same body against which the appeal is filed. The Finance Ministry, having a strong motivation to reduce government liability, is the only body permitted to decide on the amount of compensation to be paid! Does this arrangement make any sense and does it comply with the principle of fairness?
- **The Decree is narrow in scope** as it does not apply to a number of property categories, as it should, namely it does not cover:
 - (i) property of the five Greek-Orthodox foundations of Gökçeada (Imvros). According to the official document of the VGM of December 2011⁸, there are no copies of the 1936 declaration of these five foundations. Thus, the Decree is not applicable to these five foundations;
 - (ii) property that had not been declared by the non-Muslim minorities in the inventory of 1936 (the so-called 1936 Declaration), because they had been labeled as “acquired illegally;”

⁸ Document no. B.02.1.VGM.1.05.02.130.01- 99/3967/16.12.2011.

- (iii) property of “seized” (“mazbut”) non-Muslim community foundations,⁹ meaning those whose administration was seized by the VGM, for various excuses, for example, because they were, allegedly, not able either to hold board elections for a certain time or to fulfill any longer their charitable purpose;
- (iv) property that may have been listed in the 1936 Declaration of a non-Muslim community foundation, but later transferred to legal entities, which are different than the State Treasury, the Directorate General for Foundations, a Municipality or City Special Administration, but still under the supervision of a public body or other foundations. A simple example of this frequently-seen category is a property transferred to a Muslim Foundation, embodied during the Ottoman period (for instance, to the Valide Sultan Foundation). It is feared that applications concerning these transferred properties will not be approved as valid;
- (v) property that was "nationalized" which was often done in an unjust manner, amounting to "wrongful seizure;"
- (vi) properties taken away from religious institutions or communities that do not have community foundations; for example, property that once belonged to the Roman Catholic or Anglican churches;
- (vii) certain cemeteries which, even though registered in the 1936 Declaration in the name of non-Muslim community foundations, such cemeteries were not seen as “property” and were not explicitly listed in the Declaration thus risking not being returned to their community foundations; and
- (viii) properties of Muslim religious communities. This last omission has been criticized as an unjustified omission not only by these Muslim foundations themselves but also by Christian leaders

The cases, outlined above as not covered by the Decree, are likely to be brought before the European Court of Human Rights (ECtHR) and it is likely that they will win their cases.

11. **Experience to date** is incomplete as the originally set deadline was to expire 12 months from its original issuance of the Decree (which was made on 27-August-11). Although we suspect that the time allowed has been inadequate for all potential applications to be submitted with proper documentation, we shall defer judgment on this point until next year, hoping that the necessary provisions will be made by the Government of Turkey (specifically, VGM) to accommodate all potential applicants.

⁹ A March 2009 report by the Istanbul-based TESEV Foundation, “Bir Yabancilastirma Hikayesi”, found that the number of properties seized from Greek-Orthodox community foundations alone was over 900.

E. Conclusions and Recommendations

12. The process of reform in Turkey is proceeding apace and is producing welcome results. The Decree of 27-August-2011 was a bold move to correct past injustice and reverse a climate of obstinate intolerance and unremitting discrimination that has prevailed in Turkey for too long; this climate, between the government and religions that have community foundations, has been greatly improved. However, it was an initiative badly flawed and seriously incomplete in its inception and poorly implemented in practice. We feel that a more effective, legally robust and practically effective system needs to be put in place if the authorities intend to see their good intentions convert into reality.

13. We respectfully submit that OSCE should immediately impress upon the Government of Turkey the need to fully comply with the principles of OSCE, of which Turkey is a member, and specifically, to:

- Fully adhere to the principles on the rights of expression, assembly and association, dissent, and religious faith and practice of all citizens without discrimination.
- Allow full legal status for Turkey's religious minorities, including religious leadership organs, by making all the necessary legal changes.
- Establish a climate of respect, tolerance, and legitimate assistance toward the free functioning of ethnic and religious minorities and their various institutions.
- Convert the Decree on the Return of Properties into a Law of the Land, and appoint a truly independent body for its oversight and implementation. The law should have comprehensive coverage of all cases (community foundations and religious bodies) as the rule of protecting property to fulfill the foundations' original purpose is valid for all, regardless of the type of religion. The law must correct the deficiencies that have been pointed out in the Decree, including extending property losses before 1936. The Law should also mandate full cooperation of the bureaucracy with strong incentives and strict penalties for stone-walling and other non-compliance. Until such law is passed,
- Extend the deadline as needed and provide for the full implementation of the Government Decree of 27-August-2011, on the return of confiscated properties with full cooperation by VGM and its Assembly.
- Appoint a Public Advocate with the necessary staff and power to assist applicants and help them work with the government (modeled after a similar institution of the European Union).

14. We are cognizant of and thankful for decisive moves on the part of the current Government of Turkey to rectify past injustice with courageous initiatives that are aimed at breaking a mindset encrusted over 100 years of Kemalist mentality and practice, as well as the attendant bureaucratic inertia and persistence of the status quo. In order to amend past injustices and cement the rights of religious and ethnic minorities, the constitution being currently debated

should incorporate their rights unequivocally in its text in a comprehensive and precise manner. We are indeed hopeful and expect that the constitutional reform will lead to concrete democratic gains for the common citizen and to full respect for the rights of all faiths and people of all ethnic origins within Turkey.