



### *The Status of the Ecumenical Patriarchate*

The Organization for Security and Cooperation in Europe (OSCE)  
2014 Human Dimension Implementation Meeting, Warsaw, Poland

Working session 13

### **Tolerance and Non-Discrimination II Combating Discrimination against Christians**

September 30, 2014

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by  
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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 the same 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.

The Order is mindful that in the past several years the Turkish Government has taken some steps (discussed below) which begin to address this pattern of discrimination. However, the steps have been tentative, and promises made have proven difficult to deliver.

#### **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, and even state-sponsored pogroms.<sup>1</sup> This conduct constituted discrimination against Christians and other religious minorities. The Order does not suggest that such overt discrimination continues today. In fact, responsible Turkish Government officials, with whom the Order has conferred, look back upon this chapter in their nation's history with distaste and are willing to take steps necessary to correct past wrongs. However, the problem is that the process of property confiscation continues today in a more subtle way.

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<sup>1</sup> [Vladtepesblog.com/2008/04/05](http://Vladtepesblog.com/2008/04/05)

## **Absence of Legal Standing Results in Loss of Property**

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 even hold title to its Patriarchal Cathedral and headquarters from which it tends to its world-wide flock.

Instead, all church properties are owned by minority foundations, which are under the jurisdiction of the General Directorate of Foundations (GDF). The system of foundations was first established with the formation of the Turkish Republic under the Treaty of Lausanne in 1923. The 1935 Law on Religious Foundations, which went into effect the following year, required all foundations (Muslim and non-Muslim alike) to declare their properties by registering them with the GDF. Many non-Muslim foundations today complain that the GDF exercises overly tight day-to-day management control, often in an arbitrary manner. The GDF can seize a minority foundation when the GDF unilaterally 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 belonging to them. (See below.) The GDF can also unilaterally prevent the foundation boards from holding elections.<sup>2</sup> This reality has been largely responsible for the loss of Patriarchal properties (owned via the foundation system). Many of the properties produced income upon which the Ecumenical Patriarchate relied. In 1936, the year the foundation law went into effect, the Ecumenical Patriarchate, its churches and institutions registered approximately 8,000 properties. 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 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.<sup>3</sup>

Lack of legal standing is inherently discriminatory both to the Ecumenical Patriarchate and to its Orthodox parishioners because it effectively has undercut the Ecumenical Patriarch’s financial base of support, as above described. (Of course, it also often has taken away from the Ecumenical Patriarchate and its parishioners their houses of worship.)

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 responsible for the operation of all registered mosques and Muslim institutions. Imams and other

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<sup>2</sup> “A Tale of Reciprocity,” Dilek Kurban and Konstantinos Tsitsalakis, Research Center for Minority Groups, Testev Publications, July 2010, page11.

<sup>3</sup> U.S. International Freedom Report, Turkey, 2011, page 5

religious workers are civil servants and paid by the Government.<sup>4</sup> The Ecumenical Patriarchate does not ask for financial support from the Turkish Government, and it undoubtedly would not be entitled to financial support under existing Turkish law. As stated above, the Ecumenical Patriarchate has historically relied, in part, on income produced by properties which it has lost. 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 effectively denied to the Ecumenical Patriarchate and other non-Muslim religious institutions, subjected to the minority foundation system, a viable means of financial support otherwise available to Muslim religious institutions. This inability of the Ecumenical Patriarchate to own property also impacts on the financial contributions needed from Orthodox Christian parishioners who have been guaranteed the right to expect their religious institutions to survive in an unfettered fashion by the Lausanne Treaty.

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.<sup>5</sup>

### **Return of Confiscated Property**

The 1935 Law on Religious Foundations was amended in 2002, 2003, and 2008, allowing religious foundations, in some circumstances but only with the approval of the GDF, to acquire property and apply for the return of confiscated property. The effect of these amendments was limited, and the vast majority of these applications were denied.

In 2008 the European Court of Human Rights (the Court) unanimously ruled that the Pringipos Orphanage property on Buyukada Island should be returned to the Ecumenical Patriarchate, notwithstanding the argument offered by the Turkish Government that the Ecumenical Patriarchate lacked legal standing to accept title.<sup>6</sup> This was a seminal moment. Pursuant to the order of the Court, title to the property was then deeded and accepted by Turkish Courts in the name of the Ecumenical Patriarchate, which creates a *de facto* legal status for the Ecumenical Patriarchate. However, the Turkish Government still does not accept the possibility of the Ecumenical Patriarchate having legal standing. In January 2011, Deputy Prime Minister Bülent Arinc was quoted as saying that the Government of Turkey was “seeking to find an arrangement that recognizes the existence of the Patriarchate but does not offer a legal personality to it, in line with the Lausanne Treaty and our laws.”

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<sup>4</sup> *ibidem*

<sup>5</sup> The Treaty of Lausanne, 1923, Article 40. See also Article 42.

<sup>6</sup> [www.echr.coe.int](http://www.echr.coe.int), Case of Fener Rum Patrikligi, case no. 14340/05, 8/07/2008

In 2009 the European Court of Human Rights ruled that property belonging to the Koimisis Theotokou Church Foundation on Tenedos Island (Bozcaada) should be returned to the church foundation.<sup>7</sup> In that case, the Court said that the 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.<sup>8</sup>

On August 27, 2011, Prime Minister Erdogan (now President) announced a new decree (the Decree) that communities whose properties had been expropriated by the state could apply for the 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 GDF.<sup>9</sup>

The Decree covered (i) properties surveyed and registered in 1936 and subsequently confiscated from the religious foundations by various administrations of the Republic of Turkey; (ii) cemeteries belonging to non-Muslim foundations which had been improperly placed under the control and management of various towns and municipalities; and (iii) undefined deeded property (such as monasteries, parishes, and schools), which were never recognized as legal entities by the Turkish Republic.

Applications for the return of such property had to be submitted within one year from the August 27, 2011 Decree date.

Applications for 1,252 pieces of property associated with the Ecumenical Patriarchate were then timely submitted. Of these 1,252 applications, only 352 were accepted, and 900 were rejected.

Several significant pieces of property have been returned following the Decree, albeit to minority foundations. In early 2013, 190 hectares (470 acres) of forested land surrounding the Halki Seminary on the Island of Heybeliada were returned to the Ayia Triada Monastery Foundation (the foundation holding legal title to the seminary property), followed in May by the return of a former school building in Istanbul, which currently is being used by the Government as its headquarters for the European Union Ministry. Early in 2014, a building near Taksim Square, housing the Greek Consulate, also was returned.

None the less, the process has been challenging, flawed, and at times illusory. The problems are as follow.

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<sup>7</sup> [www.echr.coe.int](http://www.echr.coe.int), Case of Bozcaada Kimisis Teodoku, case nos. 37639/03, 37655/03, 26736/04, 3/3/2009

<sup>8</sup> *ibidem*

<sup>9</sup> U.S. International Freedom Report, Turkey, 2011, page 4

- (a) Several thousand properties are not covered by this Decree. These properties were detailed in our paper presented in the Human Dimension Implementation Meeting last year, Working Session 2, September 24, 2013. They include (i) properties of the 17 minority foundations seized by the GDF, as discussed above, (ii) properties confiscated before 1936, (iii) properties that were nationalized, (iv) properties of five Greek Orthodox foundations on the Island of Imvros, (v) certain cemeteries, and (vi) others.
- (b) The one year deadline for the submission of applications did not give the applicants sufficient time to prepare all the necessary paper work. Property survey and registration documents had to be recovered from files that in many cases were all but lost in government offices. Many foundations complained that they needed more time, but, thus far, no extensions have been granted.
- (c) The Decree was meant only for foundations. The Ecumenical Patriarchate and other religious institutions cannot apply for the return of seized or confiscated property because they lack legal standing.
- (d) The application process is administered by the GDF, the same office that seized the property in the first place. This is a conflict of interest. Compensation, in those cases when a property has been sold to a third party, is also initially decided by the GDF. Often the religious minorities faced “stonewalling” problems by bureaucrats who were not anxious to cooperate.
- (e) In many cases, no explanation has been given as to why an application was rejected. There has to be assurance that government officials reviewing applications did not deny them in an arbitrary fashion.
- (f) The appeal process is flawed. Appeals are heard by the same officials who denied the application.
- (g) The Finance Ministry, which has a motivation to limit the Government debt, is the only body that decides how much compensation is to be paid when a case is appealed.
- (h) For the properties that are returned, an 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. This issue is of such importance that Mr. Vingas, the minority representative to the GDF, resigned in protest,

but has since returned to his position on the Government's promise that the issue of elections will be vetted soon.

### **Management of Foundations**

Historically, each foundation has been governed by a board of 12 individuals who must reside in the district in which the foundation property is located. Because of the dwindling number of Orthodox in Istanbul, it often has proven difficult to find 12 qualified individuals in one district. The Order in past years has highlighted this problem. A related issue is that many properties produce no income and require an infusion of financial support.

The Order now understands that there has been some progress on these issues, as the GDF recently has indicated flexibility by allowing the election of board members, who do not reside in the district, and also by allowing the common management of two or more Greek Orthodox minority foundations. The Order will continue to monitor these issues closely.

As above explained, the more serious issue is that the GDF has delayed board elections. No reason has been cited. The Order calls upon the GDF to correct this impediment quickly.

### **Work Permits**

Foreigners cannot obtain work permits to work in Turkey at the Ecumenical Patriarchate. These individuals must leave the country every three months to renew their tourist visas. This makes bringing individuals from abroad to work at the Ecumenical Patriarchate very difficult and greatly disrupts the operation and productivity of the Ecumenical Patriarchate. This problem was exacerbated when the Government forced the closure of the Halki Seminary and all other private institutions of higher learning in the country. In the past, Halki students performed administrative duties at the Ecumenical Patriarchate.

### **Conclusion and Recommendations**

The Decree of August 7, 2011 was a bold step intended to correct past injustices and discrimination. As the Order stated last year, the Decree reverses a climate of long-standing intolerance and unremitting discrimination which had prevailed in Turkey for too long. However, the three years following issuance of the Decree have shown the Decree to be limited in scope and poorly implemented in practice. The Order understands that current political realities pose a challenging environment for the Government. However, doing nothing more to correct past injustices and discrimination is not an option. The Order recommends the following.

*First*, the Government should allow full legal standing for the Ecumenical Patriarchate and all religious institutions (Muslim and non-Muslim). If necessary, the 1935 Law on Religious

Foundations should be amended. Exceptions could be made in matters related to the national security and public safety.

*Second*, the Government should extend the August 27, 2012 deadline for the submission of applications to recover seized property.

*Third*, the Government should expand the scope of the Decree to include all seized properties that were excluded.

*Fourth*, the Government should totally revamp the manner by which the Decree has been 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. The Public Advocate should be provided the necessary staff and authority to oversee its mission.

*Fifth*, the Government should codify the Decree into statutory law, so that it cannot readily and arbitrarily be rescinded by later executive fiat.

*Sixth*, the Government must fully implement the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, to which Turkey has subscribed, and interpret the 1923 Lausanne Treaty so as to provide equal rights to all religious minority communities.

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In closing, the Order joins our fellow Christian, Jewish, Muslim and other brothers and sisters of all faiths to condemn the recent 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.