



The Status of the Ecumenical Patriarchate

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Introduction

In 628 AD, the Prophet Muhammad issued a decree known as "The Covenant of Protection to Those Who Adopt Christianity" (the Covenant of Muhammad) which commands his followers to protect Christians until the end of days. The authenticity of this Islamic law has been sustained throughout the ages by Islamic scholars¹, yet today it is largely ignored by the Turkish Government.

Christians around the world suffer discrimination because of their religious beliefs (for more information, visit <https://www.ChristianPersecution.com>). The intent of this paper is to highlight the discrimination faced by the Ecumenical Patriarchate and all Orthodox Christians in the Republic of Turkey today. Other non-Muslim and

¹ Letter From Prophet Muhammad to the Monks of St. Katherine's Monastery, Federation of Muslim Organizations (Apr. 7, 2015), <http://www.fmo.org.uk/letter-from-prophet-muhammad-to-the-monks-of-st-katherines-monastery/>.

some Muslim religious groups also suffer from similar discriminatory practices. This is why in 2018 Turkey continues to be on the “watch list” of the United States Commission on International Religious Freedom (USCIRF), as it has been since 2013. According to the 2018 USCIRF Report, “in 2017 the state of religious freedom in Turkey worsened.”²

The focus here is on 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, its members and their families are under the canonical jurisdiction of the Ecumenical Patriarchate (for more information, it <https://www.Archons.org>).

As were other non-Muslim religious leaders in Turkey, the Ecumenical Patriarch recently was asked to consent to a statement that the Orthodox faithful are free to follow their beliefs and practices. Nonetheless, religious discrimination remains just as real and pervasive. In this paper, the Order discusses three issues, although there are others (see below): (1) confiscation of properties belonging to the Ecumenical Patriarchate, which has been exacerbated by the fact that the Ecumenical Patriarchate lacks legal status; (2) closure of the Halki Theological School; and (3) interference in the administrative affairs of the Ecumenical Patriarchate and the election of a new Ecumenical Patriarch. These issues all result from the fact that in Turkey today “no religious community has full legal status, and all are subject to state controls limiting their rights to maintain places of worship, train clergy, and offer religious education.”³

The Turkish government has promised an equitable resolution of these issues, but what has been promised, unfortunately, so far has been only an illusion. There is a fable in Turkish folklore about a pigeon which in its simplicity took for real water a stream represented in a painting. The morale of the story is that we should not be fooled by illusions.

² *2018 Annual Report*, UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (2018), <http://www.uscirtf.gov/sites/default/files/2018USCIRFAR.pdf>, 196.

³ *2017 Annual Report*, UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (2017), <http://www.uscirtf.gov/sites/default/files/2017.USCIRFAnnualReport.pdf>, 186.

Confiscation of Property

Despite the Covenant of Muhammad, which reads that “no one is to plunder Christians, or destroy any of their churches, or houses of worship,” 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,⁴ and even a state-orchestrated pogrom in 1955.⁵ Today these wrongs remain largely uncorrected .

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 fewer than 500 properties are owned by Patriarchal related minority foundations, most of which are churches or other properties which produce no income.

The 2008 European Court of Human Rights Decision

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.⁶ The following year the Court held that property which had once belonged to the Koimisis Theotokou Church Foundation on Tenedos Island (Bozcaada) 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 Hu-

⁴ Paschalis M. Kitromilides, *EASTERN CHRISTIANITY AND THE COLD WAR, 1945-91* (Routledge 2010), 222. *See also* Sait Çetinoglu, *The Mechanisms for Terrorizing Minorities: The Capital Tax and Work Battalions in Turkey During the Second World War*, 2 *MEDITERRANEAN Q.* 23 (2012).

⁵ Kitromilides, *supra* n. 4 at 226. *See also* SPEROS VRYONIS, JR., *THE MECHANISM OF CATASTROPHE*, (GreekWorks.Com Inc. 2005).

⁶ Case of Fener Rum Patrikligi, no. 14340/05 (July 8, 2008), www.echr.coe.int; *Press Release*, EUROPEAN COURT OF HUMAN RIGHTS (July 8, 2008), https://www.mfa.gr/images/docs/ellinotourkiko/press_release_apofasi_b_gia_orfanotrofeio_prigkipoy.pdf.

man Rights, Article I, Protocol I (protection of property), to which Turkey has subscribed.⁷

Following these two decisions, on August 27, 2011, President Erdoğan (then Prime Minister) 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).⁸ 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 was administered was challenging and flawed, and its results have disappointed. In other words, the Government's promise to return confiscated property was an illusion.

Most of the applications that were accepted were never acted upon. As detailed in our papers presented to this forum the past several years, administration of the Decree process was 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 for many of the parcels, principally because local Turkish Government offices did not respond to requests for title documents in a timely fashion.

Applications for 1,252 pieces of property associated with the Ecumenical Patriarchate, nevertheless, were timely submitted. Of these 1,252 applications, only 352

⁷ Case of Bozcaada (Kimisis Theodoku), nos. 37639/03, 37655/03, 26736/04 (March 3, 2009), www.echr.coe.int. See also Ayla Jean Yackley, *European Court Fines Turkey in Greek Orthodox Case*, REUTERS (Mar. 3, 2009, 12:03 PM), <https://www.reuters.com/article/us-turkey-court/european-court-fines-turkey-in-greek-orthodox-case-idUSTRE5224XF20090303>.

⁸ *Turkey: International Freedom Report for 2011*, U.S. DEPARTMENT OF STATE, BUREAU OF HUMAN RIGHTS, DEMOCRACY, AND LABOR, <https://www.state.gov/documents/organization/193083.pdf>, 4.

were accepted, and 900 were rejected. Of the 352 applications that were accepted, only a handful resulted in the return of property.

As to the few parcels that have been returned, there are two problems. First, the properties are not income producing, and it will be difficult to maintain them. Second, the Turkish Government continues to delay the election of minority foundation board members (see below for the role of foundations) to manage the properties. Without proper minority foundations, the return of property is meaningless because the properties, under existing Turkish law, cannot be effectively managed. A related concern is that existing Turkish law unfairly restricts the eligibility of Orthodox Christians who wish to serve as minority foundation board members. Clergy are not allowed to serve, and only citizens who live adjacent to a property are eligible to serve as a minority foundation board member for that property. With the dwindling number of Orthodox eligible to be elected Board members, the minority foundations will not be able to sustain returned properties. In addition to allowing clergy to serve as minority foundation members, a fair solution is to allow Orthodox Christians, who do not necessarily reside in the district in which a property is located, to serve as minority foundation board members for that property.

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 in Turkey to recover its lost properties.

Without a legal personality, the Ecumenical Patriarchate cannot apply for permits to repair deteriorating property. When a structure deteriorates, the Government may declare the building to be abandoned and may seize it without compensation, notwithstanding the Covenant of Muhammad which reads as follows: “Their (Christian) churches are to be respected. They are not to be prevented from repairing them.”

All church properties are owned by government-denominated minority foundations, which are under the jurisdiction of the General Directorate of Foundations (GDF) established pursuant to the 1935 Law on Religious Foundations. The GDF may 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 may also unilaterally prevent the foundation boards from holding elections.⁹ 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.¹⁰

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 religious workers are civil servants paid by the Government,¹¹ 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, in a subtle manner, has effectively denied to the Ecumenical Patriarchate and other minority religious institutions a viable means of financial support otherwise available to Sunni Muslim religious institutions. This is discrimination.

⁹ Dilek Kurban and Konstantinos Tsitselikis, *A Tale of Reciprocity: Minority Foundations in Greece and Turkey*, TESEV & Research Centre for Minority Groups (July 2010), http://tesev.org.tr/wp-content/uploads/2015/11/A_Tale_Of_Reciprocity_Minority_Foundations_In_Greece_And_Turkey.pdf, 11.

¹⁰ *Turkey: International Freedom Report for 2011*, U.S. DEPARTMENT OF STATE, BUREAU OF HUMAN RIGHTS, DEMOCRACY, AND LABOR, <https://www.state.gov/documents/organization/193083.pdf>, 5.

¹¹ *Id.*

The 1923 Treaty of Lausanne, to which Turkey has subscribed, mirrors the commands spelled out in the Covenant of Muhammad and 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.¹²

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 was forced to stop admitting new students. 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 outside Turkey. In many instances they do not return to Turkey after their studies. Since the closure of Halki, the Ecumenical Patriarchate also has had difficulties finding the staff necessary to carry out its administrative responsibilities for 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, despite illusory promises by Turkish officials that Halki will be reopened.

Presidents of the United States, beginning with President Carter and his successors, Vice President Biden, many U.S. Secretaries of State (including Hillary Clinton and John Kerry), a host of European Union officials, and many international bod-

¹² Treaty of Lausanne, Article 40 (1923), https://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne. See also Article 42 (granting protection to "churches, synagogues, cemeteries, and other religious establishments" of minority populations within Turkey).

ies 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 Turkish Government officials, including President Erdoğan. The President 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 consider non-Muslim citizens living in Turkey as an essential constituent of our country. And we believe that they have the right to educate their own children in line with their faith and train their own religious functionaries. We think that they should have the same rights which we want for ourselves in freedom of religion and faith, and freedom of education.¹³

Notwithstanding the above, Halki today remains closed.¹⁴

The U.S. Commission on International Religious Freedom in its 2018 report states that the U.S. Government should “press the Turkish government to fulfill private and public promises that the Greek Orthodox Halki Seminary would be reopened....”¹⁵

The Process for the Election of a New Ecumenical Patriarch

¹³ *Turkey's Top Muslim Cleric Meets Istanbul's Fener Greek Patriarch*, ANDALOU AGENCY (July 5, 2012), <https://www.aa.com.tr/en/turkey/turkeys-top-muslim-cleric-meets-istanbuls-fener-greek-patriarch/357407>.

¹⁴ *See also Press Release: PTWF, Muslim Partners Urge Erdogan to Open Halki Seminary*, THE NATIONAL HERALD (Aug. 9, 2018), <https://www.thenationalherald.com/210119/ptwf-muslim-partners-urge-erdogan-to-open-halki-seminary-release-pastor-brunson/>.

¹⁵ *2018 Annual Report*, UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (2018), <http://www.uscirtf.gov/sites/default/files/2018USCIRFAR.pdf>, 196; *2017 Annual Report*, UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (2017), <http://www.uscirtf.gov/sites/default/files/2017.USCIRFAnnualReport.pdf>, 186; *2016 Annual Report*, UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (2016), <http://www.uscirtf.gov/sites/default/files/USCIRF%202016%20Annual%20Report.pdf>, 205; *2015 Annual Report*, UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (2015), <http://www.uscirtf.gov/sites/default/files/USCIRF%202016%20Annual%20Report.pdf>, 189.

In 1923 and 1970 the Governors of Istanbul issued decrees imposing restrictions on the election of an Ecumenical Patriarch and the metropolitans who elect him, which require that the Ecumenical Patriarch and the hierarchs who vote for him must be Turkish citizens. The Ecumenical Patriarchate accepts that candidates for the office will become Turkish citizens immediately following their election as Ecumenical Patriarch, if they are not already Turkish citizens.

The canons of the Orthodox Church, however, 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. 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 the reality is that 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 whose ministry is world-wide, not just local.

As the U. S. Commission on International Religious Freedom has stated, we look forward to the day when the Turkish government will permit the Ecumenical Patriarchate and other religious groups to select and appoint their leadership in accordance with their internal guidelines and beliefs.¹⁶

Other

Two additional issues are addressed. One issue is the unnecessary conversions of Christian historic places of worship into mosques. Since 1934, most historic Christian places of worship in Turkey have been maintained as museums, open to the public. In 2012, however, the ancient church of Saint Sophia in Nicaea (site of the Second Ecumenical Council in 787) was summarily converted from a museum into a mosque. Even local Muslim residents complained that this action was totally unnecessary as there are plenty of mosques to serve the local population.¹⁷ The same year Saint Sophia in Trabzon suffered a similar fate. In 2014 Saint Sophia at Eraclea (Eregli), built by Emperor Theodosius II between 408 AD and 450 AD became the

¹⁶ 2018 Annual Report, UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM (2018), <http://www.uscirf.gov/sites/default/files/2018USCIRFAR.pdf>, 196.

¹⁷ Susanne Gusten, *The Church That Politics Turned Into a Mosque*, N.Y. TIMES (Feb. 8, 2012), <https://www.nytimes.com/2012/02/09/world/middleeast/the-church-that-politics-turned-into-a-mosque.html>.

ninth church, named Saint Sophia, to be so converted.¹⁸ Muslim prayer services now have been introduced in the historic Saint Sophia (Istanbul) museum, which had been the home of the Ecumenical Patriarchate for almost one thousand years, and the Government is considering converting this historic building into a mosque.¹⁹ This disturbing pattern has not been limited to Orthodox churches. Armenian, Syriac, Catholic, and Protestant churches also have been subjected to a similar fate. By so doing, rather than constructing new mosques where necessary, the Government is sending a clear message. “*You don’t belong here.*”

Another issue is that the Government refuses to recognize the Ecumenical status of the Ecumenical Patriarch in the Orthodox world and refers to him simply as the “Fener Greek Orthodox Patriarch.” This issue is significant. Since the fifth century, the Patriarch of Constantinople (Istanbul) has been recognized by all Orthodox faithful throughout the world as the Ecumenical Patriarch, and the fall of the city in 1453 did not change this reality. When Mehmet conquered the city, he famously declared to Patriarch Genadios, “Be Patriarch, with good fortune, and be assured of our friendship, *keeping all the privileges that the Patriarchs before you enjoyed.*”²⁰ (Emphasis added) Referring to the Ecumenical Patriarch now as the “Fener Greek Orthodox Patriarch” is an obvious attempt to downgrade his status to that of a local priest. It again sends a clear message to the Ecumenical Patriarchate. “*You don’t belong here.*”

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,

¹⁸ *Ninth Hagia Sophia Church Converted Into a Mosque in Turkey*, ORTHODOX CHRISTIANITY, (Sept., 25, 2014), <http://orthochristian.com/73914.html>.

¹⁹ Zeynep Bilginsoy, *Turkish President Recites Muslim Prayer at the Hagia Sophia*, ASSOCIATED PRESS (Mar. 31, 2018, 10:05 AM), <https://www.usnews.com/news/world/articles/2018-03-31/turkish-president-recites-muslim-prayer-at-the-hagia-sophia>.

²⁰ Evangelos Sotiropoulos, *The Fall of Constantinople, Queen of Cities*, HUFFINGTON POST (May 29, 2013, 3:44 PM), https://www.huffingtonpost.com/evangelos-sotiropoulos/the-fall-of-constantinople-the-queen-of-cities_b_3343095.html.

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 adopt a policy which enables election of Orthodox Christians to be board members of minority foundations, in a manner which assures that all the minority foundations will be able to manage returned property effectively.

Third, 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.

Fourth, 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.

Fifth, the Government of Turkey should desist from its recent policy of converting museums which were historic Christian sites into mosques, especially when there is no overriding need for additional mosques in such locations. This policy is an impediment to harmony among religious groups.

Sixth, the Government of Turkey should desist from its policy of referring to the Ecumenical Patriarch as the Fener Greek Patriarch and should recognize him as the Ecumenical Patriarch, which reflects his true status world wide.