

Ecumenical Federation of Constantinopolitans
Meeting at European Parliament Conference on

*The Remedy and Reparations towards the Greek Community
of Istanbul: A fundamental Human Rights Issue*

Venue: Auditorium 3G2, 13.30-15.00, 27 February 2013
Meeting Program

“Legal remedies in favor of minority of Istanbul:
the question of foundations”

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1. As a constitutionally secular state Turkey does not recognize the corporate legal status of any religious minority communities. Then, the Greek Orthodox minority in Turkey doesn't have legal personality and its internal organizational structure is invisible in the eyes of Turkish law. What are legally visible are the Greek-Orthodox foundations themselves, not the Greek-Orthodox minority. The Greek-Orthodox foundations constitute sui generis legal entities and an exception to the foundations that are governed under Turkish civil law. The Lausanne Treaty defines a foundation as “established, managed and controlled” by the minority.
2. Through a complex framework of laws and regulations, Turkey has intervened in the management of Greek-Orthodox foundations and the use of their properties in clear contravention of the modern international human rights law.

I. The Management of Foundations

3. The Treaty of Lausanne gives non-Muslim minorities the right to manage their own institutions. In practice, however, the Turkish state violates this right in various ways. With the transition to the Republic, foundations of all faiths were made subject to the Law on Foundations (Vakıflar Kanunu) of 1935 and to the jurisdiction of the General Directorate of Foundations (Vakıflar Genel Müdürlüğü, VGM). From then on, the General Directorate has exercised rigid and tight control over the day-to-day management of Greek-Orthodox foundations.

4. The principal way the General Directorate has restricted the self-management of Greek-Orthodox communities has been the practice of 'seized foundations' (mazbut vakıf), whereby the General Directorate takes over the management of foundations deemed to "no longer be of charitable or practical use." Instead of allowing Greek-Orthodox foundations to make use of their real estate in other ways based on their needs and preferences, the state seized control over the foundations responsible for running these institutions. Since the 1970s, the General Directorate has seized 17 Greek Orthodox foundations, taking over their management and confiscating hundreds of properties belonging to them.

5. Moreover, it has often been state policies that have disabled foundations from holding regular board elections. For example, candidates running for board elections are required to reside in the district where the foundation is located, which effectively precludes elections for many foundations that are located in areas where there are no or very few Greek-Orthodox residents left. While provisional solutions have been developed in the past to grant select foundations city-wide electoral districts, the law makes the enlargement of electoral districts subject to the General Directorate's prior authorization. The ad hoc, arbitrary, and unpredictable nature of the election system has been criticized by the Greek-Orthodox minority as a serious impediment to their autonomy.

6. Another issue is VGM's effort to facilitate some— luckily, only a few Greek-Orthodox – to remain, without elections, at the administration of Foundations. For instance, the President of Balıklı Hospital has been appointed by the Turkish state for more than 20 years now, without ever being voted by the Greek-Orthodox community. While at the end of every four-year term, elections are strictly required by the General Directorate for all 68 today Greek-Orthodox Foundations, Balıklı Hospital – the richest Greek-Orthodox Foundation – is exempt from the procedure, besides the written protest of the minority to General Directorate.

7. A last question, which arose just a few weeks ago, is the following: the General Directorate annulled the Regulation concerning elections (article 1 of the new Regulation, published in the Official Gazette no. 28533/19.1.2013) resulting thus in the absence of this necessary democratic process! Nobody knows how long this will last, but it is certainly the most flagrant violation of the rights of Foundations that has been recorded during the last decade.

II. Property Issues of Foundations

8. Under the Lausanne Treaty and the modern human rights law, minority foundations have a fundamental right to possess property and to dispose of it for their benefit. The foundation consists of the 'main' foundation building, which in effect lends its name to the foundation (as a legal entity), such as running a church or a school, or, in rare cases, a hospital or an orphanage. The foundations acquire property through purchase or donations by members of the community. In effect, in Turkey, foundations have suffered from constraints curtailing their right to acquire and enjoy property due to excessive expropriation, confiscation by the government and the state's non-recognition of the acquisition of new property.

9. Thousands of immovable properties belonging to non-Muslim school,

social, hospital, and church foundations have been confiscated by the state in the past half century. In addition to the seizure of the managements of foundations discussed in the earlier section, another critical tool of this state policy has been the infamous misuse of the '1936 Declarations.' Following the adoption of the Law on Foundations in 1935, the newly established Republic called on all foundations, Muslim and non-Muslim, to declare the real estates they owned. The foundations adhered to this call and submitted to the state lists of real estate they owned at the time. Decades later, the lists of properties that non-Muslim foundations had declared to the state in 1936 were interpreted by the VGM to be their 'founding statutes' – with dramatic implications for these foundations' ability to retain properties acquired after that year. On the basis of no legal rule whatsoever, VGM concluded that community foundations were not entitled to own – through purchase, sale or donations- any property that was not listed in their 1936 Declarations, i.e. 'founding statutes.'

10. The distorted interpretation of mere declarations of property as founding statutes of foundations enabled the VGM to confiscate all properties that non-Muslim foundations had acquired after 1936. It was no coincidence that this policy began in the 1960s, at the height of the conflict between Greece and Turkey over Cyprus.

11. In 2008, the Foundations Law was amended to allow foundations to change their scope or purpose from that specified upon the original incorporation, permit the Armenian Orthodox, Greek Orthodox, and Jewish communities to have one elected representative on the *Vakiflar*, and allow foundations to apply for the return of confiscated property still under Turkish state control. The 2008 amendments, however, did not solve fundamental problems of the Foundations Law. For example, there was no mechanism for foundations to apply for the return of property that had been sold to third parties or for compensation for irretrievable property. After the 2008 amendments went into effect, the *Vakiflar* received around 998 applications for the return of confiscated properties of Greek-Orthodox minority. Between the passage of the 2008 amended law and August 2011, a total of only 68 properties were

returned to Greek-Orthodox.

12. In August 2011, Prime Minister Erdoğan announced a new decree creating a process for the restitution of previously-expropriated foundation property that was registered in 1936, and for which the foundation has a deed or title to the property. The new decree allows for the restitution of property that was registered in 1936 but not specifically described in the official documentation (i.e. the registration could show four properties, but not explicitly say that a property was a church, hospital, school, etc.). The decree also differs from the 2008 amendments to the Foundations Law in permitting foundations to receive financial compensation if their property was sold to a third party and cannot be retrieved. Since August 2011, 30 additional properties have been returned to Greek-Orthodox minority foundations, and the *Vakıflar* is still considering some 600 applications of the Greek-Orthodox foundations.

13. While this action is commendable, it is not codified by law. In addition, the 98 properties returned since 2008 represent only a small portion of the minority properties expropriated by successive Turkish governments over many years. Moreover, despite the 2008 amendments and the August 2011 decree, the Turkish government retains the right to expropriate land from religious communities, although it has not confiscated any religious foundations' properties since 2007.

III. Which can be the remedies of the violation of the rights of the Greek-Orthodox foundations?

14. There is urgent need to adopt a new Regulation concerning elections in minority foundations. The democratic process in the minority foundations should not be cancelled. The government should give due attention to the proposals of the Greek-Orthodox minority

concerning this new Regulation.

15. The VMG shall proceed to all necessary administrative steps for the first free elections in Balıklı Hospital.
16. All the Greek-Orthodox foundations shall be granted city-wide electoral districts.
17. The foundations law should be amended in a way to permit the common management of two or more Greek-Orthodox foundations.
18. A judicial mechanism should be established to review the VGM's assessment of applications for the return of properties and to revoke arbitrary rejections and demands that require applicants to submit further documentation.
19. The government should closely monitor key bureaucratic institutions such as the VGM and the land registry offices to ensure that they effectively protect the foundations rights.
20. The Prime Ministry should issue a follow-up circular specifically calling on the VGM and land registry offices not to require foundations to produce documents they do not have or cannot obtain.
21. Specially for Imvros and Tenedos (Gökçeada and Bozcaada), the government should take disciplinary sanctions against VGM bureaucrats and land registrars abusing their offices by acting beyond their powers.