

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

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by

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A. Introduction

1. This presentation focuses on the need for protection of the rights of the Greek-Orthodox minority of Turkey and, by extension, of all religious minorities in Turkey. We are aware of the important fact that a process of reform has been initiated and is proceeding. A most important process has been initiated to write a new Constitution for the Turkish state which is making significant progress. We are also aware of the fledgling democratic-reform package that is being finalized and of the process to write a new Constitution for the Turkish state. However, it is worrisome to observe that democratic reforms have been put on hold or regressed during the last two years.

B. Violations of the Human Rights of Minorities

2. Over the past several years, serious violations of the human rights of minorities have been reported although the constitution of the Turkish state explicitly prohibits discrimination on religious grounds. The Order of St. Andrew (the Order) strongly associates itself with the 2013 Report of the United States Commission on International Religious Freedom (USCIRF). This report offers a thorough and objective account of the status of religious freedom in Turkey and provides a detailed list of the many violations of the rights of minorities. However, the Order does not feel that enough progress was made in the past year to warrant the removal of Turkey from the list of Countries of Particular Concern (CPC)¹ as was the case in the previous year.²

3. More specifically, while giving credit to actions by the current Government of Turkey, including the process of constitutional and other reforms, we are painfully conscious that a practice of property confiscation, under various pretexts, was evident in the past 100 years, especially against the Ecumenical Patriarchate and its associated Greek-Orthodox foundations. This practice stripped from the foundations the resources necessary for them to adequately fulfill their role in the world. The following summarize these violations.

¹ U.S. Commission on International Religious Freedom (USCIRF), 2013 Annual Report, March 2013 (Covering 1-March-2012 to 28-February-2013).

² Order of St Andrew Newsletter, Dr. Elizabeth H. Prodromou, "The Politics of Human Rights: Orthodox Christianity Gets the Short End," 8-May-13.

- (a) Legal personality has been denied the Ecumenical Patriarchate, together with other churches and faiths, including the Roman Catholic Church, the Armenian Church, and the Jewish faith, making them unable to own and manage property in spite of many protests against and denouncements of this practice by the Venice Commission,³ representatives of the European Union, and the U.S. State Department.⁴
- (b) 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. As a result, their numbers have diminished, threatening their sustainability.
- (c) Members of religious minorities continue to face threats and societal discrimination and occasional violence,⁵ on the basis of their religious and/or ethnic minority status.

The Fate of the Greek-Orthodox minority of Turkey

4. **Interference with the management of minority Foundations.** The USCIRF Report for 2012 highlights in detail the plight of minorities.⁶ The main instrument of the Government's interference has been through a rigid and tight control by the General Directorate of Foundations (GDF or VGM by the Turkish language initials or Vakıflar)⁷ over the day-to-day management of Greek-Orthodox foundations. The principal way GDF has restricted their self-management has been the practice of "seized foundations" (mazbut vakıf) whereby the GDF takes over their management if they are deemed to "no longer be of charitable or practical use." A principal way of this unacceptable interference has been the **policy that 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 with very few Greek-Orthodox residents. This interference is a direct violation of article 40 of the Lausanne Treaty. As a result of these policies, GDF has seized, since the 1970s, 17 Greek Orthodox foundations. The ad hoc, arbitrary, and unpredictable nature of the imposed election system has been criticized by the Greek-Orthodox minority as a serious impediment to their autonomy.

5. Altogether, a policy of unremitting 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 about 2,500 at present. 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

³ Formal opinion of the 82nd Plenary Session, Venice, 12-13 March 2010. The document was issued in Strasbourg, 15 March 2010, Opinion no. 535/2009, CDL-AD (2010) 005 Or. Engl.

⁴ International Religious Freedom Report for 2012, U.S. Department of State, Mid May 2013.

⁵ 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 trial of the alleged assassin is on-going.

⁶ USCIRF 2013 Report, Op. Cit.

⁷ The term originates from "the Law on Foundations" (Vakıflar Kanunu) of 1935. The foundations fell under the jurisdiction of the General Directorate of Foundations (Vakıflar Genel Müdürlüğü, or VGM), often referred to as Vakıflar.

strategy of oppression and persecution of the Greek-Orthodox and other ethnic/religious minorities by the Turkish Government. Nevertheless, in this paper, we will now focus on positive developments.

C. Positive Developments

6. 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) paying attention to the issues of ethnic and religious minorities; (iii) a decisive move against the clandestine, ultranationalist groups (e.g., Ergenekon), which has threatened religious leaders, including the Ecumenical Patriarch; and (iv) announcements to return confiscated properties or provide fair compensation.

7. 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). We cite below a few of these positive developments:

- (a) Return of the Prinkipos (Büyükada) Orphanage building, following much litigation and judgments by the European Court of Human Rights (ECHR) to which Turkey is a contracting party. The ECHR 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.⁸
- (b) Restoration of property rights. In March 2011, Turkey implemented the ECHR 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.
- (c) Permission for religious ceremonies. During 2013, as in the three previous years (2012, 2011 and 2010), the Government allowed the conduct of annual religious worship services at the Sümela Monastery near Trabzon, on the Black Sea, as well as in other religiously significant sites. The order of St. Andrew believes that international practice and human rights conventions dictate that religious shrines of all faiths should be returned to their rightful owners and services should be conducted as frequently as desired without interference; rather, the state should provide protection against interference.
- (d) The Decree of 27-August-2011⁹ on property return or compensation. This decree is a major development on which we shall devote the balance of this paper.
- (e) The Council of Foundations -- part of Turkey's Directorate General for Foundations (VGM) -- returned 190 hectares of forest to the Greek Orthodox Halki (Heybeliada) Seminary.¹⁰

⁸ This is the official name for the Patriarchate used by the Government of Turkey, referring to its origins in the Roman Empire.

⁹ The Decree is dated 27-August-2011 but the announcement by P.M. Erdoğan was made on 28-August-2011.

This forested land will be given to the seminary's owner, the Aya Triada Monastery Foundation. This is the biggest property return to a minority group in the history of Turkey.

D. The Decree on Property Return or Compensation

8. 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.

9. 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.

10. The provisions of the Decree are: (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) the Minister of Finance of the Republic of Turkey will establish, with the owners, a just compensation in the event that these properties have been sold or disposed of in various ways by the Turkish state.

11. It is not the intent of the Order of St. Andrew to file, in this paper, a detailed legal analysis of the Decree and its application. Such analysis is actually being done in the field by the VGM Assembly¹¹ which includes a member elected by the non-Muslim minorities. Here, we wish to point out serious deficiencies that should be taken into account and properly corrected:

- (a) A deadline for the submission of restitution applications was set as one year from the Decree's announcement. There seem to be a need for a formal extension to the original deadline.

¹⁰ Today's Zaman, 10-January-2013.

¹¹ 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).

- (b) 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.
- (c) 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; there is no guarantee they will keep doing so.
- (d) 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! This arrangement does not comply with the principle of fairness.
- (e) 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 2011¹², there are no copies of the 1936 declaration of 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;”
 - (iii) property of “seized” (“mazbut”) non-Muslim community foundations,¹³ 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. Thus, applications concerning these transferred properties may not be approved as valid;

¹² Document no. B.02.1.VGM.1.05.02.130.01- 99/3967/16.12.2011.

¹³ 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.

- (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 (e.g., 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; 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 above, not covered by the Decree, are likely to be brought before the European Court of Human Rights (ECHR) and it is likely that they will win their cases.

12. **Experience to date** indicates that application of the Law of 2008 on Foundations and the Decree of 27-August-2012 has been erratic and of limited effect. For example, after the 2008 amendments to the Law on Foundations went into effect, the General Directorate of Foundations (GDF or *Vakiflar*) received around 998 applications for the return of confiscated properties of the 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. Since August 2011, 30 additional properties have been returned to Greek-Orthodox minority foundations, and the *Vakiflar* is still considering some 600 applications. The total of 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 legal right to expropriate land from religious communities although, in fact, it has not confiscated any since 2007.¹⁴ A distorted interpretation of the Law of 2008, considering mere declarations of property as founding statutes of foundations, enabled VGM to confiscate all properties that non-Muslim foundations had acquired after 1936 – so, the application has been quite unsatisfactory.

E. Request for remedies

13. Based on the above observations, the following requests are made by the Order in consonance with such requests made by the various bodies of Greek-Orthodox minority foundations.

- (a) A new Regulation is needed concerning elections in minority foundations -- the democratic process in the elections of minority foundations should not be cancelled.
- (b) VMG shall proceed to provide all necessary administrative steps for the first free elections

¹⁴ Y. Ktistakis, "The Remedy and Reparations towards the Greek Community of Istanbul: A fundamental Human Rights Issue," unpublished paper.

in the Balıklı Hospital.

- (c) All the Greek-Orthodox foundations shall be granted city-wide electoral districts.
- (d) The foundations law should be amended in a way to permit the common management of two or more Greek-Orthodox foundations.
- (e) An impartial and fair judicial mechanism should be established to review the VGM's assessment of applications for the return of properties and to annul arbitrary rejections and demands that require applicants to submit further documentation.
- (f) Close monitoring of key bureaucratic institutions such as the VGM and the land registry offices should be exercised by government to ensure that they effectively protect the foundations rights.
- (g) A follow-up circular should be issued by the P.M. office specifically calling on the VGM and land registry offices to eliminate foundation requirements for documents that do not exist or cannot be obtained.
- (h) Especially 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.

F. Conclusions and Recommendations

14. The process of reform in Turkey is proceeding apace and is producing welcome results. The Decree of 27-August-2011 was a bold and welcome move to correct past injustice and reverse a climate of long-standing 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, close examination of the initiative shows that it was seriously flawed and incomplete in its inception and poorly implemented in practice. A basic flaw of these provisions mentioned above is that they are not codified in law. 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 fully into reality.

15. 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:

- (a) Fully adhere to the principles on the rights of expression, assembly and association, dissent, and religious faith and practice of all citizens without discrimination.
- (b) Allow full legal status for Turkey's religious institutions (minorities), including religious leadership organs, by making all the necessary legal changes and imbed the changes into the new constitution.
- (c) Establish and defend a climate of respect, tolerance, and legitimate assistance toward the free functioning of ethnic and religious minorities and their various institutions.

- (d) 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 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.
- (e) 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.
- (f) 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).

16. The progress made in establishing reform is acknowledged. For past injustices to be amended and for solidifying respect for the rights of religious and ethnic minorities, the constitution being currently debated should incorporate their rights unequivocally in its text in a comprehensive, explicit and precise manner. We are confident, and indeed hopeful, that the constitutional reform now in progress will lead to democratic gains for the common citizen and to full respect for the rights of all faiths and people of all ethnic origins in Turkey.