# WRITTEN OBSERVATIONS

*submitted to the European Court of Human Rights*

*in the case*

# *Arnavutköy Greek Orthodox Taksiarhis Church Foundation against Turkey*

(Application No. 27269/09)

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1. The applicant is one of the foundations of the Greek Orthodox community of Constantinople, "Arnavutköy Rum Ortodoks Taksiarhi Kilisesi Vakfi," (hereafter referred to as the "applicant foundation"). It claims ownership of a plot of land containing 8,394 $m^2$ (plot 99, parcel 1) located in Beşiktaş, one of the municipalities of Istanbul.

2. On 13 November 2003, the Council of the Directorate General of Foundations, attached to the Prime Ministry, accepted the applicant foundation's request to be registered in the local land records as the owner of the property in question pursuant to Article 50H of Decree No. 227. However, this decision was never given effect. The cadastre box that is supposed to indicate the owner of the disputed property was left blank, as if there were no owner.

3. The Public Treasury filed an action (2004/01) with the Seventh Chamber of the Istanbul Court of First Instance seeking to be recognised as the owner of the disputed property. On 24 June 2005, the applicant foundation intervened before the same tribunal to claim ownership of the property. The Court ruled in favour of the Treasury and indicated that it owned the disputed property (Judgment No. 2004/1E-2007/170K). The applicant foundation then filed an appeal, which was rejected by the Civil Chamber of the Court of Cassation on 1 July 2008 (Judgment No. 2008/4788) for lack of proof. The Court considered that the applicant had not brought forward sufficient evidence to show that it had possessed the property "*under title of ownership for an uninterrupted period of more than 20 years*"[1] or to respond to claims made by others to portions of the disputed parcel.[2] The applicant foundation asked for a re-examination of this decision, but it was refused by the Court of Cassation on 10 November 2008 (Judgment No. 2008/7158).

4. On 18 May 2009, the applicant foundation filed an application (No. 27269/09) with the European Court of Human Rights (ECHR) on the basis of Article 1 of Protocol No. 1 to the European Convention on Human Rights (the "Convention") as well as Article 1 of Protocol No. 1 in conjunction with Article 14. The applicant foundation alleged that it was deprived of its property because of its status as a Greek Orthodox Church.

5. On 28 December 2009, the Council of the Directorate General of Foundations amended its opinion and issued a new decision (No. 789) in light of Article 7 of Law No. 5737, this time refusing to register the applicant foundation as the owner of the disputed property. The applicant foundation challenged this decision on 12 May 2010 before the Eighth Chamber of the Istanbul Administrative Court, which dismissed the complaint (Decision No. 2010/2046). The case went back to the State Council (*Danıştay*), Turkey's highest administrative court, which rejected the applicant's appeal in a judgment issued on 25 June 2015.

**I. Admissibility of the Application**

6. The applicant foundation has exhausted its domestic remedies under the Turkish judicial system, as the Istanbul Court of First Instance and the Court of Cassation both rendered judgments against it (See Judgment No. 2008/7158, 10 November 2008). This internal decision is final and not subject to the possibility of appeal. Thus, the applicant foundation filed the present application with the ECHR (No. 27269/09) on 18 May 2009 (less than six months after the decision of the Court of Cassation), in order to contest its validity.

[1] Cadastre Law No. 3402, 3 July 1987, Article 14.
[2] *Ibid,* Article 19.

7. Following this submission, the Council of the Directorate General of Foundations rejected the applicant's appeal to restore its ownership of the disputed property on 28 December 2009, this time by an administrative order. The State Council did not deny that it was competent to rule on the dispute (Judgment of 25 June 2015), as in a similar case previously submitted to the ECHR the government of Turkey had recognized the complete authority of the Turkish administrative courts to adjudicate cases involving administrative acts by the Council of Foundations in relation to property registration requests filed by minority foundations.[3]

8. There are other parties who currently lay claim to certain portions of the property in question, all with an eye toward acquiring legal ownership. Admittedly, the applicant foundation did not sue the Public Treasury or these other persons directly. However, it is unreasonable to require the applicant initiate frivolous judicial proceedings in order to exhaust, with excessive formalism, every single internal remedy that might be available to it.[4] On this point, the dissenting opinion of the president of the Turkish Constitutional Court (Emin Yildirim) in a judgment issued 1 February 2017 is instructive:[5]

> "*Waiting for the applicant to bring an action for annulment of the property title and registration against the owner of the building will be contrary to procedural economy and will prolong the access time of the applicant to justice. The applicant appealed to the competent court against an administrative act and subsequently brought an action before the Council of State against the decision of the judges of the merits, exhausted all the remedies that had to be exhausted*".

**II. Concerning the Violation Alleged under Article 1 of Protocol No. 1**

**A. Applicability of Protocol No. 1**

9. According to Article 1 of Protocol No. 1 of the European Convention:

> "*Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
> *The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.*"

10. The notion of "property" evoked by this provision is independent of any internally formulated definitions concerning this right under domestic law. In each case, it is important to examine the

[3] ECHR, *La Compagnie des Filles de la Charité de Saint-Vincent-de-Paul v. Turkey*, No. 19579/07, 27 January 2015, § 41: "*The Turkish government raises an objection concerning the non-exhaustion of internal remedies required under Article 35 § 1 of the Convention. It maintains that the applicant, who presented a claim based upon Law No. 4771, did not contest the rejection of its request before the domestic judiciary. The government further argues that the request of the applicant submitted in accordance with Law No. 4928 was also rejected. In such a case, the law states that the applicant has the ability to invoke the full jurisdiction of the administrative courts to contest the two rejections in question, which emanated from an administrative agency—namely the Directorate General of Foundations*."

[4] *See*, e.g., ECHR, *Gherghina v. Romania [GC]*, No. 42219/07, 9 July 2015, § 87.

[5] Turkey Constitutional Court, Judgment of 1 February 2017, Annex No. 7 to the application. Free translation

underlying circumstances and see if, as a whole, they grant the applicant a substantial property right protected under Article 1 of Protocol No. 1.[6] The objective of this provision is to give individuals at least a legitimate expectation of obtaining the right to effective enjoyment of their property.[7] In determining whether such a right exists, the Court takes into account the time elapsed, which can give rise to a right of possession and enjoyment within the meaning of Protocol No. 1.[8]

11. In this case, although the ownership of the applicant foundation has never been formally recognised by Turkish authorities, it has exercised uninterrupted possession and control over the disputed property for at least a century. Under the Ottoman legal system that was in force until 1912, non-Muslim foundations in Turkey did not have the right to possess real property in their own name and thus registered their ownership under the names of individual persons, and sometimes even under the names of fictitious persons, as is the case in here. After the law of 16 February 1912[9] granted non-Muslim foundations in Turkey the legal right to possess property as legal entities for the first time, the applicant foundation requested as early as 5 August 1913 to be registered as the owner of the disputed property.[10]

12. When non-Muslim foundations were required to declare their possessions by Law No. 2762 of 1935,[11] the application foundation disclosed its ownership of the property in question in 1936 pursuant to this provision.[12] On 3 July 1952, the applicant foundation again declared before the Cadastral Commission that it was the owner of the property and that the record of ownership in the land register under the name of Hristoduri, son of Mihal, was a fiction made necessary by the legal situation existing prior to 1912.[13] However, the Cadastral Commission decided on 6 October 1952 to leave the box indicating the owner of the property "*blank for now*."[14] The applicant foundation subsequently brought the matter before the Thirteenth Chamber of the Istanbul Court of First Instance (Appeal No. 1953/130) but was unable to obtain a favourable ruling. On 2 July 1956, the Turkish National Assembly (unicameral parliament) adopted a special measure (No. 1972[15]) allowing the free registration of properties owned

[6] ECHR, *Depalle v. France [GC]*, No. 34044/02, 29 March 2010, § 62; *Anheuser-Busch Inc. v. Portugal [GC]*, No. 73049/01, 11 January 2007, § 63; *Öneryıldız v. Turkey [GC]*, No. 48939/99, 30 November 2004, § 124; *Broniowski v. Poland [GC]*, No. 31443/96, 22 June 2004, § 129; *Beyeler v. Italy [GC]*, No. 33202/96, 5 January 2000, § 100; *Iatridis v. Greece [GC]*, No. 31107/96, 25 March 1999, § 54; *Centro Europa 7 S.R.L. and di Stefano v. Italy [GC]*, No. 38433/09, 7 June 2012, § 171; *Fabris v. France [GC]*, No. 16574/08, 7 February 2013, §§ 49, 51; *Parrillo v. Italy [GC]*, No. 46470/11, 27 August 2015, § 211; *Béláné Nagy v. Hungary [GC]*, No. 53080/13, 13 December 2016, § 76.

[7] *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. The United Kingdom [GC]*, No. 44302/02, 30 August 2007 § 61; *Von Maltzan and others v. Germany [GC]*, Nos. 71916/01, 71917/01 and 10260/02, decision on admissibility, 2 March 2005, § 74(c); *Kopecký v. Slovakia [GC]*, No. 44912/98, 28 September 2004, § 35(c).

[8] *Depalle [GC]*, *op. cit.*, § 68; see also *Öneryıldız [GC]*, *op. cit.*, § 129.

[9] Provisional law relating to the right of legal persons to dispose of their immovable property (*Eşhas-I Hükmiyenin Emval-I Gayrimenkuleye Tasarruflarına Dair Kanun-u Muvakkat*), No. 1328/1912, adopted 16 February 1912.

[10] See application § 11 and note 8.

[11] Law governing foundations, No. 2762/1935, Transitory Article 1-A, adopted 13 June 1935: "*All the trustees or the board of trustees who failed to present accounts to the foundations' administration until present, are liable to prepare a statement indicating the status of the foundations under their control, the financial sources and the field of expenditure of these sources, allocations, the amount of income and expenditure recorded for the previous year . . . the resolution indicating the date of designation of trusteeship and the body authorised to make such designation, and to submit the same to the competent foundations' administration within three months as of the enforcement of the provisions of this Law*."

[12] *See* Annexes Nos. 8 and 11 of the application.

[13] *See* Annex No. 9 of the application, pp. 2-3.

[14] Cadastral Commission, Decision of 6 October 1952: "*as per the General Directorate of Land Registry and Cadastre Handling Office order of 11 November 1948 numbered 127-3-205466, the space for owner has been left blank for now and it has been decided to ascertain the other matters and listing the shanties and trees thereupon as belonging to those referred in the space left for declarations on the title deed registry and register the immovable [with the space for owner being left blank]*" (*See* Annex No. 9 of the application, p. 4).

[15] *See* Annex No. 6 of the application.

by the foundations of minority religions. This new text, although binding, was not implemented by the Directorate General of Titles and Cadastre. The declaration of ownership made by the applicant foundation in 1952 therefore had no legal effect.

13. Despite numerous administrative and judicial proceedings, the ownership rights of the applicant foundation have never been formally recognised, even though its actual and uninterrupted possession of the property was not contested. This was even admitted by the Council of the Directorate General of Foundations, which noted in its 2003 decision[16] that the applicant foundation had been in continuous possession since at least 1936. Under Turkish law, registration in the land register can be obtained by providing proof of possession of property "*as the owner for an uninterrupted period of more than twenty years*."[17] The Foundations' Council therefore asked that the applicant foundation's status as owner of the property be formally recognised. However, because this request was never given effect, the Public Treasury considered that the land had no owner and accordingly appropriated it to the State, a result that was accepted by the Turkish judicial system.

14. These various elements show that the possessory interest of the applicant foundation is sufficiently established to constitute a substantial right to ownership in the sense expressed in the first sentence of Article 1 to Protocol No. 1 of the Convention. Thus, this provision is applicable to this case. Furthermore, in the similar case of *Kosmas and others v. Greece*, the Court held that "*tolerance on the part of government authorities . . . over a long period indicates that they have recognised* de facto *that the applicant and his predecessors had a longstanding interest in the land and the possession thereof that is acknowledged and protected by domestic law*."[18] The applicant foundation thus holds the right to ownership of the disputed property, both under the understanding of Turkish domestic law and Article 1 of Protocol No. 1 to the Convention.

**B. The Existence of State Interference**

15. An interference with the right to respect for one's property enshrined in Article 1 of Protocol No. 1 can take the form of dispossession or expropriation, brought about either through an act *de jure* or through *de facto* means.[19] In the present case, as pointed out above, the applicant foundation's right to ownership of the disputed property has never been formally recognised by Turkish institutions and courts. The failure to publicly register the applicant foundation as owner of the property despite evidence of its continuous possession itself constitutes an interference with the right protected by Protocol No. 1. In addition, the government's inaction has *de facto* deprived the applicant foundation of the use of its property for the last several years, for which reason it is requesting either restitution or a lump sum payment equal to the property's current market value (request, § 35 d).

[16] Council of the Directorate General of Foundations, attached to the office of the Prime Minister, Decision of 13 November 2003, according to Article 50H of Decree No. 227 (*See* Annex No. 11 of the application).
[17] Cadastre Law No. 3402, Article 14, adopted 3 July 1987: "*... the title of a real estate not registered in the land register (...) is registered in the name of the one who proves, by means of documents, expertise or declarations of witnesses, to have possessed it, as the owner for an interrupted period of more than twenty years …*"
[18] ECHR, *Kosmas and others v. Greece*, No. 20086/13, 29 June 2017, § 71.
[19] ECHR, *Sporrong and Lönnroth v. Sweden (Plenary)*, Nos. 7151/75 and 7152/75, 23 September 1982, § 63; *Vasilescu v. Romania*, No. 27053/95, 22 May 1998, § 51; *Schembri and others v. Malta*, No. 42583/06, 28 September 2010, § 29; *Brumărescu v. Romania [GC]*, No. 28342/95, 28 October 1999, § 76; *Depalle [GC], op. cit.*, § 78.

16. More generally, the Court may assess the conduct of the parties, including the procedures employed by the State and the way they are implemented. Indeed, Article 1 of Protocol No. 1 necessitates the existence of a domestic judicial procedure by which a person can present his case to the competent authorities in order to contest an interference with his right to respect for his property rights.[20] This procedure must allow for an adversarial debate that comply with the principle of equality of arms. In order to evaluate an existing procedure, the Court takes into account the length of the proceedings, which must remain reasonable,[21] as well as the procedures applicable from a general point of view.[22] Even when a question of public interest is at stake, the public authorities are required to take action within a reasonable time in a legally appropriate manner that exhibits consistency and coherency.[23] The fact that the applicant foundation has been left in a state of uncertainty concerning its property rights for more than a century, despite multiple judicial proceedings and decisions, clearly shows that the procedural aspect of Article 1 of Protocol No. 1 has not been respected by the Turkish State. The supposedly temporary decision of the Cadastral Commission in 1952[24] is an example illustrating the willingness of the State to procrastinate and carry out a war of attrition against the applicant foundation on this matter.

17. Finally, in respect of the obligations contained in Article 1 of Protocol No. 1, the State should have established a basic framework providing an adequate forum for aggrieved persons to effectively assert their rights and receive a definitive answer from relevant authorities concerning their validity.[25] It must be noted that the applicant foundation has never been given any such opportunity.

18. From these facts, it is clear that an interference with the applicant foundation's right to respect for its property has indeed occurred.

### C. Justifications for State Interference

#### 1) Respect for the Principle of Legality

19. Article 1 of Protocol No. 1 requires, first and foremost, that an interference by public authorities in the enjoyment of the right to respect for one's property be lawful.[26] Indeed, this provision only authorises deprivations of property under "*the conditions provided for by law*"; thus, States may regulate the use of private possessions when enforcing valid domestic laws, but not on an arbitrary basis. Moreover,

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[20] ECHR, *G.I.E.M. S.R.L. and others v. Italy [GC]*, Nos. 1828/06, 34163/07 and 19029/11, 28 June 2018, § 302; *Yildirim v. Italy*, No. 38602/02, Decision on Admissibility, 10 April 2003; *Agosi v. The United Kingdom*, No. 9118/80, 24 October 1986, §§ 55, 58-60; *Air Canada v. The United Kingdom*, No. 18465/91, 5 May 1995, § 46; *Arcuri and others v. Italy*, No. 52024/99, Decision on Admissibility, 5 July 2001; *Riela and others v. Italy*, No. 52439/99, Decision on Admissibility, 4 September 2001; *Hentrich v. France*, No. 13616/88, 22 September 1994, § 49; *Bäck v. Finland*, No. 37598/97, 20 July 2004, § 63.

[21] ECHR, *Luordo v. Italy*, No. 32190/96, 17 July 2003, § 70.

[22] *See*, among others: ECHR, *Agosi*, *op. cit.*, § 55; *Hentrich*, *op. cit.*, § 49; *Jokela v. Finland*, No. 28856/95, 21 May 2002, § 45; *Gáll v. Hungary*, No. 49570/11, 25 June 2013, § 63; *Sociedad Anónima del Ucieza v. Spain*, No. 38963/08, 4 November 2014, § 74.

[23] ECHR, *Broniowski [GC]*, *op. cit.*, § 151; *Vasilescu*, *op. cit.*, § 51; *Beyeler [GC]*, *op. cit.*, §§ 110, 114, 120; *Sovtransavto Holding v. Ukraine*, No. 48553/99, 25 July 2002, §§ 97-98; *Almeida Garrett, Mascarenhas Falcão and others v. Portugal*, Nos. 29813/96 and 30229/96, 11 January 2000, § 54; *Barcza and others v. Hungary*, No. 50811/10, 11 October 2016, § 47; *Frendo Randon and others v. Malta*, No. 2226/10, 22 November 2011, § 55; *Hunguest Zrt v. Hungary*, No. 66209/10, 30 August 2016, §§ 25, 27; *Zelenchuk and Tsytsyura v. Ukraine*, Nos. 846/16 and 1075/16, 22 May 2018, §§ 91, 106.

[24] Cadastral Commission, *op. cit.*

[25] ECHR, *Kotov v. Russie [GC]*, No. 54522/00, 3 April 2012, § 117.

[26] ECHR, *Beyeler [GC]*, *op. cit.*, § 108; *Iatridis [GC]*, *op. cit.*, § 58.

the concept of the rule of law, one of the most fundamental principles to democratic society, is an idea inherent in all the articles of the European Convention.[27] As expressed in Article 1 of Protocol No. 1, this understanding of law encompasses all provisions—whether of a legislative, judicial, or administrative origin—that carry legally binding force (e.g. statutes, agency regulations, executive orders, court opinions, etc.).[28]

20. In the present case, the applicant foundation has faithfully followed the requirements of the domestic law passed in 1912 to obtain legal recognition of its ownership of the disputed property. However, these steps have led nowhere because the cadastral box that is supposed to indicate the owner of the property remained blank, even though the applicant's possession of the property has never been contested. This situation of legal uncertainty bears witness to Turkey's ongoing disrespect of the principle of legality required under Protocol No. 1.

**2) The Objectives of State Interference**

21. To note that an interference with the right to respect for one's property contravenes domestic law suffices to show that it also violates Article 1 of Protocol No. 1 of the European Convention. However, even assuming that a legal basis does exist, any interference with the enjoyment of a right or liberty recognised by the Convention must still pursue a legitimate aim. In particular, an interference in the exercise of the right to respect for one's possession of property within the meaning of Article 1 of Protocol No. 1, can only be justified on the basis that it serves a legitimate public (or general) interest.[29]

22. In this case, the Turkish government does not appear to have invoked any such public interest. Although the Court can identify such an objective on its own initiative in order to justify an interference with the rights protected by Article 1 of Protocol No. 1,[30] none of the legitimate public interests already identified by the Court can justify the interference of the Turkish State in this instance.

**3) The Proportionality of State Interference**

23. If the State has not based its interference on a legitimate interest, it is not necessary to proceed to an analysis of its proportionality and whether a fair balance has been struck between the public good against the protection of individual rights.[31] Indeed, the principle of "fair balance" inherent in Protocol No. 1 presupposes the existence of a valid general interest against which individual interests must be weighed. Even though it has been shown that no such interest exists here, it remains a worthy exercise to briefly identify the elements that are considered when conducting a proportionality test.

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[27] ECHR, *Iatridis [GC]*, *op. cit.*, § 58; *Former King of Greece and others v. Greece [GC]*, No. 25701/94, 23 November 2000, § 79; *Broniowski [GC]*, *op. cit.*, § 147; *Amuur v. France*, No. 19776/92, 25 June 1996, § 50.

[28] ECHR, *Cantoni v. France*, No. 17862/91, 15 November 1996, § 29. *See also East West Alliance Limited v. Ukraine*, No. 19336/04, 23 January 2014, § 167; *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, No. 3503/08, 13 October 2015, § 37; *Beyeler [GC]*, *op. cit.*, § 109; *Hentrich*, *op. cit.*, § 42; *Lithgow and others v. The United Kingdom (Plenary)*, Nos. 9006/80, 9262/81, 9263/81, 9265/81, 9266/81, 9313/81 and 9405/81, 8 July 1986, § 110; *Ališić and others v. Bosnia-Herzegovina, Croatia, Serbia, Slovenia, the former Republic of Yugoslavia, and Macedonia [GC]*, No. 60642/08, 16 July 2014, § 103; *Centro Europa [GC]*, *op. cit.*, § 187; *Hutten-Czapska v. Poland [GC]*, No. 35014/97, 19 June 2006, § 163.

[29] ECHR, *Beyeler [GC]*, *op. cit.*, § 111; *Béláné Nagy [GC]*, *op. cit.*, § 113.

[30] ECHR, *Ambruosi v. Italy*, No. 31227/96, 19 October 2006, § 28; *Marija Božić v. Croatia*, No. 50636/09, 24 April 2014, § 58.

[31] ECHR, *Simonyan v. Armenia*, No. 18275/08, 7 April 2016, §§ 25-26; *Vijatović v. Croatia*, No. 50200/13, 16 February 2016, § 58; *Gubiyev v. Russia*, No. 29309/03, 19 July 2011, § 83; *Dimitrovi v. Bulgaria*, No. 12655/09, 3 March 2015, §§ 52-56; *Bock and Palade v. Romania*, No. 21740/02, 15 February 2007, §§ 58-65.

24. The concern of ensuring a "fair balance" between the general interest and the right to respect for one's property is reflected in the structure of Article 1 of Protocol No. 1 as a whole and by the need for a reasonable relationship of proportionality between the means employed and the aim pursued.[32] Verifying the existence of such a balance requires an overall examination of the different interests in play, keeping in mind that the European Convention aims to safeguard rights that are established and concrete in nature.

25. A proportionality review in this case should focus on compensation arrangements for the deprivation of property. Admittedly, Article 1 of Protocol No. 1 does not guarantee the right to complete compensation in all cases, since legitimate objectives of "public utility" may justify a sum below full market value. But without a payment that is reasonably commensurate with the current estimated value of the land, a deprivation of property almost always constitutes an excessive infringement of the right to ownership.[33] In this case, the applicant foundation has been deprived of its property without receiving any compensation at all. The European Court cannot legitimize such an approach, as it would permit a large degree of uncertainty, and even arbitrariness, in the State's implementation of the right to respect for one's property under Protocol No 1.[34]

**III. Alleged Violation of Article 1 of Protocol 1 Combined with Article 14**

26. According to Article 14 of the European Convention:

> "*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*"

**A. The Existence of Discriminatory Treatment**

27. For Article 14 to apply, there must be a difference in treatment between the applicant foundation and other similar groups that is grounded in one or more of the discriminatory motives referred to by that article. On this point, the Court has said that "*the relevant test is whether, but for the discriminatory ground about which the applicant complains, he or she would have had a right, enforceable under domestic law, in respect of the asset in question*."[35] In order to determine whether the applicant foundation was treated differently from other similarly situated groups, the Court can, and should, look at whether the government's refusal to recognise the applicant's ownership of the disputed property

[32] ECHR, *Beyeler [GC]*, *op. cit.*, § 114. *See also*, among others, *Sporrong and Lönnroth (Plenary)*, *op. cit.*, § 69; *Pressos Compania Naviera S.A. and others v. Belgium*, No. 17849/91, 20 November 1995, § 38; *Chassagnou and others v. France [GC]*, Nos. 25088/94, 28331/95 and 28443/95, 29 April 1999, § 75; *Ališić [GC]*, *op. cit.*, § 108.
[33] ECHR, *The Holy Monasteries v. Greece*, Nos. 13092/87 and 13984/88, 9 December 1994, §§ 70-71 *James (Plenary)*, *op. cit.*, § 54; *Papachelas v. Greece [GC]*, No. 31423/96, 25 March 1999, § 48; *J.A. Pye (Oxford) Ltd [GC]*, *op. cit.*, § 54; *Urbárska Obec Trenčianske Biskupice v. Slovakia*, No. 74258/01, 27 November 2007, § 115.
[34] ECHR, *Pincová and Pinc v. Czech Republic*, No. 36548/97, 5 November 2002, § 53; *Gashi v. Croatia*, No. 32457/05, 13 December 2007, § 41; *Vistiņš and Perepjolkins v. Lithuania [GC]*, No. 71243/01, 25 March 2014, § 111; *Guiso-Gallisay v. Italy (just satisfaction) [GC]*, No. 58858/00, 22 December 2009, § 103; *Moreno Diaz Peña and others v. Portugal*, No. 44262/10, 4 June 2015, § 76.
[35] ECHR, *Fabris [GC]*, *op. cit.*, § 52; *See*: *Stec and others v. The United Kingdom [GC]*, Nos. 65731/01 and 65900/01, Decision on Admissibility, 6 July 2005, § 55; *Andrejeva v. Lithuania [GC]*, No. 55707/00, 18 February 2009, § 79.

was due specifically to its status as a non-Muslim foundation or simply the result of general measures that are applied equally to all.[36]

28. As has been explained, non-Muslim foundations were not recognised under Turkish law until 1912. Although since then these foundations have technically possessed the ability to obtain legal recognition of their property ownership, it appears that targeted judicial and administrative decisions have often prevented them from exercising this right. This was the case, for instance, with the 1948 Memorandum of the General Directorate of Titles and Cadastre, on which the Cadastral Commission relied a few years later to temporarily refuse recognition of the applicant foundation's ownership of the property in question. Moreover, the willingness of the Public Treasury to assert ownership of the property immediately following the decision of the Foundations' Council in 2003 seems to reinforce the claim that the applicant foundation has been treated differently by the State.

**B. Justifications for a Legal Distinction**

**1) The Objectives of Discriminatory Treatment**

29. A distinction in treatment is discriminatory if it "*lacks an objective and reasonable basis*"; that is, if it does not pursue a "*legitimate aim*."[37] The States possess a certain margin of appreciation in determining whether a difference in circumstances justifies differentiated treatment under the law.

30. In the current case, as the interference committed by the Turkish State does not serve a legitimate aim (see Part II C-2), then the fact that it is revealing of a difference in treatment based on different ethno-religious status cannot be legitimate either.

31. In reality, the purpose of the present interference is an illegitimate "*public interest*," that of strengthening Turkey's national and religious homogeneity. However, the Turkish State has made binding international commitments regarding the protection of Christian populations who have become minorities. These obligations are derived from the Lausanne (1923) and Ankara (1930) Treaties and are defined by the decisions of the Mixed Commission established under Article 31 of the Ankara Treaty. For example, with regard to the foundations of the Greek-Orthodox community, this Mixed Commission rendered Decision No. 107 on June 7, 1934, expressly providing for the registration of their property in the cadastre.[38]
Therefore, if there existed any legitimate basis for protecting the rights of foundations based on their ethno-religious origin, it would be to the benefit of the Christian minorities and not to their detriment.

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[36] ECHR, *R.Sz. v. Hungary*, No. 41838/11, 2 July 2013, § 60.
[37] ECHR, *Case on Belgian Language Laws v. Belgium (Plenary)*, Nos. 1474/62, 1677/62, 1691/62, 1994/63 and 2126/64, 23 July 1968, § 34; *Marckx v. Belgium (Plenary)*, No. 6833/74, 13 June 1979; *Abdulaziz, Cabales and Balkandali v. The United Kingdom (Plenary)*, Nos. 9214/80 9473/81 and 9474/81, 28 May 1985; *Inze v. Austria*, No. 8695/79, 28 October 1987; *Darby v. Sweden*, No. 11581/85, 23 October 1990; *Vermeire v. Belgium*, No. 12849/87, 29 November 1991; *Pine Valley Developments Ltd and others v. Ireland*, No. 12742/87, 29 November 1991.
[38] Mixed Commission created under Article 31 of the Ankara Treaty, Decision No. 107, 7 June 1934: "*Immovable properties located within Istanbul—except for the exchange and those appearing in the lists submitted to the cadastre by the Ecumenical Patriarchy of Phanar or directly by the following institutions during the time period provided in the law of 16 February 1928—that belong to ecclesiastical legal entities with a cultural and charitable mission, or to churches, monasteries, hospitals, schools, etc. . . . will be considered as having been validly recorded in the cadastre under their name according to the law of February 16, 1928 concerning the right of property ownership, despite the fact that the formalities of the law have not been fulfilled.*"

Indeed, they must be able to expect that the authorities will implement "*positive protection measures*," in order to effectively and efficiently guarantee their right to respect for their property.[39]

32. Not only did the Turkish State fail to invoke an objective justifying different treatment in this case, but it should have taken special care to effectuate the property rights of the applicant foundation because it belongs to a non-Muslim minority protected by international agreements. Consequently, the applicant foundation was unfairly discriminated against because of its religious minority status.

**2) The Proportionality of the Difference in Treatment**

33. The finding that there is no legitimate purpose for a difference of treatment is sufficient to establish a violation of Article 14 in conjunction with Article 1 of Protocol No. 1. However, in the very unlikely event that a legitimate purpose justifies a difference in treatment, the Court should then examine whether there is in fact a reasonable relationship of proportionality between the means employed and the purpose they are intended to serve. The elements of Part II C-3 suffice to show that the Court would not validate as proportional the difference of treatment in this case under any legitimate public interest it has identified to date, which again shows that the government's actions constitute discrimination.

**Conclusion – The Rights of Minority Christians in Turkey are Systematically Violated**

34. The State's refusal to formally recognise the applicant foundation's ownership of the disputed property, as well as its expropriation, constitutes an arbitrary deprivation of property motivated by a desire to discriminate against the Greek Orthodox Church. This discriminatory violation of the applicant foundation's right to respect for its property reveals a more hidden objective of the Turkish State: to confiscate the properties of Christian minorities. The observations below substantiate this conclusion.

35. Although the Turkish Constitution officially recognizes Turkey as a secular state, non-Muslims are frequently discriminated against and treated as second-class citizens by government institutions.[40] Even minorities explicitly protected by the Lausanne (1923) and Ankara (1930) treaties are often affected.

36. As the ECLJ demonstrated in its December 2018 report "Christians in Turkey"[41], the demands placed on churches regarding the construction of places of worship are highly discriminatory. Violations of the right to property ownership and thus of religious freedom for Christians are systematic and intentional. Unlike Muslims, Christians are generally required to purchase at least 2,500 square meters of land to build a church and are not allowed to have places of worship in certain places.[42] In addition, churches are regularly the target of vandalism, the perpetrators of which are rarely pursued and prosecuted.[43] The European Court has already heard a number of cases concerning the expropriation

[39] ECHR, *Öneryıldız v. Turkey [GC]*, No. 48939/99, 30 November 2004, § 134.
[40] Abdullah Kiran, "How a social engineering project affected Christians in Turkey", *International Journal for Religious Freedom: Researching Religious Freedom*, Issue 1 & 2 (2013), vol. 6, p. 51.
[41] ECLJ, "Christians in Turkey – The Violations of Christians' Religious Freedom in Turkey" December 2018.
[42] *Ibid.*, p. 11.
[43] *Ibid.*, p. 15. *See also*: Grégor Puppinck, Christophe Foltzenlogel, Andreea Popescu, "The Catholic Church and Anatolia" M.G. Robertson Global Centre for Law & Public Policy Research Paper No. 15-7, 1 J. M.G. ROBERTSON GLOBAL CTR. FOR L. & PUB. POL'Y 127 (2015), 25 May 2016, p. 148.

of property belonging to non-Muslim foundations recognized by Turkey under the Treaty of Lausanne, including those of the Armenian Church[44] and the Greek Orthodox Church.[45] In all these cases, the Court found a violation of the property rights held by these churches under Article 1 of Protocol No. 1.

37. More generally, the Armenian and Greek Orthodox patriarchates are not recognized as legal persons under Turkish law. They therefore seek legal recognition of their rights as patriarchies and not through the creation of a foundation like the applicant.[46] The lack of legal standing accorded to religious communities is in practice a form of discrimination against non-Muslim religions, which, unlike Islam, are not represented by the Directorate of Religious Affairs (Diyanet) attached to the office of the Prime Minister.[47] Thus, as the ECLJ pointed out in its observations concerning the case of *Fener Rum Patrikliği (Ecumenical Patriarchate) v. Turkey*,[48] the government's refusal to recognise the Ecumenical Patriarchate of Constantinople as a legal entity was not an action proportionate to the objective of protecting secularism and national security. Indeed, the Ecumenical Patriarchate - as well as the Catholic Church, the Armenian Patriarchate or any other religious community - is a legal entity that must be able to benefit from the protection afforded by law and human rights. The European Commission for Democracy through Law ("*Venice Commission*") has already affirmed this principle,[49] as has the Parliamentary Assembly of the Council of Europe (PACE), which in 2010 considered that the "*absence of legal personality affecting [these communities] has direct consequences in terms of the[ir] right to property and property management*".[50]

38. As a result of discrimination against Christian minorities, large numbers have emigrated from Turkey to other nations, which has consequently reduced their overall presence in the country. In 1920 there were around two million Christians in Turkey;[51] today there are only 68,600, representing approximately 0.1 % of the national population.[52] In particular, while the Greek Orthodox minority possessed 200,000 members at the beginning of the 20th century, there are now fewer than 3,000. This extremely low number portends the eradication of the Orthodox Church from the Anatolian peninsula in the near future.[53] By comparison, the numbers of Armenian Orthodox and Protestant believers are currently around 90,000 and 7,000, respectively.[54] These figures are only estimates however because some Christians conceal their affiliation for fear of encountering discrimination and, in some cases, harassment.

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[44] ECHR, *Yedikule Surp Pirgiç Ermeni Hastanesi Vakfi v. Turkey*, No. 36165/02, 16 March 2009; *Samatya Surp Kevork Ermeni Kilisesi v. Turkey*, No. 1480/03, 16 March 2009.
[45] ECHR, *Fener Rum Erkek Lisesi Vakfi v. Turkey*, No. 34478/97, 9 April 2007; *Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi v. Turkey*, No. 37639/03, 3 June 2009; *Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfi v. Turkey No. 2*, No. 37646/03, 6 January 2010.
[46] United States Department of State, "2017 Report on International Religious Freedom – Turkey" 29 May 2018.
[47] European Commission for Democracy through Law ("Venice Commission"), "*Opinion on the legal status of religious communities in Turkey and the right of the Orthodox Patriarchate in Istanbul to use the title 'ecumenical'*", adopted during the 82nd plenary session in Venice, 12-13 March 2010, § 34.
[48] ECLJ, Observations in the case of *Fener Rum Patrikliği (Ecumenical Patriarchate) v. Turkey* (No. 14340/05), January 2008.
[49] Venice Commission, *op. cit.*, § 108.
[50] Parliamentary Assembly of the Council of Europe, "*Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (eastern Greece)*", Resolution 1704, 27 January 2010.
[51] Daniel Pipes, "The disappearance of Christians in the Middle East", *Middle East Quarterly*, winter 2001.
[52] Grégor Puppinck, Christophe Foltzenlogel, Andreea Popescu, *op. cit.*, p. 128.
[53] Elizabeth Prodromou, Rome and Constantinople, *A Tale of Two Cities: The Papacy in Freedom, the Ecumenical Patriarchate in Captivity*, Berkley Center for Religion, Peace and World Affairs, 22 March 2013.
[54] United States Department of State, "2009 Report on International Religious Freedom – Turkey" 26 October 2009.

39. These difficulties are related to deep-seated cultural and religious problems in Turkey. Christianity is mostly seen as a foreign religion of a bygone era and thus a threat to the unity of the modern Turkish State. Even more profoundly, the oppression of Christian minorities in Turkey has an eschatological dimension. In a speech on March 19, 2019, Turkish President Recep Tayyip Erdoğan declared that "*with the help of Allah, neither the residual effects of the Crusades nor nostalgia for the Byzantine period will deviate us from our path*"[55] and, concerning the Basilica Saint Sophia in Istanbul, "*we have been here for a thousand years and God willing, we will stay there until the Apocalypse*".[56] At the same time, it should be noted that there are many Christians who worship the Virgin of the Apocalypse who, crowned with twelve stars, holds under her feet a crescent moon and a snake.

40. The present case is thus only one example of the latent persecution suffered by Christians in Turkey, victims of ethno-religious nationalism.

[55] "The excessive campaign of Turkish President Recep Tayyip Erdogan", *Le Temps*, 27 March 2019.
[56] "Erdogan declares that New Zealand attack was actually aimed at Turkey", *Agence France-Presse*, 19 March 2019.