



WRITTEN OBSERVATIONS

*submitted to the European Court of Human Rights
in the case of*

BALAT RUM BALINO KILISESI VAKFI v. Turkey And 2 other applications

(Applications No. 3984/21, 3986/21 and 5567/21)

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1. The applicants against Turkey are two foundations of Greek Orthodox religious minority communities established in 1834: the Foundation of the Greek Orthodox Church of Balino in Balat (applications no. 3984/21 and no. 3986/21) and the Foundation of the Greek Orthodox Church Panayia in Belgratkapı (application no. 5567/21). The Foundations seek the restitution of certain immovable properties that belong to them, as they were listed in their 1936 declaration, or, alternatively, compensation corresponding to their value. However, the Directorate General of Foundations (hereinafter “the Directorate”), a Turkish public institution under the Ministry of Culture and Tourism¹, refuses to comply with this request.

2. These Foundations are classified as “community foundations” (“*cemaat vakfi*”) and are governed by Law No. 5737 on Foundations of 2008. They belong to the category of foundations established by non-Muslim religious communities (i.e., Christian and Jewish communities), whose members are Turkish citizens. They are thus distinct from Muslim foundations and from non-religious foundations (such as artisan guild foundations)². The Foundations enjoy private legal personality³ and are managed by boards of directors elected by their own members⁴.

3. The applicants complain, under Article 6 of the European Convention on Human Rights, that their right of access to a court was violated when the Turkish Constitutional Court rejected their application on the grounds of failure to exhaust domestic remedies, despite the fact that they had previously initiated proceedings before administrative courts. Furthermore, they claim, under Article 1 of Protocol No. 1 to the Convention, that the administration’s refusal to register the disputed properties in their name constitutes a violation of their right to property.

4. The European Centre for Law and Justice (ECLJ) bases its observations on Article 1 of Protocol No. 1 to the Convention, which protects the right to property (I). It will also examine the case from the perspective of Article 14, which prohibits discrimination based on religion (II), and will provide evidence to demonstrate that the violation of Christian rights is systemic in Turkey (III). Given this context, and considering that Christians face systemic injustices on account of their religion, particularly through efforts to dispossess them of their heritage, it would be insufficient for the Court to limit its condemnation of Turkey solely to a violation of Article 1 of Protocol No. 1. Rather, the Court should also acknowledge the existence of discrimination against the Foundations on the basis of their belonging to a religious minority. Indeed, the injustice in the organization of the Foundations was committed precisely because of the Christian religion of the applicants.

I. Alleged Violation of Article 1 of Protocol No. 1 to the Convention Due to the Non-Restitution of Immovable Properties Belonging to the Applicant Foundations

A. The Relevant Domestic Legal Framework

5. During the Ottoman era, community foundations did not have a vakfiye, the founding and legal deed of a foundation, which would have granted them legal personality and ensured the permanence of their assets and religious or charitable missions. These foundations were not governed by the same rules as private foundations (which possessed a vakfiye) but rather by imperial decrees or community decisions. They managed collective assets for the benefit of their religious communities, which were often registered in the land registry under either the real but

¹ [Structure of the General Directorate of Foundations](#), Ministry of Culture and Tourism of the Republic of Turkey.

² [Law No. 5737 on Foundations](#), Article 3, Turkish Official Gazette No. 26800, February 27, 2008.

³ *Ibid.*, Article 4.

⁴ *Ibid.*, Article 6.

borrowed name of a trusted notable from the community (nam-ı müstear) or the fictitious name of a religious saint (nam-ı mevhum). The Law of February 16, 1912, for the first time, recognized the right of foundations to own property as legal persons⁵.

6. Following the establishment of the Turkish Republic in 1923, Law No. 2762 on Foundations was enacted on June 13, 1935. This law recognized the legal personality of institutions that had been created for the benefit of non-Muslim communities under the Ottoman Empire. It required these institutions, in order to obtain foundation status, to submit a declaration (referred to as the “1936 Declaration”) in which they had to specify, among other things, the nature and amount of their revenues and provide a list of their immovable properties (Article 44 of the law). The applicant Foundations complied with this requirement, listing in their declaration the properties they owned at the time, which are at the heart of the present case.

7. In its established case law, particularly in its decision of May 8, 1974, the Court of Cassation ruled that the 1936 Declarations should be regarded as the founding documents equivalent to the statutes of community foundations. Furthermore, these declarations contained an inventory of the properties belonging to them. In the absence of an explicit clause in their declarations, these foundations were prohibited from acquiring additional immovable properties beyond those listed in the document. The Court of Cassation appeared to consider that the acquisition of immovable property by such foundations could pose a threat to national security⁶.

8. In practical terms, this 1974 ruling required that all immovable properties acquired through purchase or donation after 1936 be returned to their former owners. If these owners were deceased and had no heirs or if their heirs could not be found, the properties were to be transferred to the Directorate General of Foundations. To partially remedy the unjust treatment suffered by community foundations that had been dispossessed of their properties, numerous amendments to the legislation governing foundations were introduced through Law No. 4771 of August 9, 2002, Law No. 4778 of January 2, 2003, and the Regulation of January 24, 2003, concerning the acquisition of immovable property by community foundations.

9. Law No. 5737 on Foundations was adopted on February 20, 2008, and published in the Official Gazette on February 27, 2008. This law repealed Law No. 2762 on Foundations of 1935. The relevant provisions of this law are formulated as follows:

Provisional Article 7 of Law No. 5737

“a) Immovable properties registered in the 1936 Declarations, which are still in the possession of [foundations established by religious minorities] and registered under pseudonyms or fictitious names;

b) Immovable properties acquired for consideration, by donation, or by inheritance after the submission of the 1936 Declarations by foundations established by religious minorities, whose titles remain registered in the name of the Treasury, the [Directorate General of Foundations], the deceased, or the donors, on the grounds that these foundations do not have the capacity to acquire property; shall be registered, along with all associated rights and obligations and following the approval of the [foundations’ assembly], in the name of [the concerned foundations]

⁵ Provisional Law on the Right of Legal Entities to Own Immovable Property (*Eşhas-ı Hükmiyenin Emval-i Gayrimenkuleye Tasarruflarına Dair Kanun-u Muvakkat*), No. 1328/1912, adopted on February 16, 1912.

⁶ *Fener Rum Erkek Lisesi Vakfı v. Turkey*, No. 34478/97, January 9, 2007, § 28.

upon application to the relevant Property Registry Office within eighteen months from the entry into force of this law (...)"⁷.

Provisional Article 11 of Law No. 5737, Adopted on August 27, 2011

"a) Immovable properties of foundations established by religious minorities [that are] listed in a 1936 Declaration and for which the ownership field [in the land registry] was left blank;

b) Immovable properties of foundations established by religious minorities [that are] listed in a 1936 Declaration and [are] registered in the name of the Public Treasury, the Directorate General of Foundations, a municipality, or a provincial administration for reasons other than expropriation, sale, or exchange;

c) Cemeteries and fountains of foundations established by religious minorities [that are] listed in a 1936 Declaration and [are] registered in the name of public institutions; shall be registered, together with all rights and obligations attached thereto and upon the favorable opinion of the [foundations' assembly], in the name [of the concerned foundations] if they submit an application to the competent Property Registry Office within twelve months from the entry into force of this law (...)"⁸.

10. Pursuant to Provisional Articles 7 and 11⁹ of Law No. 5737 of 2008, the applicant Foundations submitted a request in 2012 to the Directorate General of Foundations for the registration of their immovable properties located in the Fatih district of Istanbul, specifically registered in the land registry under block 2639, parcel 3; block 2639, parcel 2; and block 1166, parcel 29. The Assembly of the Directorate General of Foundations rejected all three requests, despite the fact that the properties were listed in the applicants' 1936 Declaration as part of their assets.

B. Existence of a "Possession"

11. The notion of "possession" under Article 1 of Protocol No. 1 has an autonomous meaning, independent of formal classifications under domestic law. In each case, it is essential to assess whether, taken as a whole, the circumstances have conferred upon the applicant a substantive interest protected under Article 1 of Protocol No. 1¹⁰. This provision concerns "possessions", based on which an applicant may claim at least a "legitimate expectation" of effectively exercising a property right¹¹. The Court considers the passage of time as a relevant

⁷ Literal translation from the French version with clarifications in brackets, from: *Fondation de l'église grecque-orthodoxe Taksiarhis de Arnautköy v. Turkey*, No. 27269/09, November 15, 2022, § 25.

⁸ Literal translation from the French version with clarifications in brackets, from: *Fondation du monastère de Mor Gabriel à Midyat v. Turkey*, No. 13176/13, October 3, 2023, § 31.

⁹ The lawyer's request refers to Provisional Article 7, while the one submitted by the ECtHR registrar refers to Provisional Article 11. Both articles are similar but apply to different time periods.

¹⁰ *Depalle v. France* [GC], No. 34044/02, March 29, 2010, § 62; *Anheuser-Busch Inc. v. Portugal* [GC], No. 73049/01, January 11, 2007, § 63; *Öneryıldız v. Turkey* [GC], No. 48939/99, November 30, 2004, § 124; *Broniowski v. Poland* [GC], No. 31443/96, June 22, 2004, § 129; *Beyeler v. Italy* [GC], No. 33202/96, January 5, 2000, § 100; *Iatridis v. Greece* [GC], No. 31107/96, March 25, 1999, § 54; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], No. 38433/09, June 7, 2012, § 171; *Fabris v. France* [GC], No. 16574/08, February 7, 2013, §§ 49 and 51; *Parrillo v. Italy* [GC], No. 46470/11, August 27, 2015, § 211; *Bélané Nagy v. Hungary* [GC], No. 53080/13, December 13, 2016, § 76.

¹¹ *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], No. 44302/02, August 30, 2007, § 61; *Von Maltzan and Others v. Germany* [GC], Nos. 71916/01, 71917/01, and 10260/02, decision on admissibility, March 2, 2005, § 74 (c); *Kopecký v. Slovakia* [GC], No. 44912/98, September 28, 2004, § 35 (c).

factor, as it may give rise to a proprietary interest in enjoying a possession within the meaning of Article 1 of Protocol No. 1¹².

12. Numerous cases brought before the Court by foundations established by religious minorities in Turkey have resulted in findings of violations of Article 1 of Protocol No. 1¹³. In the present case, the applicant Foundations do not hold a title deed, which would, by itself, serve as undeniable proof of the existence of a property right. Indeed, under the Ottoman legal system in force until 1912, non-Muslim foundations were not allowed to own immovable property in their own name and instead registered their properties in the land registry under the names of individuals, sometimes even under the names of fictitious persons. However, even though the formal recognition of the applicant Foundations' ownership of the disputed properties has never been officially established, their effective and uninterrupted possession of these properties has never been contested. The applicants claimed to have possessed the disputed properties for a very long time and included them in their 1936 Declarations. This claim was not disputed by the Turkish Constitutional Court. Consequently, the applicants hold a proprietary interest constituting a "possession" within the meaning of Article 1 of Protocol No. 1, making this provision applicable to the case.

C. Non-Recognition of the Applicant Foundations as Owners

1) Lack of Procedural Safeguards in the Judicial Process Leading to the Non-Recognition of Ownership

13. The issue to be examined concerns the procedural safeguards in the judicial process that resulted in the non-recognition of the applicant Foundations as owners. The present case does not involve a situation of direct and explicit deprivation of property that formally belonged to the applicant Foundations, nor does it relate to the regulation of the use of these properties. Therefore, the case does not fall neatly into any specific category under Article 1 of Protocol No. 1. Accordingly, it must be examined in light of the general standard of this provision¹⁴.

14. In this regard, although Article 1 of Protocol No. 1 is silent on procedural requirements, a judicial procedure concerning the right to respect for possessions must nonetheless provide the concerned party with an adequate opportunity to present their case before the competent authorities in order to effectively challenge measures infringing upon the rights guaranteed by this provision¹⁵. To ensure compliance with this condition, it is necessary to assess the applicable procedures from a general perspective. In its case law, the Court has reaffirmed that procedural requirements apply not only to disputes between private individuals regarding property rights but are even more crucial when the State itself is a party to such a dispute¹⁶. Consequently, serious shortcomings in the handling of such disputes may raise an issue under Article 1 of Protocol No. 1. When assessing compliance with Article 1 of Protocol No. 1, the Court must conduct a

¹² *Depalle* [GC], *op. cit.*, § 68; see also *Öneriyıldız* [GC], *op. cit.*, § 129.

¹³ See, among others: *Fener Rum Erkek Lisesi Vakfı v. Turkey*, No. 34478/97, January 9, 2007, §§ 23-30; *Fener Rum Patriarchy (Ecumenical Patriarchate) v. Turkey*, No. 14340/05, July 8, 2008; *Yedikule Surp Pirgiç Armenian Hospital Foundation v. Turkey (No. 2)*, No. 36165/02, December 16, 2008; *Samatya Surp Kevork Ermeni Kilisesi, Mektebi Ve Mezarlığı Vakfı Yönetim Kurulu v. Turkey*, No. 1480/03, December 16, 2008; *Arnautköy Greek Orthodox Church of Taksiarhis Foundation v. Turkey*, No. 27269/09, November 15, 2022; *Mor Gabriel Monastery Foundation in Midyat v. Turkey*, No. 13176/13, October 3, 2023.

¹⁴ See, *mutatis mutandis*, *Zafranias v. Greece*, No. 4056/08, October 4, 2011, § 33; see also *Bozcaada Kimisis Teodoku Rum Ortodoks Kilisesi Vakfı v. Turkey*, Nos. 37639/03 and 3 others, March 3, 2009, § 50.

¹⁵ *Liamberi and Others*, *op. cit.*, § 79.

¹⁶ *Gereksar and Others v. Turkey*, Nos. 34764/05 and 3 others, February 1, 2011, §§ 51-53, and the references cited.

comprehensive examination of the competing interests, bearing in mind that the Convention aims to safeguard "practical and effective" rights. It must look beyond appearances and examine the realities of the contested situation¹⁷.

15. In the present case, the dispute before the Turkish Constitutional Court concerned the refusal of the Directorate General of Foundations to register the disputed immovable properties in the land registry. During this domestic procedure, the applicant Foundations sought to justify their ownership status by arguing that the properties in question were listed in their 1936 Declarations. The legal assessment of this element is of fundamental importance to the resolution of the dispute, as, under Turkish law, the 1936 Declarations submitted by foundations established by religious minorities serve as their founding documents and include an inventory of their assets¹⁸. Notably, the applicant Foundations rely on Provisional Articles 7 and 11 of Law No. 5737 on Foundations, which state that "immovable properties of foundations established by religious minorities [that are] listed in a 1936 Declaration" may be registered in the land registry in the name of the concerned foundations.

16. However, the domestic courts did not genuinely examine whether the properties listed in the 1936 Declaration corresponded to the properties claimed by the applicants. The applicants' requests for the application of Provisional Articles 7 and 11 of Law No. 5737 were rejected by the administrative courts, which held that these provisions were not applicable to their cases. Instead, the administrative courts ruled that the applicants should initiate proceedings before civil courts. The appeals were subsequently reviewed by the Turkish Constitutional Court under the right to property but were declared inadmissible on the grounds of failure to exhaust domestic remedies. There is no indication in the decisions at issue that the arguments raised by the applicant Foundations were genuinely considered, meaning duly examined by the courts concerned. Nor is there any indication that the Turkish Government invoked any legal justification or any public interest objective, which suggests that this non-recognition was neither provided for by law nor pursued a legitimate aim.

17. The general right of the applicant Foundations to respect for their possessions includes the expectation that the Turkish domestic courts adopt a reasoned and fair approach in establishing the facts and explain the grounds on which they dismissed the presented evidence. Since this legitimate expectation was not met, the judgments of the administrative courts, which were upheld by the Turkish Constitutional Court without any further review, cannot be regarded as having clearly and fairly established the facts underlying the dispute, even though the outcome of the case depended on this determination.

18. In light of the above, the Court is invited to find that the obligation to provide judicial procedures with the necessary procedural safeguards was not fulfilled in this case and that there has been an infringement of the general right of the applicant Foundations to respect for their possessions, as guaranteed by the first sentence of the first paragraph of Article 1 of Protocol No. 1. Therefore, there has been a violation of Article 1 of Protocol No. 1 of the Convention.

¹⁷ *Vod Baur Impex S.R.L. v. Romania*, No. 17060/15, April 26, 2022, §§ 59-60.

¹⁸ *Fener Rum Erkek Lisesi Vakfi*, *op. cit.*, §§ 23-28; see also, *a contrario*, *Foundation of the Syriac Monastery of Saint Gabriel in Midyat*, *op. cit.*, § 41.

2) *The Positive Obligation of Turkey to Recognize the Applicant Foundations as Owners of the Properties*

19. Given the nature of the violation found under Article 1 of Protocol No. 1, the Court could consider that the most appropriate remedy would, in principle, be the holding of a new trial or the reopening of proceedings¹⁹. However, the Court is invited to find that the registration of the disputed properties in the names of the applicants in the land registry would place the applicants, as far as possible, in a situation equivalent to the one they would have been in if the requirements of Article 1 of Protocol No. 1 had not been disregarded²⁰.

20. The real and effective exercise of the right guaranteed by Article 1 of Protocol No. 1 cannot depend solely on the State's duty to refrain from interference but may require positive measures of protection, particularly where there is a direct link between the measures that an applicant could legitimately expect from the authorities and the effective enjoyment of their "possessions"²¹.

21. The 1923 Treaty of Lausanne contains specific provisions regarding the protection of historical foundations providing public services to religious minorities. The spirit of the Treaty of Lausanne must be interpreted in favor of protecting the autonomy of non-Muslim minorities, rather than to their detriment. Furthermore, Turkey has only officially recognized three non-Muslim minorities—Jews, Greeks, and Armenians—based on its own restrictive interpretation of non-Muslim minorities²². The relevant provisions of the Treaty of Lausanne are as follows:

Article 37: "Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognised as fundamental laws, and that no law, no regulation, nor official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them."

Article 40: "Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control at their own expense, any charitable, religious and social institutions [...]"

Article 42 § 3: "The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey [...]"²³.

3) *Consequences of the Non-Recognition of the Applicant Foundations as Owners of the Properties*

22. The effective enjoyment of the properties belonging to the Foundations can only occur if their ownership of these properties is recognized. More broadly, if community foundations in Turkey are not recognized as owners of the properties listed in their 1936 Declaration, despite

¹⁹ *Arnautköy Greek Orthodox Church of Taksiarhis Foundation, op. cit.*, § 63, and *Foundation of the Syriac Monastery of Saint Gabriel in Midyat, op. cit.*, § 74.

²⁰ *Fener Rum Erkek Lisesi Vakfi, op. cit.*, § 74, *Samatya Surp Kevork Ermeni Kilisesi, Mektebi Ve Mezarlığı Vakfi Yönetim Kurulu, op. cit.*, § 39, *Yedikule Surp Pırgiç Ermeni Hastanesi Vakfi, op. cit.*, § 37

²¹ *Öneryıldız v. Turkey* [GC], No. 48939/99, November 30, 2004, § 134; *Dabić v. Croatia*, No. 49001/14, March 18, 2021, § 51.

²² Jean-Marc Balhan, « [La Turquie et ses minorités](#) ». *Études*, 2009/12, Vol. 411, 2009. pp.595-604.

²³ [Treaty of Peace with Turkey](#), Lausanne, July 24, 1923, English version.

Turkey's commitment to do so by adopting Law No. 5737 on Foundations, several legal and practical consequences may arise.

23. In many cases, when the Turkish administration refuses to recognize a foundation's ownership of a property declared in 1936, and even more so if the property was acquired between 1936 and the Turkish Court of Cassation's 1974 decision, the properties may:

- Be registered in the name of the Public Treasury and incorporated into state assets.
- Fall under the control of the Directorate General of Foundations, which then manages these properties as if they belonged to "state-administered foundations" under the often fallacious pretext that they are "disused" (*mazbut vakıf*)²⁴.
- Be reassigned to third parties or public institutions, particularly municipalities.
- Be effectively seized by various mafia-like enterprises (such as those involved in parking and real estate), which seek easy rents. Once a property reaches an advanced state of degradation, local governorates and district municipalities may ultimately take possession of these properties, often under the pretext of safety concerns. In some cases, the deterioration appears to be deliberately accelerated (e.g., uprooted wood, fires) to facilitate the eventual takeover of the land²⁵.

24. When a foundation loses its property rights, it:

- Can no longer manage or restore the property without the authorization of Turkish authorities.
- Loses potential revenue generated by the property (e.g., rent, commercial exploitation).
- Cannot sell, lease, or use the property for religious, educational, or cultural activities.

25. The refusal to recognize property ownership:

- Prevents religious communities from passing on their cultural and spiritual heritage.
- Weakens minority religious institutions by limiting their financial and administrative autonomy.
- May lead to the disappearance of certain communities due to the lack of places of worship and institutions needed to maintain their identity.

26. In light of the above, the Court is invited to go beyond merely requesting a new trial or the reopening of proceedings. The Turkish judicial system is marked by extreme delays and institutional bad faith in handling disputes involving Christian minorities. The applicant Foundations are the true owners of the disputed properties, as evidenced by their 1936 Declarations, which serve as their founding documents, recognized under Turkish law itself.

A reopening of the proceedings could result in another rejection or an unjustified prolongation of the litigation, further depriving the applicants of their properties with serious legal and practical consequences. For these reasons, the Court is urged to order the immediate restitution of the disputed properties and their registration in the land registry in the names of the applicant Foundations, rather than merely allowing the case to be re-litigated at the national level. Such a measure would not only uphold the rights of the applicant Foundations but would also send a strong message against the continued expropriation of properties belonging to Christian minorities in Turkey.

²⁴ See ECLJ, [written observations](#) submitted to the European Court of Human Rights in the case of Dimitri Bartholomeos ARHONDONI and Others v. Turkey (Application No. 15399/21), November 2024.

²⁵ Jean-François Pérouse, « Les non musulmans à Istanbul aujourd'hui : une présence en creux ? Le cas de l'arrondissement de Fatih », *Revue des mondes musulmans et de la Méditerranée*, 107-110 | 2005, pp. 261-295.

II. Alleged Violation of Article 14 in Conjunction with Article 1 of Protocol No. 1 Due to Discrimination Based on Religion Against Greek Orthodox Foundations in the Non-Recognition of Their Properties

27. For Article 14 to be applicable, there must be a difference in treatment between the applicant Foundations and other foundations, based on one or more discriminatory grounds covered by this article. To determine this, the Court considers 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"*²⁶.

To establish whether the applicants have been subjected to differential treatment, the Court may examine whether the refusal to recognize their property rights specifically targets them as non-Muslim foundations or whether it results from general measures applicable to all²⁷.

28. As previously explained, non-Muslim foundations were not legally recognized before 1912. Although they were theoretically granted legal personality from that date, they have often been prevented from exercising full ownership rights due to targeted decisions. These decisions have introduced numerous restrictions and additional conditions, making procedures more burdensome, whether for purchasing immovable property or for obtaining formal recognition of ownership titles. *"Certain factions within the state apparatus are reluctant to clarify the legal situation of minority properties, likely out of fear that the full extent of official expropriations would be exposed"*²⁸.

A. The Purpose of the Difference in Treatment

29. In the present case, the Turkish State's inaction, consisting of its failure to recognize the applicants' property rights, does not pursue any legitimate aim. Consequently, the resulting difference in treatment, based on ethno-religious grounds, cannot be justified either.

30. In reality, the interference serves an illegitimate "public interest", namely the reinforcement of Turkey's national and religious homogeneity. However, the Turkish State has made international commitments regarding the protection of Christian populations that have become minorities. These obligations arise from the Treaties of Lausanne (1923) and Ankara (1930) and are defined by the decisions of the Mixed Commission established under Article 31 of the Treaty of Ankara. For example, regarding the foundations of the Greek Orthodox community, this Mixed Commission issued Decision No. 107 on June 7, 1934, which explicitly provided for the registration of their properties in the land registry²⁹.

Therefore, if there were any legitimate aim in specifically protecting the rights of foundations based on their ethno-religious origin, it should benefit Christian minorities rather than harm them.

²⁶ 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.

²⁷ *R.Sz. v. Hungary*, No. 41838/11, July 2, 2013, § 60.

²⁸ Literal translation from the French version of: Jean-François Pérouse, *op. cit.*

²⁹ 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, these communities must be able to expect the authorities to take “positive measures of protection”, ensuring the real and effective guarantee of their right to respect for their property³⁰.

31. Not only did the Turkish State fail to pursue a legitimate objective that could justify a difference in treatment, but it should have taken special care to protect the applicant foundation’s right to respect for its property, given that it belongs to a non-Muslim minority protected by international agreements. For this reason, the applicant foundation was unjustly discriminated against on the basis of its belonging to a religious minority.

B. The Proportionality of the Difference in Treatment

32. The lack of a legitimate aim for the difference in treatment is sufficient to establish a violation of Article 14 in conjunction with Article 1 of Protocol No. 1. However, in the highly unlikely scenario where a legitimate aim could justify this difference in treatment, the Court would then need to determine whether there is a “*reasonable relationship of proportionality*” between the means employed and the objective pursued³¹. The elements presented in Part I.C are sufficient to demonstrate that the Court would not find the difference in treatment proportionate to any potential objective. This further confirms that the distinction constitutes discrimination. The Court is therefore invited to order Turkey to return the disputed properties to the applicant Foundations and to register them as the legal owners in the land registry.

III. The General Situation of Non-Recognition of Christian Minorities in Turkey

33. The failure to formally recognize the applicant Foundations’ property rights constitutes an arbitrary deprivation of their possessions, driven by an intent to discriminate against the Greek Orthodox Church. This discriminatory violation of the applicant Foundations’ right to respect for their property reveals a deeper, unspoken, and persistent objective of the Turkish State: the confiscation of Christian property. A broader analysis supports this conclusion.

34. There are a total of 167 community foundations in Turkey, including 77 Greek, 54 Armenian, 19 Jewish, 10 Assyrian, 3 Chaldean, 2 Bulgarian, 1 Georgian, and 1 Maronite foundation³². In 2010, 24 Greek Orthodox foundations and 24 Jewish foundations were declared “disused” by the Directorate General of Foundations, which subsequently took over their management. As a result, the administration and allocation of revenues from hundreds of confiscated immovable properties fell under state control.³³ The systemic infringement of the property rights of religious minority communities has been extensively addressed in the Court’s case law. In the present case, the Court has the opportunity to go further in identifying the root causes of this issue, by addressing the violation of Article 14, specifically the discrimination against the applicant Greek Orthodox Foundations due to their Christian religious affiliation.

35. The situation faced by the two applicant Foundations is part of a broader governmental policy aimed at the attrition of non-Muslim communities, the intensity of which fluctuates depending on Turkey’s geopolitical relations with Greece³⁴. The independence of Cyprus from the United Kingdom in 1960, the 1964 civil war between Greek and Turkish communities, and

³⁰ *Öneriyıldız v. Turkey* [GC], No. 48939/99, November 30, 2004, § 134.

³¹ *Öneriyıldız v. Turkey* [GC], No. 48939/99, November 30, 2004, § 134.

³² Cemaat Vakıfları, <https://www.cemaatvakiflaritemsilcisi.com/index.php/vakiflar>.

³³ Ecumenical Federation of Constantinopolitans, *A Short History of the Treatment of the Greek-Orthodox Community of Istanbul (1923-2009) and Present Human and Minority Rights Issues*, 2009.

³⁴ Samim Akgönül, *Le Patriarcat grec orthodoxe, De l’isolement à l’internationalisation de 1923 à nos jours*, 2004.

the 1974 Turkish intervention in Cyprus all had tragic repercussions on community foundations. The most direct consequence was the 1974 ruling of the Turkish Court of Cassation, which enabled hundreds of expropriations, both legally and in practice. Christian communities still suffer greatly from these expropriations today.

36. On January 17, 2010, the Parliamentary Assembly of the Council of Europe (PACE) echoed the concerns of community foundations, calling on the Turkish authorities:

“[to] resolve the question of the registration of places of worship and the question of the “mazbut” properties confiscated since 1974, which must be returned to their owners, to the entitled persons or, where the return of assets is impossible, to provide for fair compensation”³⁵.

37. In its resolution of September 13, 2023, on the 2022 report of the European Commission on Turkey (2022/2205(INI)), the European Parliament condemned the expropriation of Christian properties in Turkey:

"19. [The European Parliament] notes that no significant progress has been registered with regard to the protection of the rights of ethnic and religious minorities [...]; calls on [Turkey] to fully implement all relevant ECtHR rulings and Council of Europe recommendations on protecting minorities' property rights and to introduce legislation which makes it possible for all religious communities and ethnic minorities to acquire legal personality, by implementing the relevant recommendations of the Venice Commission [...]."³⁶

38. In response to recommendations received during its Universal Periodic Review, Turkey stated in 2019 that:

“[T]he “Foundations Assembly” which is the decision making body of the Directorate General of Foundations (DGF), adopted a decision on 8 June 2018 on the registration of 56 immovable properties to Assyrian community foundations. Between 2003 and 2018, 1084 immovable properties were registered to foundations belonging to non-Muslim minorities, including Armenian, Assyrian, Chaldean, Greek, and Bulgarian”³⁷.

Turkey must accelerate this restitution process for the thousands of properties whose ownership is still not recognized for community foundations.

39. As a consequence of the discrimination suffered by Christian minorities, mass emigration has drastically reduced their presence in Turkey. In 1920, there were still two million Christians in Turkey³⁸; today, only 169,000 remain, representing just 0.2% of the population³⁹. More specifically, while Greek Orthodox Christians numbered 100,000 citizens in 1923, today there are fewer than 2,000⁴⁰, yet their foundations still own nearly 4,000 properties⁴¹. This

³⁵ PACE, *“Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (eastern Greece)”*, Resolution 1704, January 27, 2010, § 19.5.

³⁶ European Parliament, *“2022 Report on Turkey – European Parliament Resolution of 13 September 2023 on the 2022 Commission Report on Turkey”*, P9_TA(2023)0320, (2022/2205(INI)), C/2024/1760, § 19.

³⁷ Human Rights Council, Working Group on the Universal Periodic Review, National Report of Turkey ([A/HRC/WG.6/35/TUR/1](#)), November 14, 2019, § 69.

³⁸ Daniel Pipes, *“Disappearing Christians in the Middle East”*, *Middle East Quarterly*, Winter 2001.

³⁹ Open Doors, *Turkey Report 2024*, 2024.

⁴⁰ United States Commission on International Religious Freedom, *“Examination of Threats to Religious Sites in Turkey”*, November 2023.

⁴¹ Meropi Anastassiadou-Dumont, *« Ambigüités, opacités, contradictions. Les fondations pieuses des non musulmans à Istanbul (XIXe-XXe s.) »*, 2016.

extremely low and aging population threatens the survival of Greek Orthodoxy in Anatolia⁴². Currently, there are approximately 90,000 Armenian Orthodox Christians and 25,000 Syriac Orthodox Christians in Turkey⁴³. These figures are only estimates, as some Christians conceal their identity for fear of discrimination and, in some cases, harassment.

40. In conclusion, although the Turkish Constitution officially recognizes Turkey as a secular state, non-Muslims are, in practice, treated as second-class citizens by the administration through various forms of discrimination⁴⁴. These difficulties are rooted in cultural and religious issues. Christians in Turkey predate the Turkish nation and are often viewed as foreign elements, perceived as threatening the unity of the country. On a deeper level, the oppression of Christian minorities in Turkey carries an eschatological dimension. In a speech on March 19, 2019, Turkish President Recep Tayyip Erdoğan stated: "*With the help of Allah, neither the remnants of the Crusaders nor the nostalgics of Byzantium will divert us from our path*"⁴⁵. Regarding Hagia Sophia in Istanbul, he further declared: "*We have been here for a thousand years, and if God wills, we will remain here until the Apocalypse*"⁴⁶.

41. The present case is just one example among many of the ongoing persecution faced by Christians in Turkey, who are victims of an ethno-religious nationalism that seeks to enforce the homogeneity of a Turkish and Muslim nation. The ECLJ has denounced this persecution in its submission to the Universal Periodic Review (UPR) of Turkey in October 2024 before the United Nations Human Rights Council⁴⁷.

⁴² 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, March 22, 2013.

⁴³ U.S. Department of State, [2017 Report on International Religious Freedom – Turkey](#), May 29, 2018.

⁴⁴ 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.

⁴⁵ Literal translation from the article in French : *Le Temps*, "La campagne à outrance du président turc, Recep Tayyip Erdoğan," March 27, 2019.

⁴⁶ Literal translation from the article in French : *Paris Match*, "L'attentat en Nouvelle-Zélande vise en fait la Turquie, déclare Erdoğan", March 19, 2019.

⁴⁷ ECLJ, [Universal Periodic Review 2024 of Turkey](#), October 2024.