WRITTEN OBSERVATIONS

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

Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı v. Turkey

(Application No. 23343/24)

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1. The applicant against Türkiye, *Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı* (*Saint Saviour Armenian Hospital Foundation of Yedikule*, hereinafter "the Foundation" or "the applicant"), is a foundation under Turkish law, established in 1832 during the Ottoman Empire by imperial decree of Sultan Mahmud II.[1] Once its construction was completed and the premises were equipped, the hospital began operating in 1834. The Foundation's status is consistent with the provisions of the Treaty of Lausanne concerning the protection of historical foundations providing public services for religious minorities. The applicant complains of the refusal of the Turkish authorities to register a parcel of land in its name, despite having fulfilled all the legal requirements.

2. This foundation is referred to as a "community foundation" ("*cemaat vakfı*") and is governed by Law No. 5737 on Foundations of 2008. It is among the foundations belonging to non-Muslim religious communities (that is, Christian and Jewish), whose members are Turkish citizens. It is therefore distinct from Muslim foundations and from non-religious foundations (such as artisans' foundations).[2] Community foundations have private legal personality[3] and are managed by boards of directors elected by their own members.[4]

3. The applicant submits that the refusal to register the disputed property in its name constitutes a violation of its rights guaranteed by the European Convention on Human Rights ("the Convention"). It first invokes the right to property (Article 1 of Protocol No. 1), arguing that the rejection of its application, based on Provisional Article 11 of Law No. 5737—which concerns the administrative registration of property listed in the 1936 Declaration established under Law No. 2762—rests on an arbitrary assessment of the evidence by the courts of first instance and appeal. It further alleges a violation of the right to a fair trial (Article 6 of the Convention), as the principles of legal certainty and foreseeability were not respected. The administrative court failed to carry out the necessary investigations or to assess the evidence diligently, and the higher courts endorsed these shortcomings, thereby prolonging the arbitrariness and leading to an unfair decision. Finally, the applicant complains of discrimination (Article 14 of the Convention and Article 1 of Protocol No. 12), arguing that, as an institution belonging to a religious minority, it was prevented from having its property rights recognised under the same conditions as other foundations, since the authorities imposed disproportionate evidential and procedural requirements, revealing discriminatory treatment.

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). The case will also be examined from the perspective of Article 14, which prohibits discrimination on the grounds of religion (II), and several elements will be presented to demonstrate that the violation of Christians' rights is systemic in Turkey (III). In view of this context, and considering that Christians suffer systemic injustices on account of their religion—particularly aimed at dispossessing them of their heritage—it would be appropriate for the European Court of Human Rights ("the Court") not only to find Turkey in violation of Article 1 of Protocol No. 1, but also to acknowledge discrimination against the Foundation on the basis of its belonging to a religious minority. Indeed, it is precisely because of the applicant's Christian faith that this injustice in the management of the Foundation has occurred.

[1] Surp Pırgiç Armenian Hospital Foundation.
[2] Law No. 5737 on foundations, article 3, Turkish Official Gazette No. 26800, February 27, 2008.
[3] *Ibid*, article 4.
[4] *Ibid*. article 6.

I. On the alleged violation of Article 1 of Protocol No. 1 to the Convention following the non-restitution of the immovable property belonging to the applicant Foundation

A. The relevant domestic legal framework

5. During the Ottoman period, community foundations did not possess a *vakfiye*, the constitutive and legal deed of a foundation that granted it legal personality and ensured the continuity of its assets and missions within a religious or charitable framework. These foundations were not governed by the same rules as private foundations (which had a *vakfiye*), but rather by imperial decrees or community decisions. They managed collective property for the benefit of their religious communities, often registered in the land registry under the real but borrowed name of one of the community's notables (*nam-ı müstear*) in whom they had confidence, or under the fictitious name of a religious saint (*nam-ı mevhum*). The law of 16 February 1912 recognised, for the first time, the right of foundations to own property as legal entities.[5]

6. Following the proclamation of the Republic of Turkey in 1923, Law No. 2762 on Foundations was enacted on 13 June 1935. This law recognised the legal personality of institutions that had been created for the benefit of non-Muslim communities under the Ottoman Empire. In order to obtain foundation status, they were required to submit a declaration (known as the "1936 Declaration") specifying, among other things, the nature and amount of their income and providing a list of their real estate holdings (Article 44 of that law). The applicant Foundation complied with this obligation, listing in its Declaration the properties it owned at the time, one of which is at issue in the present case.

7. However, although these properties appeared in the cadastral registers of 1912 and in the 1936 Declaration, certain buildings could not be registered in the Foundation's name for various administrative reasons. The 1912 registers and the 1936 Declaration nevertheless constitute proof of the ownership link between the Foundation and the properties concerned.

8. Subsequently, in its decision of 8 May 1974, the Court of Cassation ruled that the Declarations made in 1936 should be considered as the founding deeds equivalent to the statutes of community foundations. Moreover, these Declarations contained an inventory of the assets belonging to them. In the absence of an explicit clause in their Declarations, these foundations were not permitted to acquire real estate other than that listed in the document. The Court of Cassation appeared to consider that the acquisition of real estate by such foundations could constitute a threat to national security.[6] In practice, this 1974 decision required that all real estate acquired by purchase or donation after 1936 be returned to their former owners. If those owners were deceased and no heirs could be found, the properties were to be transferred to the General Directorate of Foundations (*Vakıflar Genel Müdürlüğü* – VGM).

9. To remedy, at least partially, the unfair treatment suffered by community foundations that had been dispossessed of their property, and within the framework of the harmonisation process with the European Union, amendments to the legislation governing foundations were introduced by Laws No. 4771 of 9 August 2002, No. 4778 of 11 January 2003,[7] and No. 4928 of 19 July 2003. In practice, these laws symbolically granted property rights to minority foundations while simultaneously consolidating the State's control over their management and assets.

10. Subsequently, Law No. 5737, adopted on 20 February 2008 and published in the Official Gazette on 27 February 2008 (No. 26800), repealed Law No. 2762 of 1935. It established a new unified legal framework for all Turkish foundations, including those belonging to recognised non-Muslim communities. Its purpose

[5] Provisional Law on the Right of Legal Entities to Dispose of Real Estate (*Eşhas-I Hükmiyenin Emval-I Gayrimenkuleye Tasarruflarına Dair Kanun-u Muvakkat*), No. 1328/1912, adopted February 16, 1912.
[6] *Fener Rum Erkek Lisesi Vakfi v. Turkey*, No. 34478/97, January 9, 2007, § 28.
[7] As well as by their implementing regulation of January 24, 2003, on the acquisition of real estate by community foundations.

was to modernise the foundations regime and to regularise the ownership of property belonging to religious minorities; however, it maintained the close supervision of the General Directorate of Foundations and allowed only partial and conditional restitution of previously confiscated property. The relevant provision of this law reads as follows:

Provisional Article 11 of Law no. 5737, passed on 27 August 2011

> *"(a) The real estate of foundations created by religious minorities [which are] mentioned in a 1936 Declaration and for which the box reserved for mentioning the owner's name [in the land register] has been left blank,*
> *b) The real estate of foundations set up by religious minorities [which are] mentioned in a 1936 Declaration and [which are] registered in the name of the Public Treasury, the General Directorate of Foundations, a commune or a departmental administration for reasons other than expropriation, sale or exchange, and*
> *c) Cemeteries and fountains of foundations created by religious minorities [which are] mentioned in a 1936 Declaration and [which are] registered in the name of public institutions,*
> *will be registered, with the rights and obligations attached thereto and after a favorable opinion from the [foundation] assembly, in the name of [the foundations concerned] if they submit a request to the competent land registry office within twelve months of the entry into force of the present law.*
> *(...)"*

11. Pursuant to Provisional Article 11, paragraph (b), of Law No. 5737 of 2008, the Foundation applied, within the legal time limit, by a petition registered on 24 August 2012, to the 1st Regional Directorate of Foundations in Istanbul, seeking the registration in its name of the property located in Istanbul, Üsküdar district, Hacı Hesna Hatun neighbourhood, Menteş Street, sheet (*pafta*) 108, block (*ada*) formerly 513, now 1311, parcel (*parsel*) 46. The Council of Foundations rejected this application on 7 October 2013, even though, according to its 1936 Declaration, the property formed part of the applicant's assets.

B. On the existence of a "possession"

12. The concept of "*possession*" referred to in Article 1 of Protocol No. 1 has an autonomous meaning that is independent of the formal classifications of domestic law. In each case, it is necessary to determine whether the circumstances, taken as a whole, have made the applicant the holder of a substantive interest protected by Article 1 of Protocol No. 1.[8] This Article concerns "*possession*", by virtue of which the applicant may claim to have at least a "*legitimate expectation*" of obtaining the effective enjoyment of a property right.[9] The Court also takes into account the passage of time, which may give rise to a proprietary interest in the enjoyment of property within the meaning of Article 1 of Protocol No. 1.[10] Numerous cases brought before the Court by foundations established by religious minorities in Turkey have found violations of Article 1 of Protocol No. 1.[11]

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[8] *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; *Béláné Nagy v. Hungary [GC]*, No. 53080/13, December 13, 2016, § 76.

[9] *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]*, nos71916/01 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).

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

[11] See, among others: *Fener Rum Erkek Lisesi Vakfı v. Turkey*, No. 34478/97, January 9, 2007, §§ 23-30, *Fener Rum Patrikliği (Ecumenical Patriarchate) v. Turkey*, No. 14340/05, July 8, 2008, *Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı 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, *Fondation de l'église grecque-orthodoxe Taksiarhis de Arnavutköy v. Turkey* No. 27269/09, November 15, 2022, *Fondation du monastère de Mor Gabriel à Midyat v. Turkey*, No. 13176/13, October 3, 2023.

13. In the present case, the applicant Foundation does not hold a title deed, which alone would have constituted indisputable proof of the existence of a property right. Indeed, under the Ottoman legal system in force until 1912, non-Muslim foundations were not entitled to own real estate in their own name and therefore registered their properties in the land register under the names of natural persons, sometimes even under fictitious names (in the present case, *Ester, Osep oğlu Kerop* or *Hacı Bodos*).

14. Furthermore, this property was delimited and identified without the assumed names appearing in the old registers having been taken into account during the cadastral works of 1951. As a result, the property was allocated and registered in the name of the Treasury (*Maliye Hazinesi*). However, it corresponded to the former plot No. 19, Arapzade Street, İcadiye neighbourhood, Üsküdar, recorded both in the cadastral table established under Law No. 1328 (1912) and in the 1936 Declaration filed with the Directorate of Foundations pursuant to Law No. 2762 on Foundations of 1935.

15. The reason given by the Council of Foundations for rejecting the Foundation's application was limited to stating that the disputed property had been registered in the name of the Treasury during the cadastral surveys of 1951, and that the corresponding entry in the 1936 Declaration could not be regarded as referring to the same real estate. No substantive examination of the historical documents produced by the Foundation was undertaken; the administration relied on a strictly formal reading of the post-1951 registers, without taking into account the correspondence between the parcels or the specific legal context of minority foundations. The applicant Foundation therefore lodged an action for annulment against this administrative decision. On 28 September 2017, the Third Administrative Court of Istanbul dismissed the action, relying on an expert report that confirmed the administration's initial reasoning.

16. However, on 27 September 2018, the 8th Chamber of the Istanbul Regional Administrative Court (*Bölge İdare Mahkemesi* – BİM), having examined the documents submitted by the General Directorate of Land Registry, the Istanbul Metropolitan Municipality (IMM), and the Municipality of Üsküdar, upheld the Foundation's appeal and annulled both the decision of the court of first instance and the contested decision of the Council of Foundations. The BİM found that the address indicated in the 1936 Declaration corresponded to a reduced portion of the parcel, which was to be registered in the name of the applicant Foundation once the administration had determined the exact extent of that portion.

17. On 21 October 2019, the administration again rejected the request for registration, considering that the information contained in the 1936 Declaration related to one of the eight properties comprising the parcel, and that the address provided was insufficient to carry out the delimitation ordered by the BİM. The applicant Foundation then brought a new action before the administrative courts. On 22 October 2021, the Seventh Administrative Court of Istanbul dismissed the action, finding that the information contained in the 1936 Declaration was insufficient to establish a link between that Declaration and the parcel in question, since the Declaration did not specify the dimensions or orientation of the property. On 14 June 2022, the 9th Chamber of the BİM upheld this judgment. Finally, on 14 July 2022, the applicant Foundation lodged an individual application before the Constitutional Court, which declared it inadmissible on 29 March 2024 on the ground that it was manifestly ill-founded.

18. The applicant Foundation's ownership of the disputed property has never been formally recognised. Only the BİM acknowledged it, in its judgment of 27 September 2018, noting that the property was indeed included in the 1936 Declaration. Nevertheless, the Foundation's actual and uninterrupted possession of the property has never been disputed. This position was never denied at any stage of the proceedings, the courts merely contesting the link between the 1936 Declaration and the parcel concerned. Consequently, the applicant is the holder of a proprietary interest constituting a "*possession*" within the meaning of Article 1 of Protocol No. 1. This provision is therefore applicable.

C. On the non-recognition of the applicant Foundation's status as owner

1) On the failure to respect the safeguards surrounding the legal proceedings which led to the non-recognition of the applicant Foundation's status as owner

19. The issue to be examined concerns the guarantees surrounding the legal proceedings that resulted in the non-recognition of the applicant Foundation's status as owner. The present case does not involve a direct and explicit deprivation of property that formally belonged to the Foundation, nor does it concern a regulation of the use of that property. Consequently, the case cannot be classified within a specific category of Article 1 of Protocol No. 1 and must therefore be assessed in light of the general standard set out in that provision.[12]

20. In this regard, notwithstanding the silence of Article 1 of Protocol No. 1 on procedural requirements, judicial proceedings concerning the right to respect for property must also afford the person concerned an adequate opportunity to present his or her case to the competent authorities so as effectively to challenge measures interfering with the rights guaranteed by that provision.[13] To ensure compliance with this condition, the applicable procedures must be considered from a general perspective. In its case-law, the Court has reaffirmed in particular that, if procedural requirements apply to disputes between private parties on matters relating to property rights, they apply *a fortiori* where the State is a party to such a dispute.[14] 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 therefore conduct an overall examination of the various interests at stake, bearing in mind that the Convention is intended to safeguard rights that are "*practical and effective*". It must look beyond appearances and inquire into the realities of the situation complained of.[15]

21. In the present case, the dispute before the Turkish Constitutional Court concerned the refusal of the General Directorate of Foundations to register the immovable property in question in the land register. During those domestic proceedings, the applicant Foundation substantiated its claim to ownership by arguing that the property in question was listed in its 1936 Declaration. The legal assessment of this element is of crucial importance for resolving the dispute, since under Turkish law the 1936 Declarations filed by foundations established by religious minorities constitute their founding deeds and include a list of the properties belonging to them.[16] In particular, the applicant relies on Provisional Article 11 of Law No. 5737 on Foundations, which provides that "*the immovable property of foundations established by religious minorities [which are] mentioned in a 1936 Declaration*" may be entered in the land register in the name of the foundations concerned.

22. However, the national court did not genuinely examine whether the property mentioned in the 1936 Declaration corresponded to the property claimed by the applicant. The applicant's request for the application of Provisional Article 11 of Law No. 5737 was rejected by the administrative courts on the spurious ground that there was no link between the 1936 Declaration and the parcel concerned, as the Declaration did not specify the dimensions or orientation of the property. The courts failed to take into account the correspondence between the parcels, which a careful reading of the cadastral registers prior to 1951 would have revealed, nor did they consider the specific legal context of minority foundations.

23. It does not appear from the decisions in question that the arguments raised by the applicant Foundation were genuinely heard—that is, duly examined by the courts seized of the case. Nor does it appear

[12] See, *mutatis mutandis*, *Zafranas 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.
[13] *Liamberi and others, op. cit*, § 79.
[14] *Gereksar and others v. Turkey*, nos 34764/05 and 3 others, 1er February 2011, §§ 51-53, and references cited.
[15] *Vod Baur Impex S.R.L. v. Romania*, No. 17060/15, April 26, 2022, §§ 59-60.
[16] *Fener Rum Erkek Lisesi Vakfı*, *op. cit*., §§ 23–28; see also, *a contrario*, *Foundation of the Syriac Monastery of Saint Gabriel in Midyat*, *op. cit*., § 41.

that the Turkish Government invoked any legal justification or any aim of public utility, suggesting that this non-recognition is neither provided for by law nor pursues a legitimate objective.

24. The applicant Foundation's general right to respect for its property includes the right to expect the Turkish national courts to adopt a reasoned and fair approach in establishing the facts and to set out the reasons why they did not accept the evidence presented. Since this legitimate expectation has not been met, it must be considered that the judgments of the administrative courts—upheld by the Turkish Constitutional Court without any further examination—cannot be regarded as having clearly and fairly established the facts underlying the dispute, even though the outcome of the case depended on them.

25. In light of the foregoing, the Court is invited to find that the obligation to provide judicial proceedings with the requisite procedural safeguards has not been respected in the present case, and that the applicant Foundation's general right to respect for its property, guaranteed by the first sentence of the first paragraph of Article 1 of Protocol No. 1, has been violated. There has therefore been a breach of Article 1 of Protocol No. 1 to the Convention.

2) On Turkey's positive obligation to recognise the applicant Foundation as the owner of the property

26. Having regard to the nature of the violation found under Article 1 of Protocol No. 1, the Court might consider that the most appropriate means of redress would, in principle, be the holding of a new trial or the reopening of the domestic proceedings.[17] However, the Court is invited to find that the registration of the disputed property in the applicant's name in the land register would place the applicant, as far as possible, in a situation equivalent to that in which it would have found itself had the requirements of Article 1 of Protocol No. 1 not been disregarded.[18]

27. 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; it may also 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 applicant's effective enjoyment of his or her "properties."[19]

28. The Treaty of Lausanne of 1923 contains specific provisions concerning the protection of former foundations providing public services for religious minorities. The spirit of the Treaty of Lausanne must be interpreted in favour of protecting the autonomy of non-Muslim minorities, rather than against them. Moreover, while Turkey has in practice recognised only three non-Muslim minorities—Jews, Greeks and Armenians—according to its own restrictive interpretation of that term.[20] The relevant provisions of the Treaty of Lausanne read as follows:

> *Article 37: "Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognized as fundamental laws, that no law, regulation or official action shall be in contradiction or opposition to these stipulations, and that no law, regulation or official action shall prevail against them".*
> *Article 40: "Turkish nationals belonging to non-Muslim minorities shall enjoy the same treatment and the same guarantees in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, direct and control at their own expense any charitable, religious or 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*

[17] *Fondation de l'église grecque-orthodoxe Taksiarhis de Arnavutköy*, *op. cit.*, § 63 and *Fondation du monastère syriaque de Saint-Gabriel à Midyat*, *op. cit.*, § 74.
[18] *Fener Rum Erkek Lisesi Vakfı*, *op. cit.* at § 74; *Samatya Surp Kevork Ermeni Kilisesi, Mektebi Ve Mezarlığı Vakfı Yönetim Kurulu, op. cit.* at § 39; *Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı, op. cit.* at § 37.
[19] *Öneryıldız v. Turkey [GC],* No. 48939/99, November 30, 2004, § 134; *Dabić v. Croatia*, No. 49001/14, March 18, 2021, § 51.
[20] Jean-Marc Balhan, "Turkey and its minorities". Études, 2009/12 Tome 411, 2009. p.595-604.

facilities and authorizations will be given to pious foundations and religious and charitable establishments of the same minorities currently existing in Turkey [...]".[21]

3) On the consequences for the applicant Foundation of not being recognized as the owner of the property

29. The effective enjoyment of the property belonging to the Foundation can only take place if its status as owner of that property is recognised. More generally, if community foundations in Turkey are not recognised as the owners of the properties listed in their 1936 Declaration—and although Turkey undertook to do so by adopting Law No. 5737 on Foundations—several legal and practical consequences may result.

30. In many cases, when the Turkish administration refuses to recognise a foundation's ownership of property declared in 1936, particularly when the property was acquired between 1936 and the 1974 decision of the Turkish Court of Cassation, such properties may:

- be registered in the name of the Treasury and incorporated into the State's assets;
- come under the control of the General Directorate of Foundations, which then manages these properties as if they belonged to "foundations under State administration", often under the spurious pretext that they are "disused" (*mazbut vakıf*);[22]
- be reassigned to third parties or public institutions, notably municipalities;
- be de facto seized by various mafia-type companies (involved in parking or real estate), seeking easy profits. Once a certain degree of deterioration has been reached, the prefecture and district municipalities, citing safety concerns, eventually reclaim these properties in practice—sometimes giving the impression that the decay has been accelerated (wood stripped, fires, etc.) in order to recover the land.[23]

31. When a foundation loses its right of ownership, it:

- can no longer manage or restore the property without authorisation from the Turkish authorities;
- loses potential income generated by the property (rent, commercial use, etc.);
- cannot sell, lease or use the property for religious, educational, or cultural purposes.

32. The refusal to recognise ownership of such property:

- prevents religious communities from transmitting their cultural and spiritual heritage;
- weakens minority religious institutions by restricting their financial and administrative autonomy;
- may lead to the disappearance of certain communities, for lack of places of worship and institutions needed to preserve their identity.

33. In light of the foregoing, the Court is invited to go beyond ordering a new trial or the reopening of the domestic proceedings. The Turkish judicial system is characterised by extreme slowness and manifest institutional bad faith in dealing with cases involving Christian minorities. The applicant Foundation is the legitimate owner of the disputed property, as evidenced by its 1936 Declaration, which constitutes the founding act recognised under Turkish law itself. A reopening of the proceedings could lead to a new rejection or an unjustified prolongation of the process, further depriving the applicant of its property, with disastrous legal and practical consequences. For these reasons, the Court is urged to order the immediate restitution of the disputed property and its registration in the land register in the name of the applicant Foundation, rather than merely requiring the case to be reopened at national level. Such a measure would not only ensure full respect for the applicant Foundation's rights but would also send a strong message against the ongoing expropriation of property belonging to Christian minorities in Turkey.

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[21] Treaty of Peace between the Allied Powers and Turkey, Lausanne, July 24 1923, French version.

[22] 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.

[23] 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, as a result of religious discrimination against the Armenian Foundation in the non-recognition of its property

34. For Article 14 to be applicable, there must exist a difference in treatment between the applicant Foundation and other foundations, based on one or more of the discriminatory grounds referred to in that provision. To ascertain this, the Court considers that "*the relevant criterion is whether, but for the discriminatory ground [invoked by the applicant], the person concerned would have had a right, enforceable before the domestic courts, to that proprietary interest."*[24] To determine whether the applicant has been subjected to differential treatment compared with others, the Court may consider whether the refusal to recognise ownership of the disputed property specifically targeted it as a non-Muslim foundation, or whether it was based on measures of general application.[25]

35. As previously explained, non-Muslim foundations were not legally recognised before 1912. Although since that date such foundations have, in theory, been entitled to acquire property as legal entities, decisions specifically targeting them have often prevented them from doing so. These decisions introduced numerous restrictions and additional conditions that burdened procedures—both for the acquisition of real estate and for the recognition of ownership title. "*Certain parts of the state apparatus are reluctant to clarify the legal situation of minority real estate, no doubt for fear that the extent of official expropriations would come to light*."[26]

A. On the purpose of the difference in treatment

36. In the present case, the inaction of the Turkish State, consisting in its refusal to recognise the applicant's ownership of the property, pursues no legitimate aim. Consequently, the resulting difference in treatment, based on ethnic and religious grounds, cannot be justified either.

37. In fact, the purpose of this interference corresponds to an illegitimate "*public interest*", namely the reinforcement of Turkey's national and religious homogeneity. Yet the Turkish State has made international commitments concerning the protection of Christian populations that have become minorities, through the Treaty of Lausanne (1923). Therefore, if there were any legitimate aim in protecting, in a particular way, the rights of foundations on account of their ethno-religious origin, it should benefit Christian minorities rather than operate to their detriment. Indeed, these minorities should be able to expect the authorities to take "positive measures of protection" in order to genuinely and effectively guarantee their right to respect for their property.[27]

38. Not only did the Turkish State fail to pursue any objective that could legitimise this difference in treatment, but it should have exercised particular care in protecting the applicant Foundation's right to respect for its property, given that it belongs to a non-Muslim minority protected by international agreements. The applicant Foundation was therefore unfairly discriminated against on the basis of its membership of a religious minority.

[24] *Fabris [GC]*, op. cit, § 52; See : *Stec and others v. the United Kingdom [GC]*, n[os]65731/01 and 65900/01, decision on admissibility, July 6, 2005, § 55; *Andrejeva v. Latvia [GC],* No. 55707/00, February 18, 2009, § 79.
[25] *R.Sz. v. Hungary*, No. 41838/11, July 2, 2013, § 60.
[26] Jean-François Pérouse*, op. cit*.
[27] *Öneryıldız v. Turkey [GC],* No. 48939/99, November 30, 2004, § 134.

B. On the proportionality of the difference in treatment

39. A finding that there is no legitimate aim underlying the difference in treatment is sufficient to establish a violation of Article 14 taken together with Article 1 of Protocol No. 1. However, in the highly unlikely event that a legitimate aim could be found to justify such difference in treatment, the Court should then verify whether there exists a "*reasonable relationship of proportionality*" between the means employed and the aim pursued.[28] The elements set out in Part I C are sufficient to demonstrate that the Court would not uphold the proportionality of the difference in treatment in pursuit of any objective, thereby confirming once again that this distinction amounts to discrimination. The Court is therefore invited to require Turkey to return the property at issue to the applicant Foundation and to register it as owner in the land register.

III. On the general situation of non-respect for Christian minorities in Turkey

40. The persistent lack of recognition of the applicant Foundation's ownership forms part of a structural pattern of dispossession of Christian property in Turkey. The administrative rejection of its registration request, based on purely formalistic and discriminatory arguments, reveals an institutional system designed to deprive Christian foundations of their property rights. This policy, pursued for several decades, reflects the Turkish State's ongoing determination to diminish the material and legal presence of Christianity within its territory.

41. Today, there are 167 recognised community foundations in Turkey, including 77 Greek, 54 Armenian, 19 Jewish, 10 Syriac, 3 Chaldean, 2 Bulgarian, 1 Georgian and 1 Maronite foundation.[29] Among them, many Christian institutions continue to face confiscation of their assets. In 2010, the General Directorate of Foundations declared 48 Greek and Jewish foundations "disused," thereby appropriating the management and income from their hundreds of buildings.[30] This practice violates the right to property guaranteed by Article 1 of Protocol No. 1 and demonstrates systemic discrimination on religious grounds.

42. The Parliamentary Assembly of the Council of Europe (PACE), in its Resolution 1704 (2010), called on Turkey to return so-called "*mazbut*" properties—those confiscated by the State since 1974—or to provide fair compensation to their rightful owners.[31] The European Court of Human Rights has already found Turkey responsible on several occasions for violating the property rights of Christian foundations, notably in the cases of *Fener Rum Patrikhanesi Vakfı v. Turkey* and *Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı v. Turkey* (Application No. 36165/02).

43. The European Parliament, in its resolution of 13 September 2023 on the Commission's annual report on Turkey, deplored the lack of significant progress in protecting the rights of ethnic and religious minorities. It specifically urged Turkey to implement the judgments of the European Court of Human Rights and to adopt legislation guaranteeing religious communities legal personality and full recognition of their property rights.[32]

44. In response to international criticism, Turkey reported in 2019 that between 2003 and 2018 it had returned 1,084 properties to foundations belonging to non-Muslim minorities (Armenian, Syriac, Chaldean, Greek, and Bulgarian).[33] However, this figure remains marginal in view of the thousands of properties still

[28] *Öneryıldız v. Turkey [GC],* No. 48939/99, November 30, 2004, § 134.
[29] Cemaat Vakıfları, https://www.cemaatvakiflaritemsilcisi.com/index.php/vakiflar.
[30] 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.
[31] PACE, "*Freedom of religion and other human rights of non-Muslim minorities in Turkey and of the Muslim minority in Thrace (Eastern Greece)*", Resolution 1704, January 27, 2010, § 19.5.
[32] European Parliament, Resolution of September 13, 2023 on the Commission's 2022 report on Turkey (2022/2205(INI)), § 19.
[33] 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.

unrecognised or registered in the name of the Treasury. The slow pace and arbitrary selection of restitutions reflect a persistent inequality in the recognition of Christians' property rights.

45. This discriminatory policy is accompanied by an alarming demographic decline of Christian communities. Whereas there were around two million Christians in 1920, today they number only about 169,000, representing 0.2% of the population. The Greek Orthodox community, once 100,000 strong in 1923, now numbers fewer than 2,000. The Armenian community counts approximately 90,000 faithful, while the Syriac Orthodox number around 25,000. These figures are approximate, as many Christians conceal their identity for fear of discrimination or harassment.

46. Religious discrimination is also evident in the governance of foundations. In August 2022, the Armenian Patriarch of Constantinople, Sahak II Masalyan, addressed an open letter to President Recep Tayyip Erdoğan denouncing the new electoral regulations applicable to the boards of non-Muslim foundations. These rules, published in the Official Gazette on 18 June 2022, introduced a restrictive territorial division and placed hospital foundations, such as that of Yedikule, under the supervision of the Ministry of Health. The Patriarch warned of the risk of boycotting the elections and the resulting loss of autonomy for Christian institutions.[34]

47. Vakıflı, the last village still inhabited exclusively by Armenians in Turkey, located in the Samandağ district (Hatay province), illustrates the persistence of these forms of discrimination. It faces the threat of expropriation under a large-scale public housing project launched by the Housing Development Administration (TOKİ) following the earthquakes of February 2023. The project, which foresees the construction of 1,353 housing units, a shopping centre and other infrastructure, covers half of the village, including both residential and agricultural areas. Moreover, the Armenian Church Foundation of Vakıflı has brought legal proceedings to recover 36 community properties transferred to the Treasury or to private individuals, but despite a 2022 judgment by the Turkish Constitutional Court acknowledging a violation of the right to property, these properties have still not been returned.[35]

48. Thus, the present case illustrates the latent and structural persecution suffered by Christians in Turkey. Their foundations—subjected to administrative obstacles, land expropriations and increased State control—are seeing their legal and patrimonial existence gradually diminished. This policy, contrary to Turkey's international commitments, seeks to consolidate the country's ethno-religious Turkish-Muslim homogeneity to the detriment of its historical minorities. The ECLJ denounced this persecution in its contribution to the Universal Periodic Review of October 2024 for Turkey before the United Nations Human Rights Council.[36] In February 2025, Turkey declared with satisfaction that, "*regarding issues related to the real estate ownership of minority foundations, the relevant legislation has been amended and, for the most part, the problems have been resolved in favour of minorities.*"[37] The present case, *Yedikule Surp Pırgiç Ermeni Hastanesi Vakfı v. Turkey*, offers an opportunity to assess the reality of those commitments.

[34] *Fides*, "Discontent and "discomfort" for the new regulations of the Foundations. The Armenian Patriarch appeals to Erdogan," August 27, 2022.
[35] *Bianet*, "Turkey's last Armenian village faces expropriation threat," January 31, 2025.
[36] ECLJ, Universal Periodic Review 2024 of Turkey, October 2024.
[37] Human Rights Council, Working Group on the Universal Periodic Review, National Report of Turkey (A/HRC/WG.6/49/TUR/1), February 10, 2025, § 101.