The New Foundations Law and the Seized Property of Minority Foundations

Yeşim Selda Hebip

A thesis presented to the

Atatürk Institute for Modern Turkish History
at Boğaziçi University

in partial fulfillment of the requirements for the degree of

Master of Arts

June 2016

Approvals

"The New Foundations Law and the Seized Property of Minority Foundations," a thesis prepared by Yeşim Selda Hebip in partial fulfillment of the requirements for the degree of Master of Arts from the Atatürk Institute for Modern Turkish History at Bogaziçi University, has been approved on 10 June 2016 by:

THESIS ADVISOR

Assoc. Prof. Cengiz Kırlı _____
Ataturk Institute for Modern Turkish History
Boğaziçi University

COMMITTEE MEMBERS

Prof. Dr. Biray Kolluoğlu _____
Department of Sociology
Boğaziçi University

Assist. Prof. Ziya Umut Türem _____
Ataturk Institute for Modern Turkish History
Boğaziçi University

Copyright © 2016 Yeşim Selda Hebip.
Some rights reserved.



This work is licensed under the Creative Commons
Attribution-NonCommercial-ShareAlike 4.0 International License.

To view a copy of this license, visit
http://creativecommons.org/licenses/by-nc-sa/4.0/

Abstract

"The New Foundations Law and the Seized Property of Minority Foundations"

Yeşim Selda Hebip, Master's Candidate at the Atatürk Institute for Modern Turkish History at Boğaziçi University, 2016

Assoc. Prof. Cengiz Kırlı, Thesis Advisor

For a considerable time, minority foundations have been struggling with the problem of property seized by the state. The issue dates back to a 1970s decision of the Court of Cassation based on the 1936 declaration. According to this decision, real estate belonging to minority foundations began to be transferred to the Treasury, the General Directorate of Foundations, or third parties. By the end of the 1990s, minority foundations had carried their legal struggles from local spaces into an international arena: European Court of Human Rights. The relevant cases resulted in decisions against the Turkish state. As a consequence of steps taken within the framework of the European Union accession process as well as pressure from the West on the Turkish state in matters of human, and particularly minority rights, a new Foundations Law was adopted in 2008.

This thesis examines internal and external dynamics behind the Foundations Law and concentrates on the historical processes that shaped those dynamics. Minority foundations are conceived as leading, rights-demanding, collective political actors. Changes in the conceptual and structural aspects of minority foundations have undertaken since the adoption of the law are assessed in a socioeconomic framework. The thesis shows that multiple, distinct dynamics and actors have affected adoption of the Foundations Law. The study evaluates the interpretation and enforcement of the law by the state within the framework of current government policies.

30,000 words

Özet

"Yeni Vakıflar Kanunu ve Azınlık Vakıflarının El Konulan Malları Sorunu"

Yeşim Selda Hebip, Yüksek Lisans Adayı, 2016
Boğaziçi Üniversitesi Atatürk İlkeleri ve İnkılap Tarihi Enstitüsü

Doç. Dr. Cengiz Kırlı, Tez Danışmanı

Azınlık Vakıfları'nın devlet tarafından el konulan mülkiyetleri ile ilgili içinde bulundukları mücadele makul bir zaman dilimini kapsamaktadır. 1974 yılında Yargıtay tarafından alınan bir kararla, 1936 Beyannamesi'ne atıfta bulunularak azınlık vakıflarına ait taşınmazlar hazineye, Vakıflar Genel Müdürlüğü'ne ya da üçüncü şahıslara aktarılmıştır. Azınlık vakıfları yereldeki yasal mücadelelerini 1990'ların sonlarına doğru Avrupa İnsan Hakları Mahkemesi'ne taşımaya başlamışlardır. Söz konusu davalar ise Türkiye Cumhuriyeti devletinin aleyhine sonuçlanmış, buna ek olarak Avrupa Birliği uyum süreci çerçevesinde ciddi adımların atılmaya başlaması ve Batı'nın insan hakları- özellikle azınlıklar- konusunda Türkiye'yi ablukaya alması neticesinde 2008 yılında Vakıflar Kanunu kabul edilmiştir.

Bu tez Vakıflar Kanunu'nun altında yatan iç ve dış dinamikleri incelemekle birlikte, bu dinamiklerin temelini şekillendiren tarihsel sürece odaklanmaktadır. Bu çalışmada azınlık vakıfları hak talep eden öncü bir kolektif ve siyasi aktör olarak sunulmuş; Vakıflar Kanunu'nun kabulünden bu yana azınlık vakıflarının geçirdiği kavramsal ve yapısal değişimler sosyoekonomik bir çerçeveden değerlendirmeye tabi tutulmuştur. Bu çalışma, Vakıflar Kanunu'nun ortaya çıkmasında çok farklı aktörlerin ve dinamiklerin etkili olduğu ve kanunun yorumlanması ve uygulanmasında hükümetin son dönem izlediği politikaların etkili olduğu sonucuna varmıştır.

30.000 kelime

Table of Contents

Acknowledgements *xi*

1 INTRODUCTION 1

1.1 Basic Literature on Foundations Law and Minority Foundations 11

2 THE LEGAL STRUCTURE OF FOUNDATIONS 17

2.1 The Concept of Foundations (*Vakıf*s) in the Ottoman Era 18
2.2 Treaty of Lausanne and Minorities 22
2.3 Minority Foundation Policies from Lausanne to the New Foundations Law 31
2.4 The New Foundations Law of 2008 42

3 INTERNAL AND EXTERNAL INFLUENCES ON THE NEW FOUNDATIONS LAW 55

3.1 Minorities' Struggles with the Domestic Legal Order 56
3.2 Minorities and ECHR Cases 62
3.3 Minority Foundations and EU Accession 67

4 FOUNDATIONS LAW: A PRAGMATIC SOLUTION PARALLEL TO NEOLIBERAL POLICY 81

4.1 Flip-Flop Mechanisms in the Return of Seized Property 81
4.2 Involuntary Compliance of Minorities with Current Policies of the AKP via the New Foundations Law: Şan Theatre and Key Plaza Cases 95

5 CONCLUSION 107

BIBLIOGRAPHY 113

Acknowledgements

First, I would like to thank my thesis advisor, Assoc. Prof. Cengiz Kırlı for his support. I would also like to thank my jury members Prof. Dr. Biray Kolluoğlu and Assist. Prof. Ziya Umut Türem for their constructive comments on the thesis. I also want to thank Tracy Lord Şen for her guidance, and Jonathan Phillips for editing the thesis.

I am also very thankful to Volkan and Mehtap for their psychological support when I felt discouraged, and for their precious advices and infinite friendship.

I thank with all my heart all my friends, especially Ezgi, İrem, Büşra, Seda, and Can who gave their support and urged me to keep going!

Special thanks to the bands, novels, movies, and one-day wonder activities with which I filled the stagnant stages of the thesis. Also- although I do not have any idea about its content, I have a great appreciation for the *Swedish Poem Collection* that caught my eye and inspired me whenever I sat at the same table in the library.

Finally, I would like to thank my mother Huriye; my father Mustafa; my sister Sevda; and my brother Saner, who supported me throughout my life in good times and bad.

NOTE: The in-house editor of the Atatürk Institute has made recommendations with regard to the format, grammar, spelling, usage, and syntax of this thesis in compliance with professional, ethical standards for the editing of student, academic work.

1

Introduction

Humanity and its aspects of kindness including donations or contributions to households, communities or to the public – which is to say, philanthropic activities – developed in a social way. By way of these, humanity perpetuates its existence dependent on the reality of unequal distribution of wealth and the capacity. The idea of contribution or philanthropy establishes a foundation for people's clustering, which gives them a sense of belonging. Foundations and philanthropic organizations are a systematic and concrete expansion of the idea. Their ideals, scopes, and targets are the products of the culture in which they exist, and differ from one geography to the next, correlating to the relative importance of values, being, concepts, and views in a given culture. The universal point at which foundations intersect is that they are subject to obligations and rules determined by the legislative bodies of their respective states.

Foundations are social institutions that play a role in the voluntary, charitable support to public, including educational, medical, and other social service activities. Each foundation has a unique character and an aim differing from, yet sometimes resembling that of others.

A foundation is generally referred to as a kind of non-profit organization that "is prohibited from distributing its financial surplus to those

who control the use assets by law or its governance structure."[1] Clearly, foundations arise out of the purpose and impetus of helping those in need of food or other basic needs, such as providing care for the elderly, education for children rather than sharing surplus among themselves or using it for income-generating activities, in this sense foundations are a sub-category of non-profit organizations.[2] They are funded and supported by an individual, a group or a community in order to run their institutions like hospitals, and schools; and they differ from the organizations such as trade associations.[3] The latter is managed and financed by a business group and aims at developing economic ties with other business sectors, not considering public's wealth to be a priority.[4]

Foundations have two key characteristics: aforementioned charitable aspect and philanthropy. The concept of philanthropy includes donation of one's possession for the good of other people. Accordingly, foundations become a narrower concept in terms of their scope than non-profit organizations since they are restricted to charitable and philanthropic activities.

From a political point of view, foundations display a solid reaction to the state and its operations. On this subject, Clemens suggests Novak's statement that foundations are political formations, which do not depend neither on their income-generating nor income-free activities as they are given legal rights, particularly the right to acquire property, within the framework of regulations determined by the state.[5] Therefore, the state policy related to economy and citizenship in particular, actively involve

1 Walter W. Powell and Richard Steinberg, "Introduction," in *The Non-Profit Sector: A Research Handbook*, eds. Walter W. Powell and Richard Steinberg (New Haven and London: Yale University Press, 2006),1.

2 Ibid.

3 Ibid.

4 Trade Association, Wikipedia. https://en.wikipedia.org/wiki/Trade_association (last accessed in May 2016).

5 Elisabeth S. Clemens, "The Constitution of Citizens: Political Theories of Nonprofit Organizations," in *The Non-Profit Sector: A Research Handbook*, ed. Walter W. Powell and Richard Steinberg (New Haven and London: Yale University Press, 2006), 207.

foundations in political forms of action such as negotiations with the state over the possible extension for their economic activities. In case of minority foundations that are the focus of this thesis, they participate in political actions concerning their legal status, equal rights issues, and ethnicity. In Turkey, the experience of minority foundations as promoters of equal rights has improved on the local scale since the 1980s, and of international human rights since the early 2000s.

There are considerable economic and political theories related to non-profit organizations and foundations that shed light on their roles in political-economic realm. Ott and Dicke state that most economic theories concentrate on these "failures."[6] These failures appear to be in three distinct forms: failures of the market and of government and of contracts.[7] They add that these theories start by seeking the role of non-profit organizations (NPOs) in a mixed economy as distinct from governmental actions and for-profit corporations.[8] This is followed by finding the role of NPO when government and for-profit companies fail – in other words, when they no longer satisfy the demands of individuals.[9] Ott and Dicke explain that markets fail since they lose their capacity to provide the circulation of goods – especially public goods. They attribute this failure to wrong production processes and wrong quantities of goods.[10] They give other failures as follows: the quantity of some goods is inadequate, access to some goods is restricted (government failure), and the quantity or quality of goods delivered to the consumer does not coincide with what the recipient was promised in the first place (contract failure).[11]

Steinberg explains the reactions of governments against the failures as follows: "to discard underprovided goods governments should either

6 J. Steven Ott and Lisa A. Dicke (eds.), *The Nature of the Non-Profit Sector* (Colorado, USA: Westview Press, 2012), 141.

7 Ibid.

8 Ibid.

9 Ibid.

10 Ibid.

11 Ibid.

pay private-sector organizations to produce them or produce collective goods."[12] The problem of inadequate quantity of and restricted goods is kept in check by "regulating for-profit providers, sometimes mandating that nonpayers retain access to collective [public] goods (like emergency phone service), or by giving selected groups special subsidies that enable them to compete for access to excludable public goods."[13] The way that government responds to the contract failure, Steinberg continues, is:

> …facilitating the enforcement of contracts, reducing the number of markets that fail in this way; second, regulating the representations that firms make to the public through truth-in-advertising and fraud laws, labelling requirements; third, limiting entry into markets that suffer from asymmetric information problems through licensing and bonding requirements; and lastly warning consumers of particular abuses and teaching consumers how to detect mistreatment."[14]

Steinberg remarks that government failure occurs when government loses its capability to provide public goods and no longer meets the expectations of – especially – those demanding the best quantity and quality for their goods.[15] At this juncture, NPOs appear to fill the gap in the services left open by the government.[16]

Lohmann remarks that failure theories fail to explain the role of nonprofit organizations in a satisfactory way. He emphasizes that these ap-

12 Richard Steinberg, "Economic Theories of Nonprofit Organizations," in *The Non-Profit Sector: A Research Handbook*, eds. Walter W. Powell and Richard Steinberg (New Haven and London: Yale University Press, 2006), 119-122.

13 Ibid.

14 Ibid., 122.

15 Ibid.

16 Henry Hansmann, "Economic Theories of Non-profit Organizations," in *The Non-profit Sector: A Research Book*, ed. Walter W. Powell (New Haven: Yale University Press, 1987), 27-42.

proaches subsume the concept of "voluntary" into existing economic theories.[17] Lohmann developed an alternative model: a theory regarding the economic nature of voluntary action, addressing to donation-operated non-profit organizations distinct from commercial non-profits. He seeks to describe an economic action not included in the triangle of the state, the household, and the market.[18] According to Krashinsky, Lohmann's theory depends on the fact that whole voluntary actions involve common goods. Krashinsky also sheds light on the root meaning of the term "common" stating that Lohmann uses this term in tandem with the Greek *koinonia*, which means people who possess a mutual goal, an agreement to act fairly and a sense of solidarity on unforced participation."[19] Lohmann explains his theory as follows:

People practise "self-defining collectiveness of voluntary actions." In other words, they gather with a collective mind independent from the government, the market and the family. The collective mind displays a distinctive kind of action: a "joint action", such as helping the needy or religious worship. Lohmann defines common goods as the product of the economic purpose of this joint action. In this sense, common goods are different from market and public goods. Lohmann explains this difference focusing on common goods' aspect of "bidirectional transfer of values", which means "the flow of economic values, cash, and commodities to noneconomic values – religious and philanthropic activities – and vice versa."[20]

17 Richard Lohmann, "And Lettuce is Nonanimal: Toward an Economics of Voluntary Action," in *The Nature of the Nonprofit Sector*, eds. J. Steven Ott and Lisa A. Dicke (Colorado, USA: Westview Press, 2012), 159.

18 Ibid., 160.

19 Michael Krashinsky "Stakeholder Theories of the Nonprofit Sector: One Cut at the Economic Literature," İn *The Study of the Nonprofit Enterprise: Theories and Approaches*, eds. Helmut K. Anheier and Avner Ben-Her (New York: Springer Science+Business Media, 2003), 135.

20 Lohmann, "And Lettuce is Nonanimal," 161-162.

Lohmann states that the services presented in the commons are social acts, not concrete outputs; they are not involved in the basic economic processes of exchange, production, and consumption.[21] Moreover, he adds that common goods are protected from economic problems like scarcity, by which other goods are easily and adversely affected, through "rendition", another distinct characteristic of common goods. Lohmann explains that rendition is a process composed of two essential elements: information and meaning. He states that information arises from interactions of novel, spontaneous, and unpredictable situations citing the example of scientific discovery while meaning is created by the certainty and predictability of situations such as that a new scientific discovery verifies the old findings, which indicates the presence of an order.[22] Since information and meaning exist outside economic domain, but depend on social and cultural needs of the society and are the resources for (possible) voluntary action, rendition protects the common goods from being influenced by economic problems.[23] The concept of endowment is relevant since it is "any fund of means and information to be used for voluntary action."[24] According to Lohmann, the way an endowment is transformed into action separates voluntary, charitable and philanthropic organizations from for-profit organizations.[25]

The concept of foundations, namely the *vakıf* system in especially Ottoman Empire, cannot be satisfactorily analyzed via failure theories. The vakıfs were not established to complete a vacancy left open by the Ottoman government after a "failure"; instead especially sultanic vakıfs essentially constituted a structure of the municipality integral to the state. They were responsible for many public services such as building bridges, supplying water to the cities, paving roads, constructing mosques and

21 Ibid.

22 Ibid.

23 Ibid., 163.

24 We will discuss this subject with the solid cases related to minority foundations in Chapter 4.

25 Lohmann, "And Lettuce is Nonanimal," 163.

other buildings of worship, founding educational establishments, and financing social institutions like hospitals.[26] To draw a philosophical distinction, the existence of vakıfs was a priori rather than a posteriori.

Vakıfs were shaped around developing and maintaining religious solidarity and responsibility in society. The solidarity concept in vakıfs reflects a sense of cooperation, collectiveness, and association, and as such the terms and theorems of failure theories – based on liberal constructs – fail to project such self-induced, societal dimensions of the vakıfs.

In this thesis, vakıfs or foundations are regarded as integral part of the state (co-existence of the state and vakıf) up until the establishment of the Turkish Republic, regardless of the extent of their responsibility for the state of public services in the waning years of Ottoman Empire – as well as irrespective of whether they underwent a "Foucauldian transformation" in Yayla's terms. Yayla explains that this kind of transformation displays "the formation of the vakıf in concordance with government's desired outcomes, the construction of governable bodies and providing a controlling device from a distance."[27] Whether or not there was a deviation from the "co-existence" in the Republican years, particularly after the adoption of the new Foundations Law, will be taken into consideration. Historical modifications and the variations in the concept of foundation will also be analyzed taking minority foundations as a case study. Since the work will be constructed around the limitations placed on minorities and their real estate problems vis-à-vis state, the scope of the foundation concept will be theoretically reduced to charity and volunteerism on the one hand, and minority organization and citizenship, on the other. Borrowing Lohmann's common goods theory, one should understand that the real estate holdings and other goods of minority foundations are common goods; they differ from market and public

26 Oded Pori, "Waqf and Ottoman Welfare Policy. The Poor Kitchen of Hasseki Sultan in Eighteenth-Century Jerusalem," *Journal of the Economic and Social History of the Orient* 35, no. 2 (1992): 167-186.

27 Hilmi Erdoğan Yayla, "Operating regimes of the government: Accounting and accountability changes in the Sultan Süleyman *Vakıf* of the Ottoman Empire (The 1826 Experience)," *Accounting History* 16, 1(2011): 5–34. Available at: http://ach.sagepub.com/content/16/1/5.abstract (last accessed on 15 December 2014.)

goods and operate in a unique system of flows of economic values, cash, and commodities to noneconomic values – religious and philanthropic activities – vice versa. This difference explains separate legal structures and legislations to regulate foundations. With respect to minorities, the circulation of goods not only has economic importance – providing for the communities' requirements of religious worship, health, and education – but also political importance in terms of providing opportunities for civic engagement and connection, as well as equipping them to compete in mainstream political processes.

Ott and Dicke state that many political theories examine the role of non-profit organizations, confining it to the scope of civil society and democracy, and focus on the ways of citizens to participate in a community and to develop political types of action within it, which further leads to "civic leadership."[28] According to such studies, Clemens states, "associational activities are constitutive of citizens as actors in terms of preferences and interests, and of the capacity to make effective demands."[29] She declares that these arguments are shaped around the idea of Tocqueville that "the ability of citizens to solve problems through associated action prohibits the extension of governmental responsibility."[30] Also she addresses the claim of Douglas that "charities and non-profit organizations may substitute for governmental actions when they collaborate with the government."[31] However, in the preponderance of recent studies, the withdrawal of the government from responsibilities like social services is explained through neoliberal theory rather than approaches centered on the capacity of actor citizens reconstructing the scope of the state.

Clemens puts forward Novak's statement that the approach centered on citizenship claims that associations like municipal and business corporations are not private collaborations, rather they are referred to as

28 Ott and Dicke, "The Nature of the Non-Profit Sector," 141.

29 Clemens, "The Constitution of Citizens," 207.

30 Ibid., 221. For further information, see Alexis de Tocqueville, *Democracy in America* (New York: Anchor Books, 1969).

31 Clemens, "The Constitution of Citizens," 221.

legal and political organizations.[32] From the political point of view, associations have their own management system, regulations, and control mechanism; and these components of associations mostly find themselves involved in an interaction with the state bodies. These deductions with Novak's ones are applicable to foundations.[33] With respect to their societal aspect, Oakeshott gives Novak's explanation that the basis of the aforementioned argument is that governance is an activity in which people gather and produce a societal interaction.[34] This point of view opens a wide spectrum of what it means for something to be political and societal, which overlaps with and transcends Habermas' concept of the public sphere in which "individuals assemble with the purpose of discussing issues bearing on state authority, relinquishing their personal identities."[35]

The socio-legal and political characteristics of foundations are derived from networks between government and foundations. Foundations operate under a legal framework, make an effort to shape government action, and constitute a part of the circulation of a wide range of valued services. The legal framework of particularly minority foundations, will be examined through the regulations, and amendments of the Foundations Law and other relevant legislation. The demands of minority foundations on the governmental agenda will be taken into consideration through the example of struggles for return of property seized by the

32 Ibid. For more information see William J. Novak, "The American Law of Association: The Legal-Political Construction of Civil Society", *Studies in American Political Development* 15 (Fall 2001): 163–188.

33 Novak establishes a connection between civil society and association and claims that an association grows out of "associational" demands like freedom, democracy and human rights by civil society. See William J. Novak, "The American Law of Association." Minority foundations can be evaluated as "associational" because of their struggles to (re)gain the rights and being acting as (narrowed) civil society.

34 Michael Oakeshott, *Morality and Politics in Modern Europe: The Harvard Lectures* (New Haven: Yale University Press, 1993).

35 Craig Calhoun, "Introduction: Habermas and the Public Sphere," in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, MA: MIT Press, 1992), 1-48.

state. The issue of the seized properties of minorities suggests the importance of foundations as a representative of suppressed populations, as a community, and as unique socio-economic networks impenetrable to the market.[36] With regard to impenetrability, this thesis puts forward the question of whether the state intended and succeeded in tendering foundation properties to the flow of the market before, with, and after the adoption of the Foundations Law of 2008.

From a market perspective, Malloy and Smith explain that property constitutes an important, legal element for two key components of economic activity: "trade and exchange;" it reflects people's interest and demand besides their need.[37] Most properties are industrial products whose qualifications are determined by people's demand, in other words by market. Malloy and Smith remark that the point separating the property of foundation and market properties is that foundations do not seek the "time varying" interests that people possess like market products varying according to technological developments, rather they have services for common requirements like shelter, health, and education.[38] However, in both a market sense and a *common* sense, Malloy and Smith states, ownership of property connects individuals to the wider community since individuals and their properties are legally and publicly recorded and traced.[39]

According to Malloy and Smith, individuals are given visibility because the state imposes tax on, record and audit their properties, which make foundations create holdings-tax relations with the state.[40] Minority foundations also develop a relation with the state based on taxation, recording and auditing. However, they mostly interact with the state through the issues of citizenship and civil rights. Therefore, a minority foundation is not only an institution established around a certain goal,

36 See Lohmann's concept of common goods.

37 Robin Paul Malloy and James Charles Smith, "Private Property, Community Development, and Eminent Domain," in *Private Property, Community Development, and Eminent Domain*, ed. Robin Paul Malloy (UK: Ashagate Publishing Limited, 2008), 1-15.

38 Ibid.

39 Ibid.

40 Ibid.

but also represents the identity of that minority. Ownership of property relates to minority and human rights. The right to property and concomitant utilization of said property leads to the fulfillment of other rights: medical service, education, housing, social support, as well as the rights of cultural and religious practice among minorities.

The members of a minority foundation not only share a mutual identity through ethnicity, religion and/or language, their struggles to regain state-seized properties bestow a sense of community to the concept of foundation. Ife states that people act together as a group and feeling part of something larger than themselves within a community; more than that, community indicates "membership": they are given tasks, share rights and a joint purpose.[41] Minority communities are visible through the channel of foundations, especially through court cases concerning foundations' real estate holdings. Through these legal proceedings, the government and minority groups have developed a dialogue.

§ 1.1 Basic Literature on Foundations Law & Minority Foundations.

Most studies of the Foundations Law deal with the issue of minorities' confiscated or immovable assets and the status of minority foundations given changes and amendments to the law from 1935 to present. Some academics like Nuray Ekşi define foundations and their types and provide the legal background of the Foundations Law. Ekşi further introduces historical and legal transformations to the law, and finally examines specific court cases, providing information about how minorities' property was affected particularly by European Court of Human Rights (ECHR) decisions and reports.[42]

41 Jim Ife, *Human Rightsfrom Below: Achieving Rights through Community Development* (UK: Cambridge University Press, 2009), 11.

42 Nuray Ekşi, Yargıtay, Danıştay ve AİHM Kararları Işığında Cemaat Vakıflarının Mülkiyet Sorunları (Istanbul: Beta Yayıncılık, 2011).

In parallel with Ekşi's study, Yuda Reyna and former president of the Supreme Electoral Council, Ali Em, evaluate the concept of foundation in the Turkish judicial system from a historical perspective.[43] Baskın Oran concentrates on the evolving concept of minorities by examining internal legislation, jurisprudence, and legal practices.[44] Dilek Kurban and Kezban Hatemi's book analyzes the real estate problems of non-Muslim communities and foundations one dimensionally, focusing on the legal regulations of minority foundations, but disregarding the political and economic history of those minorities.[45] Another publication of Dilek Kurban examines the issue within the framework of the reciprocity principle, concentrating on Muslim foundations in Greece.[46]

Apart from these, reports and studies of the minority foundations themselves and human rights associations with regard to the issue of the confiscation or seizure of real estate belonging to minority foundations by the state, conclude that current regulations of the Foundations Law have not rectified the legal ownership problems of minorities. The most comprehensive work on the subject was implemented by the Hrant Dink Foundation which focused on the Armenian community and adopted an inclusive historical methodology and legal analysis. It will comprise a substantial part of this thesis' secondary sources.[47]

Beyond the studies mentioned above, it can be said that the Foundations Law is generally examined within a legal, historical, and/or conceptual framework; studies focus on civil/minority/human rights issues and bureaucratic processes, but ignore the institutional transformation of

43 Ali Em, *Türk Hukuk Sisteminde Vakıflar* (Ankara: Turhan Kitabevi, 2006).

44 Baskın Oran, Türkiye'de Azınlıklar: Kavramlar, Lozan, İç mevzuat, İçtihat, Uygulama (İstanbul: İletişim Yayınları, 2005).

45 Dilek Kurban and Kezban Hatemi, Bir 'Yabancı'laştırma Hikayesi: Türkiye'de Gayrimüslim Cemaatlerin Vakıf ve Taşınmaz Mülkiyeti Sorunu (Istanbul: TESEV Yayınları, 2009).

46 Dilek Kurban and Konstantinos Tsitselikis, A Tale of Reciprocity: Minority Foundations in Greece and Turkey (Istanbul: TESEV Yayınları, 2007).

47 Hrant Dink Vakfı, 2012 Beyannamesi (Istanbul: Uluslararası Hrant Dink Vakfı Yayınları, 2012).

foundations. The regulations concerning real estate ownership by minority foundations; the functions and internal structure of foundations; and the economic, political, and cultural relations of foundations vis-à-vis the state and other domestic or international bodies must be evaluated as a whole.

There are noteworthy regulations: enforcement of internal audits, participation by community foundations in the decision-making process through being elected to the Council of the General Directorate, and establishment of economic enterprises and companies which will no longer depend on the permission of the General Directorate. The question is what these regulations and changes mean given government policies. For example, does the provision shifting accounting records from the Ministry of Finance to the General Directorate favor the General Directorate as a separate – independent – body, even though it is subject to the Prime Ministry? What are the driving forces that paved the way for the new Foundations Law other than the European Union (EU) accession process and ECHR decisions and reports? It is in light of these questions that I examine the Foundations Law in my thesis.

I develop a multi-dimensional approach to the Foundations Law, integrating social, economic, and political perspectives to the changing legal character of foundations. I analyze primary source materials comparing old and new articles of the Foundations Law, minority foundations' court cases concerning immovable assets, and at assessment of the governmental policies. These consist of economic and administrative changes and social arrangements, the government's interpretation and enforcement of the law, and the legislative processes, all of which together form the experience of the legal system:

> It (the experience of the legal system) appears more generally as an experience of social power. Sometimes it is an experience of power available for the citizen's use; an experience of having the ability to coerce, influence, make things happen, and get things done; of being able to invoke the aid of the state or, at least, to make use of certain procedures, practices, or circumstances of state agencies to further or protect one's interests… Conversely,

> legal experience is often an experience of power being exercised over the citizen; it involves feelings of vulnerability and insecurity, of being subject to official control or interference… It may also be an experience of being made helpless by the technicality and obscurity of regulations and practices, which one does not understand but which nevertheless envelop and trap the individual as in an iron cage.[48]

As Cotterrell mentions, citizens (especially minorities in our case) become objects of the legal system because they are under state control and helpless in the face of obscure regulations (regarding the issue of minority foundations' rights of ownership and urban renewal projects).

On the issue of bureaucratic obstacles and vagueness, Bayır gives examples of state interference with the management of community foundations from the 1960s.[49] Bayır states that the state's goal was to weaken if not close down those organizations. For this reason, the state cut off their funding resources, hence this would prevent them from acquiring new property.[50] She claims that the government used bureaucratic obstacles, one of which was its refusal to issue necessary documents for the registration of property in the name of minority foundations.[51] She adds that the General Directorate of Foundations sued minority foundations, alleging that these foundations acquired property that was not included in their charters. The Court of Cassation decided in favor of the General Directorate that "a non-Muslim foundation could not acquire new property by means of bequest or donation unless clearly stated so in its charter."[52]

48 Roger Cotterrell. Law's Community: Legal Theory in Sociological Perspective (New York: Oxford University Press, 1996).

49 Derya Bayır, *Minorities and Nationalism in Turkish Law* (Farnham, Surrey, England; Burlington, VT: Ashgate, c2013).

50 Ibid.

51 Ibid.

52 Ibid.

Bayır claims that governmental policies – regarding minorities in particular – were influenced by cultural nationalism resulting in that the government prohibited the acquirement of new property and establishment of new foundations by minority groups.[53] Bayır takes cultural nationalism and concomitantly governmental policies as the foundation that shaped the nature of the implementation of Foundations Law regulations, indicating that…

> …the political and legal changes in Turkey have not yet reached the stage of protecting the rights of diverse groups with legal guarantees… Therefore, despite the changing political discourse and political recognition of the existence of some of the non-Turkish speaking population in Turkey, the political and legal discourse on diversity and protection of minorities has not changed much. Thus, the state's tendency is to treat differences as 'folkloric' particularities, while continuing to push for unity under the umbrella identities of "Turkishness" and Sunni *Hanefi* Islam.[54]

Kurds were recognized. Teaching of minority languages was permitted. Ethnoreligious associations are allowed to be established. The seized properties of minority foundations began to be returned. According to Bayır, these changes does not constitute a progress in the mentality of Turkish state. Bayır states that despite a changing international legal atmosphere, recent legal and political changes reflect a cultural nationalist attitude towards minorities, which was inherited from the Kemalist regime.[55]

The Foundations Law needs to have a broader foundation than the approach of cultural nationalism. To analyze the Foundations Law only in terms of the issue of property ownership by minority foundations restricts the study to a monolithic frame. It must include the ideas, forces and social origins that constituted the law. Explanations and deductions concerning whether a transformation in the concept of foundation has

53 Ibid.

54 Ibid.

55 Ibid.

taken place – especially its charitable characteristics, its administrative structure, and its relation to the state – will make the law more understandable in a multi-dimensional, economic, social, political and conceptual framework.

The thesis consists of five sections. This thesis is similar to most studies focusing on minorities, minority foundations and their seized property problem in terms of historical background, concepts, arguments, and the order of content.[56] After this introduction, the second chapter gives a brief overview of vakıfs in the Ottoman period and examines the legal arrangement of vakıfs at the point the Republic was established. On the subject of minority foundations, it evaluates the Lausanne Treaty in terms of minority rights, then analyzes legislation concerning minorities and minority foundations with respect to oscillations in foreign policy, and lastly, it assesses amendments made by the Foundations Law adopted in 2008.

The third chapter evaluates the internal and external dynamics that paved the way for the adoption of new Foundations Law, respectively: the minorities' legal personality problem, ECHR cases and the transition of the issue of seized property to an international, human rights arena, and the European Union accession process.

The last chapter develops a political framework concerning the government's fragile, pragmatic policies towards the demands and problems of minority foundations. It raises questions about the application of the law and subsequent regulations, in particular: Has the concept of foundation undergone a transformation? And are foundations showing any symptoms as they drift towards being for-profit organizations?

56 Some of these studies are Hrant Dink Foundation, "2012 Declaration", Ayşegül Uçkun, "Minorities in Turkey: Status and Rights of Minorities on the Road to EU," *Jean Monnet Chair Student Workshop II*, Istanbul, 2014; Dilek Kurban and Kezban Hatemi, "Bir 'Yabancı'laştırma Hikayesi: Türkiye'de Gayrimüslim Cemaatlerin Vakıf ve Taşınmaz Mülkiyet Sorunu," (Istanbul: TESEV, 2009).

2

The Legal Structure of Foundations

Triggered by cases brought to the European Court of Human Rights (ECHR) by minority foundations that have had trouble with the state with regard to seized property, the Foundations Law became one of the most significant issues of the 2000s as part of Turkey's accession process to the European Union. In coming years, regulations regarding minority foundations followed the passing of the law in 2008, while the law itself included substantive amendments on the conditions of acquisition, exploitation and disposal of foundation properties, as well as the administrative functions and election systems within foundations.

This chapter addresses the overall historical-legal basis of foundations in Turkey. The contribution of such an analysis enables us to see the tensions that led to the emergence of the new law and understand how and on what grounds minority foundations have come to be separate from other foundations in terms of privileges and restraints. It will also help us track how the law relates to universal human rights and reveal the law's interaction with concurrent transformations in economic policy as well as "shifts of axis" in politics.

Accordingly, the first section will provide brief background information on the functions of Ottoman foundations (vakıfs), which were borrowed from Islamic thought, as well as legal amendments to foundations in the Republican period.

The second section concerns the issue of minority foundations and evaluates the Lausanne Treaty, as it was the text that determined who would be categorized as a minority in Turkey, guaranteeing them equal rights with the rest of the population, among which are the right to form and manage foundations. Throughout the section, the Lausanne Treaty will be a point of reference when the properties seized from minority foundations are discussed in the context of equality, discrimination, and unwarrantable legal action.

Finally, the third section will analyze the legal arrangements concerning minorities and minority foundations with respect to oscillations in Turkish foreign policy – basically, relations with Greece – and the amendments brought about by the Foundations Law of 2008.

§ 2.1 The Concept of Foundations (Vakıfs) in the Ottoman Era

El Basyon states that as an institution, vakıf refers to holding and using property for a given charitable activity and it has the right to dispose of that property unless Islamic rules prohibit its disposal.[1] In the legal sense, according to El Basyon, vakıf means "the retention of a specific thing in trust and the devotion of its profit or products in charity to the poor or other good objectives," and "it is the permanent dedication by a Muslim of any property for any purpose recognized under the Muslim law as being religious, pious or charitable."[2]

The aims of vakıfs range from running a mosque, church or any kind of place of worship to providing food and shelter for the poor and needy. From Islamic point of view, the person who donated property for charitable use was also performing an act of worship, which constituted an

1 M. El Basyon, "Revitalization of the Role of Waqf in the Field of Architecture: Activation of Waqf to Improve the Function of Public Buildings," in *Structural Studies, Repairs and Maintenance of Heritage Architecture 12*, eds. C.A. Brebbia and L. Binda (UK: WIT Press, 2011), 29.

2 Ibid.

integral element of the concept of vakıf.[3] In Islamic thought, a person becomes closer to God through giving. Therefore, what mattered was not the identity of the person who established the vakıf, but rather the purpose of the vakıf and whether it met the requirements of Islam: the desire to get closer to God.[4]

Babacan states that vakıfs played an important role as a non-government party in Islamic states, and he attributes the subsequent prominence of vakıfs to the change in economic activity indicating a fixed economy based on agriculture which replaced mercantilist trade.[5] In the Ottoman period as well, vakıfs had the important role of shaping social, economic, and property ties. Sesli remarks that except for judicial operations and public order-related services – the funding of which depended on taxes and income obtained from *miri* lands (cultivated by the state itself) – vakıfs were in charge of operating all "public services" in the contemporary sense, such as social and medical, and education-related services.[6]

In their own understanding of vakıfs, Çizakça argues that the Ottomans adopted and maintained the idea of decentralization in the modern sense until the eighteenth century.[7] He attributes this argument to the fact that the state ensured the autonomy of the vakıfs, but usually did not interfere in their domestic affairs, and only implemented necessary legal controlling.[8] [9] However, the Ottoman state went through a process of

3 Hrant Dink Vakfı, "2012 Declaration," 29.

4 Ibid.

5 Mehmet Babacan, "Economics of Philanthropic Institutions, Regulation and Governance in Turkey," *Journal of Economic and Social* Research 3, no. 2 (2011): 61-89.

6 Faik Ahmet Sesli, "Foundation Administrations and Foundation Landownership in Turkey from Past to Present," *African Journal of Business Management* 4, no. 9 (2010): 1769-1777.

7 Murat Çizakça, *Waqfs in the Ottoman Empire and the Turkish Republic*. https://www.academia.edu/16156826/Waqfs_in_the_Ottoman_Empire_and_the_Turkish_Republic (last accessed in May 2016).

8 Ibid.

9 For the transformation of the vakıf system in the nineteenth century, see Hilmi Erdoğan Yayla, "Operating Regimes of the Government: Accounting and accountability changes

transformation after the eighteenth century. Işık explains this transformation as follows: with the establishment of the *Evkaf Nezareti*[10] and the accompanying new regulations in the nineteenth century, *vakıfs* found themselves in a centralizing trend that resulted in the confiscation of their properties through governmental reforms that aimed to contribute to state coffers. This, in turn, led to a considerable decrease in foundation incomes. Subsequently, Işık claims that vakıfs became ineffective when involved in a mixed economy.[11]

As for non-Muslim vakıfs, in principle the vakıf itself and those who would benefit from it did not have to belong to Islam. A vakıf was established by a person "close to God" who dedicated the property to charitable use.[12] Based on this charitable purpose, non-Muslims were permitted to establish vakıfs for helping needy non-Muslims.[13] However, Hrant Dink Foundation (HDF) explains that a vakıf which demanded to operate a non-Muslim place of worship, namely church, was to be established, non-Muslims were rejected by the Sharia court since establishing a church did not fulfil the conditions of Islam even though it complied with the condition of closeness to God based on their own faith.[14] Sharia Law did not allow non-Muslims to establish a vakıf and did not provide a legal status for their institutions. Yet, the sultan's edict did. Non-Muslim vakıfs that run the institutions like schools, hospitals, and sanctuaries were established by the sultan's edict.[15]

---

in the Sultan Süleyman Waqf of the Ottoman Empire (The 1826 Experience)", *Accounting History* 16, 1(2011), pp. 5–34. Available at: http://ach.sagepub.com/content/16/1/5.abstract (last accessed on March 21, 2015).

10 It was one of the novelties came up with the Westernization attempt by the Ottoman Empire in th 1800s, known as *Tanzimat Fermanı*. This institution's aim was to establish control over vakıfs. See Çizakça, "Waqfs in the Ottoman Empire and the Turkish Republic," 8.

11 Damla Işık, "*Vakıf* as Intent and Practice: Charity and Pure Relief in Turkey", Int. J. Middle East Stud. 46, no. 2 (2014): 307-327.

12 Hrant Dink Vakfı, "2012 Declaration," 29.

13 Ibid.

14 Ibid.

15 Ibid.

With the formation of the Turkish Republic in 1923, the state developed a new legal understanding of vakıfs. Çizakça states that the Civil Code of 1926 regulated vakıfs established after 1926 and he draws attention to the usage of term "establishment" (*tesis*), stating that the term is borrowed from the West.[16] HDF claims that the usage of the term establishment functions as a litmus distinguishing foundations established in accordance with the Civil Code from old vakıfs, which were regulated under the Foundations Law of 1935.[17] To regulate foundations, a new state agency, the *Vakıflar Genel Müdürlüğü* (General Directorate of Foundations) was established as a separate body in affiliation with the Prime Ministry in 1924, while the Foundations Law was adopted in 1935.[18]

Oran states that the attitude of the new state towards minorities and their foundations depended on the provisions of the founding document of Turkish Republic, Treaty of Lausanne.[19] It regulates the legal status of non-Muslim minorities based on the principle that non-Muslim citizens should have the same religious rights and freedoms as Muslim citizens.[20] Non-Muslim minorities are granted the right to found their religious, educational, and social institutions; to manage them as well.[21] The Lausanne Treaty and its meaning for minorities and minority foundations will constitute the subject of the following section.

16 Çizakça, "A History of Philanthropic Foundations," 58.

17 Hrant Dink Vakfı, "2012 Declaration," 29.

18 Henceforth, I will use the term foundation instead of vakıf to refer to both new and old ones.

19 Oran, "Türkiye'de Azınlıklar."

20 Dilek Kurban and Kezban Hatemi, "Bir 'Yabancı'laştırma Hikayesi: Türkiye'de Gayrimüslim Cemaatlerin Vakıf ve Taşınmaz Mülkiyet Sorunu," (Istanbul: TESEV, 2009).

21 Ibid.

§ 2.2 The Treaty of Lausanne and Minorities

Conceptually, a minority is an ethnically, religiously, and linguistically different group from the rest of the society.[22] The Lausanne Treaty of October 1923 signed after the War of Independence in the 1920s laid the foundation for the establishment of the Turkish Republic defined minorities. Oran claims that with the treaty, official Turkish state policy towards minorities began to develop.[23] Akgönül states that the definition of minority and minority rights issues were included under the subsection of "Protection of Minorities" of the "Political Clauses" of the treaty, and the legal personality of non-Muslim foundations are involved in Articles 37 through 45.[24] He adds that Articles 37, 38, and 39 guarantee that other laws related to minorities will be derived from the provisions of the treaty and "provides full citizenship rights for non-Muslims which means that the Treaty establishes the supremacy of its provisions in the Turkish legal system."[25]

Article 43 states that the Turkish government will respect non-Muslim minorities' faiths and religious observances, and Article 44 claims that the provisions of the treaty depends on international guarantee, which refers to the principle of reciprocity.[26] Articles 40, 41, and 42 concern minority foundations by addressing social, cultural and economic institutions operated by minorities.[27] To understand the Lausanne Treaty, I will trace Kurban and Hatemi's method. Beginning with Article 37:

> Turkey undertakes that the stipulation's contained in Article 38 to 44 shall be recognized as fundamental laws, and that no law, no

22 Oran, "Türkiye'de Azınlıklar," 16-17.

23 Ibid.

24 Samim Akgönül, *Azınlık: Türk Bağlamında Azınlık Kavramına Çapraz Bakışlar* (Istanbul: Bgst, 2011), 50.

25 See Minorities Rights Group International's website, http://www.minoritytights.org/?lid=4387andtmpl=printpage (last accessed in May 29, 2014).

26 Samim Akgönül, "Azınlık: Türk Bağlamında Azınlık Kavramına Çapraz Bakışlar."

27 Dilek Kurban and Kezban Hatemi, "Bir 'Yabancı'laştırma Hikayesi,"10.

> regulation, nor official action shall conflict or interfere with these stipulation's, nor shall any law, regulation, nor official action prevail over them.[28]

This article states that Lausanne Treaty is above other laws, legislations, regulations or any official actions. Turkish state shall adopt laws, legislations, regulations; and implement official actions in compliance with the treaty. However, Turkey has attempted many "anti-Lausanne" actions,[29] one of which forms the subject of my thesis: the seizure of properties belonging to minority foundations. Oran cites the example of Articles 26 and 28 of the 1982 Constitution, which prohibit the use of languages other than Turkish.[30] Oran states that such prohibitions disregard Article 38, which declares "liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion."

> Article 38: The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.
>
> All inhabitants of Turkey shall be entitled to free exercise whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.
>
> Non-Muslim minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defense, or for the maintenance of public order.[31]

---

28 Republic of Turkey Ministry of Foreign Affairs, "Lausanne Peace Treaty", http://www.mfa.gov.tr/lausanne-peace-treaty-part-i_-political-clauses.en.mfa (last accessed in April 2016.)

29 Oran uses this term, see Baskın Oran, "Lausanne Barış Antlaşması," in *Türk Dış Politikası: Kurtuluş Savaşından Bugüne Olgular, Belgeler, Yorumlar*, eds. Baskın Oran (Istanbul: İletişim Yayınları, 2006), 225.

30 Ibid.

31 See the website of the Rebublic of Turkey Ministry of Foreign Affairs.

Article 38 guarantees freedom of movement and emigration; it emphasizes equality before the law for all citizens of the Republic without discriminating based on language, religion, or race. Akgönül draws attention to an attitude of the state towards minority communities, particularly in the 1950s, that violated this article. Greek populations were forced to emigrate after the September events.[32]

> Article 39: Turkish nationals belonging to non-Muslim minorities will enjoy the same civil and political rights as Muslims.
>
> All the inhabitants of Turkey, without distinction of religion, shall be equal before the law.
>
> Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employment's functions and honors, or the exarchate of professions and industries.
>
> No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.
>
> Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts.[33]

Here, as in the previous article, the first paragraph of the article guarantees equality before the law for non-Muslim citizens since it provides them same civil and political rights as Muslim citizens. The third paragraph states that differences of religion may not prevent non-Muslim citizens from working in public service or any other professions. Again Akgönül reveals that Article 39 was violated in the 1930s by the Republic through laws that prohibit foreigners and non-Muslims from working in

32 See the next section.

33 See the website of the Rebublic of Turkey Ministry of Foreign Affairs.

some occupations.[34] The fourth and fifth paragraphs are related to minority languages. The fourth paragraph mentions freedom to use one's native language for minorities. The fifth paragraph addresses the freedom for minorities to defend themselves in their own language in court. Akgönül catches other violations related to this article: "Citizen, Speak Turkish!" campaign in the 1930s,[35] and hindering minority institutions and foreign companies from keeping accounts in their own languages.[36]

After the descriptive provisions related to minorities, we reach to the articles (40, 41, and 42) that are closely related to minority foundations and the Foundations Law.[37]

> Article 40: Turkish nationals belonging to non-Muslim 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, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.[38]

Kurban and Hatemi claim that this article addresses minority foundations even though it does not name charitable, religious, and social institutions as "foundations."[39] It gives minorities an equal right (alongside Muslims) to found, administrate, and control charitable, social, and religious institutions, as well as the right to use their own language and freely practice their religion in those institutions.[40]

---

34 Akgönül, "Azınlık: Türk Bağlamında Azınlık Kavramına Çapraz Bakışlar," 54.

35 On the other hand, the use of their native language among Kurdish people still constitutes a problem today.

36 Akgönül, "Azınlık: Türk Bağlamında Azınlık Kavramına Çapraz Bakışlar," 54.

37 Dilek Kurban and Kezban Hatemi, "Bir 'Yabancı'laştırma Hikayesi."

38 See the website of the Rebublic of Turkey Ministry of Foreign Affairs.

39 Dilek Kurban and Kezban Hatemi, "Bir 'Yabancı'laştırma Hikayesi."

40 Ibid., 11.

The issue of minority foundations became prominent with the adoption of the 1935 Foundations Law, which contained regulations relating to minority foundations, most of which were foundations established before the implementation of the 1926 Civil Code.[41] One of the regulations is that the administration of such foundations would be undertaken by the General Directorate of Foundations. However, the part that concerns Article 40 of the treaty – which promises equality – is that foundations are regulated and arranged under two separate laws. Foundations established after 1926 were subject to Turkish Civil Law, but non-Muslim community foundations were only recognized as legal bodies under the Foundations Law.[42] According to Ekşi, the dual presence of the Foundations Law and the Civil Code contradicted the egalitarian framework of the Lausanne Treaty.[43] Only the Civil Code provides for the establishment of new foundations; new minority foundations were not allowed because they were de facto regulated under Foundations Law, not the Civil Code.[44]

The issue of equality comes to the fore with respect to minority incomes or funds, which are taken up in the second paragraph of Article 41, along with minority education issues and languages:

> Article 41: As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Muslim nationals are resident, adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.
>
> In towns and districts where a considerable proportion of Turkish nationals belonging to non-Muslim minorities lives, these

41 See the following section.

42 Ekşi, "Yargıtay, Danıştay ve AİHM Kararları Işığında Cemaat Vakıflarının Mülkiyet Sorunları," 80.

43 Ibid.

44 Dilek Kurban and Kezban Hatemi, "Bir 'Yabancı'laştırma Hikayesi,"12

> minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budgets for educational, religious, or charitable purposes.[45]

The first paragraph of Article 41 states that the Turkish government will facilitate children's education in their own language. Akgönül states that this provision was not applied, as attested by campaigns aimed at ensuring nationwide linguistic unity in the 1930s, such as aforementioned "Citizen, Speak Turkish!"[46] Furthermore, non-Muslim minorities were supposed to benefit from public funds – municipal and other budgets – but these were removed completely.[47]

Donations are important source of income for foundations to carry out their charitable service. Minority foundations are also funded by such source of income to operate cultural and social establishments like schools, churches, and hospitals. It is obvious that the presence of minorities depends on their wealth and assets, which protects the cultural, economic, and social values of minorities. Donations can be sometimes insufficient to run those institutions and protect assets. Public funds can help foundations sustain their service. But as HDF claims, minorities rarely enjoyed public funds for their charitable purposes even though the Foundations Law (1935) declares that "the funds and real-estates of the foundations are subject to the provisions of… private ownership."[48] Moreover, minority foundations began to lose their properties in the 1970s due to the 1936 declaration, Kurban and Hatemi state, even though their charitable and religious institutions and facilities are protected by Article 42.[49]

> Article 42: The Turkish Government undertakes to take, as regards non-Muslim minorities, in so far as concerns their family law or

45 Visit the website of Rebublic of Turkey Ministry of Foreign Affairs.

46 Akgönül, "Azınlık: Türk Bağlamında Azınlık Kavramına Çapraz Bakışlar," 55.

47 Hrant Dink Foundation, "2012 Declaration," 73.

48 Ibid.

49 Dilek Kurban and Kezban Hatemi, "Bir 'Yabancı'laştırma Hikayesi."

> personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities…
> …Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries, and other religious establishments of the above-mentioned minorities. All facilities and authorization will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are granted to other private institutions of that nature.[50]

Akgönül claims that the legal status is granted to minorities by this article.[51] The first paragraph provides minorities with the rights to perform their own cultural and social traditions like religious marriage.[52] The last paragraph of the article grants remarkable facilities for minority foundations, such as complete protection and authorization of the religious establishments of minorities and their foundations. Kurban and Hatemi draw attention to the contradiction between Article 42 and the legislations related to ownership of property of minority foundations: Foundations Law of 1935, the 1936 declarations, and the 1964 decree prevented minority foundations from acquiring property.[53]

> Article 43: Turkish nationals belonging to non-Muslim minorities shall not be compelled to perform any act which constitutes a violation of their faith or religion observances, and shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their weekly day of rest…[54]

50 See the website of the Rebublic of Turkey Ministry of Foreign Affairs.

51 Akgönül, "Azınlık: Türk Bağlamında Azınlık Kavramına Çapraz Bakışlar," 56.

52 Oran, "Lozan Barış Antlaşması," 228.

53 Dilek Kurban and Kezban Hatemi, "Bir 'Yabancı'laştırma Hikayesi."

54 See the website of the Rebublic of Turkey Ministry of Foreign Affairs.

Oran claims that Article 43 is the only article obeyed by the Republic of Turkey, and cites the example of the right to celebrate religious holidays enjoyed by minorities freely.[55]

> Article 44: Turkey agrees that, in so far as the preceding Articles of this Section affect non-Muslim nationals of Turkey, these provisions constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of the majority of the Council of the League of Nations…
>
> Turkey agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.[56]

The first paragraph of the article states that rights given to non-Muslims are internationally guaranteed and the presence of provisions regarding the protection of minorities depended on the majority vote of the Council of the League of Nations.[57] Oran states that "all agreements accepted after World War I had two features in common: first, the rights given to minorities are international provisions and guaranteed by the Council of the League of Nations; second, those provisions can be replaced only by the Council."[58] Oran emphasized that the Lausanne Treaty establishes an international framework for the protection of minorities and the assurance of minority rights.[59]

55 Akgönül, "Azınlık: Türk Bağlamında Azınlık Kavramına Çapraz Bakışlar," 56.

56 See the website of the Rebublic of Turkey Ministry of Foreign Affairs.

57 Oran, "Lozan Barış Antlaşması," 229.

58 Oran, "Türkiye'de Azınlıklar," 50.

59 Akgönül, "Azınlık: Türk Bağlamında Azınlık Kavramına Çapraz Bakışlar," 33.

> Article 45: The rights conferred by the provisions of the present Section on the non-Muslim minorities of Turkey will be similarly conferred by Greece on the Muslim minority in her territory.[60]

This article indicates the principle of reciprocity determines to what extent non-Muslim citizens are granted equal rights with the rest of the country. The protection of non-Muslims in Turkey depends on the attitude of Greece towards its Muslim minority. Accordingly, the principle of reciprocity has dominated the attitude of Turkey towards minorities and has become a crucial factor in foreign policies.[61] Kurban and Tsitselikis claim that policies regarding minorities in Turkey and Greece depended on the principle of reciprocity by citing the example of the 1923 exchange of populations.[62] Kurban and Tsitselikis state that "both countries began to create ethnically homogeneous societies immediately after World War I and considered minorities as a threat to national unity. They disregarded minorities' rights to citizenship and added a provision to the Lausanne Treaty that proposed the exchange of Greek populations in Turkey for Muslims in Greece."[63]

The Lausanne Treaty guarantees equal rights to non-Muslim minorities and Muslim citizens, but the Turkish state has long developed and pursued a stimulatory attitude towards non-Muslim minorities,[64] which will be discussed in the next section.

60 See the website of the Rebublic of Turkey Ministry of Foreign Affairs.

61 Kurban and Tsitselikis, "A Tale of Reciprocity: Minority Foundations in Greece and Turkey."

62 Ibid.

63 Ibid.

64 Gareth Jenkins, "Non-Muslim Minorities in Turkey: Progress and Challenges on the Road to EU Accession," *Turkish Policy Quaterly* (2004), 4.

§ 2.3 Minority Foundation Policies from Lausanne to the New Foundations Law

Foundations began to be regulated under a new unit of the state, the General Directorate of Foundations, established in 1924. Another development related to foundations was the adoption of the Civil Code in 1926. It included provisions regarding foundations and regulated them under the rules and principles of legal personality.[65] A law determining the rules of implementation of the Civil Code states that foundations established before the adoption of the Civil Code (dating back to the Ottoman Empire) would be regulated by a different law. This separate law (the Foundations Law) rearranged the legislation of old foundations. It was adopted in 1935 and old foundations – mainly consisting of minority foundations – began to be administered by the General Directorate of Foundations.[66]

Foundations established before the adoption of the Code are separated into the two groups according to the first article of the 1935 Foundations Law.[67] *Mazbut* foundations included ones whose administration was abdicated before this law, ones whose trusteeships were charged to an authority, and ones that had lost their philanthropic status.[68] These were administrated by the General Directorate of Foundations and had a legal personality. *Mülhak* foundations (including minority foundations), on the other hand, were ones that were managed by trustees and an administrative council under the authority of the General Directorate of Foundations.[69]

Basically, the 1935 law separated old foundations (from before 1926) from new ones (established after 1926), and regulated only the old ones. A provision relating to tradesmen's and non-Muslim or minority community foundations were added to the law in 1949 declaring that these foun-

65 Hrant Dink Vakfı, "2012 Declaration," 49.

66 Ibid.

67 Ibid.

68 Ibid.

69 Ibid.

dations were administrated by people and institutions elected by themselves and monitored by the General Directorate.[70] With this additional provision, Çağatay states, minority foundations would be no longer regulated as mülhak foundations.[71] They were recognized as a third category.[72]

HDF claims that the article concerning the administrative regulations of the Foundations Law led to the emergence of the 1936 declarations.[73] Foundations were obliged to submit a declaration including the scope and purpose of the foundation and the list of properties with detailed information. In following years, these declarations began to be received as charters and used for dispossession of minority foundations.[74] According to the article:

> All trustees or board of trustees that have not presented their accounts to the foundation's administration to date should within three months after the acceptance of the relevant law prepare a declaration presenting the scope of their foundation, it sources of income, their locations of payment and dedication, the income and spending of the previous year, its amount, kind, the decision on which the trusteeship is based or the authorized entity on which the elections are based, and its duration. The declaration must be submitted to the foundations' administration to which they are tied.[75]

HDF lists the content of the declaration which a foundation's trustee had to take into consideration as follows: the name and title of the foundation, the manager of the foundation, the date of trustee election, the type and addresses of properties, income resources and forms of their utilization,

70 Ibid., 59.

71 Mustafa Çağatay, "Geçmişten Günümüze Azınlık Vakıflarının Mal Edinmeleri Sorunu," *Türkiye Barolar Birliği Dergisi* 96 (2011): 112.

72 Hrant Dink Vakfı, "2012 Declaration," 59.

73 Ibid.

74 Ibid.

75 Ibid., 54-55.

the constituents of for-income properties, and the information given by their charter (vakfiye) – a document including the foundation's purpose and a list of real-estate holdings.[76] Minority foundations were established with the sultan's edict and therefore did not have charters. These charters were recognized as the legal proof of the ownership of property by minority foundations. In the case that a minority foundation did not have a charter or possessed property not listed in its charter, it would lose its property. The 1936 declarations destroyed the right of minority foundations to acquire property, resulting in the seizure of their properties by the state.[77]

Demir and Akar state that there are four important turning points in the history of minorities in Turkey: the exchange of Turkish and Greek populations, *Varlık Vergisi* (Wealth Tax Law) issued by the state to dispossess minorities and to nationalize trade, the September events, and the process of expelling of the Greek population.[78] They emphasize that because minorities dominated the economy in the first years of the Republic, they became an intermediary for high-income Turkish citizens to have access to income-generating resources.[79]

The Wealth Tax Law is considered one of the crucial examples of how the government tried to break minorities' dominance over the economy. It imposed a higher tax on non-Muslim citizens compared to Muslim citizens such that many non-Muslims lost their real-estate holdings and a considerable number of them emigrated.[80] Akan claims that the lives of minorities were adversely effected, not only their properties and income.[81] The presence of minorities as a community with cultural values

76 Ibid., 55.

77 Ibid.

78 Hülya Demir and Rıfat Akar, *İstanbul'un Son Sürgünleri* (İstanbul: İletişim Yayınları, 1994), 11.

79 Ibid., 10.

80 Aysun Akan, "A Critical Analysis of the Turkish Press Discourse against Non-Muslims: A Case Analysis of the Newspaper Coverage of the 1942 Wealth Tax," *Middle Eastern Studies* 47 (2011), no.4: 605-621.

81 Ibid., 608

and social activities came under threat, which Aktar declares was the nationalist policy of the government in the 1930s and 1940s.[82] The Foundations Law (1935) and 1936 declarations constituted the by-products of this era. The Court of Cassation's decision[83] that resulted in dispossession of minority foundations can be also considered a nationalist policy in sync with the Wealth Tax Law.

HDF states that many foundations appealed to the court to register their properties in their name. If a property was registered in someone else's name, the court decided that the property would not be registered in foundation's name. In the year 1942, the Court of Cassation concluded that the owner according to the title deed had to give permission to the foundation that wanted to register property in their name, otherwise the foundation would have to apply to the court as before. In the Ottoman Empire, legal personalities did not have the right to register title deeds in their name, therefore community institutions had to register properties in either a real person's name or in the name of a religious figure like a saint.[84]

With the 1942 decision of the Court of Cassation, cadastral surveys began and for title deeds that had been registered under the name of a religious figure, the owner was left blank. The absence of a legal owner allowed the treasury or the Foundation Administration to register some properties on behalf of themselves.[85] HDF states that the Court of Cassation ignored a method of registration inherited from Ottoman Empire.[86] This rejection is part of the aim of the Kemalist regime to break all ties with the Ottoman system.

Another legal regulation regarding minority foundations was related to their administrative role. The Foundations Law states that board members elected by a minority foundation itself will be in charge of managing

82 Ayhan Aktar, *Varlık Vergisi ve Türkleştirme Politikaları* (Istanbul: İletişim Yayınları, 2000).

83 For details, see Hrant Dink Vakfı, "2012 Declaration."

84 Ibid., 35.

85 Ibid.

86 Ibid.

foundation.[87] In 1938, a law was enacted stating that minority foundations would be managed by trustees appointed by the General Directorate of Foundations.[88] According to HDF, this administrative amendment to the 1935 Law was just the state's will to establish control over minority foundations by appointing its own officials as trustees, leading to the absence of minorities in the decision-making processes of their own foundations.[89]

In 1949, a second amendment to the law was made. As before the 1938 law, minority (and tradesman's) foundations would again be administered by elected member, and inspected by the General Directorate of Foundations.[90] HDF argues that the reason for the second amendment was that the trustees appointed by the government lacked administrative knowledge related to charitable properties like schools, and churches.[91] They were unable to manage them, so the government decided minority foundations should be self-governed once again.[92]

While the policies regarding minorities from the 1920s through the 1950s had a nationalist motivation, the ones from the 1950s through the mid-1970s were more related to Turkey's foreign policy, to the detriment of minorities and concomitantly minority foundations. Akgönül remarks that the transition to a multi-party system led to a remarkable change occurred in the socio-economic structure of Turkish society.[93] He cites the example of multi-ethnic and different socio-cultural groups who voted for Democrat Party in the 1950 elections, stating that "among the supporters of Democrat Party including Turkish high-income people who demanded for more economic independency, the land-owners who had

87 Ibid., 59.

88 Ibid.

89 Ibid.

90 Ibid.

91 Ibid.

92 Ibid.

93 Samim Akgönül, *Türkiye Rumları: Ulus-Devlet Çağından Küreselleşme Çağına Bir Azınlığın Yok Oluş Süreci* (Istanbul: İletişim Yayınevi, 2007), 163.

suffered from *Çiftçiyi Topraklandırma Kanunu,*[94] the peasant who believed that they had been ignored by Republican People's Party (CHP), and low-income population who settled in the poor areas of Istanbul, there were minorities who had suffered from nationalist policies." The Democrat party promised supporters more freedom and rights.[95] All in all, the decade began with high hopes.

Akgönül states that the Democrat party followed a western-oriented policy in foreign politics, and along with this new policy which depended on collaboration with the West, the state used the recognition of minorities to pressure the West.[96] While in the first decades of the Republic minorities were an internal matter such that the government tried to include them in the process of nation building, the transition to a multiparty in system in 1950 and concomitant, evolving relations with Western institutions like the European Economic Community (EEC)[97] turned the issue of minorities into an external matter. Interference from outside (like the negotiations with England about Cyprus) shaped mainly by relations with Greece and human rights abuses had an impact on the government's decisions regarding minorities.

Two of the most important developments brought about by foreign policy were the 1964 decree and the decisions by the Court of Cassation in the 1970s regarding the 1936 declaration. Until the 1970s, state officials had not acknowledged the 1936 declaration.[98] Minority foundations were able to acquire properties other than the ones allowed by this declaration. Tensions with Greece beginning in the middle of the 1950s had a substantial impact on the government's memory related to the declarations.

---

94 This law was adopted in 1945. Its goal was to give farmers land - from land owners - and to remove inequalities in land distribution. Visit http://tr.wikipedia.org/wiki/%C3%87ift%C3%A7iyi_Toprakland%C4%B1rma_Kanunu. (last accessed in April 2016).

95 Akgönül, "Türkiye Rumları," 163.

96 Ibid., 164.

97 To get more information about the relations between the Western and Turkey in the 1950s, see Samim Akgönül, "Türkiye Rumları."

98 For details, see Hrant Dink Vakfı, "2012 Declaration."

To review what happened in the 1950s: Turkey and Greece simultaneously became members of NATO and fought side-by-side in Korea. By addressing those developments, Akgönül claims that a relationship between the two countries began in this period.[99] Furthermore, they signed the Turkish-Greek Cultural Agreement in 1951. However, Akgönül remarks, this positive atmosphere was destroyed by the crisis of Cyprus started in 1950s.[100] In 1955, England began to lose its influence over the administration of Cyprus and Ankara demanded the autonomy of the island from England. The demand was rejected and Turkey proposed a division of the island into two separate states in 1957.[101]

In 1959 England, Turkey and Greece agreed on the establishment of the Republic of Cyprus. The constitution based on independence and power sharing was issued in 1960.[102] It provided a management system to fulfil the expectations of the two societies: the president will be elected from the Greek side; the vice president from the Turkish side.[103]

In 1963, the Greek President Makarios stated that he would make changes to the Constitution ignoring the principle of equal distribution between the two nationalities and excluding Turkish officials from government.[104] Turkey objected to this exclusion, but the president did not withdraw his decree. In the same year, a conflict between the Greek and Turkish people broke out resulting in around 500 deaths from both sides and the displacement of many Turkish Cypriots.[105] In reaction, the Turkish government deported 900 thousand Greeks from Turkey in 1964, regardless of whether or not they were citizens. It also enacted the 1964 decree regarding the real estate holdings of the deported people.[106]

---

99 Akgönül, "Türkiye Rumları," 164.

100 Ibid., 175.

101 Carter V. Findley, *Modern Türkiye Tarihi: İslam, Milliyetçilik ve Modernlik 1789-2007* (Istanbul: Timaş Yayınları, 2011).

102 Ibid.

103 Akgönül, 253.

104 Findley, 322.

105 Wikipedia, Cyprus, https://en.wikipedia.org/wiki/Cyprus (last accessed in April 2016).

106 Akgönül, "Türkiye Rumları."

Meanwhile, domestic events and regulations regarding minority and minority foundations were as follows: in 1956, the Public Commission of the Grand National Assembly of Turkey (TBMM) removed the 1942 decision stating that the owner of a title deed had to give permission to a foundation that wish to register the property in its name.[107] This change meant that properties registered in the name of real persons or religious figures legally belonged to the foundations. Subsequent related court cases ended with decisions in favor of minority foundations.[108]

A year earlier before this decision of the commission, the September events - attacks on the private property, churches, and cemeteries of minorities in Istanbul - occurred. According to Aktar, Hür regards the September events as an indicator of the shift in the Democrat party's liberal policies towards minorities, stemming from growing economic problems and worsening relations with Greece.[109] During these events, workshops belonging to minorities (59% of Greeks, 17% of Armenians and 12% of Jews) were either transferred to Muslims or closed down.[110] Regarding the commission's decision above, it constituted an exception among the unfavorable attitudes and treatment directed at minorities that does not comply with Hür's argument.

The Cyprus Crisis and the September events affected the government's policy towards minorities in the 1960s and 70s. Indeed, by the end of the 1950s the fund within the state budget allocated for minority foundations (based on the Lausanne Treaty) was annulled.[111] Furthermore, although minority foundations had been separated from mülhak foundations by the 1949 amendment, they were subjected to old regulations and

107 Hrant Dink Vakfı, "2012 Declaration."

108 For more details and examples of the court decisions, see Hrant Dink Vakfı, "2012 Declaration," 61-63.

109 Ayhan Aktar, *Varlık Vergisi ve Türkleştirme Politikaları* (Istanbul: İletişim Yayınları, 2000).

110 Dilek Güven, 6-7 Eylül Olayları (1), *Radikal*, 06 September 2005. http://www.radikal.com.tr/haber.php?haberno=163380 (last accessed in January 2015).

111 Hrant Dink Vakfı, "2012 Declaration," 71.

considered mülhak foundations.[112] HDF indicates that the Foundations Bank (*Vakıflar Bankası*) seized income that foundations gained from their properties, and the renovation of charitable properties were suspended because minority foundations were recognized as mülhak.[113]

From the mid-1960s onwards, non-Muslim foundations were pushed to present their charters to prove legal ownership. Since minority foundations were established by the sultan's edict, they did not have charters. The General Directorate concluded that the declarations submitted by minority foundations in 1936 would be regarded as charters.[114] Parallel to this regulation, the courts decided that such declarations would be considered as charters for minority foundations and that minority foundations that did not declare their properties in 1936 would lose their properties and not be allowed to acquire new property.[115]

From the time the General Council decided that 1936 declarations would be regarded as charters, properties belonging to minority foundations not listed in those declarations and properties acquired after 1936 were seized by the state. Properties acquired through donations or purchase were returned to former owners, or if the former owners were dead, to their heirs. When there was no heir, properties were signed over to the General Directorate of Foundations or the treasury.[116] Furthermore, an amendment to the Civil Code made in 1967 prohibited the establishment of new foundations by minority groups.[117]

The other consequence of the Cyprus issue and the September events was the 1964 decree. The Cypriot constitution's principles were violated in the mid-1960s and a conflict broke out between the Greek and Turkish people on the island, which would not end until the mid-1970s. The decree stated that the Greek nationals would lose their right to exploit real estate holdings in Turkey and their savings and income would be

112 Ibid.
113 Ibid.
114 Ibid., 65.
115 Ibid.
116 Ibid., 67.
117 Ibid., 69.

seized.[118] The decree stemmed from external influences (the events in Cyprus) and was intended to dispossess Greek citizens. Kurban and Hatemi, on the other hand, draw attention to internal influences, claiming that the decree was adopted by the state in order to weaken minorities economically and disrupt their capacity to organize.[119]

Minority foundations were regulated under the Foundations Law of 1935 and were legally allowed to acquire, hold, and dispose of properties to meet their needs in compliance with their founding purposes. In 1974, this provision became the subject of adjudication. According to a decision of the Court of Cassation, these foundations could no longer acquire new properties.[120] The 1936 declarations began to be recognized as founding charters. If minority foundations had not presented their list of properties in 1936, they would lose their properties. Beyond that, none would be allowed to acquire new property.[121] After the decision of the Court of Cassation, cases regarding real estate holdings not listed in the declarations ended to the detriment of minority foundations.[122]

Göçek claims that nationalist ideas dominated the period that began with Republican reforms and continued with Wealth Tax Law in the 1940s, then with street mobs in September 1955 and the forced emigration of minorities during the Cyprus events in 1960s, and finally with subsequent legal arrangements concerning minorities and their social and economic organizations in the 1970s.[123] But the changes in the legislation regarding minority foundations from the mid-1950s to the 1980s and the decisions of the Court of Cassation in the 1970s regarding cases opened by minorities against the state – which had seized their assets or given

118 Demir and Akar, "İstanbul'un Son Sürgünleri," 117.

119 Kurban and Hatemi, "Bir Yabancılaştırma Hikayesi." 7.

120 Hrant Dink Vakfı, "2012 Declaration."

121 Ibid., 65.

122 Çağatay, "Geçmişten Günümüze Azınlık Vakıflarının Mal Edinmeleri Sorunu," 125.

123 Fatma Müge Göçek, "Defining Parameters of a post-nationalist Turkish historiography through the Case of the Anatolian Armenians". In *Turkey Beyond Nationalism: Towards Post-Nationalist Identities*, ed. Hans-Lukas Kieser (London; New York: I.B. Tauris, 2006), 102.

them to third parties – did not seek only to assimilate minorities; but also they were the result of relations with external actors, namely Greece.

Akgönül argues that the seizure of properties belonging to minorities in the 1970s was the last step in the nationalization of capital; and he suggests that "a multi-layered political view" must be developed to comprehend these developments because the explanation of "an immediate reaction to the events in Cyprus" of the state is weak.[124] He continues that "capital transfers – transactions of unlisted assets – and negotiations and conflict of interest between the state and minorities must be underpinned to fully understand the 1936 declarations."[125] Some scholars state that external factors like the Cyprus issue influenced political power, bureaucracy, and state officials, all of which were the remnants of the Kemalist regime and its nationalist policy.[126]

The 1980s and 90s were characterized by a series of discriminatory policies against minorities. For example, according to the *Sabotajlara Karşı Koruma Yönetmeliği* (Regulations of Protection against Sabotages) that was adopted in 1988 and in effect until 1999, non-Muslim citizens were considered "local foreigners." The Administrative Court used the term "foreign national Turkish citizen" for Greek citizens in 1996.[127] Because of such governmental and judicial practices, the Foundations Law and the status of properties seized from minority foundations did not capture the attention of the government until the beginning of the 2000s.

The legal modifications concerning minority foundations made in the 2000s – like 2004 law, which expands rights to acquire, use, and dispose

124 Akgönül, "Türkiye Rumları," 321.

125 Ibid.

126 See Ergun Ozbudun, "Chapter Two: Constitutional Law" In *Introduction to Turkish Law*, ed. Tuğrul Ansay and Don Wallace (The Netherlands: Kluwer Law International, 2011), pp. 19-51. Akgönül, "Türkiye Rumları: Ulus-Devlet Çağından Küreselleşme Çağına Bir Azınlığın Yok Oluş Süreci." Çağatay, "Geçmişten Günümüze Azınlık Vakıflarının Mal Edinmeleri Sorunu." Baskın Oran, ''Laik Ülkemizde Etno-Dinsel Temizlikler." Göçek, "Defining Parameters of a post-nationalist Turkish historiography through the Case of the Anatolian Armenians."

127 Açık Radyo, "Azınlık Hakları ve Kültürel Haklar Raporu," 17 November 2005. http://acikradyo.com.tr/arsiv-icerigi/azinlik-haklari-ve-kulturel-haklar-raporu. (last accessed in April 2016).

property, removing several restrictions – were initiated by legal cases carried before the ECHR by minorities and by reforms dictated by the European Union. These will be analyzed in detail in Chapter 4.

§ 2.4 New Foundations Law of 2008

The recent Foundations Law approved by the Turkish Parliament in February 2008 made important amendments to the former Foundations Law. According to the gen. provisions of the law, it was adopted to guarantee that the properties of foundations are registered and that they are operated economically. The General Directorate of Foundations describes the scope and content of the law as follows: It regulates the rules and procedures regarding the administration and organization of the foundations; it also gives information relating to the responsibilities and duties of the General Directorate of Foundations.[128] In this section, a short history of the new Foundations Law will be given and the articles will be assessed with the changes indicated.

According to the new Foundations Law, foundations can be classified in terms of their administration and internal functioning. With respect to administration, foundations divided into five groups: mazbut, mülhak, community (minority), tradesmen, and new foundations. To mention again, mazbut and mülhak foundations are those established before the Civil Code of 1926 was adopted, though mazbut foundations are administered by the General Directorate of Foundations in accordance with the Foundations Law of 1935, while mülhak foundations are administered by the heirs of their founders.[129]

The properties of the General Directorate of Foundations and mazbut foundations are considered government property. With respect to mül-

128 General Directorate of Foundations, "Foundations Law No: 5737," http://www.vgm.gov.tr/icerikdetay.aspx?Id=168 (last accessed in November 2013.)

129 General Directorate of Foundations, "Foundations Law No: 5737," See Article 3: Section of Definitions.

hak foundations, they are administered and represented by managers assigned by the Foundations Council.[130] Mülhak foundations that do not have an established administrative body will be administered and represented by the General Directorate of Foundations through a court decision.[131]

The board members selected by the craftsmen will manage tradesmen's foundations[132] established before the enforcement of the Civil Code of 1926.[133] New foundations are managed based on the foundation's charter. They are allowed to acquire new property only if they satisfy criteria issued by the General Directorate. The category of new foundations includes ones founded under the former Civil Code and ones founded under the new Civil Code of 2002.[134]

Community foundations belonging to non-Muslim communities have a legal personality provided by the Foundations Law of 1935.[135] Sesli states that community foundations have the right to acquire, hold, exploit, and dispossess of property; however, they have to report their properties to the General Directorate of Foundations.[136] According to Sesli, one of the most important points of the new Foundations Law distinguishing it from the old one is that it defines and gives regulations for community foundations.[137]

Besides defining community foundations as a novelty, the law includes considerable changes and amendments. I will focus on those

130 Sesli, "Foundation Administrations…," 1772.

131 General Directorate of Foundations, "Foundations Law No: 5737," See Article 7.

132 In the 2008 law, tradesmen foundations are termed artisans' foundations. I prefer the term tradesmen, as does Sesli.

133 General Directorate of Foundations, "Foundations Law No: 5737," See Article 3: Section of Definitions.

134 Sesli, "Foundation Administrations…," 1773.

135 For details regarding the issue of legal personality, see Chapter 3.

136 Sesli, "Foundation Administrations…," 1773.

137 Ibid.

changes and amendments examining the new Foundations Law article-by-article, and comparing the provisions with those of the old law.[138] [139]

2.4.1 *The Right to Establish Branches, Representative and Economic Enterprises*

> Article 5: …New Foundations may establish branches and representative offices for the purposes of achieving its objects laid down in the deeds of trust, provided that they have to file a declaration with the General Directorate of Foundations. The rules and procedures for the issue of a declaration shall be governed in the respective regulations.
>
> Foreigners shall be able to establish new foundations in Turkey in accordance with the principle of de jure and de facto reciprocity.[140]

TÜSEV's report implies that according to the old legislation, establishing branches and representative offices depended permission by the General Directorate of Foundations. Foreigners were not permitted to establish foundations in Turkey. According to the provision above, those restrictions are lifted and the only relation is to file a declaration.[141]

In 2003, a provision had been added to the Decree Law Concerning the Organization and the Duties of the Directorate of General Foundations of 1984. It noted that foundations established abroad can participate in activities, establish branches and representatives, and collaborate with local foundations in Turkey only with permission of the Ministry of Interior, subject to review of the Ministry of Foreign Affairs, and only if the

138 I made this comparison using TÜSEV's Report, ''Eski Vakıflar Mevzuatı ile Yeni Vakıflar Kanununun Yeni Vakıflara İlişkin Hükümlerinin Karşılastırması'', 27 February 2008.

139 The English version of the law was taken from the official website of General Directorate of Foundations. http://www.vgm.gov.tr/icerikdetay.aspx?Id=168 (last accessed in November 2013)

140 General Directorate of Foundations, "Foundations Law No: 5737,"

141 TÜSEV, ''Eski Vakıflar Mevzuatı ile Yeni Vakıflar Kanununun Yeni Vakıflara İlişkin Hükümlerinin Karşılastırması."

benefits of international cooperation conformed to the principle of reciprocity.[142]

Em states that the Civil Code of 2002 does not contain any provisions providing permission for establishing foundations to foreigners, it only declares that the international activities of associations and the establishment of branches are subject to the same rules as foundations.[143] He also claims that the establishment of associations by foreigners is not applicable to foundations, since the right of a foreigner to establish an association is regulated under a separate title including regulations related to international activities by associations. [144] He adds that foreigners have the right to establish foundations in Turkey with the principle of reciprocity.[145] However, with the provision that ''Foreigners shall be able to establish new foundations in Turkey in accordance with the principle of de jure and de facto reciprocity,'' the new Foundations Law clarifies the ambiguity.

> Article 25: Foundations may establish branches and representation offices abroad; or carry out international operations and cooperation; set up high entities or may become members of organizations established abroad in accordance with their objectives and activities, provided that it is contained in their deed of trust.
>
> Foundations may receive in-kind and in cash endowments and grants from individuals, institutions and bodies at home or abroad and give grants and donations in cash or in-kind form to the foundations and associations located at home and abroad with similar purposes. Cash aids that come from or are sent to abroad shall be remitted and received through and over the banks and shall be notified to the General Directorate. Form and content of the notice shall be laid down in a regulation.[146]

142 Em, "Türk Hukuk Sisteminde Vakıflar."

143 Ibid.

144 Ibid.

145 Ibid.

146 General Directorate of Foundations, "Foundations Law No: 5737,"

TÜSEV reports that international activities that depended on the permission of the General Directorate Foundations and the issue of "in-kind and in cash endowments and grants from individuals, institutions and bodies at home or abroad" were not defined in the old legislation. When foundations received grant and donations from abroad, they had to notify the General Directorate of Foundations according to the Associations Law.[147]

According to the new Civil Code, foundations established in Turkey can affiliate with foundations or institutions established abroad so long as they remain faithful to their purpose as recorded in their charters, but they have to consult the Ministry of Foreign Affairs and get the permission of the Ministry of Interior.[148] With the new law, to engage in international activities, establish branches and representatives abroad, and carry out international cooperation to fulfil the purposes indicated in their charters depends on the permission of the Ministry of Interior, and is subject to the review of the Ministry of Foreign Affairs.[149]

> Article 26: A foundation may establish and incorporate economic enterprises or firms so as to promote its goals and to generate revenues… The revenue generated from economic enterprises including the companies shall not be allotted for any purpose other than the objectives of the foundation. Regarding companies which have been established by foundations where the majority of the founders are foreign nationals or where more than half of the shares are owned by such foundations, the acquisition of property by such companies will be subject to the property acquisition provisions applicable to the same foundations.
>
> The General Directorate of Foundations is entitled to establish economic enterprises or companies with the incomes and the rental-yielding real estate of the General Directorate and fused

147 See TÜSEV's Report.

148 See The Decree Law Concerning the Organization and the Duties of the Directorate of General Foundations (1984): Additional Article 3 (Add: 07/08/2003-4963/29). Available in www.tskdv.org.tr/p01/227khk.pdf (last accessed in November 2013).

149 See TÜSEV's report.

> foundations, upon the decision of the Council of Ministers. The replacement of company shares and rights with more useful ones, their conversion into cash and exploitation and the utilization of all the rights related to these as well as the utilization of rights related to partnership shares shall be carried out by the General Directorate.[150]

According to the old legislation, permission of the General Directorate Foundations was required to establish economic enterprises and companies.[151] With Article 26 of the new law, permission of the General Directorate is abolished and the only condition is to give prior notice to the General Directorate.[152] The last statement of the article provides foundations the opportunity to earn more income through transferring shares to for-profit organizations and replace their properties with more useful ones. In this sense, foundations can be more functional and aspire to the standards of for-profit, economic organizations. They can internalize existing economic networks, provided that they remain loyal to their objectives.

Çizakça states that the 1950s were liberating for foundations.[153] He attributes the 1967 law to two men: Vehbi Koç, who hoped to establish a philanthropic foundation along the lines of the American tradition in Turkey, and Aydın Bolak, a member of parliament. He notes that "they realized a necessary modernization of the foundation system that could only be actualized through a new law. The Law was finally enacted in 1967."[154]

Çizakça emphasizes a provision within the law: "a foundation is now allowed to establish a company and allocate the latter's total profits, or a

150 General Directorate of Foundations, "Foundations Law No: 5737,"

151 See TÜSEV's report.

152 Ibid.

153 Murat Çizakça, *A History of Phianthropic Foundations: The Islamic World from the Seventh Century to the Present* (Istanbul: Boğaziçi University Press, 2000).

154 Ibid., 57.

share thereof, to its own specific purpose."[155] He states that the law included an article regarding the modernization of foundations and the subject of tax exemption: "provided that 80% of their revenues are reserved for public purposes, the foundations can be exempted from taxation. This taxation can only be granted by the Council of Ministers (Article 4 and 5)."[156] According to Çizakça, this article was rarely applied because of the way the Ministry of Finance interpreted the law.[157]

The issue of tax exemption is reevaluated – without criteria for exemption – in Article 77 of the new Foundations Law, which states that immovable properties owned by the Directorate and mazbut foundations shall be exempt from taxes due to their feature of being governmental properties. In addition, "funds, donations and sponsorships to be provided by such real persons and legal entities for the maintenance, repair, restoration or sustenance of movable and immovable properties owned by the foundations, for landscaping works and expropriation of such property under the General Directorate's control shall be deducted from their income and corporate tax base."[158] Apart from those statements, regulations concerning tax exemption for foundations and their enterprises do not exist in the new law.

The decree adopted in 2007 establishes the conditions for foundations to benefit from tax exemption: foundations must not serve a group or community, must have a certain budget and income (minimum asset of 505,000 TL and income of 49,000 TL per year), and must run social services open to the public.[159] In this sense, the return of seized properties to minority foundations is significant to benefit from tax-exemption, ef-

155 Ibid.,"60.

156 Ibid., 63.

157 Akyıldız, "Vakıfların Kamu Hizmetlerine Yönlendirilmesi ve Vakıflar Genel Müdürlüğünün Rolü," 109.

158 General Directorate of Foundations, "Foundations Law No:5737". http://www.vgm.gov.tr/icerikdetay.aspx?Id=168 (last accessed in October 2014).

159 Gelir Dairesi Başkanlığı, "1 Seri No'lu Vakıflara Vergi Muafiyeti Tanınması Hakkında Genel Tebliğ" http://www.gib.gov.tr/node/88885 (last accessed in April 2016).

fectively contribute to public services, and maintain their economic viability. With the return of seized property, minority foundations can meet the requirements determined by law for tax exemption.

When examining the list of foundations benefiting from tax exemption announced by the Council of Ministers in 2013, most are ones established for the purpose of implementing public services such as education and health; and minority foundations not appear in the list, [160] either because minority foundations are deemed to only address their communities rather than public services, or because they do not have adequate incomes and assets.

2.4.2 *Administrative Structure of Foundations*

On previous pages, I mentioned that mazbut foundations are administered by the General Directorate of Foundations in accordance with the former Foundations Law while mülhak foundations are administered by the founder's heir.[161] If mülhak foundations do not have an established administrative body, then they are administered and represented by the General Directorate of Foundations by a court decision.[162]

Tradesmen foundations established before the implementation of the Civil Code of 1926 are managed by the Board of Directors selected by the craftsmen.[163] The new foundations are managed based on the foundation's charter. They are allowed to acquire new property only if they meet the requirements issued by the General Directorate. The category of new foundations contains ones established under the old Turkish Civil Law, and ones regulated under the new Turkish Civil Law[164]

The new Foundations Law does not clarify procedures regarding the management of minority foundations:

160 Gelir Dairesi Başkanlığı, "Bakanlar Kurulunca Vergi Muafiyeti Tanınan Vakıfların Listesi." http://www.gib.gov.tr/bakanlar-kurulunca-vergi-muafiyeti-taninan-vakiflarin-listesi (last accessed in April 2016.)

161 See 42-43.

162 Ibid.

163 Ibid.

164 Ibid.

> Article 6: …Managers for the Non-Muslim community foundations shall be appointed by their members. The rules and procedures for appointing foundation managers shall be laid down in a regulation…[165]

The 2015 Progress Report states that minority foundations may not elect their board members because the necessary regulations related to election procedures has not been determined since the 2008 law.[166]

> Article 6: …the management body of new foundations shall be appointed according to the deed of trust and the majority of those parties holding an office in the management bodies of the foundations should have a domicile in Turkey.[167]

TÜSEV's report notes that provisions of the old law declared that foreigners could not participate in a foundation's management. With the adoption of the new law, restrictions relating to managers were abolished, so anybody can be a foundation manager.[168]

> Article 41:…The Council shall be composed of fifteen members in total, consisting of five members including the Director General, three vice Directors General and one 1st legal advisor plus five members, who shall be university graduates and shall have specialized knowledge and experience in the field of foundations, to be appointed through a joint decree upon a proposal by the Prime Minister; plus three members to be elected by new foundations and two members, one of whom shall be elected by annexed foundations and the other by the community foundations. Furthermore, new foundations shall elect three reserve members while each of the annexed [mülhak] foundations and community foundations shall elect one reserve member. The elections shall be held

165 General Directorate of Foundations, "Foundations Law No: 5737,"

166 Republic of Turkey Ministry for EU Affairs, "2015 Progress Report,"61. http://www.ab.gov.tr/index.php?p=46224&l=1 (last accessed in April 2016).

167 General Directorate of Foundations, "Foundations Law No: 5737,"

168 See TÜSEV's Report.

> separately upon the invitation by the General Directorate and with the participation of a representative to be appointed by the management body in the new foundations; by the foundation managers in the annexed foundations and by the board of directors in the Community foundations.[169]

Before the new regulations, the council was comprised of five members and did not include members of mülhak, community, and new foundations.[170] Sesli states that, according to the 1984 decree, the council consisted of one chairman and four members, and the members appointed by the Prime Minister from among people with knowledge and experience of law, administration, economy, management, and foundations.[171] The statement regarding the requirements for membership under the new law is reduced to "specialized knowledge and experience in the field of foundations." The participation of mülhak, community, and new foundations in the decision-making process is a democratic step, especially considering the European Union accession process.

2.4.3 *The Issue of ownerhip in the Foundations Law*[172]

Sesli lists the articles which regulates the fundamentals of property ownership of the Foundations Law: Articles 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 26, and 27.[173] Basically, the articles specify the standards to acquire and hold properties and the procedures of land registry.[174]

> Article 12: Foundations may acquire goods, and have any disposition thereon.

169 General Directorate of Foundations, "Foundations Law No: 5737,"

170 See TÜSEV's Report.

171 Sesli, "Foundation Administrations...," 1773.

172 While giving this title, I utilize the publication of Sesli. See Sesli, "Foundation Administrations…,"

173 Ibid., 1774.

174 Ibid.

> The Council shall be authorized to replace, convert to cash or exploit those rental-yielding real estates or rights held by the General Directorate or the fused [mazbut] foundations with those ones which are more useful.
>
> Concerning annexed [mülhak], Non-Muslim community, artisans' [tradesmen] foundations and new foundations, those goods and rights allocated to the foundation at the establishment may be replaced with more useful ones or converted to cash with a court decision if there are justified reasons if there are justified reasons, following the application by the foundation's management body and consultation with the Supervision Authority; whereas their goods and rights acquired at a later stage may be replaced with more useful ones or converted to cash upon the decision of the competent body of the foundation and on the basis of the report to be prepared by independent expert institutions…[175]

According to the new law, all foundations have the right to acquire goods and the freedom to dispose them. In order to replace goods with more useful ones or convert them to cash, a decision of the Council of the General Directorate is sufficient for mazbut foundations, while for mülhak, minority, tradesmen's and new foundations, a court decision is necessary. From an economic point of view, attaining a court decision and following the procedures in the article constitutes a crucial obstacle for such foundations in terms of disposing of their goods. It also grants a monitoring function to the state over such goods.

> Article 31: Foundations have to keep and maintain their accounting records in accordance with such rules and procedures to be designated by the General Directorate. Those rules and procedures in relation to the books and records to be kept and maintained shall be regulated in the respective regulation…[176]

175 General Directorate of Foundations, "Foundations Law No: 5737,"

176 Ibid.

Formerly, foundations' accounting was recorded in accordance with rules and procedures of the Ministry of Finance.[177] Now, these rules and procedures are introduced by the General Directorate. Furthermore, foundations previously had to invest their assets in state banks. The provision that "Foundations shall invest their assets by observing economic rules and risks" opens the gates for foundations to invest their money in other banks.[178]

2.4.4 *Control Units Over Foundations*

The old law did not include regulations related to internal auditing, but states that "checking compliance of the foundation to its objectives and the applicable laws and compliance of its economic enterprises with the legislation and its activities" was the duty of the General Directorate of Foundations. The new law mandates internal auditing for mülhak, minority, tradesmen's and new foundations. According to the provision below, the monitoring of foundations will be implemented primarily through internal auditing:

> Article 33: Internal auditing is a must in annexed [mülhak], community, artisans' [tradesmen] and new foundations. The foundation may be audited by its own bodies or by independent audit firms.
>
> Foundation managers shall submit the reports of in-house audits which are to be conducted at least once a year and the results to the General Directorate within two months following the date of the report, at the latest.
>
> The General Directorate shall carry out an audit for checking compliance of the foundation to its objectives and the applicable laws as well as for compliance of its economic enterprises with the legislation and its activities.[179]

177 See TÜSEV's Report.

178 Ibid.

179 General Directorate of Foundations, "Foundations Law No: 5737,"

The General Directorate explains the aims of internal auditing as follows: "It aims to ensure that foundational activities are performed in compliance with legal procedures and the purposes of the foundation, and that resources of funding are used economically and efficiently. It guarantees that the records of foundations are reliable, complete, and accessible."[180] The Directorate focuses on the supportive role of internal auditing, claiming that "it helps foundations fulfil their purposes by evaluating their own control processes."[181]

The modification of the structure of foundations is an important economic factor in the business sector as it facilitates establishing economic enterprises, developing economic relations with both internal and external business institutions, and eliminating restrictions related to acquiring property. With the amendments of the new Foundations Law, foundations increase their public service and economic activities – especially, in social domains from which the state has withdrawn.

All in all, the new Foundations Law was prompted by European Union concerning about the attitude of the Turkish state towards its minorities, demanding the improvement of human and minority rights in Turkey. Minorities' struggles for their seized properties also led to said amendments and rearrangements. We will discuss the internal and external dynamics of the new Foundations Law in the next chapter.

180 General Directorate of Foundations, "Vakıfların Denetimi." http://www.vgm.gov.tr/sayfa.aspx?Id=43 (last accessed in December 2013.)

181 Ibid.

3

Internal and External Influences on the New Foundations Law

Regarding disturbances minorities have encountered, the majority consist of problems establishing the legal entities of communities and their seized properties. However, this does not mean that the problems of minorities are limited to their foundations and property issues. An example is that non-Muslim communities are not allowed to train new clergy due to the fact that religious training institutes have been closed by Turkish authorities.[1]

Laki Vingas, associated representative of community foundations, remarks that religious communities do not have legal status as institutions and religious establishments are not permitted to obtain legal status.[2] He adds that because they lack legal status, communities like the Latin Catholic Church faced adverse enforcements with regard to their right to the peaceful enjoyment of possessions, which mostly result in their seizure by the state.[3] Not only communities but community foundations – whose legal status were recognized by the Treaty of Lausanne and protected by

1 Hrant Dink Vakfı, "2012 Declaration," 53.

2 This statement was taken from a speech of representative of community foundations, Laki Vingas at a Conference of Non-Muslim Communities and the Legal Status of Community Foundations held in May 13, 2013 in Ankara.

3 See the Progress Reports.

the 1935 Foundations Law – have had difficulties with the government's enforcement, as in the case of Fener Rum Erkek Lisesi Vakfı (FRELV), discussed below.

Minorities who applied to the national courts came up empty-handed, and because domestic recourses were exhausted, began to take their cases into the European Court of Human Rights. ECHR judgements against the state reflected negatively on Turkey in the international arena, and Turkey's efforts at accession to the European Union forced Turkey to reconsider the problems of minorities and minority foundations, the issue of seized, immovable properties, and consequently, a new Foundations Law. The approach of the government seems oriented at protecting its standing in the international arena, as well as a pragmatic taking into account of the statements of then Vice Prime Minister Responsible for Foundations, Mehmet Ali Şahin, after the decision of the ECHR that the foundation must be compensated in the case of FRELV: "I suppose that it is important to adopt a new Foundations Law as soon as possible to deal with such cases and also because of the necessity for Turkey to govern in parallel with the European Convention."[4]

§ 3.1 Minorities' Struggles with the Domestic Legal Order

The economic existence of communities or minorities depends on foundations and concomitantly on their real estate holdings. Mahçupyan states that "the government's policies and enforcement regarding foundations and their possessions affect the cultural existence of communities; minorities can lose their essence as a community if their economic resources are weakened."[5] He adds that "all those considered, a community's right to acquire property as a legal personality and the right to use

4 Milliyet, "Felaket Değil Bekliyorduk", 11 January 2007. http://www.milliyet.com.tr/2007/01/11/siyaset/asiy.html (last accessed on 14 February 2014).

5 Ethem Mahçupyan, Türkiye'de Gayrimüslim Cemaatlerin Sorunları ve Vatandaş Olamama Durumu Üzerine (Istanbul: TESEV Yayınları, 2004).

it have been the most emphasized subject.''[6] Legal status or legal personality is the legal existence of an association, company, or a foundation. Reyna and Moreno explain the term by citing an example regarding non-Muslim communities. They state that if such communities are given legal personality, chief rabbis or patriarchs elected by consent of the government will be able to represent his institution – and thereby the community. Reyna and Moreno focus on the importance of legal status that provides minorities with a legal frame for their interactions with the state.[7]

In the period of the Ottoman Empire, non-Muslim minorities (communities) fell under a *millet sistemi,* which allowed different communities to determine their own private, domestic law, on in socio-economic issues with reference to their own religion and ethnicity.[8] Considering domestic affairs, Ekşi claims, millets such as *Rum* (Greek) Milleti and *Ermeni* (Armenian) Milleti were independent in a way that the Empire gave them religious, judicial, and legal autonomy.[9] They were governed by people selected from among members of the *millet* and approved by the sultan.

After the Reform Edict of 1856, separate *Nizamname*s for each *millet* were promulgated. Reyna and Moreno state that these regulations standardized the selection of headman of religious communities turned the patriarchate and chief rabbis into public officers.[10] They add that minorities generally had legal personality and put forward the question of when minority foundations obtained legal status. They state that some scholars and lawyers accept the 1328 Kanun-i Muvakkat (temporal law) as the start year while another group[11] states that the 1935 Foundations Law

6 Ibid.

7 Yuda Reyna and Ester Moreno Zonana, Son Yasal Düzenlemelere Göre Cemaat Vakıfları (Istanbul: Gözlem Gazetecilik Basın ve Yayın, 2003).

8 Ekşi, "Yargıtay, Danıştay ve AİHM Kararları Işığında Cemaat Vakıflarının Mülkiyet Sorunları."

9 Reyna and Moreno, "Son Yasal Düzenlemelere Göre Cemaat Vakıfları".

10 Ibid.

11 Reyna and Moreno give the essential resources for the issue of legal status of minority foundations: Ata Sakmar, Cemaat Vakıflarıyla İlgili Düzenlemeleri (2004). Hasan Güneri,

provided legal status to minority foundations. On this subject, Ekşi cites the example of lawyer Diran Bakar', who relies on Article 3 of 1328 Kanun-i Muvakkat. The patriarchates who represented their communities began to register real estate and give the registers to the land registry administration, *Defteri Hakani Emaneti.* According to Bakar, Ekşi states, the communities were given legal personality for first time since they were carrying out legal practices.[12]

Reyna and Moreno compare different publications on legal status. They address Bertan's statement that the 1328 Muvakkat granted legal status on the basis that the community could register the real estate in its name along with Bakar's argument. As the counterargument, they cite Sakmar's view that community foundations acquired legal personality through their declaration submitted to the General Directorate of Foundations and later considered as charter. Reyna and Moreno state that İmamoğlu rejects Sakmar's assertion by claiming that because community foundations were established based on the sultan's edict, they did not need charter.[13]

In accordance with İmamoğlu's argument, Ekşi claims that having charter does not indicate the presence of legal personality. She confirms this argument with the 1328 Kanun-i Muvakkat. It recognizes the legal personality of minorities since it provides self-management to religious, scholarly, and charitable foundations.[14] She states that even though the law organizes only the procedures concerning legal personality and the right to acquire property for community foundations, but does not give a definite statement regarding whether community foundations have legal

---

Azınlık Vakıflarının İncelenmesi (2006). Nazif Öztürk, Sosyal Siyaset Açısından Cumhuriyet Öncesi Vakıflar (2004). Altuğ İmamoğlu, Azınlık Vakıfları ve Yabancıların Taşınmaz Edinimleri (2006).

12 Ekşi, "Yargıtay, Danıştay ve AİHM Kararları Işığında Cemaat Vakıflarının Mülkiyet Sorunları."

13 Reyna and Moreno, "Son Yasal Düzenlemelere Göre Cemaat Vakıfları".

14 Ekşi, "Yargıtay, Danıştay ve AİHM Kararları Işığında Cemaat Vakıflarının Mülkiyet Sorunları."

status. However, Ekşi claims that the right to acquire real estate by itself is concrete evidence for legal personality.[15]

Dilek and Tsitselikis state that the Treaty of Lausanne, specifically Articles 40-44, protects the legal personality of community foundations and recognizes their right to acquire, hold, and dispose of properties.[16] However, from the proclamation of the Republic to the present, they conclude that the state has violated the provisions of the treaty and cite the example of the 1936 declarations that began to be regarded as charter in 1974. According to the declaration, properties acquired by the minority foundations after 1936 would either be seized by the government or returned to former owners. The declaration included only a list of properties and did not specify the purposes, management, or foundations' right to gain property.[17] Dilek and Tsitselikis conclude that the 1974 decision resulted in the seizure of the property of minorities. They add that a concrete provision pertaining to the enjoyment of possessions did not exist in the declaration; foundations could not acquire any possessions other than ones listed in the declarations.[18]

To summarize the 1974 decision, the Court of Cassation stated that declarations made in 1936 would be considered the charters that determined the status of foundations and concluded that acquiring additional property constituted a threat to national security. By decision of the court, legal establishments managed by persons who are not Turkish would be banned from acquiring property.[19]

According to Vingas, as highlighted in a speech at the conference on "The Legal Status of Non-Muslim Communities and Community Foundations and the Issue of Legal Personality"[20] organized in May 2013, the lack

15 Ibid.

16 Kurban and Tsitselikis, "Bir Mütekabiliyet Hikâyesi: Yunanistan ve Türkiye'de Azınlık Vakıfları."

17 Hrant Dink Vakfı, "2012 Declaration."

18 Kurban and Tsitselikis, "Bir Mütekabiliyet Hikâyesi: Yunanistan ve Türkiye'de Azınlık Vakıfları."

19 Ibid.

20 Gayrimüslüm Cemaatler ve Cemaat Vakıflarının Hukuki Statüsü ve Tüzel Kişilik Sorunu.

of legal status has resulted in the problems and injustices for non-Muslim communities and citizens. In the same conference, Reyna states that "community and community foundations are intertwined; separating these from one another is impossible. Greek and Armenian Patriarchates, chief rabbis, and Syrian and Catholic churches, which are not community foundations, do not have legal personalities."

Vingas explains that "although the majority of community foundations were established with suggestions and contributions of those religious institutions, they do not benefit from the incomes of foundations."[21] Hatemi states that ''catholic foundations have been treated as aliens and the claim has been made that they are bereft of legal personality because they are 'religious orders' without a foundation's legal personality. The injustices suffered by Catholic foundations that have reached acute levels have not been removed yet.''[22] Not only Catholic churches but all non-Muslim people have been seen as alien by the separatist attitude of the state, dating back to the process of creating the nation-state.

Turkey's main policy in the early years of the Republic was determined by the nationalist goal of establishing a unique Turkish identity.[23] Oran establishes a sequence of the ethnic and discriminatory policy as follows: the campaign "Citizen, speak Turkish!" between 1920s and 1960s; Varlık Vergisi levied on non-Muslim citizens; and the alien rolls (*Ecanip Defterleri*) in which non-Muslim citizens were recorded instead of the standard state register until the 1940s.[24] The 1964 Decree was one of those discriminative treatments to minorities.

The 1964 decree ordered non-Muslim citizens to leave their houses without taking their properties and belongings with them and deported

21 This statement was taken from the speech of the representative of community foundations, Laki Vingas at a Conference of Non-Muslim Communities and the Legal Status of Community Foundations held in May 13, 2013 in Ankara.

22 Hrant Dink Vakfı, "2012 Declaration," 21.

23 Baskın Oran, ''Laik Ülkemizde Etno-Dinsel Temizlikler," in Türkiyeli Gayrimüslimler Üzerine Yazılar, ed. Baskın Oran (Istanbul: İletişim Yayınları, 2011).

24 Ibid.

them.[25] Furthermore, this regulation prevented minorities from acquiring assets. The decree was caused by the events in Cyprus,[26] Oran states that many court cases resulted in verdicts against Greek citizens.[27]

> Non-Muslim foundations that are not subject to the establishment method of Turkish foundations and therefore constitute a different category cannot be subject to a complete application of provisions unique to Turkish foundations… there are no provisions or records that could approve of the said foundations installation of new sources of income. As a result, it cannot be claimed that the plaintiff foundation is authorized to enact new *akar*s, real estate properties generating income.[28]

The verdict was given by the Court of Cassation in the 1970s. HDF states that this decision violates the Treaty of Lausanne's provisions on the principles of equality and protection of minorities. The decision emphasizes a separation between foundations established by non-Muslim citizens and Turkish foundations as if they are regulated under different laws.[29] In fact, the separation is based on the date. Aforementioned, all foundations established before the adoption of the Civil Code of 1926 are regulated under the Foundations Law regardless of whether they are minority or not. The court decision above ignores the law.

According to Kurban and Tsitselikis, the perception of minorities as aliens is legitimated based on the principle of reciprocity, including the simultaneous decisions regarding the protection of Muslims in Greece

25 Hrant Dink Vakıf, "2012 Declaration."

26 The outbreak of tensions between Turkish Cyprus and Greek Cyprus began in 1963. From 21–31 December 1963 up to 133 Turkish Cypriots were killed by Greek Cypriots. 364 Turkish Cypriots and 174 Greek Cypriots were killed in the following years. 18,667 Turkish Cypriots from 103 villages abandoned their homes. See https://en.wikipedia.org/wiki/Bloody_Christmas_%281963%29

27 Baskın Oran, ''Rum Mallarına Gizli İpotek," "in Türkiyeli Gayrimüslimler Üzerine Yazılar, ed. Baskın Oran (Istanbul: İletişim Yayınları, 2011).

28 Hrant Dink Vakfı, "2012 Declaration", p. 63.

29 Ibid.

and non-Muslims in Turkey, indicated in Article 45 of the Treaty of Lausanne.[30] According to the principle of reciprocity, Tsitselikis notes, "if a state violates or neglects the conventional commitments of Lausanne (Articles 37-44) then the counter-party would legally have the discretion to apply relevant measures and policies to its own minority."[31] Minority foundations and religious communities have become the central subject of the application of reciprocity. As mentioned, the Bloody Christmas events paved the path for the 1964 decree, and Turkey applied reciprocity in a way that Greek minorities were negatively affected. In both Turkey and Greece, Kurban and Tsitselikis state, minority communities do not have legal personality and are not represented in the national legal system, both because of the policy of reciprocity as well as rooted nationalist attitudes.[32] The point is, as Reyna states, community and community foundations are intertwined with one another by legal authorities as did the Court of Cassation.

§ 3.2 Minorities and ECHR Cases

Due to deficiencies in the legislation and arbitrary application of the law regarding the problems of minority foundations, minorities went to local courts but the cases ended to the detriment of minorities. Therefore, they began to take their cases to the ECHR at the end of the 1990s. Applications to the ECHR started in 1990 and began to conclude in 2007. HDF states

30 Kurban and Tsitselikis, "Bir Mütekabiliyet Hikâyesi: Yunanistan ve Türkiye'de Azınlık Vakıfları".

31 Konstantinos Tsitselikis, "A Surviving Treaty: The Lausanne Minority Protection in Greece and Turkey" In The Interrelation Between the Right to Identity of Minorities and Their Socio-Economic Participation, ed. Kristen Henrard (The Netherlands: Martinus Nijhoff, 2013), 303.

32 Kurban and Tsitselikis, "Bir Mütekabiliyet Hikâyesi: Yunanistan ve Türkiye'de Azınlık Vakıfları".

that the first decision given by ECHR regarding the seized property of minority foundations is for the Fener Rum Erkek Lisesi Vakfı (FRELV).[33] It stated that the foundation had been deprived of enjoying the right to acquire property.[34]

FRELV is a community foundation that provides education. It approached to the ECHR in 1996 on the basis that the implementation of the Foundations Law of 1935 violated property rights guaranteed by Article 1 of Protocol No. 1,[35] and that minorities faced discrimination per Article 14 of the European Convention of Human Rights.[36] The application reached the European Court in 1998 and was finally accepted in the docket in 2004.

The foundation acquired half of a building in Istanbul in 1952, which was certified in the same year by the Governor of Istanbul. Statements concerning the legal entity and acquisition of immovable property in the certificate are as follows:

> Fener Rum Erkek Lisesi Vakfı is a legal entity authorized to acquire immovable property by virtue of the Foundations Act. It is run by an administrative board consisting of ... Further to a request of 3 October 1952 by the Beyoğlu Land Registry, the present document is issued for the purposes of the transaction concerning

33 The process of the case was taken from the summary of the judgment. See HUDOC European Courts of Human Rights, "The Case of Fener Rum Erkek Lisesi Vakfı," 09 January 2007. http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-78866 (last accessed on 08 February 2015).

34 Ibid.

35 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. See Council of Europe, "The European Convention on Human Rights", 4 November 1950. http://www.hri.org/docs/ECHR50.html (last accessed on 8 February 2015).

36 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. See Council of Europe, "The European Convention on Human Rights."

immovable property located at ... by virtue of section 2 of the Land Registry Act.[37]

The foundation registered the building, paid the taxes, and bought the other half of the building in 1958. That same year, the Istanbul governorship issued another certificate indicating that "Fener Rum Erkek Lisesi Vakfı [was] a legal entity authorized to acquire immovable property by virtue of the Foundations Act."[38]

The treasury stated that the building was not listed in the 1936 declaration; ignoring the certificate issued by the Governor of Istanbul, it applied to the District Court of Beyoğlu in 1992 for the return of the building to its former owners. The treasury's argument depended on an expert report saying that the foundation was not given the right to acquire property apart from those listed in the 1936 declaration, so the title deed would be cancelled and the building would be registered to its former owners.[39]

In 1996, the District Court ordered the cancellation of the title and return of the building to its former owners. In the same year, the foundation appealed to the Court of Cassation and asserted the right to enjoy possessions guaranteed by Article 1 of Protocol No. 1, but the Court of Cassation confirmed the verdict of the District Court. During the judicial processes, the foundation claimed that the prohibition against acquiring properties and the cancellation of title did not stand on law. It asserted that the prohibition depended on the 1974 decision of the Court of Cassation, which stated that the 1936 declaration would be considered the charter that determined the foundation's legal status.[40]

The foundation argued a violation of property rights with reference to Article 1 of Protocol No. 1. The government asserted that the foundation did not possess any property based on the protocol. It claimed that the

37 HUDOC European Courts of Human Rights, "The Case of Fener Rum Erkek Lisesi Vakfı."

38 Ibid.

39 Ibid.

40 Ibid.

seizure of the building was actually a transfer of the title from the treasury to the former owners, meaning that the foundation had not never possessed the building. It asserted that the foundation was not entitled to acquire property even if the protocol was applicable to this issue.[41]

According to court documents, the bases of the government's argument are the certain articles of the Civil Code and the Foundations Law of 1935. Another objection by the government related to the legal personality of the foundation. According to the government, the foundation obtained its legal personality after the 1936 declaration. According to the government, there needed to be a provision in this declaration for the foundation to acquire property by purchase or donation, verifying that a foundation had the capacity to acquire properties. Because of the absence of such a provision in the declaration of said foundation, the government finds the foundation's defense for the return of the building unacceptable.[42]

The ECHR approached the case within the framework of property rights in light of Article 1 of Protocol No. 1. The court advised the state that Article 1 imposes positive obligations to protect the right to acquire property. The ECHR inferred that cancellation of the title dispossessed the foundation that had used the building between the years 1952/1958-1974 – the year the Court of Cassation announced its decision. The ECHR ruled that the cancellation of the title with by court decision was an explicit violation of the right to acquire property guaranteed in Article 1 of the protocol.

None of the provisions of the 1935 Foundations Law prohibited the acquisition of properties not listed in the 1936 declaration for the community foundations. The restriction to the acquisition of those estates in 1952 nor in 1958 stemmed only from the judicial opinion of, and the way of interpretation of the legislation by the Court of Cassation in 1974. Taking these implications into consideration, the ECHR concluded that the acquisition of the building in 1952 and 1958 was approved by certificates issued by the Governor of Istanbul, which articulated that the foundation

41 Ibid.

42 Ibid.

had the capacity to acquire property as a legal personality. Moreover, the ECHR took into account changes in the Turkish legal system, particularly that the state had begun to recognize the right of community foundations to acquire possessions through regulations implemented in 2002 and 2003.[43]

The ECHR decided that dispossession of the foundation was not in accord with the principle of legitimacy and constituted a violation of the foundation's property rights; it concluded that Article 1 of Protocol No. 1 was violated. The foundation's complaint with respect to the issue of discrimination asserted was deemed negligible. According to the court's 2007 decision, the state would permit the foundation to register the building in its name within three months, otherwise the state would pay 910 thousand Euro to the foundation "for the pecuniary damage resulting from the annulment of its title and the effective non-enjoyment of its possessions from 2002 onwards."[44] The court's decision in this case is literally the same for the case of Yedikule Surp Pırgiç Armenian Hospital Foundation. The ECHR demanded the state's payment of compensation in the amount of 2,2 million Euro to the foundation for its property in Beyoğlu based on Article 1.[45] The ECHR did not consider the discriminatory attitude of the state and ignored Article 14 because the article is abstract.[46] If the court finds a violation of a solid article like Article 1, then it convicts the state on that basis. Considering these statements, the judgment in the case of FRELV states:

> The Court does not consider it necessary to decide in the abstract whether the role in the continental-law system of a rule established by the courts is comparable to that of statutory provisions, it being more important – in any event – to ensure that the legal basis meets the requirements of foreseeability, accessibility and precision. The Court remains convinced that the existence per se

43 Ibid.

44 Ibid.

45 See Hrant Dink Vakfı, "2012 Declaration".

46 Oran, "Azınlık Vakıfları Yönetmeliği'nin Neresi Doğru."

of a legal basis does not suffice to meet the requirement of lawfulness and considers it appropriate to address the question of the quality of the law.[47]

§ 3.3 Minority Foundations and EU Accession

Öztürk states that the Foundations Law of 1935 was the only legal regulation that included the term minority as a legal or social concept before the European Union accession process, and attributes the legally limited visibility of minorities to the absence of a comprehensive legislation which approaches the issue of minority from all perspectives – from granting minorities legal status to setting out the terms and conditions to acquire and hold property, and to establish new foundations for them.[48] According to Öztürk, the absence of a legal framework focusing on minorities has caused the state to carry out a discriminatory policy towards them.[49] Bayır considers the government's minority policy as parcel to cultural nationalism, which "includes the legal and administrative difficulties to prevent non-Muslim foundations from acquiring new properties, also to make their establishment process more difficult in comparison to that for Muslim foundations."[50]

Minority rights began to be shaped within the framework of human rights in the 1990s. Meanwhile, the number of cases related to government-seized properties of minority foundations taken to the ECHR increased. Since human rights issue was one of the important conditions for the access to the European Union, Turkey had to examine the issues of minorities and minority rights by reckoning among international affairs and agendas – especially in order to resolve the problems of minority foundations. One of the most important dynamics prompting the adoption of new Foundations Law was the accession process. With the

47 Ibid.

48 Nazif Öztürk, Azınlık Vakıfları (Ankara: Altın Küre Yayınları, 2003).

49 Ibid.

50 Bayır, "Minorities and Nationalism in Turkish Law."

new Foundations Law, the government intended to remedy legal vagueness and inequalities with respect to the status of minority foundations and their seized property.[51]

Oran states that "minority rights both expanded geographically and deepened in terms of quality and this process still continues dramatically, hereby Turkey's restrictive attitude towards minority issue has come into conflict with the contemporary tendencies."[52] He continues that "while the problems of minorities and minority foundations had mainly been considered within the framework of reciprocity, the European Union accession process and the ECHR cases forced Turkey to change its approach towards minority issues from a foreign policy issue to a domestic affair."[53] Before analyzing the accession process, I will give a brief information about European Union minority rights:

Kurban describes post-Cold War Europe as full of fear of potential ethnic and religious conflicts, and regards this fear was a catalyst for the establishment of the Organization for Security and Co-operation in Europe (OSCE) and signing of a range of international conventions recognizing positive rights and privileges of minorities.[54] One of those conventions was the Paris Charter, adopted in 1990, which was also signed by Turkey. The statement associated with minorities and minority rights is as follows:

> We affirm that the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve

51 Most studies state that the European Union accession process accelerated the adoption of the new Foundations Law. This conclusion can be easily reached through the Progress Reports.

52 Oran, "Türkiye'de Azınlıklar: Kavramlar, Lozan, İç Mevzuat, İçtihat, Uygulama."

53 Ibid.

54 Dilek Kurban, "AB'nin Anayasal Düzeninde Azınlık Hakları: Açılımlar, Fırsatlar, Olasılıklar," in Türkiye'de Çoğunluk ve Azınlık Politikaları (TESEV: İstanbul, 2005).

> and develop that identity without any discrimination and in full equality before the law.[55]

Çavuşoğlu points to another agreement – the Framework Convention for the Protection of National Minorities – a multilateral treaty of the Council of Europe in 1995, aimed at protecting the rights of minorities.[56] The aims of the framework as determined by the Council of Europe are as follows:

> …to ensure that the signatory states respect the rights of national minorities, undertaking to combat discrimination, promote equality, preserve and develop the culture and identity of national minorities, guarantee certain freedoms in relation to access to the media, minority languages and education and encourage the participation of national minorities in public life.[57]

Çavuşoğlu claims that the framework contains "the program provisions determining the principles to be contracted for applying national legal regulations and proper governmental policies, rather than bestowing direct applicable rights to national minority group."[58]

Another point to which Çavuşoğlu draws attention is that there is no clear theoretical definition of the concept of minority in these international documents. Therefore, she claims that governments can determine minority groups as they wish.[59] And she adds the following:

---

55 Heads of state or government of the participating States of the Conference onSecurity and Co-operation in Europe (CSCE), "Charter of Paris for A New Europe" Paris, 19- 21 November 1990. http://www.osce.org/mc/39516 (last accessed in January 2014).

56 Çavuşoğlu notes that the Council of Europe first discussed specific protections for national minorities in 1949, but did not make a firm commitment to protect these minority groups until 1990.

57 Naz Çavuşoğlu, "Azınlıkların Korunmasına İlişkin Uluslararası Normlar," in Türkiye'de Çoğunluk ve Azınlık Politikaları (TESEV: İstanbul, 2005).

58 Ibid., 168.

59 Ibid., 170.

> Rather than providing an explicit definition of the term "minority," the Framework gives an implicit one based upon self-identification which underlies sharing a common identity stemming from diverse ethnic, religious and linguistic objective characteristics; and the demand for protecting this identity.[60]

Kurban remarks that by the 1990s the European Union had not taken any steps to prepare agreements involving distinct provisions relating to minority rights.[61] The first step taken by the Union was to make a series of provisions providing legal guarantees of minorities' individual and negative rights (freedom of religion, equality before law, enjoyment of the same civil code and political rights as citizens) but according to Kurban these provisions did not guarantee positive rights.[62]

When Turkey's candidacy for the European Union collided with the Union's activity to minorities, Turkey's policy towards minorities underwent a change. The European Union began to encourage Turkey to implement necessary legislation about human and minority rights, freedom of speech, and civil organizations, and economic reforms. The Union annually evaluates Turkey's performance through the progress reports prepared by the Commission of the European Communities. Through official feedback from European Union delegations, the public bodies of candidate countries and non-governmental organizations (NGO), the commission evaluates developments and deficiencies of the candidates with respect to the accession process.[63]

Parallel to the European Union's concern for minority rights at the end of 1990, minority rights and the problems of minority foundation began to be evaluated in the progress reports. For example, the 2001 report

60 Ibid., 172.

61 Kurban, AB'nin Anayasal Düzeninde Azınlık Hakları: Açılımlar, Fırsatlar, Olasılıklar, 204.

62 Ibid., 205.

63 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "İlerleme Raporları", last updated in 17 October 2014. http://www.ab.gov.tr/index.php?p=46224andl=1 (last accessed in January 2015).

stated that "churches still faced some difficulties, especially about acquiring property. There has not been any progress on this issue since the closure of Halkı Orthodox College in 1971. The legal status of many churches was not recognized, which caused some troubles including that religious functionaries were not permitted to enter Turkey."[64]

3.3.1 *Evaluation of the Progress Reports*

During the accession process, progress reports have been important in Turkey with respect to guiding, regulating, or changing existing conditions in the country. They assess whether or not a candidate has implemented the directives of the European Union over the previous year. The issue of minorities, their property problems, and concomitantly the issue of minority foundations and the Foundations Law have been an integral part of the report. The European Union is sensitive to human rights issues and considers the situation of minorities – or, in the case of Turkey, of non-Muslim individuals – as a crucial measure of whether Turkey has made inroads on the subjects of human rights and democratization.

I will summarize the evaluations regarding minority foundations and the Foundations Law in progress reports between 1998 and 2015. Rather than examining the years separately, I will analyze the articles before and after 2008, when the new Foundations Law was adopted.

3.3.1.1 Before 2008

Although the constitution secured the freedom of religious belief and freedom of worship was not restrained, non-Muslim communities faced several restrictions with respect to religious freedom. Because of the fact that they did not have legal status and their acquisition of property was restricted, they continually faced the risk their properties would be seized by the government.[65]

64 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2001,"". http://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/Turkiye_Ilerleme_Rap_2001.pdf. (last accessed in April 2016).

65 Oran, "Türkiye'de Azınlıklar: Kavramlar, Lozan, İç mevzuat, İçtihat, Uygulama".

In the year 2003, a specialist group meeting was organized in partnership with Turkish authorities and the European Commission. They discussed the regulations related to freedom of religion.[66] The meeting foretold a possible, new Foundations Law since participants concluded that "legal reforms adopted so far were insufficient, that legislation in this area should be revised on the basis of the generally accepted principles of non-discrimination, equality and cooperation, and that an overhaul of the laws on associations and foundations based on EU standards, and taking into account the case law of the ECHR, was necessary."[67] These statements accelerated parliament's efforts regarding a new Foundations Law.[68] According to the progress reports, even though the new law would have provisions regarding non-Muslim communities and their foundations, it would still fall behind the European Union Standards. The specialist group concluded that religious pluralism could be guaranteed only through an explicit, comprehensive legal framework covering all religious communities, including Assyrians and Alevis.[69]

Progress reports before 2008 state that the General Directorate interfered with the administration of minority foundations as it was entitled to close foundations down without a court order or to seizure their assets.[70] To give another example of interference by the General Direc-

66 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2003,"32. http://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/Turkiye_Ilerleme_Rap_2003.pdf (last accessed in April 2016).

67 Ibid. See English version of the progress report on the website http://trade.ec.europa.eu/doclib/html/116602.htm (last accessed in April 2016).

68 The new Foundations Law was ratified in November 2006 but vetoed by former president, Ahmet Necdet Sezer.

69 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2003," 32.

70 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2006," 15. http://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/Turkiye_Ilerleme_Rap_2006.pdf (last accessed in April 2016).

torate, the 2004 progress report remarks that participation of foundations in international projects were conditional on the approval of the General Directorate.[71]

3.3.1.2 After 2008

The new Foundations Law was adopted in February 2008. The 2008 progress report states that articles of the new law take into account all present foundations and its provisions facilitate establishing foundations. The report remarks that "the law remedies issues regarding the election of administrative members, the right to acquire property, funds from abroad, and collaboration with foreign foundations. It adds that the prohibition against foreigners establishing foundations in Turkey is lifted and the reciprocity principle is legitimatized."[72]

The 2008 report also states that "the new law provides tax incentives for donations to all foundations and allows tax exemptions for the repair, restoration and landscaping of cultural properties that belong to foundations. Furthermore, the law provides for the establishment of the Foundations Council as the highest decision-making body for foundations. As a positive step, the foundations themselves are represented in this new body"[73] As seen, the first report after the adoption of the Foundations Law includes the hopeful statements regarding the foundations. In the following progress reports, the atmosphere concerning freedom of religion, minority issues, minority foundations, and their property problems were as follows:

---

71 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2004," 34. http://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/Turkiye_Ilerleme_Rap_2004.pdf.

72 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2008," 16. http://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/turkiye_ilerleme_rap_2008.pdf (last accessed in April 2016).

73 Ibid. English version of the 2008 progress report is available on the website http://www.ab.gov.tr/?p=123&l=2 (last accessed in April 2016).

Generally, there has been some progress with respect to the issues of minorities, and the adoption of the Foundations Law is a step forward. On the other hand, the processes to resolve the problem of property seized from minorities is slow. Furthermore, Alevis and Assyrians continue to experience difficulties with respect to gaining proper education, performing worship, and acquiring property.[74] The 2009 progress reports states that Assyrians have faced obstacles regarding property rights and title deed transactions, especially in the Southeast of Turkey.[75]

The reports declare that the law addresses neither the issue of seized properties of minorities nor the property problems of mazbut foundations.[76] In addition, there have not yet been changes with respect to the issue of immovable, seized properties belonging to the Latin Church. Catholic churches have neither legal identity nor the status of community foundation, as mentioned.[77]

The progress reports focus on the implementation of the new Foundations Law. They point out the regulations making some changes to the new Foundation in 2011, and indicate that the legal framework gives minority foundations the opportunity to regain assets included in the 1936

74 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2009," 22.
http://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/turkiye_ilerleme_rap_2009.pdf (last accessed in April 2016).

75 Mor Gabriel Monastery is one property that has suffered from the problem of seizure, Then Prime Minister Erdoğan announced in September 2013 that the land (on which the monastery is located) would be returned to the Syriac community. This decision was approved a week later by the General Directorate of Foundations. A land registration process of two months began and some area of the land was returned to the monastery in February 2014. Fore more details, see http://en.wikipedia.org/wiki/Mor_Gabriel_Monastery (last updated on 25 June 2014).

76 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2009," 27.

77 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2011," 37.
http://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/2011_ilerleme_raporu_tr.pdf (last accessed in April 2016).

declarations and clarifies the 2008 Foundations Law. According to the reports, the regulation notes that minorities can register assets listed in the 1936 declarations, including real-estates currently registered in the name of the treasury, the General Directorate, and municipalities. Furthermore, the reports draw attention to the point that the changes to the law in 2011 include only seized properties of mülhak foundations, but exclude those belonging to mazbut foundations and Alevi foundations.[78]

As can be understood from the summary of the progress reports, the new Foundations Law is important since it promises the return of property seized from minorities. After the 2011 regulation, 116 community foundations applied for the return of 1,560 estates. By August 2013, the Council of Foundations had approved the return of only 253 estates and compensation payments for eighteen estates. It decided that 878 applications were not legally consistent.[79] Clearly, minority foundations continue to experience difficulties relating to property rights. By April 2014, the Foundations Council had approved the return of 65 more properties and the payment of compensation for three.[80] Up to that point, a total of 1092 applications were found to be ineligible. The remaining applications are still being assessed.[81]

In addition to the progress reports, Oran claims that despite the European Union accession process, minorities still do not enjoy the right of organization properly and the freedom of existence as a community since

78 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2014," 10. October 2014. http://www.abgs.gov.tr/index.php?p=49743andl=1 (last accessed in April 2016).

79 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2013," 61. http://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/2013_ilerleme_raporu_tr.pdf (last accessed in April 2016).

80 There is no statistical information related to the number of resolved/unresolved seized property in the 2015 Progress Report.

81 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2014," 8. October 2014. http://www.abgs.gov.tr/index.php?p=49743andl=1 (last accessed in February 2015).

the communities cannot obtain legal status.[82] He continues that minorities cannot establish new foundations as provided for in the 2002 Civil Code: "[T]he foundations supporting the communities that are damaging to national interest cannot be established." According to Oran, "this is an open-ended statement, incompatible with the Constitution, ECHR Judgements, and the Treaty of Lausanne which includes articles guaranteeing the right for non-Muslim communities to establish all kinds of organizations and foundations."[83]

Mehmet Yıldıran, a foundation specialist in the General Directorate of Foundations, explains the reason why the General Directorate has not resolved the issue of the seized property of minority foundations: the term vakıf has no equivalent in the European legal system as it is a unique, institutional, cultural, and legal body dating back to the Ottoman period.[84] Yıldıran states that European Union does not have a grasp of the infrastructure and function of foundations in Turkey, and thereby misevaluates cases concerning the rights of minority foundations to acquire and use property. Yıldıran attributes this misevaluation to that the Union fails in separating mazbut vakıfs from mülhak ones. He clarifies that if minority foundations have the charters or 1936 declarations, they are automatically regarded as mülhak otherwise they are placed under the category of mazbut.[85] Yıldıran legitimates the seizure of the properties of minority foundations by the state based on this argument.

As mentioned in the previous chapter, the administrative authority of mazbut foundations belongs to the General Directorate. In this respect, according to Yıldıran, the expressions "seized properties" and "dissolved foundations" for mazbut foundations as denoted in the European Union progress reports reflect a lack of knowledge by the authors. Furthermore, according to Yıldıran, the reports use the terms "merged" and "fused" for mazbut, which he says are an inadequate substitute for mazbut clarifying

82 Oran, "Türkiye'de Azınlıklar: Kavramlar, Lozan, İç mevzuat, İçtihat, Uygulama".

83 Ibid.

84 Mehmet Yıldıran, "AB Türkiye İlerleme Raporlarında "Mazbut" Kavramı Sorunu," Vakıflar Dergisi 41 (2014): 115-125.

85 Ibid.

the term "merged" is used for companies that are combined and "fused" is the engagement of two or more bodies to form a single entity.[86] Based on improper substitutes for the word "mazbut" by the West, Yıldıran concludes that the foundations system in Turkey should be examined within its historical and social context in order to avoid misuse of mazbut vakıfs.[87]

The progress reports claim that even though there is progress in the implementation of amendments to the Foundations Law of 2008, the legislation still does not cover mazbut foundations. [88] At the same time, the European Union criticizes the implementation of the law which determines the scope and meaning of mazbut vakıfs, due to the fact that they are defined to the detriment of minority foundations' property right and damage their mechanisms of independent decision-making.[89] The problem which Yıldıran overlooks is that the law itself categorizes mazbut and community (minority) foundations as separate bodies, but when it comes to the application of the law, community and mazbut foundations are sometimes regarded as the same, contrary to the fact that in the past minority foundations were evaluated as mülhak.

If we stick to Yıldıran's argument, we claim that the European Union approaches the issue from the perspective of human and minority right, disregarding the legal, cultural, and historical structure of the Turkish foundation system. This approach ignores defects and insufficiencies in the legislation and democracy. The Foundations Law does not only regulate minority foundations and their right to acquire property, it also includes novelties such as promising foundations more income by permitting the replacement of their company shares and rights with more useful ones. This reflects Western influences on foundations and in this sense, requires more conceptual, social, economic, and historical research. Rather than questioning the European Union's misevaluation of Turkish

86 Ibid., p. 122.

87 Ibid.

88 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "Türkiye Düzenli İlerleme Raporu 2014," 10 October 2014. Considerable amount of religious (community) foundations are regarded as mazbut rather than mülhak. See 2014 Progressive Report.

89 Ibid., 74.

foundations, it is more significant to put forward questions about the influence of the Union on foundations and the legal system regulating foundations. At this point of the study, the European Foundation Statute (EFS) will be analyzed.

The EFS is a legal regulation that has the purpose of helping foundations exploiting their property in more useful ways to make European citizen's lives better. It intends to create a legal framework for European foundations to supplant individual country's separate rules.[90] According to the European Commission, all member states are urged to accept the statute, which will function under European Union's rules.[91] In 2012, the European Commission presented a legislative proposal for a European Foundation Statute. A couple members like – Italy and Luxemburg – reject the EFS, but a majority support it.[92]

The European Foundation Centre (EFC), established in 1989, is an international association of foundations and corporate funders. The center urges European Union members to accept EFS. Their basic argument is that foundations have already increased cross-border activities, and in order not to face national restrictions in the future, they must be protected under the EFS.[93] The center lists the advantages as follows:

> …enables [this] organization to open a bank account, manage its assets effectively in any EU country; which aids this organization to expand its medical research activities and enter into contracts with private or public partners in other countries; which enables this organization to have a unique effective and coherent governance structure while operating in various countries; which allows

90 Wikipedia, "European Foundation Project." https://en.wikipedia.org/wiki/European_Foundation_Project (last accessed in April 2016).

91 European Commission, "Proposal for a Council Regulation on the Statute for a European Foundation," 8 February 2012. http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:52012PC0035 (last accessed on 10 January 2015).

92 Ibid.

93 EFC, "It's Time for a European Foundation Statute," 2014. http://www.efc.be/programmes_services/resources/Documents/EFS_brochure_2012_FINAL.pdf (last accessed in January 2015).

> this organization to move its seat in a clear and transparent way protecting creditors and beneficiaries when needed; and other such concrete rights and opportunities which de facto are denied today to foundations in the internal market.[94]

The center asserts that separate laws regulating foundations – more than fifty across Europe – are obstacles for foundations which plan to work abroad and develop international relations with companies, firms, and other foundations. It claims that the statute will be a useful instrument for these foundations enabling them to expand beyond national borders.[95] This perspective recalls the amendments made by the Foundations Law of 2008. According to the new law, foundations can participate in international activities, establish branches and representatives abroad, and develop international cooperation. These novelties are similar to the advantages of the statute. In this sense, certain novelties of the new Foundation Law reflect a mainstream idea of foundations propagated by the EFC across Europe. On the other hand, the Foundations Law does not give foundations absolute freedom to act abroad by the virtue of the fact that the activities of foundations outside the country are contingent on permission of the Ministry of Interior and subject to the review of the Ministry of Foreign Affairs.[96]

Although there is an influence of Western legal frameworks on the new Foundations Law[97] and other legislations and regulations brought about by the European Union accession process, one cannot claim that European legal colonialism has spread to every area of the Turkish legal system. Turkey has nominally implemented relevant legislations, but indigenous legal traditions as Yıldıran remarks, (for example, the separate categories of mazbut, mülhak, and community foundations) and enforcement of the 1936 declaration predominate.

---

94 EFC, "Will the EU and its Member States support foundations?" November 2014. http://www.efc.be/uncategorized/will-the-eu-and-its-member-states-support-foundations (last accessed in April 2016).

95 Ibid.

96 See Chapter 2.

97 Ibid.

4

Foundations Law: A Pragmatic Solution Parallel to Neoliberal Policy

Since 2001, Justice and Development Party[1] (AKP) government has implemented radical economic and legal regulations. In terms of minorities, two developments among them are important: urban renewal projects and the Foundations Law. In this section, through several case studies, the grounds behind decisions related to the repossession or dispossession of minority foundations and interaction with the AKP's neoliberal policies – specifically recent urban renewal projects – will be examined. The cases are Istanbul based since the city constitutes an ideal junction point making minorities meet with urban policies of the state. Therefore, our assumption will be limited with this framework.

§ 4.1 Flip Flop Mechanisms in the Return of Seized Property

The Hrant Dink Foundation (HDF) classifies ownership depending on land registers as follows: properties with no ownership problem and properties that have been seized by the state. The first category includes properties whose titles are in the name of the foundation and ones sold

1 *Adalet ve Kalkınma Partisi*.

by the foundation – including assets nationalized via sale or sold to other foundations.[2] We will not discuss such properties; our main concern is with properties seized by the state.

HDF states that most of the real-estate holdings belonged to minority foundations are under administration of government bodies. The ownership of some of them passed to the General Directorate of Foundations, and were then sold to third parties.[3] However, HDF adds that some of these seized properties were returned to their foundation via a temporary article added to the new Foundations Law, several legislations enacted in 2003, and the decree which came into effect in 2011.[4]

HDF explains the process of returning properties as follows: In some cases, properties were first returned to their former owners. If the former owner was not able to be traced or was dead, then they were registered as belonging to treasury. In other cases, properties were returned to former owners but were then registered in the name of the first foundation under the administration of the Directorate because the former owner was lost and did not have any heirs.[5]

With the adoption of the new Foundations Law and concomitant regulations, the problems of seized property have begun to be resolved in spite of the slow, inadequate, and unsatisfactory implementation of the law. The resolution process will be examined through the cases of the Bomonti Mıhitaryan Primary School and Yedikule Surp Pırgıç Armenian Hospital Foundation. Afterwards, disruptions and deficiencies related to the process will be listed. The lengthy, intense stories of the struggles of these foundations with the state – especially the latter case – will show that the government's attitude towards foundations is based on a flip-flop mechanism: the government ignores the rule of law and undoes the achievements of foundations in legal processes in the name of urban renewal.

2 Hrant Dink Vakfı, "2012 Declaration."

3 Ibid., 179.

4 Ibid., 179.

5 Ibid., 179-181.

4.1.1 *The Bomonti Mıhitaryan Primary School Case*

The Hrant Dink Foundation gives a comprehensive history of the Bomonti Mıhitaryan Primary School. I will summarize that history as follows: The Surp Ğazar Armenian Catholic Mechitarist Priests Association established three schools in Istanbul. The first was opened in Galata in 1803; the second on Sakızağacı Avenue in Pera in 1830. The last was the Mechitarist Armenian Primary School, opened in Kadıköy in the 1850s. The school in Sakızağacı was closed after a fire. By the decree of the sultan, the school was rebuilt and began to provide education for Catholic Armenian Children in 1888, and was moved to Bomonti in 1958. The school building was bought from the owner that same year by the Armenian Association and registered at the land office. From that year, the school continued its educational service with a new name ''Bomonti Private Armenian Catholic School.''[6]

HDF continues: In 1979, the General Directorate of Foundations (DGF) sued the foundation claiming that the 1936 declaration submitted to the Directorate by the foundation did not involve the school building, for this reason the building had been illegally acquired by the foundation. The DGF's intent was to cancel the title of the building and register it under the name of its former owner. In 1984, the local court decided that the school would be registered under the name of its former owner, which was re-evaluated likewise by the Court of Cassation a year later. The foundation lodged an appeal in 1988, which was immediately rejected by the court.[7]

The building was registered under the name of the heirs of the building's former owner, who had willed that her entire estate be donated to the Ankara Ayaş Municipality.[8] Part of the building was given to Ayaş Mu-

6 Hrant Dink Vakfı, "2012 Declaration," 119.

7 Ibid., 121.

8 Agos, Bomonti Mihitaryan Okulunun 27 Yıllık Mağduriyeti Son Buldu, 2 November 2012, http://www.agos.com.tr/haber.php?seo=bomonti-mihitaryan-okulunun-27-yillik-magduriyeti-son-bulduandhaberid=3197 (last accessed on 11 November 2014).

nicipality, while the rest was bequeathed to her siblings. Miltaş, a construction company, bought the heirs' shares later.[9] The foundation faced a lawsuit brought by both the municipality and the company for payment of compensation. According to the suers, the school had not paid any rent during the time it operated there, but these demands were rejected.[10] The HDF's report emphasizes the compelling point that the former owner made her will regarding the donation of the building to the municipality after the foundation had bought the building. HDF claims that the court made an unlawful decision that the building was registered under the name of the former owner, because she actually did not own it at the time.[11]

In 1998, the Bomonti Mechitarist School Foundation had to sign an agreement with the municipality to keep the school open. Miltaş reacted against the agreement by going to court, and with the decision of the court the students, teachers and administrative staff emptied the building.[12] The children had to participate in classes outside.[13] HDF states that the Armenian community protested the decision of the court and Erol Çakır, then mayor of Istanbul, brokered an agreement between the foundation and Miltaş on the maintanence of education inside the building.[14] The mayor of Şişli Municipality, Mustafa Sarıgül, campaigned on the promise to the Armenian community that the school would remain open, saying ''our duties are to approach all citizens equally and fairly without considering their race, language, and culture in Şişli and in the whole country.''[15] However, the foundation had to wait until the end of 2012 for

9 Hrant Dink Vakfı, "2012 Declaration," 121.

10 Ibid.

11 Ibid., 119.

12 Ibid., 121.

13 Agos, Bomonti Mihitaryan'da Adalet Yerini Buldu, 9 November 2012, http://www.agos.com.tr/haber.php?seo=bomonti-mihitaryanda-adalet-yerini-bulduandhaberid=3303 (last accessed on 11 November 2014).

14 Hrant Dink Vakfı, "2012 Declaration,", 123.

15 Hürriyet, Belediye Ermeni Okulunu Kurtardı, 05 August 1999, http://hurarsiv.hurriyet.com.tr/goster/printnews.aspx?DocID=-94639 (last accessed on 11 November 2014).

"complete" justice. In 1999, the Şişli Municipality fulfilled its promise and bought 25% of the shares of the building from Miltaş, giving the municipality control over the school building.[16]

Agos, a daily Armenian newspaper published in Turkey, describes that "the Bomonti Mechitarist School Foundation had to become a renter in a building it purchased outright 30 years before."[17] Based on the decree adopted in 2011 promising the return of properties registered as public institutions to community foundations, the foundation went to the court. In November 2012, the case taken up by the 13th Civil Court of First Instance of Istanbul ended with the ruling that the school building would be returned to the foundation.[18] Ayaş Munipality appealed the decision and the Court of Cassation overruled the Civil Court's verdict. The foundation appealed to the Civil Court again, but the court rejected the appeal.[19]

The Bomonti Mechitarist School Foundation was among 108 community foundations to go to court after the adoption of the 2011 decree regarding a total of 1,568 properties. By September 2012, fifty-eight estates had been returned to foundations. For fifty-three estates, verdicts were delivered against the foundations, and for only eight estates, payment of compensation was ordered.[20] Laki Vingas describes this statistical picture pessimistic and he says "it is connected to the absence of amendments regarding properties whose ownership had already been transferred to former owners, and assets that had fallen out of the community foundations' possession because of expropriation."[21]

16 Hrant Dink Vakfı, "2012 Declaration,", 123.

17 Agos, "Bomonti Mıhitaryan Okulunun 27 Yıllık Mağduriyeti Son Buldu."

18 Ibid.

19 Agos, Bomonti Mıhitaryan Hâlâ Çözüm Bekliyor, 14 May 2015. http://www.agos.com.tr/tr/yazi/11584/bomonti-mihitaryan-hl-cozum-bekliyor (last accessed in April 2016).

20 Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, "2012 İlerleme Raporu," 10 October 2012. http://www.ab.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/2012_ilerleme_raporu_tr.pdf (last accessed in April 2016).

21 This statement was taken from a speech of representative of community foundations, Laki Vingas at a Conference of Non-Muslim Communities and the Legal Status of Community Foundations held in May 13, 2013 in Ankara.

4.1.2 *Yedikule Surp Pırgiç Armenian Hospital Foundation Case*

The seized property of other Armenian or Greek foundations notwithstanding, Yedikule Surp Pırgıç Armenian Hospital Foundation alone faced ownership problems with ninety-five seized properties. Seven of these assets belonged to the DGF, five assets were owned by the treasury, thirty-seven assets were registered under the name of third party, five assets belonged to a municipality, twenty-five assets had an indeterminate status, ten assets were regarded as non-existing parcels, three assets were being used for the public, and three assets had no assigned ownership. These properties include houses, apartments, offices, shops, factories, and empty lots.[22]

Until now, the foundation has faced ownership problems with 130 assets, even though only 44 were acquired after 1936. Several of the foundation's assets were returned in 2012 or the foundation was paid compensation for them.[23] In addition to those, in 2014, a 42 thousand square meter lot including Zeytinburnu Stadium (belonging to the Zeytinburnu Municipality), Zeytinburnu Sport Complex (owned by the Istanbul Metropolitan Municipality), and a parking lot, that had been seized by the state in 1964[24] were returned to the foundation by a decision of the General Assembly of Foundations.[25]

In 1974, the ownership of this land passed to the DGF and then to the municipality.[26] In 2012, based on the 2011 decree, part of the land was returned to the foundation.[27] However, in October 2014, 20 percent of the

22 See "Table of Seized Properties," in 2012 Declaration (İstanbul: Hrant Dink Vakfı, 2012), 384-407.

23 Hrant Dink Vakfı, "2012 Declaration," 365.

24 Ibid.

25 Agos, Surp Pırgiç Arazisini Geri Aldı Ama Kullanamıyor, 24 December 2015. http://www.agos.com.tr/tr/yazi/13799/surp-pirgic-arazisini-geri-aldi-ama-kullanamiyor (last accessed in May 2016).

26 Hrant Dink Vakfı, "2012 Declaration," 365.

27 Sözcü, Ermeni Vakfı'na En Büyük İade, 8 February 2014. http://sozcu.com.tr/2014/gunun-icinden/ermeni-vakfina-en-buyuk-iade-454047 (last accessed on 11 November 2014).

total land area was rezoned from trade to parking by a decision of the Assembly of Istanbul Metropolitan Municipality (IBB).[28] This decision shows that ownership problems of minority foundations cannot be restricted to the scope of the new Foundations Law and cannot be evaluated solely from the perspective of minority rights demanded by the European Union. The decisions of the court cases are intertwined with the government's neoliberal policy, which will be discussed in detail on the following pages.

Returning to the foundation's plight: the foundation regained some 14 assets using legal means (plus the plot returned in 2014) or was paid compensation for them. The ECHR had solved four of those cases. One was the case of the Istanbul Clothing Industry (IGS)[29] building on Istiklal Avenue in Istanbul's Taksim district. HDF underlines that this ruling was important since it was the first case taken to the ECHR by Armenian foundations. The story is as follows:[30]

In 1943, an Armenian citizen donated her property to the Yedikule Surp Pırgiç Hospital Foundation. In 1954, the foundation wanted to register the property under its name and applied to Istanbul Municipality; the Istanbul governorship decided the following year that the foundation was authorized to acquire property. So the foundation registered the property under its name at the land registry. In 1962, after getting the legal approval of the authorities, the building was rented out to the IGS, at the foundation's request.[31]

The building maintained this status until 1992. In this year, the foundation was sued because its building was not listed in the 1936 declaration and it did not have the capacity to acquire property.[32] The foundation

28 Hürriyet, Yedikule Surp Pırgiç Ermeni Hastanesi'nin Bir Bölümü Park Alanı Oldu, 24 October 2014. http://www.hurriyet.com.tr/yedikule-surp-pirgic-ermeni-hastanesinin-bir-bolumu-park-alani-oldu-27448486 (last accessed in April 2016).

29 İstanbul Giyim Sanayi. It was a commercial complex.

30 This story is also taken from the 2012 Declaration too.

31 Hrant Dink Vakfı, "2012 Declaration," 135.

32 Ibid.

clarified that it was a local, charitable institution; and fulfilled all requirements issued by the country's legal system, so it had the right to achieve, hold and dispose of this building. In addition, the foundation responded that the Civil Code of 1926 gave it legal personality and the right to acquire property.[33] Moreover, it remarked that the 1936 declaration was not a charter, rather a legal document listing the properties of foundations.[34] According to the foundation, the state violated the principle of separation of powers by considering the declaration as charter.[35] Despite this defense, the legal process was evolving to the detriment of the foundation.[36]

HDF continues the story: the local court decided that the treasury was the only heir the former owner (the said Armenian citizen) even though the foundation possessed the necessary documents to confirm the presence of an heir. The foundation applied to the ECHR in 1999 based on the argument that minority foundations have the right to obtain property taking into account the provisions of the Civil Code, the Foundations Law, and the articles of the Treaty of Lausanne.[37] It claimed that the confiscation of its property violated the European Human Rights Convention guaranteeing the right to acquire property, as well as granting non-Muslim communities protection against discrimination.[38]

The Turkish state's counterargument was that the foundation had not been permitted to hold that property, because it was not listed in the 1936 declaration. Therefore, the state asserted that it did not violated any provisions of the aforementioned convention.[39] In 2006, the ECHR suggested and the Turkish state agreed to return the property. In 2007, the Turkish government declared that it would remove obstacles for community foundations to enjoy the right of possession, particularly the 1974 deci-

33 Ibid.
34 Ibid.
35 Ibid.
36 Ibid., 137.
37 Ibid.,137.
38 See Chapter 3.2
39 Hrant Dink Vakfı, "2012 Declaration."

sion. That same year, the court decided that the building would be returned to, and registered under the name of the Yedikule Surp Pırgiç Armenian Hospital Foundation.[40]

The timeline of the struggle of the foundation with the state for its property started with a local court decision that limited the foundation's capacity to acquire property and continued with the seizure of the property. Concomitant, domestic court cases were unsuccessful for the foundation. Subsequently, these cases were taken to the international arena, namely the ECHR, which ended in the general favor of the foundation. The timeline does not disappear at this point, but continues under the new Foundations Law, especially for cases not taken to the ECHR. As long as the foundation fulfills the necessary conditions, seized property is returned to the foundation through the new law and relevant legislation.

The two cases exemplify only one aspect of the new law; the return process of property to minorities. On the other hand, some governmental actions show that the enactment of the new law and court decision stemming from the law do not guarantee easy resolution of property problems of the foundations. For instance, the decision of the municipality that a certain part of another asset belonging to Yedikule Surp Pırgıç Armenian Hospital Foundation would be rezoned from trade to parking ignored its right to acquire and hold property. There is an uncertainty and vagueness inherent in the decisions. The problem goes beyond the scope of minority rights and the framework of European Union demands. It becomes an integral part of the official policy of the government.

To give an example of a legally baseless decision, consider another plot of land which had belonged to the Yedikule Surp Pırgıç Armenian Hospital Foundation and was seized. 16/9 Towers, which are made up of three buildings, now stand on the land. Before analyzing the issue of the 16/9 Towers, I will recount the baseless decision: President Erdoğan com-

40 Ibid.,139-143.

manded authorities to decrease the height of the towers because they violate the historical silhouette of Istanbul.[41] The decision given by an administrative court in September 2014 was that the height of the towers would be decreased from 85 to 45 meters.[42]

The land belonging to the foundation gained the status of a commercial asset in 2007, and there was no height limit on construction. In 2014, any sort of commercial construction on that land was prohibited. The legislative intent presented by Zeytinburnu Municipality to the IBB stated that green space would be increased, and the public good will be ensured.[43] As is typical in the political atmosphere of Turkey, neither green space nor the public good were considerations in the final project.

One and a half years before the IBB rezoned the Hospital Foundation's land as parking lot, riots objecting to the construction of the Taksim Military Barracks (an Ottoman Era nostalgia project of the government) on the site of Gezi Park – one of the few green spaces in Istanbul – broke out in May 2013 and spread across country in a short span of time ending with twenty-two fatalities, and at least 8 thousand injuries[44] In the days following the IBB decision, citizens struggled to preserve the Validebağ

41 Managers and bureaucrats from the AKP have flats in those towers. For the intricate relations among municipalities, bureaucrats, and their relatives, economic institutions, and other entities associated with the 16/9 Towers, see *Cumhuriyet*, "16:9'un Çok Özel Sakinleri," 23 August 2014, http://www.cumhuriyet.com.tr/haber/turkiye/109345/16_9_un_cok_ozel_sakinleri.html (last accessed on 14 November 2014).

42 Ibid.

43 Hürriyet, "Yedikule Surp Pırgiç Ermeni Hastanesi'nin Bir Bölümü Park Alanı Oldu."

44 For more on the Gezi Park riots, see *Gezi Parkı Olayları: İnsan Hakları Hukuku ve Siyasi Söylem Işığında Bir İnceleme*, (İstanbul: İstanbul Bilgi Üniversitesi Yayınları, 2013) Özbank, M. (2013). Gezi Ruhu ve Politik Teori, İstanbul: Kolektif Kitap; Benlisoy, F. (2013). Gezi Direnişi Türkiye'nin Enteresan Başlangıcı, Istanbul: Agora Kitaplığı; Sönmez, M. (2013). Kent Kapital ve Gezi Direnişi, Ankara: Nota Bene Yayınları; Gürcan, E. C. and Peker, E. (2015). Challenging Neoliberalism at Turkey's Gezi Park: From Private Discontent to Collective Class Action, Palgrave Macmillan. Cihan Tuğal, "Occupy Gezi: The Limits of Turkey's Neoliberal Success", Jadaliyya (2013)

Grove, another of the few green spaces in Istanbul, against the construction of a mosque near its entrance.[45] In February 2015, the Council of State reversed the IBB decision.[46] The future of the grove is still uncertain.

This undemocratic decision concerning the aforementioned case as well as the numerical data suggesting that 318 estates have been returned to the foundations, compensation has been arranged for twenty-one estates, and 1,092 applications have been determined not legally consistent out of a total of 1,560 estates seized by the state shows that implementation of the law is inadequate.[47] Given that application of the new law that appeared was a condition of European Union accession, and the divergent influence of current state policy, an important question comes to mind: is the AKP abandoning the goal of accession to the European Union?

After the 2002 elections, the AKP stated that it would give precedence to European Union accession program and work on the necessary reforms.[48] In following years, there were crucial improvements with respect to European Union demands: the death penalty was lifted; the Kurdish people were given status as a minority group and they would enjoy minority rights.[49] In spite of these improvements, retardation of the reform process and the inadequacy and inefficiency of existing reforms (as in the implementation of the new Foundations Law) is apparent, especially after the mid-2000s. Avcı attributes this to three developments: increased political polarization in the society because of the Kurdish issue, the Cyprus issue, and the loss of faith among people and politicians

45 Radikal, "Validebağ İçin Yürüdüler," 2 November 2014 http://www.radikal.com.tr/turkiye/validebag_icin_yuruduler-1222880 (last accessed on 15 November 2014).

46 T24, "Danıştay, Validebağ Korusu'nu Yapılaşmaya Açan İBB Kararını İptal Etti." 25 February 2015. http://t24.com.tr/haber/danistay-validebag-korusunu-yapilasmaya-acan-ibb-kararini-iptal-etti,287985 (last accessed in May 2016).

47 See Chapter 3.3.1.

48 AKP, AKP Election Manifesto (Ankara, 2002).

49 Gamze Avcı, "The Justice and Development Party and the EU: Political Pragmatism in a Changing Environment," *South European Society and Politics* 16, no. 3 (2011): 409–421.

in the European Union accession process.[50] According to Avcı, each of these weakened Turkey's cooperation with the European Union.[51]

First, in 2005 the consensus between the Turkish state and the Kurdistan Workers' Party (PKK) ended after a five-year peace period.[52] Second, in 2004, Cyprus became a European Union member. Avcı states that the AKP was displeased with this development guessing the European Union would no longer provide economic help for Turkish land in Cyprus.[53] According to Avcı, the other reason for the AKP's disapproval is the probability that the European Union would decrease political pressure on the Greek Cyprus. [54] Third, Avcı asserts that German Chancellor Angela Merkel and then French President Nicolas Sarkozy's opposition to Turkey's European Union membership disillusioned the Turkish. She attributes poll results showing a decline in public support for European Union membership to this opposition.[55]

Avcı also attributes the government's declined interest in the accession reforms to a fourth reason: since 2007 struggles between the government and secular state actors such as the army and judiciary have increased erupting events like the "e-memorandum", and the Ergenekon trial, which has been ongoing since 2008.[56] On the other hand, Avcı emphasizes that there was still progress in European Union accession reforms after 2005 by citing the examples of the approval of national judicial reform strategy and the adoption of the new Foundations Law. [57] In addition to this, there have been some improvements in minority rights, including legal reforms guaranteeing the right of minorities (not only Ar-

50 Ibid.
51 Ibid.
52 Ibid., 413.
53 Ibid.
54 Ibid.
55 Ibid., 415.
56 For more details, See Avcı "The Justice and Development Party and the EU."
57 Ibid. 417.

menians, Greeks but also the Kurdish) to speak their own languages, publish their own newspapers, found their own television channels and operate private schools that teach in their native language.[58].

The aforementioned improvements can be illusive because the AKP government interprets the laws arbitrarily, ignoring the principle of rule of law and drafting vague in legislation, as seen in the case of Yedikule Surp Pırgıç Armenian Hospital Foundation. Çavdar states that the AKP government acts within parameters constructed by current domestic policy and pressures from the European Union regarding Turkey's democratization.[59] Avcı emphasized that the reforms stemming from this quasi-democratic structure makes the AKP government credible, but the radical characteristics of the reforms do not remedy the mentality of the state establishment.[60] Legal reforms prompted by the European Union, are still subject to judicial legislation and are not applied based on the principle of the rule of law.[61]

By citing another example of the arbitrary interpretation of the law and the violation of property right by the state, the governor of Edirne, Dursun Şahin, used his authority to halt an ongoing restoration of a synagogue in the city, declaring that the synagogue would be transformed into museum as a political response to the Israeli invasion of the Al-Aqsa Mosque, the third holiest site among Muslims. After the reaction and media attention to this decision by the Jewish community, the DGF announced that the right of disposition of the synagogue belongs to the Directorate and the structure would serve as sanctuary.[62] Şahin explained

58 See World Movement for Democracy, "Human Rights and Democracy in Turkey." http://www.wmd.org/resources/whats-being-done/human-rights-democracy-turkey#sthash.Ek9bT2cy.dpuf (last accessed in 15 November 2014).

59 Gamze Çavdar, "Islamist New Thinking in Turkey: A Model for Political Learning?" *Political Science Quarterly* 121, no. 3 (2006): 477-497.

60 Avcı, "The Justice and Development Party and the EU."

61 See pages 88- 89.

62 Radikal, "Edirne valisi İsrail'e kızdı sinagog restorasyonunu kısıtladı," 22 November 2014, http://www.radikal.com.tr/turkiye/edirne_valisi_israile_kizdi_sinanog_restorasyonunu_kisitladi-1236768 (last accessed on 24 November 2014).

that the decision stating the synagogue would be converted to museum was made by the DGF before.[63]

The Foundations Law clarifies the issue of the restoration of the immovable assets in Article 28, which state that "… (for those properties that belong to the General Directorate and mazbut foundations), expropriation, exploitation, repair, restoration and – if needed – reconstruction works of the cultural assets of the foundation and conservation areas whose ownership have changed over shall be pursued and carried out by the General Directorate."[64] In this case, the governor's attempt to associate Jewish citizens of Turkey with Israel indicates mindset that Jewish people are regarded as foreigners in their own country. This pattern of thought weakens the European Union-mandated steps toward democratization and affects the policy-making of the government.

Avcı describes the AKP's attitude towards the European Union, reforms, and their implementation as "passive activism," which means that while the AKP has not abandoned the aim of joining the European Union, the government's motivation for reforms has notably decreased.[65] She claims that "the AKP's basic long-term European Union commitment has not changed fundamentally, but it has been affected and constrained by the dynamics and nature of negotiations with the European Union, and changes in domestic and European politics… The AKP has realized that passing high-stake reforms in an environment like this [increased nationalism and hardening Euroscepticism among the main opposition parties, negative public opinion in Turkey and Europe] could be a threat to its own existence and domestic sources of political power."[66] Back to the question of whether or not the AKP is abandoning the goal of accession

63 CnnTurk, "Edirne Valisi'ne Tepki Yağdı, Sinagog Kararından Döndü," 23 November 2014, http://www.cnnturk.com/haber/turkiye/edirne-valisine-tepki-yagdi-sinagog-kararindan-dondu (last accessed on 24 November .2014).

64 Fore more details, visit the website of General Directorate of Foundations, http://www.vgm.gov.tr/icerikdetay.aspx?Id=168.

65 Avcı, "The Justice and Development Party and the EU," 419.

66 Ibid.

to the European Union? The answer is based on Avcı's argument. The government has not abandoned but decelerated the accession process, and keeps the reform strategies, as Avcı states, as backup plan to protect its credibility.[67]

Two more cases that show other achievements that accompanied new Foundations Law will be discussed, then the government's current policy will be analyzed.

§ 4.2 Involuntary Compliance of Minorities with Current Policies of the AKP via the New Foundations Law: Şan Theatre and Key Plaza Cases

4.2.1 *The Şan Theatre Case*

The Şan Theatre was on the land that belonged to the Surp Agop Hospital Foundation, a community foundation in Elmadağ, Istanbul. In the beginning of the nineteenth century, immediately after the outbreak of plague, the Armenian community bought this land and built a hospital, four houses, and four shops including a garden that remained vacant until the 1950s.[68] It was then rented to Onnik Nazar, a film producer, to make movies and theatrical shows. Premieres of local movies took place in the Şan Theatre, and in the 1970s and 1980s, most Turkish musicians, actors, and actresses took the stage at this theatre.[69]

67 In May 2016, the relation between the European Union and the Turkish state has worsened. President Erdogan rejected the European Union's condition for Turkey to adopt an anti-terrorism regulation in exchange of visa-free travel of Turkish citizens to Europe, see The Telegraph, "EU-Turkey Deal: It Is 'Cruel' of Europe to Close Its Borders to Syrian Refugees, Erdogan Says," 9 May 2016. http://www.telegraph.co.uk/news/2016/05/09/eu-turkey-deal-it-is-cruel-of-europe-to-close-its-borders-to-syr (last accessed in May 2016).

68 Radikal, "Şan'ı Anthony Şenlendiriyor," 7 July 2007, http://www.radikal.com.tr/ek_haber.php?ek=ctsandhaberno=6809. (last accessed on 15 November 2014).

69 Ibid.

The theatre building burned down in a fire that resulted from an electrical contact malfunction in 1987.[70] Until 2002, legal permission was not given to restore the building because of the fact that it belonged to the Surp Agop Hospital Foundation.[71] In August 2002, within the scope of the European Union accession process, a law of fourteen articles was approved by the assembly, including a regulation that promised improvements concerning the return of property seized from community foundations. However, the theatre was not restored and fully demolished in December 2011.[72]

In 2008, the foundation signed an agreement with Şan Gayrimenkul Company, the greater shares of which are owned by a Belgian Company, Vizzion Europe, for the Şan City Project[73], a commercial and shopping complex consisting of a shopping mall, a hotel, housing estates, and business offices in the theatre's place.[74] Other partners are Özbek Turizm, Sanayi ve Ticaret A.Ş. and Point Hotel. Authorities claimed that a Şan Theatre would be built within this building complex not only to perform plays but also welcome other art activities.[75] After the protests in Gezi Park, it was decided not to build the shopping mall.[76] Two more hotels are

70 According to *Radikal*, there were doubts regarding the fire and a suggestion that the police had started it.

71 Radikal, "Şan Küllerinden Doğacak," 28 September 2002. http://www.radikal.com.tr/ek_haber.php?ek=ctsandhaberno=1422. (last accessed on 15 November 2014).

72 Ibid.

73 Habertürk, "Taksim'e 150 milyon Euro'luk Şan City Projesi Geliyor," 29 May 2009. http://emlakkulisi.com/taksime-150-milyon-euroluk-san-city-projesi-geliyor/16475(last accessed on 15 November 2014).

74 Hrant Dink Vakfı, "2012 Declaration," 339.

75 See http://www.megaprojeleristanbul.com/print/san-city.This internet site is a project displaying all 'mega' constructing projects in Istanbul (last accessed on 11 November 2014).

76 Agos, "Şancity Projesiyle Surp Agop'a Yeni Hastane ve Huzurevi," 23 June 2014. http://www.agos.com.tr/haber.php?seo=sancity-projesiyle-surp-agopa-yeni-hastane-ve-huzureviandhaberid=7504. (last accessed on 12 November 2014).

planned in its place.[77] *Agos* states that the hospital belonging to the foundation is going to be expanded, modernized, and equipped with high technology-units.[78] The project was supposed to be completed in 2015.[79] Özbek Turizm transferred its shares and left the project in the summer of 2015.[80] According to Kuyumciyan, there were no official explanations relating to the share transfer and the next steps of the construction.[81]

The project is also known as Osmanlı Mahallesi (Ottoman Street), Selim Dalaman, one of the partners, explains the name Osmanlı Mahallesi thusly: ''Taksim and its surroundings have an architectural texture, an understanding similar to the first years of the Republic. This project is appropriate for the city's identity. Also, the shopping mall will not be constructed as a closed area, an approach embracing the city and the residents.''[82]

The striking point is that Sıraevler, located along the plot of land and formerly used by poor people, is now being revived as Gurme Sokağı (Gourmet Street), where purveyors of world cuisine will be arranged. Dalaman states that they have been contacting with the upscale restaurants, which means that poor people will not enter these places which were open to the needy before.[83] Furthermore, there are rumors claiming

77 Emine Merdim Yılmaz, "Şan Tiyatrosu'nun Başına Gelenler ve Gelecekler," 26 December 2011. http://www.arkitera.com/haber/index/detay/san-tiyatrosunun-basina-gelenler-ve-gelecekler/5675 (last accessed on 11 November 2014).

78 Agos, "Şancity Projesiyle Surp Agop'a Yeni Hastane ve Huzurevi," 23 June 2014. http://www.agos.com.tr/haber.php?seo=sancity-projesiyle-surp-agopa-yeni-hastane-ve-huzureviandhaberid=7504. (last accessed on 12 November 2014).

79 Paros, "Rüya Gibi Bir Proje Şan City," 10 September 2014. http://www.paros.com.tr/?p=4012 (last accessed on 12 November 2014).

80 Agos, "Şan City İnşaatında Yaprak Kıpırdamıyor."

81 Ibid.

82 Jale Özgentürk, "Fakirhaneden Osmanlı Mahallesine, Radikal", 30 October 2011. http://www.radikal.com.tr/yazarlar/jale_ozgenturk/fakirhaneden_osmanli_mahallesine-1067924 (last accessed on 12 November 2014).

83 Habertürk, "Şan City, Elmadağ'daki Surp Agop Hastanesi Vakfı'nın Arazisi Üzerine Kuruluyor!" 11 January 2012. http://emlakkulisi.com/san-city-elmadagdaki-surp-agop-hastanesi-vakfinin-arazisi-uzerine-kuruluyor/4104 (last accessed on 11 November 2014).

that the foundation least the land to the aforementioned firm for a forty-four-year period instead of a build-operate-transfer agreement. On this subject, the foundation asserted that it assigned the right of usufruct to the company, but that the title deed is still registered under its name.[84]

HDF reports that the foundation has had ownership problems for only two out of their fifty-three real-estate holdings. These are the Şişli Armenian Catholic Cemetery – reported in the 1936 declaration and recently returned to the foundation from the municipality – and an apartment that was donated to the foundation in the 1960s and that now belongs to a third body.[85] Furthermore, HDF claims that the Surp Agop Armenian Hospital Foundation is the one with the least problems among Armenian foundations.[86] The dearth of ownership problems and the consistent rulings in favor of the foundation, one can argue, suggest that the foundation complies with current urban policy easily. The foundation spent less time in the courts (compared to the other foundations like FREVL) but is now faced with the vagaries and slowdowns related to construction. During this time, it cannot exploit its land. I claim that the foundation has been a part of the project because of the fact that it would otherwise lose its land, so I use the term "involuntary compliance."

The term "voluntary compliance" pertains to a company's avoidance of practices with which society is not pleased rather than adapting to rules imposed by the state. In other words, the company no longer needs governmental rules because it has already accepted to act in accordance with a probable state rule. The opposite of this term indicates that a company cannot elude the state-imposed regulations and must comply with them to maintain its economic asset.[87] To adapt the term to the situation of minority foundations, I claim that they have had to act in accordance with a "existing" state regulation. Actually it is possible to use the term "policy" instead of regulation because of the ambiguous interpretation of

84 Agos, "Surp Agop Eleştirileri Yanıtladı," 2 March 2012. http://www.agos.com.tr/haber.php?seo=surp-agop-elestirileri-yanitladiandhaberid=857 (last accessed on 11 November 2014).

85 Hrant Dink Vakfı, "2012 Declaration," 339.

86 Ibid.

87 See https://en.wikipedia.org/wiki/Voluntary_compliance (last accessed in May 2016).

the regulations and laws by the state. In order to protect their properties and rights on them; and to avoid everlasting and exhausting legal proceedings, they have involuntarily complied with the government's current policy. Meanwhile, they have caused a conceptual shift for their goods.

Minority foundations have common goods, distinct from market and public goods. Common goods are the product of voluntary activities depending on donation. They have different components from other goods, as Lohmann states, they are rendition, information and meaning.[88] He explains that "consumption (or extinction of value) associated with acts of rendition is never entirely complete because of memories, written accounts, artifacts, and other meanings. Any fund of surviving meanings and of new information that functions as a resource for further voluntary action is here termed an endowment."[89]

Lohmann gives memories and written accounts as examples of meaning. Taking minorities into consideration, I propose that meaning is ethnic identity and the struggle for protection of that identity. Minorities demand their own education and worship and concomitantly wish to establish new schools and sanctuaries. The individuals in a minority maintain the endowments of foundations in order to guarantee the presence of the minority, hence the common goods of minority foundations do not face economic problems like scarcity. The endowments are "never entirely complete" as long as minority and minority foundations maintain their presence. In order to protect their presence within this scope, the foundations like Surp Agop Hospital Foundation involuntarily complied with current developments. However, their properties have evolved into market-like goods, which will be explained in the next sub-section.

4.2.2 *The Key Plaza Case*

The Hrant Dink Foundation states that the land from which the Key Plaza is now rising was not a seized property. It belonged to the Karagözyan Armenian Orphanage Foundation. The land had been a car parking lot

88 Lohmann, "And Lettuce is Nonanimal."

89 Ibid.

since 1978. The Şişli Municipality proposed to authorities to use it as a public service center and a car park in 1985, but this proposal was rejected.[90] However, the municipality opened a public market and a car park on the land in 1994. The foundation had a condition for use of the land: if it receives flats in the building(s) to be constructed, it will make an agreement with the municipality or other partners.[91]

The foundation and the municipality could not come to an agreement. The municipality decided to expropriate the land but could not carry out its plan because of public demonstrations.[92] The foundation applied to the court in 2000, claiming that the manager of the car park refused increases in rent and that the foundation had received a below market rent for years. The case ended with the decision that the renter would leave the land in 2001.[93]

According to HDF, with the adoption of new Foundations Law the foundation agreed with a company for a building complex consisting of a hotel, residences, offices, and car parks after gaining the necessary permits.[94] This agreement included a project named Key Plaza Project, which was comprised of offices and a hotel. After the project was over, the foundation rented its office in the Key Plaza (Marriott) to the United Nations Development Program (UNDP), which constituted an economic benefit to the foundation as regular rental income.[95]

Agos claims that the foundation began to seek the more profitable ways to evaluate its properties. With that purpose in mind, it made an agreement with an international company, Jones Lang La Salle (JLL), that has offices in two-hundred countries around the world and provides brand consultancy, building management, and real estate consultancy

90 Hrant Dink Vakfı, "2012 Declaration," 345.

91 Ibid.

92 Ibid.

93 Ibid.

94 Ibid.

95 Agos, "Key Plaza'da Sevindiren İmza," 22 August 2014. http://www.agos.com.tr/tr/yazi/7814/key-plazada-sevindiren-imza (last accessed in April 2016).

services.[96] Roni Saris, an assistant director of the company, explains: ''If you submit the project to the contractor, he will make all the investment, and since he undertakes the whole cost, you are given a nominal rent and he gains the market rate profits. However, today communities acquire a constant income through participating in various projects. The foundations can invest the surplus remaining after acquiring essential purposes for diverse development projects, thus can obtain optimum income from their properties.''[97] The Turkish director of the company states that "it is more important for them to be a part of the projects of charitable organizations like community foundations. This project is beyond making business. As an international firm they can form a hub among local minority foundations, international institutions, and funds."[98]

From the cases mentioned above, important deductions constitute the starting point for understanding the government's incentive to implement the law. First of all, the government's urbanization policy is a key issue. Lalendais claims that the AKP government hopes to gain more benefit from resources by creating for-profit facilities like residences, shopping malls, and hotels.[99] In order to reach this goal, the government reorganizes "the spatial configuration of cities," especially of metropolises like Istanbul.[100] According to Lalendais the government is aware that the cities with plentiful for-profit facilities attract more investments. On the

96 Agos, "Azınlık Mülklerine Profesyonel Destek," 8 September 2014. http://www.agos.com.tr/azinlik-mulklerine-profesyonel-destek-8044.html (last accessed on 11 November 2014).

97 Ibid.

98 Ibid.

99 Gülçin Erdi Lelandais, "Space and Identity in Resistance against Neoliberal Urban Planning in Turkey," *International Journal of Urban and Regional Research* 38, no.5(2014): 1785–1806.

100 In Istanbul alone, there are approximately 70 projects concerning the reorganization of the city, whose purposes ranges from religion, education, health, transportation, trade, and tourism to recreation, and urban renewal. For more details, visit http://megaprojeleristanbul.com.

local scale, this configuration displaces low-income residents and dissuades low-income visitors.[101]

Kuyucu states that the AKP government prioritized economic regulations after winning the 2002 elections and real estate holdings have become important for it to implement the regulations.[102] He adds that the AKP began to apply proper legislation in order to "institutionalize a fully commodified regime in real estate."[103] Kuyucu lists the government's methods of institutionalization as follows: "privatization of state -owned property and elimination of low-income markets, specifically housing, which has constituted the barriers to a full commodification of land."[104] Low-income neighborhoods most of which are illegally arranged and whose residents have no title deed are the obstacles to the government's goal of commodification.[105] Such neighborhoods with legally ambiguous property ownership are the priority for urban renewal projects.[106] Minority foundations are also targets, because they also have property ownership problems.

Kuyucu addresses some developments regarding urban renewal projects: the AKP passed a municipal law that provides municipalities with the authority to conduct renewal projects in low-income areas, then a law (Law 5366) that gives local governments the authority to implement the projects in natural and historical areas.[107] Kuyucu claims that the latter law enables municipalities to ignore bureaucratic rules prohibiting the complete commodification of such areas.[108] Furthermore, Kuyucu draws

101 Lelandais, "Space and Identity in Resistance…"

102 Tuna Kuyucu "Law, Property and Ambiguity: The Uses and Abuses of Legal Ambiguity in Remaking Istanbul's Informal Settlements," *International Journal of Urban and Regional Research* 38, no.2(2014):609–27.

103 Ibid.

104 Ibid.

105 Ibid.

106 Tuna Kuyucu and Özlem Ünsal "Urban Transformation as State-Led Property Transfer: An Analysis of Two Cases of Urban Renewal in Istanbul," *Urban Studies* 47, no.7(2010): 1479-1499.

107 Kuyucu, "Law, Property and Ambiguity," 616.

108 Ibid.

attention to the fact that the new municipal law does not include criteria for the target areas, only the minimum size of the land to be renewed. Finally, he concludes that the absence of such criteria in the law leads to arbitrary governmental decisions, which means that any zone in the city may be demolished and reconstructed as a part of urban renewal project.[109] In the case of Yedikule Surp Pırgıç Armenian Hospital Foundation, the municipality utilized this legal ambiguity, and indeterminate, long-running court process resulted in the 2014 decision that 20 percent of the total land belonging to the foundation would be rezoned from commercial area to parking lot. This constitutes an example for Kuyucu's argument about arbitrary filling of vacancies in the legislations by the government bodies.

Kuyucu and Ünsal emphasize that urban renewal projects cause socioeconomic inequality; investors and municipalities achieve high profits from them while low-income groups are displaced and dispossessed.[110] They remark that "socioeconomically sensitive communities" that are located in the project area, like minority foundations are dispossessed by state actors, local authorities, and for-profit organizations that rearrange their property according to legal and economic reforms.[111] It is expected from minority foundations to rearrange their property to the current policy, for which I used the term involuntary compliance.

In the case of Key Plaza and Şan Theatre, the minority foundations are not excluded from the land capital. The foundations' common goods are integrated with market capital in the form of plazas, projects, malls, luxury hotels, and new transport networks. Based on Lohmann's common goods theory, minority foundations have been exploiting their goods jointly and independently in the space outside the state, the market, and the household (or they have been struggling for their property in legal ways.) until infrastructural developments appeared.[112] Common goods are shaped by the economic purpose of joint action – such as helping the

109 Ibid.,615.

110 Kuyucu and Unsal, "Urban Transformation…," 1483.

111 Ibid.

112 See Introduction.

needy, and religious worship – have separate characteristics from market commodities. Common goods follow a bidirectional transfer of values: a flow of economic values, cash, and commodities to noneconomic values – religious and philanthropic activities – and vice versa.

In the example of Key Plaza, the space became reallocated to high income people, particularly corporate occupants of the Plaza, by removing the public market previously located there, as well as a minibus station that provided transportation to low-income social groups in this region. This resulted in the alienation of such people from that space – not to mention the neighborhood's inhabitants. The foundation's services – like free religious activities disappeared and were transformed to high-income goods absorbed into the flow of economic values to economic values. The foundation can use their income for charitable, philanthropic, or cultural activities somewhere else outside the relevant space, but activities which are not implemented within that space do not constitute a bidirectional transfer.

Another deduction from the cases of the Şan Theatre and the Key Plaza,[113] is that because the areas of such considerable construction projects belong to minority foundations, the government would not tend to inhibit the projects due to the risk of legal proceedings related to the seized property. Consequently, this incentivized the government to adopt the new Foundations Law and exploit the related regulations.

Seeking ways to obtain fast, high profits from resources is the point of neoliberal policies in the first place. In terms of urbanization, Lelandais states that "neoliberal policies are shaped within dominancy of competi-

113 Besides those, other cases are enlightening for this issue: The Aya Dmitri Church Foundation's plan to construct a residence and shopping mall on their approximately twenty thousand square meter property in Şişli and the Beyoğlu Ohannes Gümüşyan Armenian Church Foundation's intent to transform its property in Asmalımescit – one of the most important historic, touristic neighborhoods of Istanbul, which has increased in value over the last few years – into a hotel. See Hürriyet, "Yeni Gayrimenkul Yatırımcıları: Azınlık Vakıfları," 20 August 2010. http://www.hurriyet.com.tr/ekonomi/15597248.asp (last accessed in 25 November 2014). The Gümüşyan Hotel now serves as boutique hotel.

tion as a way of managing urban spaces, which conflicts with the redistribution of income and wealth, and leading to that many services that were fulfilled previously by the state are transferred to non-state and quasi-state bodies such as corporations and non-governmental organizations."[114] In the case of the Şan City Project, those quasi and non-state bodies are Şan Gayrimenkul A.Ş., Surp Agop Hospital Foundation, and other corporations, Özbek Turizm,[115] Sanayi ve Ticaret A.Ş., Point Hotel, and Vizzion Europe.

Neoliberal policies, specifically urban policies, create opportunities for new, non- and quasi-state actors in terms of developing local and global networks of finance. The second deduction from these two cases becomes apparent: on the one hand, minority foundations have become a part of neoliberal urban policies and thus a fresh actor, on the other hand, their understanding of foundation in terms of being charitable without a profit-making purpose has undergone a change. They have added a new source of income to their budgets besides endowments. Chief Assistant Sevan of the Architects and Engineers' Solidarity Association for Reviving and Researching Charities (HAYCAR) – which offers voluntary consulting to minority foundations regarding their immovable assets –, states that "the tendency of minorities towards the assessments of their properties has increased after the adoption of the Foundations Law of 2008. Due to the fact that the financial value of land in the city center have dramatically increased, minority foundations have chosen to participate in high-profit projects such as shopping malls and, for-profit housing instead of holding onto inactive and obsolescent assets."[116]

We claim that minority foundations did not choose this participation, but were to do so. This indicates the involuntary compliance of minorities into recent reforms in order to maintain their presence as mentioned in the previous subsection. Involuntary compliance does not have a negative meaning, since it enables minorities to develop a new form of citizenship. This citizenship depends on the institutional representation of

114 Lelandais, "Space and Identity in Resistance...," 1786.

115 In the summer of 2015, the firm abandoned the project. See the previous subsection.

116 Ibid.

minorities through their foundations, through the struggle for the right to acquire and dispose of property, and through participating in current financial networks that develop relations with local or global corporations.

Lelandais argues that citizenship is a concept shaped by cultural and economic activities and civic rights and duties, indicating both a sociological and legal aspect.[117] She emphasizes that "citizenship does not signify purely legislations and rights which determine the relationship of the individual to the state, but also the practices by which individuals or groups formulate and assert new rights, or fight to extend or maintain existing ones."[118] In this sense, the Foundations Law is related to the field of citizenship in the way that it regulates the rights of groups – namely minorities – who try to exist through an institution. It validates the practices by which minorities and minority foundations reformulate their relationships to the state and non-state bodies.

The identity transformation of minorities is related to the transformation of foundations since foundations embody minorities' existence as community, makes them visible in public space, and generates them as an economic structure. Foundations or vakıfs are charitable, non-profit institutions whose only concerns are public utilities or restricted services to a certain group, such as minorities and their communities. That Karagözyan Armenian Orphanage Foundation has made an agreement with an international company, Jones Lang La Salle (JLL), with the purpose of generating profits; and that poor people are dispossessed from urban spaces where they formerly benefited from the food services of Surp Agop Armenian Hospital to make way for the construction of Şan Plaza, which will in turn be rented to high-income occupants – these indicate the reformulation of the concept of foundation by minorities in compliance with the current policy of the state. It implies a change in the relationships of minorities to the state, and thus a reformulation of the concept of citizenship by minorities.

117 Gülçin Erdi Lelandais, "Citizenship, minorities and the struggle for a right to the city in Istanbul," Citizenship Studies 17, no.6-7 (2013): 817-839.

118 Ibid.

5

Conclusion

Foundations are political formations given legal existence by the state and the right to achieve property by law. They are involved in political action associated with economy and with citizenship. Minority foundations and their ownership of property are important to understand the role of foundations as rights-demanding actors. To reacquire their properties and gain equal rights with other (Muslim and Turkish) citizens, minorities and minority foundations took a proactive role in court cases in the 1970s. They gained international visibility through ECHR court cases in the beginning of 2000s.

The new Foundations Law adopted in 2008 was initiated by three concrete dynamics: the struggles of minorities who demanded the disambiguation of the legal status of minority foundations in the domestic legal framework, ECHR cases that resulted in the rulings against the state that had violated the enjoyment of possessions, and the European Union accession process that promoted the state to implement necessary regulations. To understand these dynamics, this thesis presents the historical background of the legal status of minority foundations and supports the conclusion of other publications that minority foundations are legally entangled considering the 1974 court decision. They have been prohibited from acquiring, exploiting and disposing of real estate despite legal status guaranteed by the Lausanne Treaty. According to the Court of Cassation, the 1936 declarations were regarded as the charters that determined the

status of foundations. Acquiring properties not listed in these declarations was disallowed since acquiring properties was perceived as a threat to national security. The decision further legitimated the confiscation of the properties of minority foundations and formed the essence of the state's defense in the ECHR. However, most cases taken to ECHR resulted in rulings against the state on the grounds that it had violated the right to enjoy possessions based on Article 1 of the Protocol.

The ECHR decisions, progress in Turkey's candidacy for the European Union and the European Union's sensitivity to minority issues occurred concurrently. Minority rights and the problems of minority foundations have been one of the leading subjects in accession progress reports. According to these reports, the Foundations Law and subsequent regulations have contributed to slight progress on the issue of seized properties.

This thesis explains the European Union's interest in the subject of minorities and minority foundations by concentrating on the discourse of progress reports, the arguments of which are shaped around human and minority rights, democracy, and rule of law. As an alternative to existing arguments, I establish a connection between the adoption of the new Foundations Law and the institutionalization of foundations as a unique system (observable in all European Union countries). To illustrate this point, I examine the European Foundation Statue as a product of efforts by the European Foundation Centre establishes an international, legal basis for foundations.

I draw a parallel between amendments made by the new law – such as participation of foundations in international activities, establishment of branches and representatives abroad, and establishment of international cooperation – and the Western attempt to enact international legislation for foundations. An international law may facilitate foundations attendance at international activities without interference. This thesis affirms that there is a Western influence on legal thought on issues of both human rights and institutionalization of foundations, however the European legal order has not penetrated the Turkish legal system in practice. Observing the ways of law is applied hints at this. The government interprets the Foundations Law arbitrarily and ignores the principle of rule of

law, leading to a vague in application of the legislation. I focus on neoliberal policies – specifically urban ones – that effectively guide authorities on the subject of the interpretation and enforcement of the law.[1]

On the subject of the economic transformation of foundations, I draw on Lohmann's common goods theory. According to the theory, common goods are the products of "self-defining collectiveness of voluntary actions,"[2] which exist independent of the state, market, and household. They are shaped by the economic purpose of joint action, such as helping the needy and religious worship. Common goods have distinct characteristics from public goods and market commodities in that common goods entail a bidirectional transfer of values: the flow of economic values, cash, and commodities to noneconomic values, such as religious and philanthropic activities, and vice versa.[3]

In this thesis, foundations – limited in scope to minority foundations – are regarded as formations in which there is a flow between economic and noneconomic values. In this respect, the real estate and property of minority foundations are common goods. Through two cases, the Şan Theatre and Key Plaza, I indicate that minority foundations have gained the opportunity to utilize their resources in profitable ways on account of both amendments to the Foundations Law and the enthusiasm of the state for urban renewal.

Because their lands have been targets of urban transformation projects, minority foundations became a fresh actor among other non-state actors taking part in the decision-making process regarding urban policies. As observed in the cases of the Şan Theatre and Key Plaza, minority foundations have interrupted the bidirectional transfer of values since they have utilized their property in ways that charitable, voluntary, collective, and philanthropic activities are not performed. They rent them to a firm or a company without the economic purpose of joint action.

The property of minority foundations is no longer in an independent space outside the market because the interpretation and enforcement of

1 See The Yedikule Surp Pırgıç Armenian Hospital Foundation Case, 120.

2 Lohmann, "And Lettuce is Nonanimal."

3 See Introduction.

the Foundations Law and ensuing legislation has become intertwined with current urban transformation policies. Arguably, minority foundations have started to lose their non-profit by seeking profit through collaboration and cooperation with commercial bodies. However, this thesis is restricted to foundations in Istanbul. Studies that include Anatolian foundations may have different findings.

The issue of the seized property of minority foundations is analyzed from an interconnected sociological, legal, economic, and political perspective. One of the deficiencies of the thesis is the lack of fieldwork. I have worked with secondary resources, written documentation of the court cases, and selected articles from newspapers and relevant websites. This research is important because it does not simply juxtapose raw materials as other studies on the problems of minority foundations did, but it provides an evaluation of the issue from legal, economic, and political perspectives.

Bibliography

Açık Radyo, "Azınlık Hakları ve Kültürel Haklar Raporu," 17 November 2005. Accessed on 29 April 2016. http://acikradyo.com.tr/arsiv-icerigi/azinlik-haklari-ve-kulturel-haklar-raporu.

Agos. "Bomonti Mihitaryan Okulunun 27 Yıllık Mağduriyeti Son Buldu." 2 November 2012. Accessed on 11 November 2014. http://www.agos.com.tr/haber.php?seo=bomonti-mihitaryan-okulunun-27-yillik-magduriyeti-son-buldu&haberid=3197.

————. "Bomonti Mihitaryan'da Adalet Yerini Buldu." 09 November 2012. Accessed on 11 November 2014. http://www.agos.com.tr/haber.php?seo=bomonti-mihitaryanda-adalet-yerini-buldu&haberid=3303.

————. "Surp Agop Eleştirileri Yanıtladı." 2 March 2012. Accessed on 11 November 2014. http://www.agos.com.tr/haber.php?seo=surp-agop-elestirileri-yanitladi&haberid=857.

————. "Şancity Projesiyle Surp Agop'a Yeni Hastane ve Huzurevi." 23 June 2014. Accessed on 12 November 2014. http://www.agos.com.tr/haber.php?seo=sancity-projesiyle-surp-agopa-yeni-hastane-ve-huzurevi&haberid=7504.

————. "Azınlık Mülklerine Profesyonel Destek."8 September 2014. Accessed on 11 November 2014. http://www.agos.com.tr/azinlik-mulklerine-profesyonel-destek-8044.html.

————. "Bomonti Mıhitaryan Hâlâ Çözüm Bekliyor." 14 May 2015. Accessed in April 2016. http://www.agos.com.tr/tr/yazi/11584/bomonti-mihitaryan-hl-cozum-bekliyor.

————. "Şan City İnşaatında Yaprak Kıpırdamıyor," 29 December 2015. Accessed in April 2016. http://www.agos.com.tr/tr/yazi/13854/sancity-insaatinda-yaprak-kipirdamiyor.

————. "Key Plaza'da Sevindiren İmza," 22 August 2014. Accessed in April 2016. http://www.agos.com.tr/tr/yazi/7814/key-plazada-sevindiren-imza.

————. "Surp Pırgiç Arazisini Geri Aldı Ama Kullanamıyor," 24 December 2015. Accessed in May 2016. http://www.agos.com.tr/tr/yazi/13799/surp-pirgic-arazisini-geri-aldi-ama-kullanamiyor.

Akan, Aysun. "A Critical Analysis of the Turkish Press Discourse against Non-Muslims: A Case Analysis of the Newspaper Coverage of the 1942 Wealth Tax." *Middle Eastern Studies* 47, no.4 (2011): 605-621.

Akgönül, Samim. *Azınlık: Türk Bağlamında Azınlık Kavramına Çapraz Bakışlar*. Istanbul: Bgst, 2011.

————. *Türkiye Rumları: Ulus-Devlet Çağından Küreselleşme Çağına Bir Azınlığın Yok Oluş Süreci*. Istanbul: İletişim Yayınevi, 2007.

AKP. *AKP Election Manifesto*. Ankara, 2002.

Aktar, Ayhan. *Varlık Vergisi ve Türkleştirme Politikaları*. Istanbul: İletişim Yayınları, 2000.

Akyıldız, Ali. "Vakıfların Kamu Hizmetlerine Yönlendirilmesi ve Vakıflar Genel Müdürlüğü'nün Rolü." In *Vakıf Medeniyeti Sempozyumu Kitabı.* Ankara: Vakıflar Genel Müdürlüğü Yayınları, 2003.

Alp, Sezin, Başkan, Argun and Kibaroğlu, Ayşegül. "Neoliberal Transitions in Hydropower and Irrigation Water Management in Turkey." in *Water Policy Entrepreneurs: A Research Companion to Water Transition Around the Globe*. Edited by Dave Huitema and Sande Meijerink. Cheltenham: Edward Elgar Publishing, 2009.

Arendt, Hannah. *The Human Condition*. Chicago: University of Chicago Press, 1958.

Avcı, Gamze. "The Justice and Development Party and the EU: Political Pragmatism in a Changing Environment." *South European Society and Politics* 16, no. 3 (2011): 409–421.

Basyon, M. El. "Revitalization of the Role of Waqf in the Field of Architecture: Activation of Waqf to Improve the Function of Public Buildings." In *Structural Studies, Repairs and Maintenance of Heritage Architecture XII*. Edited by. C.A. Brebbia & L. Binda. UK: WIT Press, 2011.

Bayır, Derya. *Minorities and Nationalism in Turkish Law*. Farnham, Surrey, England; Burlington, VT: Ashgate, c2013.

Calhoun, Craig. "Introduction: Habermas and the Public Sphere." In *Habermas and the Public Sphere*. Edited by Craig Calhoun. Cambridge, MA: MIT Press, 1992.

Clemens, Elisabeth S. "The Constitution of Citizens: Political Theories of Nonprofit Organizations." in *The Non-Profit Sector: A Research Handbook*. Edited by Walter W. Powell and Richard Steinberg. New Haven & London: Yale University Press, 2006.

CnnTurk. "Edirne Valisi'ne Tepki Yağdı, Sinagog Kararından Döndü." 23 November 2014. Accessed on 24 November 2014. http://www.cnnturk.com/haber/turkiye/edirne-valisine-tepki-yagdi-sinagog-kararindan-dondu.

Cotterrell, Roger. *Law's Community: Legal Theory in Sociological Perspective*. New York: Oxford University Press, 1996.

Council of Europe. "The European Convention on Human Rights.".4 November 1950. Accessed on 8 February 2015. http://www.hri.org/docs/ECHR50.html.

———. "The Framework Convention for the Protection of National Minorities."10 November 1994. Accessed in February 2014. http://www.ohchr.org/Documents/Publications/GuideMinorities8en.pdf.

Cumhuriyet. "16:9'un Çok Özel Sakinleri." 23 August 2014. Accessed on 14 November 2014. http://www.cumhuriyet.com.tr/haber/turkiye/109345/16_9_un_cok_ozel_sakinleri.html.

Çağatay, Mustafa. "Geçmişten Günümüze Azınlık Vakıflarının Mal Edinmeleri Sorunu." *Türkiye Barolar Birliği Dergisi* 96 (2011): 91-148.

Çavuşoğlu, Naz. "Azınlıkların Korunmasına İlişkin Uluslararası Normlar," in *Türkiye'de Çoğunluk ve Azınlık Politikaları*. Istanbul: TESEV, 2005.

Çavdar, Gamze. "Islamist New Thinking in Turkey: A Model for Political Learning?" *Political Science Quarterly* 121, no. 3 (2006): 477-497.

Çizakça, Murat. *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present*. Istanbul: Boğaziçi University Press, 2000.

————. *Waqfs in the Ottoman Empire and the Turkish Republic*. Accessed in May 2016. https://www.academia.edu/16156826/Waqfs_in_the_Ottoman_Empire_and_the_Turkish_Republic.

Demir, Hülya and Akar, Rıfat. *İstanbul'un Son Sürgünleri*. İstanbul: İletişim Yayınları, 1994.

EFC. "It's Time for a European Foundation Statute." 2014. Accessed on 10 January 2015. http://www.efc.be/programmes_services/resources/Documents/EFS_brochure_2012_FINAL.pdf.

EFC, "Will the EU and its Member States support foundations?" November 2014. Accessed in April 2016. http://www.efc.be/uncategorized/will-the-eu-and-its-member-states-support-foundations.

Ekşi, Nuray. *Yargıtay, Danıştay ve AİHM Kararları Işığında Cemaat Vakıflarının Mülkiyet Sorunları*. Istanbul: Beta Yayıncılık, 2011.

Em, Ali. *Türk Hukuk Sisteminde Vakıflar*. Ankara: Turhan Kitabevi, 2006.

European Commission. "Proposal for a Council Regulation on the Statute for a European Foundation." 8 February 2012. Accessed on 10 January 2015.http://eur-lex.europa.eu/legal-content/EN/NOT/?uri=CELEX:52012PC0035.

Findley, Carter V. *Modern Türkiye Tarihi: İslam, Milliyetçilik ve Modernlik 1789-2007*. Istanbul: Timaş Yayınları, 2011.

Gelir Dairesi Başkanlığı. "1 Seri No'lu Vakıflara Vergi Muafiyeti Tanınması Hakkında Genel Tebliğ" Accessed in April 2016. http://www.gib.gov.tr/node/88885.

Gelir Dairesi Başkanlığı, "Bakanlar Kurulunca Vergi Muafiyeti Tanınan Vakıfların Listesi." 2015. Accessed in April 2016. http://www.gib.gov.tr/bakanlar-kurulunca-vergi-muafiyeti-taninan-vakiflarin-listesi.

General Directorate of Foundations. "Foundations Law No: 5737." Accessed in November 2013. http://www.vgm.gov.tr/icerik-detay.aspx?Id=168.

————, "Vakıfların Denetimi." Accessed in December 2013. http://www.vgm.gov.tr/sayfa.aspx?Id=43.

Göçek, Fatma Müge. "Defining Parameters of a Post-Nationalist Turkish Historiography through the Case of the Anatolian Armenians." in *Turkey beyond Nationalism: Towards Post-Nationalist Identities*. Edited by Hans-Lukas Kieser. London; New York: I.B. Tauris, 2006.

Güven, Dilek. "6-7 Eylül Olayları (1)." *Radikal*. 06 September 2005. Accessed on 10 January 2015. http://www.radikal.com.tr/haber.php?haberno=163380.

Habertürk. "Taksim'e 150 milyon Euro'luk Şan City Projesi Geliyor." 29 May 2009. Accessed on 15 November 2015. http://emlakkulisi.com/taksime-150-milyon-euroluk-san-city-projesi-geliyor/16475.

————, "Şan City, Elmadağ'daki Surp Agop Hastanesi Vakfı'nın Arazisi Üzerine Kuruluyor!" 11 January 2012. Accessed on 11 November 2014. http://emlakkulisi.com/san-city-elmadagdaki-surp-agop-hastanesi-vakfinin-arazisi-uzerine-kuruluyor/4104.

Hansmann, Henry. “Economic Theories of Non-profit Organizations.” in *The Non-Profit Sector: A Research Book*. Edited by Walter W. Powell and Richard Steinberg. New Haven: Yale University Press, 1987.

Hatemi, Kezban and Kurban, Dilek. *Bir 'Yabancı'laştırma Hikayesi: Türkiye'de Gayrimüslim Cemaatlerin Vakıf ve Taşınmaz Mülkiyeti Sorunu*. Istanbul: TESEV Yayınları, 2009.

Hrant Dink Vakfı. *2012 Beyannamesi: The Seized Properties of Armenian Foundation in Istanbul*. Istanbul: Uluslararası Hrant Dink Vakfı Yayınları, 2012.

HUDOC European Courts of Human Rights. “The Case of Fener Rum Erkek Lisesi Vakfı”. 09 January 2007. Accessed on 08 February 2015. http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-78866.

Hürriyet. “Belediye Ermeni Okulunu Kurtardı.” 5 August 1999. Accessed on 11 November 2014. Http://hurarsiv.hurriyet.com.tr/goster/printnews.aspx?DocID=-94639.

Ife, Jim. *Human Rightsfrom Below: Achieving Rights through Community Development*. UK: Cambridge University Press, 2009.

Işık, Damla. “Vakıf as Intent and Practice: Charity and Pure Relief in Turkey.” *International Journal ofMiddle East Stud.*46, no. 2 (2014): 307-327.

Jenkins, Gareth. “Non-Muslim Minorities in Turkey: Progress and Challenges on the Road to EU Accession.” *Turkish Policy Quaterly,* 2004.

Krashinsky, Michael. “Stakeholder Theories of the Nonprofit Sector: One Cut at the Economic Literature. “In *The Study of the Nonprofit Enterprise: Theories and Approaches*. Edited by Helmut K. Anheier and Avner Ben-Her. New York: Springer Science+Business Media, 2003.

Kurban, Dilek and Tsitselikis, Konstantinos. *Bir Mütekabiliyet Hikâyesi: Yunanistan ve Türkiye’de Azınlık Vakıfları.* Istanbul: TESEV Yayınları, 2010.

Kurban, Dilek. "AB'nin Anayasal Düzeninde Azınlık Hakları: Açılımlar, Fırsatlar, Olasılıklar." in *Türkiye'de Çoğunluk ve Azınlık Politikaları*. Istanbul: TESEV Yayınları, 2005.

Kuyucu, Tuna and Özlem Ünsal. "Urban Transformation as State-Led Property Transfer: An Analysis of Two Cases of Urban Renewal in IstanbuL," *Urban Studies* 47 (2010), no.7: 1479-1499.

Kuyucu Tuna. "Law, Property and Ambiguity: The Uses and Abuses of Legal Ambiguity in Remaking Istanbul's Informal Settlements," *International Journal of Urban and Regional Research* 38, no.2(2014): 609–27.

Lelandais, Gülçin Erdi. "Citizenship, minorities and the struggle for a right to the city in Istanbul." *Citizenship Studies* 17, no.6-7(2013), pp. 817-839.

————. "Space and Identity in Resistance against Neoliberal Urban Planning in Turkey." *International Journal of Urban and Regional Research* 38, no.5(2014): 1785–1806.

Lohmann, Richard. "And Lettuce is Nonanimal: Toward an Economics of Voluntary Action." in *The Nature of the Nonprofit Sector*, Edited by J. Steven Ott and Lisa A. Dicke. USA: Westview Press, 2012.

Mahçupyan, Ethem. *Türkiye'de Gayrimüslim Cemaatlerin Sorunları ve Vatandaş Olamama Durumu Üzerine*. Istanbul: TESEV Yayınları, 2004.

Malloy, Robin Paul and Smith, James Charles. "Private Property, Community Development, and Eminent Domain" in *Private Property, Community Development, and Eminent Domain*. Edited by Robin Paul Malloy. UK: Ashagate Publishing Limited, 2008.

Megaprojeleristanbul.com. "İstanbul'un Mega Projeleri." Accessed on 11 November 2014. http://www.megaprojeleristanbul.com/print/sancity.

Milliyet. "Felaket Değil Bekliyorduk." 11 January 2007. Accessed in 14 February 2014. http://www.milliyet.com.tr/2007/01/11/siyaset/asiy.html.

Minorities Right Group International. Accessed on 29 May 2014. http://www.minorityrights.org/?lid=4387&tmpl=printpage.

Novak, William J. "The American Law of Association: The Legal-Political Construction of Civil Society", *Studies in American Political Development* 15 (2001):168-188.

Oakeshott, Michael. *Morality and Politics in Modern Europe: The Harvard Lectures*. New Haven: Yale University Press, 1993.

Oran, Baskın. "Azınlık Vakıfları Yönetmeliği'nin Neresi Doğru." in *Türkiyeli Gayrimüslimler Üzerine Yazılar*. Istanbul: İletişim Yayınları, 2011.

————. "Laik Ülkemizde Etno-Dinsel Temizlikler." in *Türkiyeli Gayrimüslimler Üzerine Yazılar*. Edited by Baskın Oran. Istanbul: İletişim Yayınları, 2011.

————. "Lausanne Barış Antlaşması." in *Türk Dış Politikası: Kurtuluş Savaşından Bugüne Olgular, Belgeler, Yorumlar*. Edited by Baskın Oran. Istanbul: İletişim Yayınları, 2006.

————. "Rum Mallarına Gizli İpotek." in *Türkiyeli Gayrimüslimler Üzerine Yazılar*. Edited by Baskın Oran. Istanbul: İletişim Yayınları, 2011.

————. *Türkiye'de Azınlıklar: Kavramlar, Lozan, İç mevzuat, İçtihat, Uygulama.* İstanbul: İletişim Yayınları, 2005.

Ott, J Steven and Dicke, Lisa A.(ed.), *The Nature of the Non-Profit Sector*. Colorado, USA: Westview Press, 2012.

Ozbudun, Ergun. "Chapter Two: Constitutional Law." In *Introduction to Turkish Law*. Edited by Tuğrul Ansay and Don Wallace. The Netherlands: Kluwer Law International, 2011.

Özgentürk, Jale. "Fakirhaneden Osmanlı Mahallesine." *Radikal*. 30 October 2011. Accessed on 12 November 2014. http://www.radikal.com.tr/yazarlar/jale_ozgenturk/fakirhaneden_osmanli_mahallesine-1067924.

Öztürk, Nazif. *Azınlık Vakıfları*. Ankara: Altın Küre Yayınları, 2003.

Paros. "Rüya Gibi Bir Proje Şan City." 10 September 2014. Accessed on 12 November 2014. http://www.paros.com.tr/?p=4012.

Pori, Oded. "Waqf and Ottoman Welfare Policy. The Poor Kitchen of Hasseki Sultan in Eighteenth-Century Jerusalem", *Journal of the Economic and Social History of the Orient* 35, no. 2 (1992): 167-186.

Powell, Walter W. and Steinberg, Richard. "Introduction." in *The Non-Profit Sector: A Research Handbook*. Edited by Walter W. Powell and Richard Steinberg. New Haven & London: Yale University Press, 2006.

Radikal. "Edirne valisi İsrail'e kızdı sinagog restorasyonunu kısıtladı." 22 November 2014. Accessed on 24 November 2014. http://www.radikal.com.tr/turkiye/edirne_valisi_israile_kizdi_sinanog_restorasyonunu_kisitladi-1236768.

————. "Şan Küllerinden Doğacak." 28 September 2002. Accessed on 15 November 2014. http://www.radikal.com.tr/ek_haber.php?ek=cts&haberno=1422.

————. "Şan'ı Anthony Şenlendiriyor." 7 July 2007. Accessed on 15 November 2014. http://www.radikal.com.tr/ek_haber.php?ek=cts&haberno=6809.

————. "Validebağ İçin Yürüdüler". 2 November 2014. Accessed on 15 November 2014. http://www.radikal.com.tr/turkiye/validebag_icin_yuruduler-1222880.

Reyna, Yuda and Zonana, Ester Moreno. *Son Yasal Düzenlemelere Göre Cemaat Vakıfları.* Istanbul: Gözlem Gazetecilik Basın ve Yayın, 2003.

Sesli, Faik Ahmet. "Foundation Administrations and Foundation Landownership in Turkey from Past to Present." *African Journal of Business Management* 4, no.9 (2010): 1769-1777.

Soyarık-Şentürk, Nalan. “The AKP’s Citizenisation Project: Where to?” In *Silent Violence: Neoliberalism, Islamist Politics and the AKP Years in Turkey*. Edited by Simten Coşar and Gamze Yücesan-Özdemir. Ottowa: Red Quill Books Ltd., 2012.

Sözcü. “Ermeni Vakfı’na En Büyük İade.” 8 February 2014. Accessed on 11 November 2014. http://sozcu.com.tr/2014/gunun-icinden/ermeni-vakfina-en-buyuk-iade-454047.

Steinberg, Richard. “Economic Theories of Nonprofit Organizations.” In *The Non-Profit Sector: A Research Handbook*. Edited by Walter W. Powell and Richard Steinberg. New Haven and London: Yale University Press, 2006.

T24, “Danıştay, Validebağ Korusu'nu Yapılaşmaya Açan İBB Kararını İptal Etti.” 25 Febru-ary 2015. Accessed in May 2016. http://t24.com.tr/haber/danistay-validebag-korusunu-yapilasmaya-acan-ibb-kararini-iptal-etti,287985.

Tocqueville, Alexis de. *Democracy in America*. New York: Anchor Books, 1969.

Tusev.org.tr. “Eski Vakıflar Mevzuatı ile Yeni Vakıflar Kanununun Yeni Vakıflara İlişkin Hükümlerinin Karşılaştırması.” 27 February 2008.

Türkiye Cumhuriyeti Avrupa Birliği Bakanlığı, “Türkiye Düzenli İlerleme Raporu.” Last updated in 17 October 2014. Accessed on 8 February 2015. http://www.ab.gov.tr/index.php?p=46224&l=1.

Organization for Security and Co-operation in Europe, “What Is the Publishing Body for This? *Charter of Paris for A New Europe*. Heads of State or Government of the Participating States of the Conference on Security and Co-operation in Europe (CSCE), Paris, 19- 21 November 1990. Accessed in January 2014. http://www.osce.org/mc/39516.

World Movement for Democracy. “Human Rights and Democracy in Turkey.” Accessed on 15 November 2014. http://www.wmd.org/resources/whats-being-done/human-rights-democracy-turkey#sthash.Ek9bT2cy.dpuf.

Yayla, Hilmi Erdoğan. “Operating Regimes of the Government: Accounting and Accountability Changes in the Sultan Süleyman Waqf of the Ottoman Empire (The 1826 Experience). “A*ccounting History* 16, no. 1(2011): 5–34.

Yıldıran, Mehmet. “AB Türkiye İlerleme Raporlarında ‘Mazbut’ Kavramı Sorunu.” *Vakıflar Dergisi* 41 (2014):115-125.

Yılmaz, Emine Merdim. “Şan Tiyatrosu’nun Başına Gelenler ve Gelecekler.” 26 December 2011. Accessed on 11 November 2014. http://www.arkitera.com/haber/index/detay/san-tiyatrosunun-basina-gelenler-ve-gelecekler/5675.