

## **Table of Contents**

- ***Minority foundations still cannot hold elections***
  - ***Registration of a Seventh-Day Adventist organization rejected***
- 

## **Minority foundations still cannot hold elections**

***Since 2013 Turkey's government has blocked community foundations relating to the non-Muslim communities protected under the Lausanne Treaty from holding board member elections. This causes foundations many problems, including that "new ideas or new dynamism are not allowed". Some fear that progress achieved since 2008 is being reversed.***

By Mine Yildirim

Forum 18 (05.03.2019) - <https://bit.ly/2Cek5N0> - Turkey's government has obstructed non-Muslim community foundations from exercising their right to elect new board members since 2013, by failing to draft the election regulation it is legally obliged to draft. The government insists community foundations elections cannot take place without a government-drafted election regulation. Community foundations have a difficult choice to make: continue to ask the government for regulations and not take legal action against the government, which has not worked so far; take legal action or to defy the government by going ahead with elections to renew their boards, and so risk possible harmful consequences.

The state's obstruction of elections causes many problems. Deaths, ill health and other reasons have reduced the numbers of board members, imposing extra work on those that remain. Without new elections vacant places cannot be filled. Indeed, Moris Levi, the deputy leader of the Jewish community who also represents all the community foundations to the government's Vakıflar Genel Müdürlüğü (VGM - Directorate-General of Foundations), told Forum 18 that for some foundations "very soon it will be impossible for these institutions to carry on with so few board members .. The damage done by not being able to hold elections is enormous." As new members cannot be recruited, the lawyer Sebu Aslangil notes, "new ideas or new dynamism are not allowed, and these are very important for community life" (see below).

These community foundations are unique institutions relating to the non-Muslim communities protected under the 1923 Lausanne Treaty, such as Armenians, Greeks, Syriac Orthodox, Jews and a handful of others (see below).

Despite their limitations, the community foundations are vital for community life as they are the only legal institutions which may support non-Muslim minority institutions and communities (see below).

Progress achieved since the 2008 Foundations Law is being reversed as a result of the obstruction of elections, a person associated with a community foundation told Forum 18 in February 2019 (see below). Like others Forum 18 has spoken to, they wish to remain anonymous.

***What are the community foundations?***

The community foundations are non-Muslim institutions established by decrees (fermans) of the Ottoman Sultans. The ferman did not – unlike a new foundation today - state what the objectives or rules of governance (such as for elections) are for the community foundations. They have a special legal status in the Turkish Republic, based on the special protection given to the then-existing non-Muslim communities under the 1923 Lausanne Peace Treaty.

These community foundations do not provide legal entity status for the communities themselves. So their existence does not address the central problem that no religious community is allowed to have legal status and so to act as themselves among other things legally govern and administer their own community life and property.

But despite limitations, the community foundations are vital for community life as these foundations are the only institutions which are legally allowed to support Lausanne minority institutions and communities. After the changes made in the 2008 Foundations Law, new life was breathed into these community foundations.

Community foundations own the buildings and property – including places of worship – of non-Muslim communities protected under the Lausanne Treaty, such as the Greek Orthodox Church, the Armenian Apostolic Church, and the Jewish Rabbinate, and are run by independent foundation managers. Under the Ottoman Regulations, spiritual and temporal assemblies should be elected to administer the affairs of these communities and the foundations dedicated to benefit them.

From their foundation onwards, the government has often subjected non-Muslim community foundations to tight and arbitrary restrictions, including confiscating property, de facto preventing them from maintaining their property in good repair, and often removing Board members. If all Board members died, the state would often prevent new members being appointed and confiscate the property.

In 2011 a Restitution Decree restored to these foundations some but not all confiscated property (see below).

Non-Muslim communities themselves have also faced problems such as state interference in and obstruction of religious community leader elections, as is currently happening in the Armenian Apostolic Church.

### ***Associations, new foundations***

Under Turkey's legal system religious or belief community members (but not communities themselves) can come together to gain legal status as associations, a route followed by some Protestants and Jehovah's Witnesses. In theory such associations have legal personality and can own property in their own name, though this does not mean that religious communities as such own the property.

The other legal entity status available is the foundation, but the Civil Code prevents such entities being designated to support a particular religious community. As the community foundations relating to the non-Muslim communities protected under the Lausanne Treaty can support specific religious or belief communities, they are a useful anomaly in Turkey's legal framework. However, no new community foundations can legally be founded.

Even lifting the Civil Code restrictions on foundations would not solve the many problems Turkey's denial of legal status - against international law - causes religious communities.

Numerous attempts to establish new foundations for the benefit of particular religious communities have not been successful. Courts have refused such applications based on the Civil Code provision preventing the establishment of foundations supporting a particular religious or belief community. For example, six Turkish Seventh-day Adventists tried to establish a foundation to support Adventists in October 2004. The Supreme Court blocked this in 2005.

A long-running legal struggle led to a 15 January 2019 judgment (Application No. 12541/06) by the European Court of Human Rights (ECtHR) in Strasbourg in favour of the Adventists. The Court found that, by not allowing the foundation, Turkey had violated Article 11 ("Freedom of assembly and association") of the European Convention of Human Rights and Fundamental Freedoms. Yet as Turkey has often not implemented ECtHR judgments in full, it remains to be seen both whether the six Adventists will be allowed to establish a foundation, and whether the Turkish Government will change the Civil Code to prevent similar violations from happening again (see forthcoming F18News article).

More background on the historical background and legal issues discussed in this article is in the book "The Collective Dimension of Freedom of Religion: A Case Study on Turkey" by Dr Mine Yildirim (Routledge, 2017).

### ***"New ideas or new dynamism are not allowed"***

The state's obstruction since 2013 of community foundation board elections causes many problems. Deaths, ill health and other reasons have reduced the numbers of board members, imposing extra work on those that remain. Board members are not paid and agree to serve only for a fixed term. But without new elections, vacant places cannot be filled.

"We are facing the risk of losing a whole generation. If we cannot ensure that young, enthusiastic, visionary new board members who move with the times are in charge, we may be responsible for damaging our centuries-old cultural heritage", Moris Levi, the deputy leader of the Jewish community who also represents all the community foundations to the government's Vakıflar Genel Müdürlüğü (VGM - Directorate-General of Foundations) told Forum 18 on 22 February. "Unfortunately, as a result of deaths, emigration and resignations, there are foundations with only two or three board members. Very soon it will be impossible for these institutions to carry on with so few board members, who are very tired. The damage done by not being able to hold elections is enormous."

As new members cannot be recruited, the lawyer Sebu Aslangil also pointed out that "new ideas or new dynamism are not allowed, and these are very important for community life".

### ***Why no elections?***

Despite its limitations the adoption of the Foundations Law (No 5737) of 27 February 2008 led to many improvements for the community foundations.

An important gain for community foundations has been the ability to register non-movable objects (such as buildings) that they had declared in the 1936 Declaration in the name of their community foundations. In addition, the Foundations Law allowed foundations to recover confiscated properties that were in 2008 controlled by the State Treasury or Foundations Regional Directorate. Provided that a foundation applied for such property within 18 months, the property would be registered in the name of the community foundation.

However, the Foundations Law failed to address situations in which the ownership of such property was transferred by the state to a third party. The 2011 Restitution Decree sought to address such situations.

The Foundations Law also stated that the VGM would draw up and publish regulations for board elections within six months. It published a Foundations Regulation (one month late) on 27 September 2008, so community foundations began organising elections. However, on 19 January 2013 the VGM repealed Articles 29-33 of the Regulation which govern community foundation elections.

Since then, whenever foundations have asked the VGM for permission to hold board elections, the VGM's standard response has been that the Regulation on Foundations is being prepared, and foundations will have to wait for these specific articles to be finished.

### ***Lack of political will to find solution***

Many meetings have been held since 2013 to try to find a solution, involving representatives of community foundations, public authorities including the head of the VGM, government ministers, and President Recep Tayyip Erdogan. For example, in 2015 the community foundations met then-Prime Minister Ahmet Davutoglu and presented a draft regulation proposal.

Until 2016 the solutions discussed focused on the Regulations. The government then started indicating that it might adopt a law instead of a regulation, as then-Deputy Prime Minister Yalcin Akdogan told the Grand National Assembly on 28 January 2016. However, since then the government has given no public indication that it is concretely preparing such legislation.

In meetings with the VGM, community foundation representatives have repeatedly and strongly urged the government to produce regulations governing elections. Toros Alcan, who was until December 2017 the community foundations' representative to the VGM and a VGM Council member, told Agos newspaper at that time that the community foundations had considered three possible options: opening a court case against the government; continuing negotiations with the VGM; and writing a letter to President Erdogan.

The community foundations decided to continue trying to negotiate with the government. Community foundations representative Alcan told Agos that he had had numerous meetings with VGM General Director Adnan Ertem. Ertem had told Alcan, Agos reported, that "we have made our preparations and are waiting for the political will to implement it".

As of March 2019, this political will has not yet materialised.

### ***No legal bar to elections***

Legally, nothing prevents the VGM from producing the Regulation, nor is there any legally justifiable explanation for the VGM's failure to produce it. Indeed, Turkey has a positive obligation in international law to ensure that both community foundations and belief communities can fully exercise the right to freedom of religion and belief and to freedom of association, as the Council of Europe's Venice Commission pointed out in March 2010.

However, as with many of Turkey's problems related to the interconnected freedoms of association and of freedom of religion and belief, a lack of political will damages the protection of human rights.

### ***Still no answer to 2018 parliamentary question***

In July 2018 Syriac parliamentary deputy Tuma Celik from the HDP (Halkların Demokratik Partisi – People's Democratic Party) asked a parliamentary question of the Culture and Tourism Minister asking why the VGM had published no community foundation election Regulation – despite numerous government statements over the years promising that the Regulation would be published soon. Deputy Celik also asked for details of the Regulation drafting process, pointing out that denial of the right to elect new board members was "causing problems that are difficult to remedy".

As of March 2019, the Ministry has not responded to this parliamentary question.

### ***No change after meeting Presidential Spokesperson***

On 31 July 2018 a group of 18 non-Muslim community representatives made a public declaration in the context of the Pastor Andrew Brunson case, claiming among other things that "we are free to live out our faiths and practice our worships in line with our traditions. Statements alleging and/or alluding to oppression are completely untrue and go beyond purpose".

Voices within the communities publicly disputed the claims in the declaration. On 1 August Presidential spokesperson Ibrahim Kalin praised the declaration and met the representatives. They raised with him many problems their communities face, including the state's refusal to allow community foundations to hold elections.

But to date (March 2019) there have been no signs that this meeting has resulted in any change.

### ***Is progress made since 2008 being reversed?***

The state's blocking of community foundations elections has meant that the progress achieved since the 2008 Foundations Law is being reversed, a person associated with a community foundation told Forum 18 in February 2019.

### ***What next?***

A number of scenarios seem possible. Community foundations might open a court case challenging the government's failure to draft election regulations. These communities might also continue trying to raise the issue with the government and seeking change.

Another option would be to go ahead and hold elections. As lawyer Sebu Aslangil argues, "there is nothing in the Foundations Law that would prevent elections, even under these circumstances". However, he told Forum 18 in February 2019, "the situation seems frozen without anything being done".

If the approach of community foundations to date is an indication, it is likely that they will continue to wait for the government to change its approach and show the political will to allow them to hold elections. If so, they will bear the ever worsening consequences of not being able to hold elections.

## **Registration of a Seventh-Day Adventist organization rejected**

***Altinkaynak et autres c. Turquie (no. 12541/06)***

Strasbourg Consortium (15.01.2019) - <https://bit.ly/2T1i800> - Applicants are six Turkish nationals who attempted, in September 2004, to register a religious organization, Tükiye Yedincigün Adventisterli Vakfı (Foundation of the Seventh-day Adventists) in Istanbul. The tribunal of the first instance rejected their demand, judging that the objective of the organization was to meet the religious needs of people embracing the faith of Seventh-day Adventists and that this was contrary to provisions of the Turkish Civil Code prohibiting the establishment of foundations whose purpose is to support members of a particular community. The judgment was upheld in further court action.

The applicants brought the case before the European Court of Human Rights alleging violations of Articles 9, 11, 14, 17, and 18 in the abridgment of their rights to freedom on thought/conscience, freedom of peaceful assembly, and in contravention to prohibitions against discrimination, destruction of Convention rights and freedoms, and application of restrictions for unprescribed purposes.

In its judgment of 15 January 2019 the Court decided to examine the applicants' complaints under Article 11 only and, finding a violation of their right to freedom of (religious) assembly, awarded EUR 2,724 (pecuniary damage), EUR 3,000 (non-pecuniary damage), and EUR 3,000 (costs and expenses) to the applicants jointly.

Court decision and other documents available at:

<https://www.strasbourgconsortium.org/portal.case.php?pageId=10#caseId=597>