TIGHT OUTFIT: ARMENIAN INSTITUTIONS IN TURKEY, PROBLEMS AND SOLUTIONS

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EUROPEAN ENDOWMENT FOR DEMOCRACY

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FOREWORD

Nesrin Uçarlar | Project Coordinator

This report is the result of the project titled "An Up-To-Date Approach to Minority Rights: Suggestions for The Armenian Community's Problems," carried out by the Hrant Dink Foundation since July 2021. It aims to put the current issues faced by Turkey's Armenian community on the country's political and social agenda. Although research and publications on the Armenian community in Turkey have increased significantly in quantity and quality recently, a lack of publications on the present-day problems and proposals for solutions persists.[1]

This study, which looks at the issues of the Armenian community with a rights-based approach, focuses particularly on the problems of Armenian schools, foundations and religious institutions and aims to draw attention to the racist and discriminatory treatment of Armenians and other non-Muslim communities in Turkey, which is the main factor that gives rise to these problems. Within the context of resolving these problems, the study seeks to point out the needs and possibilities of the Armenian community and non-governmental organizations in Turkey regarding minority rights advocacy.

One of the most important parts of the study is the identification of and proposals for solutions to the problems regarding the property rights of foundations, which have the authority and responsibility to serve the Armenian community in Turkey. The rights to organise, to elect leaders and to participate in politics and society are required for their functioning. The Armenian community's right to education, and the ongoing problems and current needs of Armenian schools constitute another important section and are treated in relation to the problems of the foundations. The indeterminate legal status of the Armenian Patriarchate, which has prevented its recognition as a legal entity and, in turn, has created a representation problem

1 There are two comprehensive studies on the current problems of the Armenian community: Özdoğan, G. G., Üstel, F., Karakaşlı, K., & Kentel, F. (2009). *Türkiye'de Ermeniler. Cemaat - Birey – Yurttaş (Armenians in Turkey. Community - Individual – Citizen*, Istanbul Bilgi University Publications; Özdoğan, G. G., Kılıçdağı, O. (2011).Türkiye Ermenilerini Duymak: Sorunlar, Talepler ve Çözüm Önerileri. TESEV Yayınları.

for the community, is discussed in the context of religious freedoms. In the conclusion of the report, a brief summary of the problems and suggestions that are raised throughout the report appears alongside an examination of the limits and possibilities for legal, political and social advocacy of the proposals.

We worked to identify the current problems of Armenian institutions, which are at the centre of the report, with a two-pronged methodological study. We had one-on-one meetings with the chairpersons of foundations that serve schools and hospitals; the principals of Armenian schools; and Armenian Apostolic Patriarch Sahak Maşalyan and Armenian Catholic Archbishop Levon Zekiyan, the community's main spiritual leaders in Turkey.[2] In addition to those dealing directly with current problems, we interviewed people who were involved in the management of Armenian foundations; lawyers and financial advisers working on the problems of Armenian institutions; and the heads of Greek, Jewish and Syriac foundations.[3] Each of the 54 meetings contributed to our understanding of the various layers of the issues and the range of proposed solutions.[4]

2 We had the opportunity to interview the chairman or board member of 16 of the 18 Armenian foundations that have schools and hospitals. We would like to mention the names of the foundation managers we interviewed and thank them for their contribution to our work: Arman Kamar, Bernard Sarıbay, Diana Kamparosyan, Dikran Gülmezgil, Dikran Ödül, Habip Özfuruncu, Harutyun Ebeoğlu, Hrant Moskofyan, İskender Şahingöz, Mesut Özdemir, Murat Öger, Rita Nurnur , Servan Sertşimşek, Simon Cekem, Toros Alcan and Yesai Demir. We were able to conduct a written interview with Şant Çakmakçı. Our attempts to meet with Bedros Şirinoğlu were unsuccessful as our request for an appointment was not answered. In addition, we sent a questionnaire to all foundations with detailed questions on financial and administrative issues, but received a response from only one foundation.
We interviewed all of the primary and high school principals of 16 Armenian schools, a total of 20 educators. We would like to mention the names of the school principals we interviewed and thank them for their contribution to our study: Anilda Menekşe & Azniv Gürgen, Anita Tumayan, Aras Delice, Armen Saruhanyan, Arpi Manukyan, Arusyak Koç Monnet, Belinda Mıhçıoğlu & Diana Yılancıoğlu, Karekin Barsamyan, Katya Vargı & Elda Karagözyan & Eva Orakyan, Melikcan Zaman, Silva Kuyumcuyan, Şahin Çınar, Talin Berberoğlu, Talin Nayir, Tamar Nergis and Yeranuyi Balcı.
We had the opportunity to interview Patriarch Sahak Mashalyan and Archbishop Levon Zekiyan. Other than the religious leaders, we preferred to use our general assessments of the interviewees' statements, rather than citing the speakers directly.

3 In this context, we conducted 16 interviews. We would like to thank the people we interviewed for their contribution to our work: Ali Elbeyoğlu, Aren Dadır, Can Ustabaşı, Dikran Altun, İshak İbrahimzadeh, Laki Vingas, Luiz Bakar, Margos Karahan, Masis Yontan, Melkon Karaköse, Ömer Kantik, Sebuh Aslangil, Setrak Davuthan, Sevan Sheşetyan and Şahin Gezer.

4 The interviews were conducted in Turkish and lasted an average of 1.5 hours. All of the interviews and transcription of the recorded interviews were carried out by the project coordinator Nesrin Uçarlar. Delal Dink, vice president of the Hrant Dink Foundation, accompanied some of the meetings.

The information and data that we obtained from interviews were supplemented with a historical and current assessment of the legal framework, and we prepared texts that formed the basis of the workshops we held on schools and foundations. We shared these texts, which identified the problems and solutions suggested by the interviewers, with workshop participants. By organising one workshop on schools and two on foundations, we received the evaluations of the problems and possible solutions from academics, lawyers and activists who are experts on these issues.[5] We held a fourth workshop on advocacy with the participation of members of non-governmental organisations and journalists in order to discuss in detail the problems related to the implementation of proposed solutions and the legal, political and social possibilities.[6]

We considered the information gathered from interviews and workshops together with legal regulations and the relevant literature and sought to express the problems and solutions as detailed and concretely as possible, with reference to the international and current literature. Each section concludes with a package of proposed solutions, after a detailed description and listing of the problems on the subject.

The introductory section of the report, titled Credo, and the issues discussed in the subsequent sections seek to draw a legal, sociological and political framework in order to take a critical look at the 1923 Treaty of Lausanne's provisions on

5 The workshop we organized on schools was attended by Istanbul Bilgi University Law Department Lecturer Prof. Dr. Turgut Tarhanlı, Istanbul Bilgi University Sociology Department Lecturer Prof. Dr. Kenan Çayır, Education Reform Initiative Director Işık Tüzün, Getronagan High School Principal Silva Kuyumcuyan and Surp Haç Tıbrevank High School Foundation Board Chairman Prof. Dr. Toros Alcan.
We organized a second workshop in order to solidify the proposals for legal solution that emerged in the first workshop on foundations. In both workshops, Istanbul University Law Department Lecturer Prof. Dr. Sanem Aksoy Dursun, Human Rights Joint Platform General Coordinator Feray Salman, lawyer Destina Kantik, lawyer Aren Dadır and lawyer Margos Karahan participated. Lawyer Fethiye Çetin also attended the first workshop; she also read the whole report and shared her comments and suggestions with us. We thank her and all the participants for their contributions to our study.

6 The workshop "Minority Rights Advocacy" was attended by Cem Bico from the Heinrich Böll Stiftung's Turkey branch, Andrew Finkel from the independent online news site T24, Sinan Gökçen from Civil Rights Defenders, We Will Live Together Education and Social Research Foundation general coordinator Prof. Dr. Ferhat Kentel, political affairs adviser to the Delegation of the European Union to Turkey Sema Kılıçer, Yıldız Önen from the We Are All Migrants platform, Arican Paker from Anadolu Kültür's İstanbul office, lawyer Polat Yamaner from the Human Rights Foundation of Turkey and Esma Yaşar of the Association for Monitoring for Equal Rights. We would like to thank all participants for their contributions to our study.

the protection of non-Muslim minorities, the European and international documents that define universal and contemporary standards of minority rights and the Turkish Republic's policies towards minorities. It includes a critical assessment of the terms "community" (in the meaning of congregation), "non-Muslim" and "minority" regarding the Armenian community in Turkey, in the context of legal regulations, political approaches and everyday language. Since conducting a debate on terminology or an intellectual intervention into the scholarship on the Armenian community in Turkey is not a main objective of this study, statements referring to Armenians as a minority and discussing the problems and rights of the community within the context of the minority rights regime are also discussed in the Credo chapter.

It is clear that the term minority is problematic, because the concept of minority gains meaning when it is in a hierarchical dichotomy with the majority; a minority-rights regime contains dilemmas and limits in parallel with nation-state building; and it is instrumental in rendering invisible the indigenous nature of the Armenian community of Turkey and the genocide and colonialist violence it was subjected to. In fact, objections to the term minority are made from an anti-colonialist perspective of Ottoman history before and after the genocide that examines the violence against Armenians together with its economic, political and social layers. Research on the Armenian community in Turkey within the framework of genocide, genocide denial and colonialist policies argues that the genocide and its denial, which includes the destruction and disregard of the intellectual and economic resources of Armenians, compresses the community into a minority status (Suciyan, 2018). Based on these criticisms, discussing the official minority status and the minority rights granted to Armenians with reference to the fact that they are an indigenous, minoritized group makes it possible to consider their historical and political rights in the context of the rights of colonized and indigenous peoples.[7] In this respect, calls to include the political, economic,

7 Some of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples of 2007 address the needs and rights of minority groups only at the individual and contemporary level, while the needs and rights of the Armenian community, originating from the past, should be addressed collectively and comply with the international minority rights regime. In this context, Article 5 of the Declaration, which regulates the right of indigenous peoples to have and strengthen their own political, legal, economic, social and cultural institutions, regulates the rights of indigenous peoples to preserve and develop the past, present and future manifestation of their own culture, such as archaeological sites, historical artifacts, ceremonies, technology and visual

artistic and cultural heritage of the Armenian community in the Turkish narrative and the quest for the recognition of the right to reconcile with the past can be the subject of an advocacy that will accompany the process of problematizing the concept of minority and the minority rights regime. On the other hand, as we outlined above, the aim of this study is to focus on current problems and proposals by considering the rights of the Armenian community within the context of the existing minority rights regime, allowing us to only touch on the potential of such a problematization, rather than carrying out such a problematization.

Although the institutions responsible for serving Armenians in Turkey have certain problems stemming from the socio-political structure of the community, the fundamental cause of these can be seen as the legal and political policies of the Republic of Turkey. In this regard, the recommendations in the report are addressed directly at official institutions. This report aims to mobilize offi-

and performing arts and literature and which are deprived of states without prior consent of indigenous peoples, which they shall freely give with the necessary information; Article 11, which obliges intellectual, religious and spiritual beings to compensate, through effective mechanisms, and Articles 12 and 13, which complement this article; Articles 14, 15 and 16, which regulate the education and media rights of indigenous peoples within the framework of active and positive responsibilities of states; Article 18, which regulates the right of indigenous peoples to have and develop their own decision-making mechanisms, as well as to participate in decision-making processes on matters affecting them through representatives they will designate, and Article 19, which deals with the right to participation within the scope of states' obligations in terms of ratification, consultation and cooperation; Article 20, which recognizes the right of indigenous peoples deprived of their means of existence and development to just compensation; Attention can be drawn to many other articles, particularly Article 33, which regulates the structure of their institutions and the right of indigenous peoples to appoint and elect their members through procedures determined by them. See: https://www.un.org/esa/socdev/unpfii/documents/DRIPS_Turkish.pdf.

Article 3 of the Declaration, which is one of the most controversial articles in terms of states and regulates the right of indigenous peoples to determine their own future and political status, can be interpreted within the framework of the decolonization movement rather than independence, by interpreting it as the full implementation of the articles of the Declaration and universal human rights (Erueti, 2017). The article on the "right to self-government" of the UN Declaration on the Rights of Indigenous Peoples can be discussed within the framework of the multi-layered citizenship rights of indigenous peoples (Iamamoto, 2022). The understanding of "time-layered citizenship", which covers the historical/temporal dimension of citizenship experienced by indigenous peoples and the practical equivalents of this dimension in terms of identity, status and rights, is the concept of colonialism/empire, republic/nation-state, multi-national/post-nation-state of indigenous peoples. It is nourished by its experiences of continuity and interruptions between periods and its collective memory of legitimacy, law and justice in the context of its relations with official institutions.

cial institutions, political parties and legislative, executive and judicial organs to provide the Armenian community their multifaceted citizenship rights; to inform non-governmental organizations and the Armenian community about establishing universal and contemporary minority rights and the rights of indigenous peoples in Turkey; and to update them in line with the needs and expectations of Turkey's non-Muslim communities. We hope this report will also become a reference for studies on the Armenian community and that it will contribute to the political, legal and social solutions to the current problems of the Armenian community.

CREDO

The Armenians of Turkey are one of the groups whose collective rights were covered under the Treaty of Lausanne. The peace treaty, signed between the Ottoman Empire and Allied powers in 1923, reflects the understanding of minorities of its time. It gave the same rights as other citizens to minorities, provided them the opportunity to preserve their collective cultural identity, introduced principles for a minority rights regime and obliged the Ottoman authorities to implement them.

The Treaty of Lausanne lists the rights of minorities and the obligations of the state between Articles 37 and 45. Some of these are negative obligations requiring the state not to restrict freedoms; that is, it specifies what the state will not do. For example, the freedom of movement and migration of non-Muslim minorities will not be restricted under Article 38. Other sections dealing with minority rights outline the state's positive obligations, listing what the state should do to protect and develop the physical existence and cultural identity of minorities. In other words, the Treaty of Lausanne not only precludes the Turkish state from erecting roadblocks but also gives it the function of facilitator. However, these were set out as general principles and objectives without specifying the details of how they would be met. For instance, Article 41 states that the Turkish state will provide the necessary facilities for non-Muslim minority groups to receive an education in their own language, but it does not set out what these facilities should be and how they will be provided. Implementation requires laws to be enacted by the legislature. Although nearly a century has passed, the laws necessitated by the Treaty of Lausanne have not been enacted. Therefore, many aspects of the treaty remain unclear and have not been applied consistently.

Since the treaty, universal standards for minority rights in particular, and human rights in general, have improved, and a rights-oriented approach in the treatment of minorities by states has become a democratic norm. The perception of minorities since the Treaty of Lausanne and the way in which minorities are defined and positioned socially have become more liberal and democratic globally, especially since the 1990s. Fulfilling the rights possessed by minorities has been accepted as a criterion of democracy; minority rights are seen as complementary

to human rights. In terms of the law, sustaining the identity of a minority group, with all its characteristics, has become a positive obligation for the state.

A few examples of international declarations and conventions emphasizing and guaranteeing minority rights in the 1990s are listed here. Although the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities by the United Nations General Assembly in 1992 is not legally binding, it sets out the political criteria for the treatment of minorities, giving states the obligation to provide them the opportunity to protect and develop their identity. The Framework Convention for the Protection of National Minorities, which was adopted by the Council of Europe in 1995 and entered into force in 1998, is an international agreement that introduces comprehensive regulations on minority rights and guarantees the language, education and cultural activities of minorities. Turkey has not signed this convention. The Charter of Paris of 1990 by the Organization for Security and Cooperation in Europe (then called the Conference on Security and Cooperation in Europe), which Turkey signed, stipulates the ethnic, cultural, linguistic and religious identities of minorities should be protected and strengthened, that minorities have the right to freely express their identities and that the necessary conditions for the protection and development of these identities must be created. Furthermore, in the final report of the OSCE meeting on national minorities held in Geneva in 1991, it was set forth that minority rights and the obligations of states to protect these rights cannot be confined to the internal affairs of a state and that it is legitimate for other states and international organizations to show interest in these issues. Finally, the High Commissioner for National Minorities, established within the OSCE in 1992, published nine reports on minority rights and the treatment of minorities between 1996 and 2019.[8]

There is no difference in the direction or any contradiction between such international declarations and conventions that provided security to minority groups in the 1990s and the Treaty of Lausanne. On the contrary, considering that preventing discrimination against minorities became more prominent after World War II and emphasizing the positive obligations of states came to the fore in the 1990s, it can be said that there is alignment on the matter of positive rights between the Treaty of Lausanne and the understanding of minority rights that emerged after the 1990s that is still accepted as valid today. Therefore, we can say that solu-

8 https://www.osce.org/hcnm/thematic-recommendations-and-guidelines

tions to the problems discussed in this report should be implemented in line with the rights and freedoms that are outlined in general in the Treaty of Lausanne, but within the context of minority rights as they relate to human rights with the standards of today's international documents. There is a need to make and implement legal regulations in line with these standards. While making these laws, contemporary human rights law should be observed, which would not contradict Lausanne but support it. Interpreting the provisions of the treaty with the values, concepts and standards of today is also necessary in terms of international law. Therefore, it is necessary to understand the relevant provisions of the Treaty of Lausanne as part of human rights.

Understanding of human rights places the state's negative and positive obligations under three headings: respect, protect and fulfill. By respect, it is meant that states will not interfere nor impose restrictions on minorities when they are exercising their rights. Protection is the state's safeguarding of members of minority groups against human rights violations. Fulfillment refers to the positive steps states must take to facilitate the exercise of fundamental rights.[9] This is the summary of the basic approach required to solve the problems that this report seeks to explain. The first condition to resolve the problems is for politicians, bureaucrats and other decision makers to adopt an understanding of the positive obligations of the Treaty of Lausanne and the significant progress made since the 1990s on minority and human rights.

Yet the approach to the problems of minorities in the entrenched understanding of the administration in Turkey seems to be a win-lose strategy one takes with an adversary. Adjustments to protect the assets and identities of minorities are viewed as a loss or concession on behalf of the state, and so such measures are avoided as much as possible. Sometimes improvements are presented as favors that should be received with gratitude and preempt further requests. Yet sustaining minority communities and providing the necessary conditions for their existence are among the basic duties of those who exercise political power. Determining policies with this goal in mind should be considered essential. The first step is to view the measures to be taken not as privileges, concessions or even favors, but as rights.

9 https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law

It is not possible to solve any of the problems that we will address in this report without abandoning this mentality, which considers minority groups threats to be eliminated or potential criminals to be kept under surveillance, and accepting that the requested adjustments are the right of minorities, according to universal human and minority rights criteria.

The issue of reciprocity

Before moving on to the substance of the problems, we think that it is necessary to dwell on the concept of reciprocity, which public officials often present as an obstacle to resolving the problems of minorities in Turkey. Article 45 of the Treaty of Lausanne could be mistakenly interpreted to include reciprocity in its discussion of minority fights, but in fact it cannot be applied in the context of minorities, due to both the treaty itself and human rights principles. First, the aforementioned article states that the same rights granted to non-Muslims in Turkey are to be granted to Muslims in Greece, but it does not make the application on one side a condition for the application on the other.[10] Both Turkey and Greece are individually responsible for providing these rights and opportunities to the people under their jurisdiction. There is no provision in the treaty that states the conduct of one abrogates the responsibility of the other. Regardless of the other side's conduct, the party that fails to honor its own commitments is deemed to be in breach of the treaty. The second reason the Treaty of Lausanne precludes the principle of reciprocity is that, in the case of the Armenian and Jewish communities, there is no state party in the treaty. Neither Armenia, which was a part of the Soviet Union by 1923, nor Israel, which was established a quarter century after the pact, are among the parties of the treaty. Therefore, considering Greece's practices for these two groups is completely incompatible with the reality on the ground. There is no legitimate reason for the Armenian and Jewish communities in Turkey to be bound and limited by Greece's treatment of its Muslim citizens in its own country. Moreover, as we will see below when we look at the reasons

10 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.

that make reciprocity impossible in principle, there is no legitimate justification for the rights of ethnic Greek citizens of Turkey to be conditional on the practices of the Greek state.

Among the reasons of principle, the first is this: Reciprocity is not a principle that a state can consider in the treatment of its own citizens; it is a term and practice related to two separate states' treatment of each other's citizens, that is, to foreigners in the legal sense. For example, if another state requires your citizens to present a visa, you can claim reciprocity and apply a visa requirement to the citizens of that state. The non-Muslim minorities covered by the Treaty of Lausanne cannot be subject to reciprocity since they are citizens of the Republic of Turkey. Second, under universal law the principle of reciprocity cannot justify human rights violations. According to the law governing conventions, reciprocity or retaliation cannot be used in the provisions on human rights protection. In other words, a violation of human rights in one place cannot justify a violation of human rights in another. Even though Turkey is not a signatory to the U.N.'s Vienna Convention on the Law of Treaties, which entered into force on January 27, 1980, that agreement states that the violation of a convention by one of its parties does not permit the other party or parties to forgo articles that protect individuals.[11]

Considering all of these issues, using the concept of reciprocity as an obstacle for improving the situation of the groups known as the Lausanne minorities is not possible.

Regarding the terminology

The term frequently used when discussing the Christians and Jews of Turkey is "non-Muslim communities." For example, foundations belonging to these groups are referred to as "community foundations," sometimes by adding the adjective "non-Muslim," in the regulations for foundations. Although we may use the same terms from time to time in this report when referring to the relevant regulations, we must say that these qualifications are not appropriate. In other

11 https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

words, defining these groups as a "community" or "non-Muslim" is a reflection of the wrong approach.[12]

The term "community" has two connotations or allusions: First, it attributes a homogeneity, a uniformity to the group that is defined in this way. It assumes that individuals belonging to the relevant group think and act in the same direction on the basis of the same values. However, the Armenians of Turkey, though small in numbers, are highly diverse; they are differentiated, even divided, along various lines. Different cultural groups may have different ideological and political persuasions. **Therefore, to call such a diverse body a "community" does not suit the situation.**

The second implication inherent in the term *cemaat*, the Turkish word for "community," is that the group in question is religious, even a devoutly religious one. In other words, religion is considered the defining feature of the group. Armenians in Turkey are not homogeneous in this respect either. There are pious Armenians from the Apostolic, Catholic and Protestant Churches as well as Armenians who do not observe religion. In fact, although the exact number is unknown, there are also Islam(ized) Armenians who have been on the agenda in recent years. **As a result, it is not possible to see and define the Armenians of Turkey as a strictly devout Christian community.**

As for the term "non-Muslim," it too emphasizes religion. Beyond that, it is a term that creates a hierarchy between "the essence and those who deviate from the essence." To put it more concretely, Islam and Muslims are essential, while those who are not are defined and positioned as the "other." Christian, Jewish and other religious communities have been amalgamated, even homogenized, with the common denominator of being non-Muslim, ignoring the characteristics and originality of each group's identity. Both "community" and "non-Muslim" reflect the continuation of the perceptions of the Ottoman millet system.[13]

12 The Turkish words for "non-Muslim" and "community" are *gayrimüslim* and *cemaat*, respectively. In Turkish, they have a clearly religious connotation and reflect a biased tone. "Congregation" might be an alternative for *cemaat* but, in the context of *Ermeni cemaati*, congregation refers to a much smaller and limited group.

13 This term denotes the administrative system through which the Ottoman state governed Christian and Jewish communities and organized relations between the state and these communities. Although it is much more complicated, one can say that the system recognizes the autonomy of these communities in their civil and religious affairs to a certain extent, whereas it clearly and officially establishes a hierarchy between Muslims and non-Muslims.

So how should we define and name these groups? Bearing in mind that any answer to this question is open to debate and considering that it is well-established in the international literature, we have chosen to use the terms "minority" or "minority communities." However, it is very important to make two annotations on the term minority, one in the conceptual and global context and the other in the context of Turkey. In the conceptual and global context, it should be pointed out that the term minority took shape within the ideals and function of the nation state, and therefore, minorities were regarded as a "problem," especially in the first half of the 20th century. Although this understanding has changed somewhat in the post-World War II period, minority and nation state continue to be closely linked. The minority is defined only in the context of the "majority," which is supposed to form the basis of the nation state, and by the dominant norms. Just like the term "non-Muslim," it relies on a hierarchical context based on binary opposition, namely by reproducing the minority-majority asymmetry. Therefore, minority rights are recognized and enforced within the framework of a legal and political regime that continues to protect the interests of the nation state and dominant norms.

As a sociological term, minority refers to disadvantaged groups in a society, but in a normative sense it does not indicate an inherent good or evil in these communities. The meaning of the term minority in Turkey is historically and politically negative. Being an equal citizen and being a member of a minority, as well as minority rights and citizenship rights, are considered mutually exclusive categories. For example, those who define themselves as Turkish and oppose migrants coming to and settling in Turkey may say, "We don't want to be a minority in our own country." The official policy and social perception implied by this concern is that minorities do not have as many rights as everyone else in the country where they live. Those in the minority are deemed "foreigners," "guests," or "wards." These are all, of course, misconceptions. Minorities have been made minorities in many states, including in Turkey, as a result of certain policies; they are citizens with different identities and needs, but with equal rights. It is in accordance with the principles of democracy and pluralism that they benefit from certain positive rights and public support in order to continue their existence and culture as compensation for minoritizing and minimizing policies and the harm they have suffered in the past.

The minority policies of the Republic of Turkey

Contrary to the Treaty of Lausanne and the literature on international minority rights, minorities, and therefore Armenians, have been exposed to explicit and implicit, direct and indirect discrimination, some of which we will discuss in this report, throughout the history of the Turkish Republic. In addition to relatively well-known events like the Twenty Classes[14] and the Wealth Tax[15], non-Muslims were prohibited from traveling beyond Istanbul's provincial borders without official permission between February 1925 and 1932, and Article 4 of the Civil Servant Law No. 778, enacted in 1926, created the requirement of "being a Turk" to become a civil servant[16], further examples of the many forms of discrimination that were in clear contravention of the Treaty of Lausanne.

Throughout the Republican period, the participation of Armenians, Greeks, Assyrians and Jews in institutional politics was also limited. Berç (Keresteciyan) Türker was the only ethnic Armenian deputy during single-party rule that lasted until 1950 after he entered parliament in 1935. Paving the way for this was the Free Republican Party's nomination of minority candidates in the Istanbul municipal election of 1930, although some in the press harshly criticized this (Okutan, 2004, 149-150). With the multiparty system, three Armenian deputies – Andre Vahram Bayar, Zakar Tarver and Mıgırdiç Şellefyan – served with the Democratic Party throughout the 1950s, and Berç Turan became a senator for the Justice Party between 1961 and 1964. No Armenian deputy was elected for another half-century. Then, in 2015, Selina Doğan from the Republican People's Party (CHP), Markar Esayan from the Justice and Development Party (AKP) and Garo Paylan from the Peoples' Democratic Party (HDP) entered parliament. Presently, Paylan is the only Armenian deputy in the Turkish Grand National Assembly.

14 This World War II-era conscription of Christians and Jews to work in labor camps included the elderly and physically and disabled.

15 Crippling taxes that were imposed mostly on non-Muslim citizens in 1942 resulted in the financial ruin of many minority citizens.

16 This condition was changed to "being a Turkish citizen" with the Civil Servants Law No. 657, enacted in 1965.

As a general finding, it can be said that state authorities disregarded the negative and positive obligations for minorities required to be fulfilled by the state by the Treaty of Lausanne. Just as negative obligations were violated by imposing prohibitions, measures that should have been taken to protect the existence and cultural identity of minorities were not fulfilled by claiming that special support on the basis of religious identity was against the principles of equality and secularism. Equality was understood and practiced as the elimination of differences or a disregard for differences.

Despite all of the rhetoric on equality, the main problem is that Armenians and other minorities are categorized as "dangerous" and "enemies," and as a result are kept under constant surveillance and excluded from certain areas such as bureaucracy or politics. The most concrete example of this is the "lineage code." We will elaborate further in the education section on how the practice was used to restrict enrollment at Armenian schools. In brief, since the establishment of the republic, the state had secretly assigned a separate numerical code to Armenian, Greek and Jewish citizens to indicate their ancestry . This system of the state determining a child's Armenianness was revealed in an official letter by education officials in response to a student's application to enter an Armenian school in 2013. The letter made clear that the codes assigned to minority citizens were a form of surveillance. Since changes were subsequently made to school registration procedures, this code is no longer checked, and state officials have declared that the coding system is no longer in use.[17] But such verbal statements do not ensure that similar practices will not be reinstated, as long as a general legal policy prohibiting discrimination is not adopted.

Discrimination also occurs in employment in the civil and military bureaucracies. As stated above, "being a Turk" was an official prerequisite to become a civil servant until 1965 when it was changed to "being a Turkish citizen." Yet we see that in practice Armenians have not been employed in the state bureaucracy, except in higher education and the arts, and the administrative, security and judicial branches are effectively closed to minorities. This manifests as tacit discrimination, rather than official. For the first time in the history of the republic, an Armenian citizen named Leo Suren Halepli won a spot on the expert staff of the Secretariat General for EU Af-

17 https://www.agos.com.tr/tr/yazi/14473/soy-kodu-sifahen-kalkti

fairs at the Foreign Ministry in 2009. He was unable to assume his role due to judicial proceedings over alleged problems in the entrance exam. By the time the case was resolved in 2011, Halepli had opted to pursue other interests and never became a civil servant.[18] A more recent example is that of Berk Acar, who became a district governor in 2022.[19] Both Halepli and Acar's success were covered in the national press as "the first Armenian to join the state" and "the first Armenian district governor" in a public admission of ongoing discrimination.[20]

Discrimination can be considered under three interrelated headings: laws, practice and mentality. Aside from the existence of discriminatory laws, the legal dimension of discrimination is apparent with the lack of rules to combat discrimination and ensure constitutional equality. In addition, the fact that Turkey did not sign some international conventions to combat discrimination and hate crimes, signed others with reservations or did not implement those it did sign by failing to make the necessary legal adjustments constitutes another aspect of official discrimination. For example, Protocol No. 12 of the European Convention on Human Rights, which regulates the prohibition of discrimination, was signed by Turkey on April 18, 2001, but has not yet been ratified by the parliament.

An example of the inadequacy of the legal framework can be found in Article 122 of the Turkish Penal Code (TCK), which regulates the prohibition of discrimination.[21] The main problem with this article is that discrimination and hate crimes overlap almost exactly, and moreover, it makes hate a prerequisite for discrimination. These are related but different concepts. As such, the article narrows the scope of both hate crimes and discrimination: For the crime of discrimination to have occurred, the motive of hatred must be proven. In other words, this presumes that there can be no discrimination without hate, which is inconsistent with re-

18 https://www.gazetevatan.com/dunya/devlete-giren-ilk-ermeni-273668

19 https://www.agos.com.tr/tr/yazi/27435/berk-acar-goreve-basladi

20 https://www.gazeteduvar.com.tr/ilk-ermeni-kaymakam-berk-acar-gorevine-basladi-haber-1579199

21 *Hatred and Discrimination*
Article 122 – (Amended on March 2, 2014 – By Article 15 of the Law no. 6529)
(1) Any person who (a) Prevents the sale, transfer or rental of a movable or immovable property offered to the public, (b) Prevents a person from enjoying services offered to the public, (c) Prevents a person from being recruited for a job, (d) Prevents a person from undertaking an ordinary economic activity on the ground of hatred based on differences of language, race, nationality, color, gender, disability, political view, philosophical belief, religion or sect shall be sentenced to a penalty of imprisonment for a term of one year to three years.

ality. In addition, since the crime of discrimination is limited to the four actions listed in the article; actions other than these four do not constitute the crime of discrimination. The article does not give hate crimes the weight and space they deserve. In the apt words of the 18th Criminal Chamber of the Court of Cassation: "Article 122 of the TCK mentions hate crimes, but neither the crime itself nor its punishment are there.[22] The lack of a law against and impunity for hate crimes systematically pave the way for the continuation of such attacks. In conclusion, it would be beneficial to consider these concepts and related actions separately in the legislation in order to effectively combat against both discrimination and hate crimes. Adding a motivation of hate to qualify actions that are already considered criminal by the penal code is also worth considering.

Article 216 of the TCK on "publicly provoking hatred or hostility" against a group of people[23] provides an example of the problem with implementation. Although the wording of this article seems to have been designed to prevent hatred and racism against disadvantaged groups, in practice it is used to pressure groups other than those with a Turkish identity. Similarly, Article 301 restricts the freedom of expression of the general public, but especially of minority individuals, with a prohibition on "degrading the Turkish Nation" and other state bodies.[24] The late journalist

22 https://www.hurriyet.com.tr/gundem/ilk-kez-nefret-suclari-tanimlandi-40265961

23 *Provoking the Public to Hatred, Hostility or Degrading*
Article 216 – (1) A person who publicly provokes hatred or hostility in one section of the public against another section which has a different characteristic based on social class, race, religion, sect or regional difference, which creates a explicit and imminent danger to public security shall be sentenced to a penalty of imprisonment for a term of one to three years.
(2) A person who publicly degrades a section of the public on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to a penalty of imprisonment for a term of six months to one year.
(3) A person who publicly degrades the religious values of a section of the public shall be sentenced to a penalty of imprisonment for a term of six months to one year, where the act is capable of disturbing public peace.

24 *Degrading Turkish Nation, State of Turkish Republic, the Organs and Institutions of the State*
Article 301 – (Amended on 30/4/2008 – By Article 1 of the Law no. 5759)
(1) A person who publicly degrades Turkish Nation, State of the Turkish Republic, Turkish Grand National Assembly, the Government of the Republic of Turkey and the judicial bodies of the State shall be sentenced a penalty of imprisonment for a term of six months to two years.
(2) A person who publicly degrades the military or security organizations shall be sentenced according to the provision set out in paragraph one.
(3) The expression of an opinion for the purpose of criticism does not constitute an offence.
(4) The conduct of an investigation into such an offence shall be subject to the permission of the Minister of Justice.

Hrant Dink is perhaps the best-known defendant charged with this crime. While an amendment made in 2008, following Dink's assassination in January 2007, requires the permission of the Justice Ministry to bring this charge, the restriction of freedom of expression and the risk of being prosecuted under this article have not been completely eliminated. For example, using the term "Armenian genocide" in written or oral statements carries the risk of being prosecuted under this article. In addition, the regulation considers insulting the Turkish nation a crime but does not envisage any sanctions on the humiliation of other people.

What is meant by mentality is that hatred and enmity of Armenianness, or more precisely, of Armenians is a defining element of Turkish identity. **Armenians and other minorities are ignored and underrepresented in national education, the media and popular culture. When they do appear, they are often mentioned together with derogatory and negative modifiers.** As we said above, they are seen as "foreign," "dangerous" or even "traitor." The second point related to this is the persistence of the Ottoman-era view that Turks are *millet-i hakime*, or the dominant people, and the rest are *millet-i mahkume*, the subjugated, revealing that the notion of full and equal citizenship has not been adopted. It suggests that the existence of identities other than Turkishness is only possible thanks to the magnanimity of the Turks.

This mentality manifests itself as hate speech in various areas of society, especially in the media. Monitoring of hate speech in the national and local press by the Hrant Dink Foundation in 2019 revealed the scale of hate speech: "In 2019, it was determined that 4,364 columns and news stories targeting national, ethnic and religious groups were published. It was observed that 108 contained hate speech of different categories against more than one group. In these stories, 5,515 instances of hate speech against about 80 different groups were detected."[25] The study points out that Armenians are among the top groups exposed to hate speech.

Individuals in Turkey encounter such targeting, racist and discriminatory discourse not only in the media, but also in the formal education system. In course materials, especially in history textbooks, the modifiers mentioned above are used to define Armenians. Beyond textbooks, the fight against "so-called Armenian genocide allegations" includes making children watch documentaries and

25 https://hrantdink.org/attachments/article/2665/Nefret-soylemi-ve-Ayr%C4%B1mc%C4%B1-Soylem-2019-Raporu.pdf

write essays that foster the same discriminatory ideas and language of hatred, part of an indoctrination effort that has spanned generations. It is not surprising that people who have undergone this schooling harbor feelings of hatred and hostility towards Armenians and other minority groups, even if they have never actually met any.

Another area where minority policies and approaches to minorities manifest themselves in Turkey is the treatment of minority cultural heritage. According to an inventory study conducted by the Hrant Dink Foundation, there are some 9,500 buildings in Turkey that can be defined as minority cultural heritage, of which approximately 4,500 belong to Armenians, 4,000 to Greeks, 700 to Syriacs and 300 to Jews.[26] Churches, schools, monasteries, cemeteries, hospitals and orphanages and other buildings that once belonged to the Armenian communities of Anatolia were not just left in ruin but destroyed for various purposes, primarily for treasure hunting. The few surviving buildings are either under private ownership, used as warehouses or workshops, or for public services. There are even churches whose deeds are now held by individuals. Furthermore, as we will discuss in further detail within the context of religious freedoms, there are ancient Armenian monuments that have been restored, such as the Cathedral of the Holy Cross on the island of Aghtamar in Lake Van, are not returned to the Armenian Patriarchate. Services are only permitted at the Aghtamar church one day a year.

The problems of implementation that we discussed are actually the manifestation of this mentality into action on various platforms, especially in the decisions and actions of the bureaucracy. So much so that even remedial legal changes for the elimination of discrimination or the restoration of rights can be stuck in red tape. The challenge is clearly illustrated in a document produced by the state itself: A Prime Ministry circular, numbered 2010/13 and published in the Official Gazette on May 13, 2010, stated that, "Despite the improvements concerning non-Muslim minorities undertaken within the framework of the democratization process of recent years, these problems have not been resolved fully due to various reasons stemming from implementation."[27] The same circular lists the issues that require attention, in effect listing the discrimination that had taken place.

26 https://hrantdink.org/tr/faaliyetler/projeler/kulturel-miras/147-anadolu-nun-cok-kulturlu-mirasini-ortaya-cikarmak-ve-savunmak

27 https://www.resmigazete.gov.tr/eskiler/2010/05/20100513-17.htm

Among the matters that need to be corrected are the lack of due diligence for the protection and maintenance of non-Muslim cemeteries that have been transferred to municipalities, failure by land registry offices to abide by court decisions in favor of non-Muslim foundations and the absence of legal actions against publications that incite hatred and hostility against non-Muslim communities. These problems, pointed out by the prime minister of the time himself, offer a catalog of discriminatory practices against minorities.

THE PAST, PRESENT AND FUTURE OF MINORITY FOUNDATIONS

In the Ottoman Empire, the communal life of Armenians, especially in the city, was shaped and experienced around institutions such as churches, schools, orphanages, hospitals, monasteries and cemeteries. Under Ottoman law, these institutions were established by the sultan's edict, that is, by an administrative decision; or rather, their establishment was permitted and land was allocated to them in the same manner. In the Turkish Republic, the state felt the need to redefine these institutions and categorized them as waqfs, or foundations, with the Civil Code of 1926. However, these institutions did not have certified charters (*vakfiye*), a requirement to be a foundation, and their practical character and true functions did not match the definition of a foundation. **A foundation is defined as a property association that serves a particular purpose and is a more static structure. But these institutions are rather a union of people that is dynamically shaped with their participation rather than property associations.** A prerequisite of public participation, boards that manage institutions such as schools and churches have long been elected by popular vote, whereas typical foundations do not have elected administrators. Also, unlike foundations, these organizations were not established to serve a single purpose; their mission is broadly defined as "serving the community." All of these characteristics are incompatible with the definition of a foundation. To put it metaphorically, from the very beginning these institutions were dressed in a shirt that was too tight for them. The mismatch between their functions and their legal status also gave rise to problems in the decades that followed, as we will explore below.

A law containing detailed regulations on foundations that were established before the passage of the 1926 Civil Code was enacted in 1935. This law defined these institutions of the Christian and Jewish communities as annexed foundations. Annexed foundations in addition to being defined as foundations founded prior to enactment of the Civil Code dated 1926 with nr. 743 were to be managed by administrators that would be appointed by the Foundations Assembly.[28] Thus,

28 https://www.vgm.gov.tr/vakiflarimiz/vakiflarimiz/mulhak-ve-esnaf-vakiflar

the state took these institutions under its tutelage through the General Directorate of Foundations (VGM). Until 1949, when it became possible for members of the community to choose their own administrators again, an administrator appointed by the state managed these foundations under a system known as the "single trustee system."[29]

The current legal framework governing minority foundations, which are referred to as "congregational foundations," are the Foundations Law, dated 2008 and numbered 5737, and the Foundations Regulation, which was enacted the same year. This law is a step toward protecting the constitutional rights of minority foundations that have long been violated, including the right to acquire property through donations, inheritances and purchases; the freedom for foundations to assist one another; determining election procedures for foundation administrators; and the right of minority foundations to have representation at the Foundations Assembly. However, as we will discuss in detail below, some problems were not fully resolved.

The Republic of Turkey committed to providing all kinds of facilities and support to religious, charitable, social and educational institutions and activities of the groups defined as "non-Muslim minorities" when it signed the Treaty of Lausanne. When the state gathered these under the umbrella of foundations, the state's obligations became obligations to minority foundations. In cases where the Treaty of Lausanne is insufficient or unclear, current standards for minority rights in the international acquis should be accepted as guiding principles. From this perspective, the state has positive obligations toward minority foundations to make the relevant legal reforms and secure the exercise of rights. In other words, minority foundations in Turkey should benefit from the rights granted to minorities in the Treaty of Lausanne and under international law. This would give minority foundations the right to access public finances and resources, the right to participate in public affairs and decision-making processes, the right to organize, access to effective legal remedies, the right to property and protection against discrimination. Removing the legal and bureaucratic obstacles that hinder minority foundations from exercising these rights would also mean ensuring

29 We will revisit this subject in the section on administrative elections.

that minorities enjoy constitutional and equal-citizenship rights. In order for minority foundations to fulfill their responsibilities toward their society, they must be able to fully exercise the rights granted to them without unnecessary or arbitrary restrictions.

Armenian foundations have traditionally served in the fields of education, religion and health, but they are organizations that are expected to operate in new areas according to the both changing makeup and needs of Armenian society and contemporary problems. In order to reflect the needs of the Armenian community, as well as a liberal and democratic approach, Armenian foundations should include new responsibilities, services and fields of activity on their agenda, such as: conducting studies on the legal regulations regarding the Armenian community; participation in legal processes and supervision of their implementation; increasing the accountability of Armenian institutions; empowering members of minority communities; contributions to the fight against racism and discrimination; preservation of cultural heritage; research into the needs and rights of disadvantaged groups such as women, children, the disabled and the elderly; tracking the internal and external migration of Armenians; promoting social justice; creating cultural and sports activities for youth; restructuring educational scholarships for youth; establishing exchange programs for young people to make international connections; and taking on new responsibilities for entrepreneurs, such as providing in-kind and cash support.

EFFICIENT AND EFFECTIVE GOVERNANCE OF FOUNDATIONS

Minority foundations should be seen as a model of organization and civic participation specific to a certain segment of the society, and the legal regulations that ensure the effective governance of these foundations should be considered within the scope of the freedom of association of citizens. Freedom of association also means that informing, rather than seeking permission, is required when

establishing and operating an organization. Again, as a requirement of freedom of association, these foundations should be completely free when registering members, determining the obligations of their members and the scope of their activities and choosing their administrators. However, a clause in Article 101 of the Civil Code that reads, "Formation of a foundation contrary to the characteristics of the Republic defined by the constitution, constitutional rules, laws, ethics, national integrity and national interest, or *with the aim of supporting a distinct race or community is restricted*" (emphasis added by the authors), is presented as a barrier to the freedom of association.[30]

Likewise, minority communities should have the right to be involved in policy making processes by exercising their right to nominate their members and directors, to engage in any lawful activity and to express their opinion on any issue, without the need for any permission, because it is only possible for foundations to fulfill their responsibilities through the provision and exercise of these rights.

Election of board members

Since the 19th century, the people who manage the Armenian community's institutions have been elected by popular vote on a neighborhood basis – a prerequisite for ensuring participation from the bottom up. Residents in a certain district vote for the committee members who will manage the relevant Armenian institutions in that district. During the Republican period, two main problems arose regarding these elections. The first of these is that elections were not held at all, or more precisely, were not permitted to occur, and the second was that election rules lagged the changing demographics of Armenian society and were not updated.

The first direct intervention in foundation elections was in 1938, when administration was taken away from boards elected by the public and given to a single person appointed by the state. This became known as the "single trustee system" and continued until 1949, when it was abolished during efforts to engage with the West in the aftermath of World War Two. That is when Law No. 5404 was enacted with the provision that removed the status of annexed foundations from non-Muslim foundations and said they were to be "administered by com-

30 In addition, legal experts we spoke with said this article is applied arbitrarily by the government; for example, some Alevi groups are allowed to establish foundations while others are not.

mittees directly elected by the communities to which they belong." However, until the Regulation on the Methods and Principles of the Boards of Non-Muslim Religious Foundations came into force in 2004, the rules for holding elections did not have a legal basis, but were conducted with the permission of the Interior Ministry's minorities desk and with police measures according to custom. After the 2004 regulation, Articles 29 to 33 of the Foundations Regulation, which was enacted in 2008, regulated the elections of non-Muslim foundations.[31] At the same time, there were demands regarding constituencies and election rules, especially from the Armenian community,[32] and some suggestions were conveyed to the Directorate General of Foundations (VGM). In 2013, the VGM invalidated the articles of the Foundations Regulation on elections at minority foundations, promising to "do better." Scrapping the articles before new rules were ready created an election crisis. Applications to hold an election submitted after that date were rejected on the grounds that the relevant articles were no longer valid. In 2019, the VGM, undertook a measure to complete appointments made by boards who had lost members due to death, resignation or other reasons. This measure was struck down by the Seventh Administrative Court of Ankara in 2021 with its acceptance of an objection to the measure.[33] The VGM appealed the decision at the Ankara Regional Administrative Court, which ruled the lower court was unauthorized to rule and that the application should be sent to the Council of State.

The Justice Ministry's Human Rights Action Plan and Implementation Calendar, published in April 2021, included Article 4.3, called "Providing Freedom of Religion and Conscience in the Broadest Sense," which was a pledge that "a regulation will be made in the Foundations Regulation regarding the establishment and election of non-Muslim community foundations' boards of directors" within a year. Despite this, petitions to hold elections that were submitted to the VGM by four of the five major foundations –Surp Haç Tıbrevank High School Foundation,

31 https://www.resmigazete.gov.tr/eskiler/2008/09/20080927-13.htm

32 Elections for the Beyoğlu Üç Horan Church Foundation were repeated three times between 2009 and 2012 due to conflicts in the constituency of the Armenian community, and the court canceled the elections twice as a result of the objection. https://www.agos.com.tr/tr/yazi/3314/uc-horan-u-cuncu-kez-sandiga

33 The rationale for the annulment decision included the following statements: "It is concluded that there is no lawfulness in the proceedings, which are the subject of the case, which are established in such a way as to constitute a violation of both the freedom to vote and be elected, which is protected in accordance with constitutional regulations, and the prevailing provision of the Law on Foundations." https://www.agos.com.tr/tr/yazi/25483/vakif-secimleri-iptal-eden-genelge-hukumsuz-mahkeme-karari

Karagözyan Orphanage Foundation, Kalfayan Orphanage Foundation, Surp Lusavorich Church and Getronagan High School Foundation – on October 3, 2021, were not accepted on the grounds that a legal regulation on elections was still being prepared. Subsequently, the Surp Haç Tibrevank High School Foundation filed a lawsuit at the Istanbul administrative court. One of the five largest foundations, Surp Pırgiç, opted to wait for the new legal regulation.

After this long wait, the new Community Foundations Election Regulation was published in the Official Gazette on June 18, 2022. We will assess this regulation below, but it is first useful to discuss the negative implications of forgoing elections for a lengthy period of time and some significant elements of the election regulation.

> The authorities have not yet explained why the preparation of the election regulation took nine years. The fact that the regulation has now been issued does not make this question irrelevant because, first of all, it is the state's public and democratic obligation to its citizens to provide a satisfactory explanation on this issue. Otherwise, it normalizes arbitrary decisions and actions by the government. Secondly, the answer to the question of why it took so long to prepare the regulation will also enable us to understand why some articles of the regulation were prepared the way they were. There is a correlation between the amount of time the preparation took and its content. What was the administration thinking in delaying the regulation for so long, and how did this thinking reflect on the content of the regulation? Answers to these questions should be demanded.

The legitimacy and actions of the board members who served for more than 10 years, despite a mandate of four years, have become controversial in the eyes of Armenian society. It is a completely natural right of the community to dismiss through elections those administrators whose actions they do not like. The Armenian community's constitutional right to vote and to be elected was violated, and it was deprived of the right and opportunity to evaluate the services that were provided and to inspect and improve the management of its own institutions for a long period of time. This situation has led to inertia, indifference to the work of foundations and to an interruption in the transfer of governance from generation to generation in the Armenian community. These naturally endanger the future of foundations as institutions.

In addition, the lack of elections since 2013, which meant the will of the people was not reflected in the administration of foundations, has cast a shadow over the return of property made with the regulations of 2008 and 2011, because the properties were not managed by boards that had the support of the public, effectively hindering the use of the properties, which we will touch upon below.

Another problem that has emerged is confusion about under which rules elections will be held and how constituencies will be determined. As stated, foundation elections were based on districts, which are historically accepted as the surrounding area of a church. Due to the decreasing population of the Armenian community and the way in which Istanbul has developed, major imbalances have emerged among districts' Armenian populations. While thousands of Armenians live in some districts, in others only a handful remain. Some Armenians have settled in relatively new districts that do not have any Armenian foundations, schools or churches. The imbalance creates more vital and tangible problems when a foundation whose electorate has dramatically decreased has a significant amount of property. Properties and income that essentially belong to the entire Armenian community are being managed at the will of a limited number of people.

There are different attitudes within the community on this issue, but the rule equating the electoral constituency with the neighboring district is no longer compatible with the current situation and does not make elections meaningful. Alternatives include basing foundation elections on the maps used for voting in district, provincial or general elections for members of parliament. In fact, the pertinent articles in the Foundations Regulation that were canceled in 2013 set out the constituency as the district where the foundation is located, while leaving the option to the foundation's board to expand the electoral district to surrounding areas. If the VGM was satisfied that a foundation lacked "enough" voters in the district or province where it is located, the electoral district could be expanded to an area where it has the "most congregation." In our interviews for this report, we learned that the general inclination is for constituencies to be expanded to a regional or provincial basis. [34]

34 Since the 1970s, the foundations of the Getronagan, Kalfayan, Karagözyan and Tıbrevank schools and the Surp Pırgiç Hospital Foundation, which are known as Hink Hastadutyun (Five Foundations,) have held their elections on the same day and on a provincial basis. In the last elections, a total of 12 foundations held their elections on a provincial basis.

It is necessary to mention a final, important point about elections that may seem technical: voter lists. For a sound election, knowing who is eligible to vote and how many potential voters there are is obviously important. This is critical for minority foundations, in which voters must be a member of the community. Despite this, Armenian foundations do not have complete and up-to-date lists. The task of creating a voter list, which includes various difficulties and requirements depending on the boundaries of the constituency, is not one that foundations can handle on their own. That makes this another issue that requires coordination, which we will discuss below. This brings us to the conclusion that a body, such as a joint election board, that will both create the voter lists before elections and ensure the reliability of the elections by acting as an arbitrator in the event disputes arise, is necessary. It is contrary to basic logic that administrators, who may also be candidates for re-election, or the committees appointed by those administrators should organize and run the elections. In any contest, one of the competitors cannot be the referee.

Evaluation of the 2022 Community Foundations Election Regulations and the electoral process

The Community Foundations Election Regulation was published in the Official Gazette on June 18, 2022.[35] But after some developments that will be explained below it was revised on September 17, 2022. This regulation, both in its original and amended form, fell short of expectations in resolving the problems we explained above and, with some of its rules and requirements, increased the authority of the VGM over minority foundations. This tutelage is most clearly seen in Article 10 of the regulation under the heading "Pre-election proceedings." The first three paragraphs of the article are as follows:

> Pre-election proceedings
>
> ARTICLE 10- (1) The foundation is to notify the relevant regional directorate of the decision to hold an election by the administrative board, the electoral district, the date of the election, the lists of voters registered at the foundation, the composition of the election organizing committee, at least 60 days before the election date.

35 https://www.resmigazete.gov.tr/eskiler/2022/06/20220618-9.htm

(2) After examining the information and documents required for an election, *a certificate of authorization to hold an election is given** to the relevant foundation by the regional directorate. If there are missing documents or documents that do not comply with regulations, the foundation is given seven days to complete or correct the documents.

(3) For those foundations that do not complete or correct their documents within this period and those whose boards' terms have expired, an election determined by the regional directorate will be held by the organizing committee within 30 days of the expiration of the board of directors' terms in office.

(*Emphasis added by the authors.)

Here, we see that an obligation to obtain an "authorization certificate" was introduced, which was not present in the previous regulation. Even if the official name for this isn't "permission," it amounts to obtaining permission from the VGM before each election. The requirement to obtain such a certificate and the lack of specification for how long it will take to receive the certificate could open the door to arbitrary practices by the directorate, effectively allowing it to block an election. In its current form, this article restricts the freedom of association, and contrary to what is stated in the Treaty of Lausanne, the state is making the work of minority foundations more difficult, not easier.

A foundation that cannot complete the required documents or has deficiencies in the documents it has submitted is given seven days to correct them. When we consider this provision along with a provision in Article 11 that states, "Members of the election organizing committee are not required to be members of the same community," we see that there is no theoretical or legal obstacle for an election at a foundation that is unable to complete the required documents on time to be carried out by bureaucrats from the VGM, for example.

Another issue that strengthens the authority of the VGM can be found in the second clause of Article 12, which states the lists of candidates are checked by the VGM against Article 8 and 9 and are finalized after the VGM notifies the foundation. It is apparent that the reformed regulation lags the articles that were invalidated in terms of freedoms and envisages the VGM's supervision at every stage.

As for how the electoral district is organized under the new regulation, each province is considered an electoral district, but in Istanbul, where the majority of minority foundations are located, each of the three Istanbul districts used in

parliamentary elections has also been specified as a distinct electoral district.[36] A step forward, compared with the old regulation, is that the option of holding elections on a town basis has been removed. However, the previous regulation gave foundations the opportunity to expand their constituency by applying to the VGM. This is now only available to foundations located outside of Istanbul, which is a worsening from the previous regulation. Furthermore, understandably, parliamentary electoral districts in Istanbul are not specified in accordance with the demographic realities of the Armenian or other minority communities, thus there is a clear imbalance between electoral regions based on the distribution of Armenian foundations and population.

Following complaints from minority communities, the aforementioned change of September 17, 2022, gave communities with fewer than 15 foundations in Istanbul, such as Jews and Syriacs, the opportunity to hold Istanbul-wide elections. But the Greek and Armenian communities, which each have more than 15 foundations, were not allowed to hold a province-wide vote. How this decision was reached, why the figure of 15 was decided upon, why the number of foundations and minority populations were not considered are unanswered questions, and so this change, like the regulation itself, appears to be an arbitrary decision.

Two issues in the regulations in terms of candidates and administrators should be underscored. The first is that candidates are required to reside in the electoral district, just as voters are. Considering that a board of directors consists of at least seven people, as well as substitutes equal in number to the absolute majority, problems can arise in finding enough candidates in districts where the population of minorities is relatively small. Problems can arise in finding enough candidates in the districts where the population of minorities is relatively small. There is no prerequisite for candidates to live in the areas from which they are standing in parliamentary elections, even though the same districts are the basis for determining foundations' electoral districts. This requirement of residency may leave the foundations without directors and accordingly create the risk for them to be taken as a fused foundation which would mean a loss for the community.

The second point is that the regulation does not impose consecutive term limits on board members. Democratic governance usually limits the number of terms elect-

36 For the boundaries of the parliamentary election districts, see https://ysk.gov.tr/doc/dosyalar/docs/24Haziran2018/2018CBMV-illenenMVSayilari.pdf

ed officials can serve, and this is typically two terms. Since there is no such term limit for the board of directors of minority foundations, sometimes the same people serve for 25 or 30 years.

Another issue where progress was not made in the new regulation is the election organizing committee. For some time now, the subject of complaints has been that the organizing committee is appointed by the current administrators who may also be candidates, because it violates the principle of holding the vote under the supervision of an impartial arbitrator. This situation has not been remedied by the new regulation, which does not specify how the election organizing committees will be formed. Article 10's statement that foundations will notify the VGM of the makeup of the organizing committee means the situation will continue as is. On the other hand, there is no provision on how and with what method the administration will determine the organizing committee.

These errors and ambiguities in the regulation led to disputes within the Armenian community when the election process began. The Armenian Foundations Association, with the consensus of most foundations, determined one joint election committee for the first and third regions on June 27, 2022, and two for the second region because of its high population and number of foundations.[37] These delegations were to be tasked with coordinating and carrying out the elections of the Armenian foundations in their areas. However, three foundations – Beyoğlu Üç Horan Armenian Church Foundation, Büyükdere Surp Hripsimyants Armenian Church Foundation and Ortaköy Surp Asdvadzadzin (Mother Mary) Church and School Foundation – disagreed and decided to hold elections with committees they would establish.

While the joint election organizing committees in the second region determined a voter list of approximately 19,000 people, Ortaköy foundation's exclusive election organization committee's list consisted of 900 people, with which it applied to the VGM. The Regional Directorate of Foundations initially accepted the list and issued the authorization document required by the regulation. This caused a reaction among the community over concerns that such a limited voter list would undermine the principles of representation and fairness, and the patriarchate and other segments of society filed objections with the authorities. As a result, a change was made in the first clause of Article 10 in the September 17, 2022, regulation, with the condition that voter lists given to the VGM should consist

37 https://www.agos.com.tr/tr/yazi/27240/secim-tertip-heyetleri-olusturuldu

not only of voters registered at the foundation but "all members of the congregation who meet eligibility criteria in the electoral district where the [foundation] is located" and assigned responsibility for identifying those voters to the foundation's administration. This resolved the voter list dispute for the Ortaköy foundation, and the vote was held with the larger list in the second region.

Another situation encountered for the first time in these elections was the official distinction between Apostolic and Catholic foundations and voters. This distinction between the Apostolic, Catholic or Protestant sects has no social equivalent among Turkey's Armenian community. Individuals belonging to these sects are integrated in their public and private lives. Making such a distinction between foundations is unnecessary, meaningless and, in fact, harmful to the Armenian community, especially to its Armenian Catholic members, whose numbers are considerably reduced.

This distinction emerged in the Pangaltı Armenian Catholic Mıhitaryan Monastery and School Foundation elections. The election organizing committee applied to the First Regional Directorate of Foundations with a list of voters that included all Armenians, regardless of sect, and received authorization to hold the vote in a letter numbered 321045 and dated October 7, 2022.[38] However, some Armenian Catholics objected to the VGM about the lists, and the VGM decided that only Catholic Armenians could vote in elections at all of the Catholic foundations.

This decision is inconsistent in many respects. First, it departs from past practices. From the Treaty of Lausanne to past and current laws and regulations on foundations, we do not come across any distinction, recognition or custom on the basis of sect. Additionally, a look at the official website of the VGM's Community Foundations Representation shows the primary categorization as: "There are a total of 167 community foundations, of which 77 are Greek, 54 are Armenian, 19 are Jewish, 10 are Syriac, three are Chaldean, two are Bulgarian, one is Georgian and one is Maronite," although some foundations include "Catholic" in their names. [39]

More importantly, the public authority had previously never imposed restrictions on Armenian foundations that have "Catholic" in their names, such as restricting the vote only to Catholics. In fact, in the previous election of the aforementioned

38 https://www.agos.com.tr/tr/yazi/27900/pangalti-mihitaryan-icin-iki-liste-calisma-yurutuyor

39 http://www.cemaatvakiflaritemsilcisi.com/index.php/vakiflar

foundation, the majority of voters were the non-Catholic parents of students and graduates of the school that is affiliated with the foundation. While there had been criticism that past elections were held with too small an electorate and were insufficiently transparent, no distinction between Catholic and non-Catholic voters was made. Some argue the phrase "a member of the congregation to which the foundation belongs" in Clause C of Article 8 of the current regulation, which defines eligibility requirements, is the reason for this distinction. However, this expression and condition were present in previous election regulations. Furthermore, in the Foundations Regulation of 2008, Clause A of Article 30 stated, "Members of the community benefiting from the foundation or its charity participate in the election of the board of directors of the foundation." This was later annulled, along with Articles 29 to 33 which also regulated elections. At that time, excluding non-Catholics due to this wording was never discussed. The understanding of the word "congregation" to mean at the sectarian level in this context has only recently been put forth.

This distinction has also created a contradiction for candidates, if Apostolic Armenians cannot vote in elections of Catholic foundations yet still stand as candidates for their boards. Non-Catholic candidates participated in the aforementioned foundation's election, receiving a certain percentage of votes, giving rise to an absurd situation in which a person cannot vote for the office for which he or she is a candidate.

We also see no basis for the distinction when we look at who receives services from the foundation. A defining feature of foundations is the activities they carry out and who benefits from those. The article mentioned above in the Foundations Regulation of 2008 included benefiters among the electoral conditions. It is not only Catholics who benefit from the services of foundations defined as Catholic; non-Catholic students attend those schools and non-Catholic patients visit those hospitals. Making only Catholics eligible voters is therefore inconsistent and incorrect.

Creating distinctions such as Apostolic, Catholic or Protestant within the Armenian community in terms of their rights and practices will further undermine an already weakened society. Such distinctions do not exist on the social plane, and they should not be in question in the legal realm.

The regulation introduced a new practice of separating elections of foundations with hospitals from the others. No satisfactory explanation or justification has been offered by the authorities for this; in other words, it is an arbitrary imposition. Article 15, under the heading "Exception," reads: "Procedures and principles

regarding the election of administrative boards at community foundations with hospitals will be determined by a regulation in line with the Health Ministry's view within a year of this regulation entering force." These hospitals already operate under the authority of the Health Ministry, and no problems have been reported in their relations with the ministry to date. Like the other foundations, those with hospitals have the status of community foundations, and there is no legal basis to treat them differently than the others.

To summarize, this regulation that came out nine years later contains mistakes, deficiencies and contradictions. It is no secret that there are those within the Armenian community who seek to exploit these errors and omissions for their own personal gain. But it is the public authority that causes conflict in the Armenian community by making incomplete, complex and contradictory legal rules as a management strategy.

> The current regulation jeopardizes the minority foundation's autonomy and freedom of association, places them under the tutelage of the VGM and very nearly changes their status. This tutelary feature of the regulation clearly violates both the Treaty of Lausanne and the Constitution of the Republic of Turkey, in which Article 5 compels the state "to remove the political, economic and social obstacles that limit the fundamental rights and freedoms of the individual in a way that is incompatible with the social state of law and the principles of justice, and to provide the necessary conditions for the development of the material and spiritual existence of man."

Income-expenditure disparity

Like the demographic distribution of Armenians, another imbalance among foundations is the distribution of property and income, with major disparities in their balance sheets. While some foundations run a budget surplus, others always face a budget deficit. This is a dire problem, especially at foundations with schools that do not have enough income to cover the school's expenses. Schools with a budget deficit try to compensate with donations from the Armenian community, which have a high sentimental value, but cannot close the gap because they are unstable and insufficient. Support from foundations with budget surpluses is a possibil-

ity, but that depends entirely on the initiative and generosity of the foundation's administrators, it is not formalized and the decisions, methods and amounts are uncertain and transitory, precluding it from serving as a solution for the problem.

Need for coordination and supervision

The large disparities between income and expenditure among the foundations and the constant budget deficits of some foundations show that there is a need for coordination among foundations, especially on, but not limited to, financial matters. To meet this need, the Inter-Foundation Solidarity and Dialogue Platform (VADIP) was established in 2009, which is an unofficial, voluntary association of foundation presidents; later this organization was renamed the Armenian Foundations Union (ERVAB) and still operates under this name. These groups were unsuccessful in finding solutions to the problems, because they were deprived of a legal status, their working procedures and principles were unclear and they did not operate in line with democratic practices. Because the head of a foundation is also the head of or a director in this group, its consulting and supervisory services to the group are problematic. This creates a vacuum that makes it difficult for foundations to provide "quality" services to the Armenian community. Foundations are deprived of a basic organization necessary for realizing their raison d'etre. In addition, the lack of such a structure causes financially strong foundations to dominate weak foundations, damaging the reputation of foundations and their relations with society.

The lack of a supervisory mechanism also harms public trust in the foundations. The current legislation makes internal auditing essential in foundations. The form and scope of financial auditing, such as whether to use independent auditing firms, is left to the initiative of the foundation's management. The VGM, on the other hand, audits foundations for compliance with their mission and with the law and audits economic enterprises for compliance in their activities and with the legislation. While some foundations share their financial audit reports with the public through the press or the patriarchate, this is not a common, detailed nor regular practice, so falls short of meeting the need for auditing and establishing trust within society.

Administrative structure and form

Another problem at Armenian foundations is the composition and governance of their boards of directors. To put it briefly, the composition of the boards is not representa-

tive of the whole of Armenian society, and management styles lacking transparency and interaction are far from addressing current needs and problems.

Before the last elections in foundations, only three of the 53 foundation presidents, and only 27 of the 169 board members of 18 foundations with schools and hospitals were women, which gives us a figure of 16%. The gender balance has been improved since the last elections. During the last elections, 134 women were among the 436 elected board members, i.e. 30.7% of the new board members are women. Generally speaking, the average age of the leaders of foundations was 65. Board members tended to be about 55-years-old or older at most foundations. As far as we could determine, 5 percent of members are university-educated engineers or business professionals, while the rest are self-employed with high school diplomas. This profile fails to reflect the diversity of society. Due to lack of data, we cannot claim whether the representativeness of these positions, with respect to age or occupation, has been improved. However, our impression is that there have not been any significant changes.

Additionally, some, if not most, of the boards have a style of administration in which the head of the foundation is the only boss. Each foundation is associated with its president; other members of the board cannot or will not appear before the public. Management is not a team sport.

The style of management has led to inadequate professionalization, institutionalization, transparency and accountability. The management know-how, skills and capacity required by the workload at some foundations, especially after property has been returned, are beyond what managers who do this job voluntarily and part-time can provide. Management of the property under the responsibility of some foundations requires the employment of a wide range of staff, from lawyers to real-estate consultants. Moreover, as we said above, there is an expectation that foundations will undertake other activities and responsibilities in addition to their traditional functions. Neither the hours nor the qualifications of the current manager profile can fulfill these expectations. All this calls for greater integration of full-time professionals into foundation management.

The opaque nature of Armenian foundations is one of the biggest problems. Most boards of directors are like a black box. There is no regular communication between the foundations and society, even with the Armenian community in the neighborhood where a foundation is located. Most foundations do not have a website with information and news about the institution, except for the web page of the foundation's school.

The area where the lack of transparency is most problematic is the area where it is most needed, namely, the financial situation and relationships. Although some foundations make their annual balance sheets public, these do not contain enough detail and are far from satisfactory. The Armenian community is deprived of the knowledge of which foundation owns how much and what kind of property and the amount of income it earns. Managers refrain from providing this information as if it were their personal trade secret. All of the foundations, except for Yedikule Surp Pırgiç Hospital Foundation, accepted our request for a meeting, but the questionnaire, which included questions about financial matters, that we sent to more than 40 Armenian foundations, was only answered by one foundation, Topkapı Surp Nigoğayos Church Foundation. Likewise, lawyers for foundations whom we interviewed for this report stated that a large numbre of properties of various foundations have been returned following their applications,[40] but the foundations did not share this information with the Armenian community, the true owners of those properties.

Another requirement of institutions is the cultivation of an institutional memory. The place where the "memory" of the institution is represented and transferred to future generations is the archive. Here, Armenian foundations come up short. Systematic archives, which contain previous boards of directors' decisions throughout the history of the republic, relevant legal regulations and official circulars, correspondence from the past and the present and the files of lawsuits are neither centrally available nor at individual foundations. This makes scholarship, as well as a better understanding of the problems that still exist today in order to produce solutions to these problems difficult.

FINANCIAL RESOURCES AND SUSTAINABILITY OF FOUNDATIONS

The right to access financial resources, which is an integral part of the freedom of association, is protected under the United Nations' International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and

40 Lawyers are understandably unable to specify which foundation owns or is reclaiming which property, due to attorney-client privilege.

Political Rights' Article 22, as well as in Article 12 of the Charter of Fundamental Rights of the European Union. Legislation and policies on the right of access to financial resources can strengthen and facilitate the effectiveness of foundations. Restrictions on accessing and using these resources jeopardize their sustainability by subjecting them to a subordinate and weak position, hindering their freedom and activities, as clearly demonstrated by minority foundations. These "resources" are broadly defined as: financial assistance, material resources, access to international funds and solidarity, travel, and communication without unnecessary interference and enjoyment of state protection in these areas.[41] Similar to non-governmental organizations, the resources of minority foundations consist of the following items: national and local public support, international aid, charitable donations, property income and income-generating activities.

Armenian foundations receive no regular public financing, neither direct support in the form of cash transfers, nor indirect support by providing basic expenses such as electricity, heating and water. It is the same for schools and churches. While the state covers all the expenses of mosques and pays the salaries of imams, it does not cover the basic expenses of churches or the salaries of clergy and other employees. This is a clear breach of the principle of equality among citizens, as well as Turkey's commitment in the Treaty of Lausanne to support minorities' religious and other institutions. Presently, there is no direct pressure to restrict religious freedoms, but the lack of support from the public budget makes it difficult to follow religious practices. The state should either support no religion or sect, or if it supports one, it should support them all.

Only two of the Armenian foundations, the Yedikule Surp Pırgiç Armenian Hospital Foundation and the Surp Agop Hospital Foundation, have economic enterprises. Other foundations lack this type of income. As previously mentioned, there are serious disparities between the foundations in their income from property. Furthermore, the state confiscated many properties under administrative and judicial procedures for years and imposed restrictions on the rights of foundations to acquire property.

41 For more detailed information on this subject, please refer to the following report by the European Union Agency for Fundamental Rights, especially pages 8 and 9: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-challenges-facing-civil-society_en.pdf

Property rights

Before we move on to how appropriation developed historically, it is useful to briefly explain why foundations and their properties are so vital. The institutions on which the collective Armenian identity and existence are based are institutions: foremost schools, as well as churches, orphanages, hospitals and cemeteries. These are the basic components of community life. The state has placed all of these institutions under the umbrella of foundations, and the continuation of their existence and functions depends on income from the properties they own. These institutions cannot function and survive without the income the foundations' properties generate. Were these institutions unable to function and exist, it would be the end of the Armenian identity and its social existence in Turkey. This is what makes foundations and their income so important.

If we look at the historical development of property problems, we see that the acquisition of property by these institutions has been an issue since the Ottoman period because they did not have a legal personality. To be more specific, property could not be registered on behalf of foundations because they were not regarded as legal entities.[42] The properties of foundations are either registered in the name of reliable people from within the community, that is, with a trustee; or under the names "Jesus Christ," "Saint Mary" or other religious figures. Foundations attained legal personalities for the first time with the Provisional Law on Ownership of Immovable Properties by Corporate Bodies (*"Eşhas-ı Hükmiyenin Emvali Gayrimenkuleye Tasarruflarına Dair Kanunu Muvakkat"*), enacted in 1912. However, this right could not be fully realized because foundations were given only 1-1/2 years to submit declarations for title deed registrations, followed by the start of the war. Later, problems arose with the registrations made under aliases, leading to tragicomic situations in which the property was transferred to the state foundations administration or the Treasury because Jesus or Mary were "missing" and their heirs could not be found.

In this situation, the state asked all foundations to prepare and submit a list of their properties in 1936. This list, referred to in the literature as the 1936 Declaration, became the origin point for problems when, decades later, both the VGM and the courts arbitrarily accepted the 1936 Declaration as a charter deed for founda-

42 This was also the case for other foundations in the Ottoman Empire.

tions that had none. Naturally, foundations did not include wording about properties they might acquire in the future in the declaration they submitted in 1936, because they could not have predicted that the declaration would be treated as a charter deed decades later. However, by accepting this declaration as the charter deed and the list therein as immutable, the administration in effect froze the real-estate assets of the foundations in 1936. The confiscation from minority foundations of property they had acquired through purchases, donations, inheritance and other means after 1936 began with a lawsuit filed by the Balıklı Greek Hospital Foundation at the Second Chamber of the Supreme Court of Appeals in 1971 in order to register under its name a piece of property donated by a philanthropist. **The court clearly discriminated among citizens in the reasoning for its ruling by stating, "Real-estate acquisitions of legal entities created by non-Turkish people are prohibited."**[43] The second chamber's judgment was upheld by the Supreme Court of Appeals General Assembly in 1974,[44] which persisted with the discriminatory approach of the lower court with the following statements in its reasoning:

> "Clearly, it is forbidden for Legal Entities created by non-Turkish persons to acquire immovable property. Because Legal Persons are more powerful than Real Persons, it is clear that the state will face various dangers, and various inconveniences may arise if their acquisition of immovable property is not restricted. For this reason, although it is possible for foreign Real Persons to acquire immovable property in Turkey by purchase or inheritance, on condition that it is mutual, Legal Persons are deprived of this."

The reference to citizens of Turkey as foreigners is a flagrant legal scandal. Yet this justification formed the judicial, though not legal, basis for the 1936 Declaration to serve as the charter deed of foundations, with the statement: "The capacity of legal persons is limited by their status. Community foundations, on the other hand, do not have charters. Therefore, the 1936 Declarations should be counted as a charter. If there is no provision in the declarations that new property will be acquired, it means that these foundations do not have the capacity to acquire property." If we take a closer look at this approach, which is based on purely arbitrary reasoning and inference, the following picture emerges. First, the state arbitrarily stuck these institutions with the status of foundations, even though they did not have founda-

43 Supreme Court Second Chamber, decision dated July 6, 1971, numbered E. 4449, K.4399.

44 Supreme Court of Appeals General Assembly, decision dated May 8, 1974, numbered E. 1971/2-820, K.1974/505.

tion deeds. Then to fill that void, it arbitrarily designated a simple list of property as the charter deed. Then it confiscated property that was acquired after that list was submitted with the same arbitrariness. It raises several questions. Since these institutions did not possess a foundation deed, why were they given the status of a foundation? The same state that classified them as foundations when it knew they did not have these deeds makes them pay the price for not having the foundation deed. If there were no charters, why weren't they asked to prepare a charter, rather a declaration of their property? If this declaration hadn't been required, what would have been accepted as a foundation deed?

In subsequent years, the VGM relied on this decision by the Supreme Court of Appeals to file numerous lawsuits to seize properties acquired by minority foundations after 1936. **Accordingly, these properties went to either their original owners or their heirs, and when neither could be found, passed to the VGM, the Treasury or the Directorate General of National Property.** Moreover, the confiscated properties are not just those that were not included in the 1936 Declaration; even those listed in the declaration were taken for various reasons. In fact, a study by the Hrant Dink Foundation found that most of the seized properties are those listed in the 1936 Declaration:

> "A review of the seized properties of Armenian foundations that could be traced within the scope of this project shows that there are many instances where properties registered in the 1936 Declaration were subject to this act of extortion. 66% (490 items) of the 748 seized immovable assets were registered in the 1936 Declaration. Almost half of other immovables are either registered in the 1913 Declaration, or were acquired by foundations in the pre-Republican period. Only 17% (127 items) of the seized properties correspond to the post-1936 period." (Hrant Dink Foundation, 2012, p.193)

Some changes have been made on the matter of properties since the early 2000s within the framework of the harmonization process with EU laws.[45] The last and

45 Law No. 4771, enacted in August 2002, granted foundations the right to acquire immovable property, dispose of immovable assets and register the property at their disposal in their own name, "regardless of whether they have foundation certificates or not," contingent on the permission of cabinet. A limited period of six months was foreseen for the registration. Law No. 4778, enacted in January 2003, transferred authorization from cabinet to the VGM. With the amendment made in the Law on Foundations in July 2003, the registration period was extended to 18 months. The January 2003 regulation issued under Law No. 4778 introduced other restrictions on property acquisition. The VGM would be able to consult cabinet and unspecified "relevant public institutions and organizations" in applications for property acquisition. The vague process suggested that the state approached this issue as a security and intelligence matter, rather than citizens' rights. The regulation also gave foundations the right to acquire property only "to meet their religious, charitable,

most comprehensive of these steps was the Foundations Law No. 5555, which was passed in 2006. The president at that time, Ahmet Necdet Sezer, vetoed the nine articles pertaining to minority foundations with a discriminatory approach that echoed the 1974 Supreme Court of Appeals ruling, saying, "It is incompatible with the Treaty of Lausanne, the constitutional principles put forth as the founding principles of the Republic of Turkey, with the existing legal system, with Article 10 of the constitution that prohibits privilege, as well as with national interests and public interests."[46] The Foundations Law No. 5737, which contains the same articles, was enacted in 2008 during the presidency of Abdullah Gül. This law introduced important innovations, including the right of minority foundations to acquire property, dispose of their properties, in certain cases and under certain conditions, swap acquired property and rights for more advantageous ones or for cash (Article 12). It also allowed for the donation of property that was not of use to one foundation to another within the same community or to convert it to a source of income(Article 16); accepting cash donations and other aid from domestic and foreign organizations, provided the VGM was notified (Article 25); and establishment of an economic enterprise and company, again, with notification to the VGM (Article 26).

The law's provisional Article 7 for the first time introduced a regulation on the return of appropriated assets, albeit with limitations.[47] However, it also contained serious deficiencies. For example, it did not include a provision for the return of or compensation for property that had been transferred to a third party after it was seized. Furthermore, it stipulated that properties appearing in the 1936 Declaration that were registered under fiduciary or religious names *be in the possession of the foundation*. In practice, this meant that properties registered to these names and confiscated after 1936 would not be returned.

social, educational, sanitary and cultural needs," in addition to linking the purchase of real estate by community foundations to onerous bureaucratic procedures. It is important to note these regulations from 2002 and 2003 included no provision on properties confiscated in the past.

46 Republic of Turkey Presidency, "To the Presidency of the Grand National Assembly of Turkey," No: B.01.0.KKB.01-18/A-10-2006-830, November 29, 2006, p. 15

47 Provisional Article 7: "Community foundations; a) The immovables registered in the 1936 Declarations and registered in the title deed under pseudonymous or unnamed persons still in their possession; b) Immovable properties that were purchased by community foundations after the 1936 Declaration or bequeathed or donated to community foundations, but still registered in the title deed in the name of the Treasury or the General Directorate or those who testified or donated, on the grounds of not being able to acquire property; if an application is made within 18 months from the effective date of this Law, together with the rights and obligations in the land registry records, the registrations are made on behalf of the community foundations by the relevant land registry directorates after the positive decision of the Assembly.

According to information provided by the VGM, 1,410 registered applications were made in accordance with Law No. 5737's Article 7. Of these, 181 were approved, 347 were denied and 890 were rejected due to a lack of sufficient documentation (Hrant Dink Foundation, 2012, p. 78). The fact that 65% of applications were rejected on the basis of insufficient documentation reveals the regulation's shortcomings. In fact, provisional Article 11[48] was added to the law on August 27, 2011, to address this issue, followed by a regulation for the article's implementation two months later. This time, however, properties not included in the 1936 Declaration were excluded, which meant that many appropriated assets were not returned. Only some of the properties included in the declaration that were confiscated were returned. According to the VGM website:

> "Under the regulation made with Provisional Article 11 of the Foundations Law No. 5737, a solution was obtained with the decision to register 333 immovable assets to the names of foundations and pay the cost of 21 immovable assets. Additionally, ownership of 55 immovable assets was transferred to four Syriac foundations, within the scope of Provisional Article 13, which was added to the Law on Foundations No. 5737 on July 23, 2018. With the aforementioned regulations, it was decided that a TOTAL of 1,084 immovable assets were registered in the name of community foundations and to pay the cost of 21 immovable assets to community foundations between 2003-2018." [49]

However, what we could not find on the VGM website or in other sources is the ratio of accepted applications to all applications made on the ground of regulations enacted after 2008, which would be the real indicator of the amount of re-

48 Provisional Article 11: "Community foundations; a) Immovables registered in the 1936 Declaration but with unclear owners, b) Immovables registered in the 1936 Declaration but registered in the name of the Treasury, General Directorate of Foundations, municipality and special provincial administration for reasons other than expropriation, sale and barter, c) Cemeteries and fountains registered in the 1936 Declaration and registered in the name of public institutions, together with their rights and obligations in the land registry, are registered in the name of community foundations by the relevant land registry directorates, if an application is made within 12 months from the effective date of this article. Property registered to the Treasury or the General Directorate on the grounds community foundations were not allowed to acquire property, but were purchased by community foundations or bequeathed or donated to community foundations, and were then registered to third parties shall be compensated for by the Treasury or the General Directorate at their current value, to be determined by the Finance Ministry. The procedures and principles regarding the implementation of this article are regulated by a regulation. https://www.resmigazete.gov.tr/eskiler/2011/08/20110827-1.htm For the regulation, see: https://www.mevzuat.gov.tr/File/GeneratePdf?mevzuatNo=15356&mevzuatTur=KurumVeKurulusYonetmeligi&mevzuatTertip=5

49 https://www.vgm.gov.tr/vakiflarimiz/vakiflarimiz/cemaat-vakiflari.

turned properties. In this respect, we only have data from the Third Sector Foundation of Turkey (TÜSEV), dated 2012: As of September 18, 2012, the Foundations Assembly decided to return 58 immovable assets out of 1,568 applications and to pay compensation for eight immovable assets; it ruled that 53 applications were ineligible. The assessment of the remaining 1,449 applications was ongoing as of that date. Unfortunately, we could not obtain information from the Armenian foundations on how many applications were made and how many properties were returned within the scope of these regulations, which points to problems with their style of administration and transparency.

Deficiencies and difficulties encountered during the restoration process

The trouble first appears at the beginning of provisional Article 7, where it stipulates that for a property to be registered with a foundation, it must both be included in the 1936 Declaration and be in the possession of the foundation at the time of application. In a regulation for the return of confiscated properties, it is an incoherent requirement to expect the property in question to be under the foundation's ownership. How can an appropriated asset still be in a foundation's possession?

Relatedly, one of the biggest challenges faced by foundation administrators is obtaining documents that prove they owned the properties. Although information about confiscated property, such as cadaster and land-registry records, are in the hands of state institutions, the task of proving their ownership of properties and/or where they are located is assigned to foundations, namely the victim, and foundations are given a limited amount of time to meet this obligation. This contradicts the spirit of a regulation that is supposed to offer compensation and instead creates new violations of rights. The fact that a foundation's managers must gather documents already with the state in order to prove to the state that the properties in question belong to the foundation is a sign that the government and the bureaucracy are making things harder, rather than easier, for foundations that have had their rights usurped. In addition, foundation managers and lawyers who are trying to gather the necessary documents say that they often encounter a negative attitude in the archives and that they have difficulty obtaining the documents.

According to information we received from lawyers, another issue that complicates work on properties registered in the 1936 Declaration is that these properties lack block and parcel numbers, since cadastral procedures at that time had not yet been

conducted. Back then, official deeds were recorded by describing the surroundings of a property from north to south. Because of changes in the physical environment and street names over a long period of time, it is often difficult to determine the exact location of some of the properties. The requirement that this challenging work be done in a limited amount of time makes achieving results difficult.

Foundation administrators and lawyers also told us about the rejection of applications for the return of property registered to the VGM because the owner was not specified in the registrar and it was designated a fused foundation, in which the VGM takes control of its administration. Because the Foundations Assembly decides on the return of or compensation for property, the VGM is in the position of both defendant and judge. Although some of the compensation applications for properties now in the hands of third parties have been approved, the fact that the market value of the property is determined by the party that will pay it, i.e. the state, leads to both reduced compensation and delays in its payment. Despite the clearly stated imperative in provisional Article 11 that the parties are the government and the foundation, applications have been rejected with the recommendation that foundations open a lawsuit against the third party to cancel a cadaster or title deed. Since neither incurring damages to a bona fide third party is appropriate nor is a voluntary evacuation of a property likely, the side that should compensate the foundation for the loss of property is the state.

Provisional Article 11 stipulates that for compensation of a property to be paid by the Treasury or the VGM above the value determined by the Finance Ministry, that property had to be usurped on the grounds that minority foundations were not authorized to possess properties other than those listed in the 1936 Declaration. This is a significant restriction on compensation, since illegal expropriations took place not only because of unauthorized possession but also because of other reasons, such as annulment of title deeds or wills.

It is also worth noting the problem of public institutions continuing to claim rights over properties that have been registered to foundations or even returned by administrative or court decisions. In lawsuits where the government has appealed local court decisions' that were in favor of foundations, the Court of Cassation has ruled that the provisional Articles 7 and 11 do not limit rights under cadastral law and therefore the plaintiff foundation cannot make any claim. Therefore, it is possible to refuse to return properties registered in the cadaster in the name of a public institution, on the grounds that the legal limitation of 10 years has been exceeded. Furthermore, lawsuits by public institutions to annul title deed registra-

tions for properties that have been returned to foundation under the provisional articles show the need for legal reforms. Similarly, we have learned that difficulties in implementing court decisions for the return of property arise at the land registry offices during the registration of properties that are to be returned.

There are also lawsuits today that seek the return of property. We could not obtain definitive data on the number of ongoing cases. We were told that cases take too long; in particular, cases won by foundations in lower courts that are then appealed are kept waiting at the Supreme Court for many years. Also, we noted that there are cases in which the land in dispute was converted into a public space, such as a park, primarily by municipalities before the higher court has reached a decision. This would prevent a foundation from using the land to generate income in the future, should it ultimately win the case. Furthermore, foundations face difficulty evicting people from homes that have been built without permission on land they have recovered.

Tax liability

In Turkey, foundations, including minority foundations, are not subject to corporate tax, in line with Corporate Tax Law No. 5520. If they have established an economic enterprise, that enterprise is subject to corporate tax. Among Armenian foundations, Yedikule Surp Pırgiç Armenian Hospital Foundation and the Surp Agop Hospital Foundation operate an enterprise; some of these hospitals' health services are provided for fees, and they issue invoices and pay corporate taxes. As we will discuss in the chapter on schools, the state sometimes treats Armenian schools as if they were fee-charging private schools, demanding they pay value-added taxes (VAT) and other fees, even though these schools do not operate like private schools.[50]

While foundations are not corporate taxpayers, they are obliged to pay the state the withholdings they make from payments made in return for the purchase of goods or services by means of a concise declaration. For example, minority school administrations make this deduction from teachers' salaries and pay them to the state.

Foundations also pay 20 percent tax on rental income. In addition, they are also liable to pay VAT for rent earned from land, buildings and mineral waters, spring waters, mines, quarries, etc., except for leases that do not practically concern minority foundations.

50 You may find details on this issue in the Schools chapter of our report.

FOUNDATIONS' RIGHTS OF PARTICIPATION AND REPRESENTATION

In democracies, participation from the bottom up in decision-making processes is important and a necessity. Although the momentum of and enthusiasm for Turkey's EU membership have been lost, candidate countries are still expected to adhere to the Treaty on European Union. In Article 11, the obligations of official institutions on the civil and political participation of citizens and institutions says, in part:

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

One of the most significant problems minority foundations have long faced is the inability to participate sufficiently in decision-making processes, especially in matters that concern them. In general, the administrative tradition in Turkey is for decisions to be taken from top to bottom, without adequate discussion and consultation with relevant organizations. To ensure the participation of minority foundations in decision-making, it was envisaged that community foundations would elect a representative to the Foundations Assembly with a change to Article 96 of the Foundations Law.

While it is a positive step toward giving minority foundations a voice, some problems are apparent with this regulation. Before discussing the position of the minority representative in particular,it is first necessary to draw attention to the general representative capacity and effectiveness of the Foundations Assembly by looking at its composition.

The assembly consists of a total of 15 members. In addition to the general director of foundations, his three deputies and the VGM's legal counsel, five members with knowledge and experience on foundations who are university graduates are appointed by the president, three are chosen by new foundations and one each by annexed and minority foundations. The assembly meets at least twice a month, with at least two-thirds of its members present, and requires an absolute majority of the total members to make decisions. As seen, 10 of the members

are determined by the government from among civil servants at the VGM and appointed by the president , when eight votes are required for a decision. In other words, representation of foundations at the assembly is generally insufficient. Furthermore, the fact that 167 minority foundations elect only one member to the assembly, and therefore only one member from one community represents the different communities at the assembly, is another factor that makes representation inadequate and ineffective. According to our meetings with minority foundation representatives who have or are serving at the assembly, the problems they have repeatedly brought to the agenda have not been resolved, pointing to the need for more detailed and comprehensive regulations on the rights of participation and representation. [51]

It is not possible to say that the representative of minority foundations, neither as a person nor as an office, was adequately and effectively addressed by the government and the VGM in the election crisis of the boards of minority foundations, which was discussed above. The representative has not been regularly involved in the process of preparing the election regulation, said to be underway since the end of 2021. Aside from the fact that the representative office was not actively involved in preparing the draft, widespread, systematic and transparent work with foundations was not undertaken. Only a limited number of administrators were interviewed behind closed doors, and the public was not clearly informed on what was discussed at these meetings. The draft election regulation was given to a limited number of people "on the condition that it is not shared with others." At the last stage, the changes proposed by the current representative of community foundations, Can Ustabaşı, in consultation with community foundations and former representatives, were not accepted by the VGM. Therefore, the existence of a representative on at least the issue of elections, did not have an impact.

Broadly speaking, the main barriers and difficulties to the participation of civil society in decision-making processes are: limited access to information on political or legal initiatives; the absence of minimum standards or clear rules regarding the exercise of the right to participation, and thus inconsistent practices; a lack of awareness of and the skills for various methods of effective and meaningful participation; and a lack of allocation of time, financial and human resources for

51 For detailed information, see https://www.cemaatvakiflartemsilcisi.com/

participation in public services.[52] Despite the findings that the channels of communication of Armenian foundations with national and local official institutions have improved in recent years, it should be noted that the quality and quantity of this improvement still depends on unofficial relations and political circumstances. We observed that communication, information-sharing and even services lack continuity and are completely at risk due to personnel changes at the municipality or other public institutions, for example.

REFORM PACKAGE

Below are suggestions for solutions to the problems we have sought to summarize in this report. The point where almost all of these problems converge is the legal status of community foundations. Therefore, the solution must start from there.

Legal status

As we said at the beginning of the chapter, the legal status designated to minority foundations does not conform with their historical and actual identities. A foundation is basically a property association; minority foundations, on the other hand, encompass dynamic, active institutions such as schools, churches and hospitals in which people take part in their functions and activities and these institutions have to change in order to adapt to the changing conditions of the time. **The status of foundation freezes their position and limits their flexibility and opportunities by pigeonholing them.**

One alternative to the current legal status could be the status of an association, which is defined as an organization of persons. But that too does not fully match the character of minority foundations. Because these institutions have a distinct religious community, membership would have to be restricted to a particular ethnic or religious group, which could cause legal problems, for example.

52 For more detailed information on this subject, please refer to the following report of the European Union Agency for Fundamental Rights, especially pages 10 and 11: https://fra.europa.eu/sites/default/files/fra_uploads/fra -2018-challenges-facing-civil-society_en.pdf

Instead, a status specific to these institutions is needed. A group of citizens in this country require this status, which should be recognized by the authorities as a democratic right. In fact, the state has accepted this to some extent by creating a separate category of "community foundations." To find solutions to the problems of foundations, it is necessary to accept their aspects that do not fit with the classic definition and status of a foundation and find other arrangements. Also, a democratic approach would be to look at these institutions as vehicles for the participation in decision-making of a segment of the citizenry, both in their own minority groups and in political and social matters in society at large.

Since nomenclature is an integral part of defining – and therefore the legal status – and based on what we said about the term in our report's chapter titled Credo, it would be more accurate to characterize these foundations as "minority foundations" rather than "community foundations."

Since minority foundations and newly established foundations have fundamental differences, classifying them under the same law causes problems, both conceptually and legally. There may be an issue that requires regulation for minority foundations that does not apply to new foundations. To avoid such complications, a law specific to minority foundations should be considered as the first choice; if this isn't possible, minority foundations should be covered in a separate section with a separate law prepared for older foundations.

In addition, considering the differing demographic and social structures and needs of each minority group, preparing different regulations for each minority group would remove confusion and contribute to lasting solutions of the problems.

Another important issue is related to the status of fused foundations. Foundations for which a manager cannot be appointed for a period of 10 years are managed and represented by the VGM with a court decision, and these are called fused foundations. Managers cannot be elected or appointed again at these foundations;[53] in other words, control of the foundation is taken from its owners.

53 https://www.vgm.gov.tr/vakiflarimiz/vakiflarimiz/mulhak-ve-esnaf-vakiflar

According to information from lawyers actively working in this area, designating a fused foundation have been implemented arbitrarily and inconsistently by the state; so much so that one of two physically adjacent foundations belonging to the Jewish community in the Istanbul district of Balat has been defined as fused foundation while the other is not.

A minority foundation and the properties under its control collectively belong to the entire minority group and are a means for the realization of its collective rights. Therefore, designating a minority foundation a fused foundation violates the rights of the minority group. It should be stipulated in the law that these foundations cannot be given the status of fused foundations. And if one is, there must be a regulation to make it legally possible to transfer the assets in its possession to another foundation or foundations with similar purposes belonging to the same minority group. Furthermore, this legal reform should make it possible to revive and return minority foundations that have been previously annexed. The Hagia Sophia Foundation, which has been reactivated in recent years, could serve as a precedent in this regard.[54]

Foundations' financial resources and sustainability

Property rights

As we try to explain in this report, the confiscation and return of property has become a complex issue spanning decades. Although steps taken since 2008 on the issue of restitution have been positive, there have been shortcomings in every new regulation. The authorities have avoided instituting a legal remedy at the root, but this is what is necessary. Regardless of whether a property is listed in the 1936 Declaration, its type and the reason for its confiscation, a legal

54 Hagia Sophia, built as a church in the 6th century, served as a mosque during Ottoman rule. In 1934, it was converted into a museum, which troubled some conservatives. In 2020, its status as a museum was annulled and it was made a mosque again after a court ruling reactivated the Hagia Sophia Foundation.

regulation that contains precise and inclusive terms is necessary for the return of seized properties and for fair and speedy compensation for property that was transferred to third parties. Since all obligatory documentation is already held by state institutions, the burden of proof should be removed from foundations. To reiterate the determination from an earlier report on this subject: "If community foundations demonstrate with minimum indications that they have acquired immovable assets through legal means, the burden of proof should fall on the state; if there is a suspicion that the claims of foundations are invalid, the state that already has or has the opportunity to have all the necessary information and documents should be obliged to prove the contrary" (Kurban & Hatemi, 2009, 29).

There should be no time limit for return or compensation applications made by foundations; if there is, this period may be limited to 10 years, taking the cadastral objection period as a benchmark. However, it should be underscored that such a limit is only pertaining to the registration of the property to the concerned foundation by an administrative regulation. Otherwise, it is always permissible to file a lawsuit for the return of an asset, since the right to property is an inviolable right.

While these regulations are being discussed and made, one thing should not be forgotten: The expectation is neither a concession nor privilege from the government to these foundations, but compensation for injustices and unlawfulness committed in the past. The amount of compensation should be directly proportional to the scale of the usurpation. The more that was taken, the more that should be demanded.

Tax liability

Exempting minority foundations from taxes, duties, excises and fees, except on income earned from their economic enterprises, would provide financial relief to minority foundations. This requires a regulatory change. Recognition by the government that these foundations work for the public good would both ensure tax-exemption status and increase donations, because such contributions could then be deducted from donors' taxes. A legal regulation giving these institutions

tax-exempt status and an administrative decree stating they work for the public good are needed. It is useful to note that the current rules for tax exemption require an example of the foundation charter, which brings us back to the problem that minority foundations lack this charter. Therefore, a foundation charter should not be a condition when granting public-benefit status to minority foundations.

Effective and efficient governance of foundations

Perhaps the first thing to mention in this section is the need to remove the restriction in Article 101 of the Civil Code that states foundations cannot be established to support members of a certain race or community, which is an obstacle to freedom of association in general and contradicts the Treaty of Lausanne.

Another obstacle hindering minority foundation activities is the legal requirement that if a foundation wants to be engaged in certain activities, initiatives, and partnerships, these had to be mentioned in the foundation charter. Because the vast majority of minority foundations do not have these charters and have been unable to meet this condition from the outset, they are deprived of many opportunities. When the Law on Foundations was being written, the requirement of a foundation charter to establish a business was abolished in Article 26, and all foundations' equality before the law was cited as the justification. Therefore, the prerequisite of a charter for minority foundations' activities should be removed from all articles in accordance with the principle of equality.

We will now focus on two more specific issues related to the effective and efficient governance of foundations: administrator selection and coordination among foundations.

Administrator elections

As discussed previously, the regulation issued on June 18, 2022, on the election of administrators not only falls short of resolving problems related to elections, it expands the VGM's influence over minority foundations. This regulation, which gives the VGM control and approval at every stage of elections, including in the determination of the candidate lists, restricts the freedom of association and must be changed. The VGM's role in elections can be defined as that of an arbitrator only in the event of complaints from minority groups.

The regulation defines the constituencies of foundations along the same lines as parliamentary constituencies in Istanbul, and as the entire province for those located outside of Istanbul, allowing the latter to expand their constituency. Although this is better than restricting elections to a neighborhood, foundations in Istanbul should also be given the opportunity to include the entire province as their constituency. Broadening the base of voters as much as possible would prevent foundations from manipulating elections with a limited number of voters to prevent or restrict Armenians' access to financial resources, which belong to the entire community. So, parliamentary constituencies are better than townships, but the entire province is even better. Ending the requirement of "residency in the constituency" for candidates would correct problems caused by the imbalance between where people live and the geographical distribution of foundations. In reality, today all Armenian foundations serve the whole province. A family residing in one district in Istanbul can send its child to a school in another district or organize church ceremonies such as weddings and funerals in a church outside of the area where they reside. If elections are held on a regional basis, the residency requirement in the constituency should be abolished for the candidates. Otherwise, as explained above, this can put minority foundations at risk of becoming fused foundations..

How election organizing committees, which plan and oversee elections, will be formed is another issue that needs to be clarified. The new regulation, as in the past, left this task to foundations' current administrations, but did not specify a method. As such, a long-running complaint about the lack of impartial election organizing committees remains. Independent organizing committees authorized during the election process are needed to ensure voter lists are up-to-date, reliable and secure; prevent arbitrary and irregular practices during elections; safeguard fair, transparent and high-participation elections; and review any objections during the process or results, including against foundations that are not holding elections on time. Therefore, a rule that would enable a single election organizing committee chosen by the community or, at least, all of the foundations, is needed in the regulations. This committee can organize and supervise all the elections that are held during its term of office, and a new one can be elected when that term expires.

Also absent from new regulation are term limits for administrators. The same people can be administrators for a very long time, which is incompatible with democratic principles. A limit of two terms, which is a broadly accepted norm, is necessary for the length of time administrators can serve.

In the event there are not enough candidates for all the foundations in a certain area, it is possible to group together foundations with less property and responsibilities with foundations that have a higher workload, because the new regulation allows one person to be an administrator at three foundations. In other words, the same seven people can simultaneously stand as candidates for a foundation with a high workload and one or two foundations with a low workload; if elected, they can manage these foundations concurrently.

We have already stated that there is no legal basis nor justification for the stipulation that foundations with hospitals must be separated from other foundations and hold elections one year later under a separate arrangement. This practice should be abandoned.

Before moving on to potential solutions for coordination and regulation among foundations, it should be said that minority groups' demographics – that is, their populations and geographical distribution, needs and expectations – may differ. Because of this, among the options should be issuing different electoral regulations for each group.

Coordination and supervision among foundations

As discussed in the section in which we covered the problems faced by foundations, inequities between income, expenditure and property among foundations, especially the constant budget deficits of foundations with schools, and the need for regular and independent audits make coordination on the use of resources and the management of foundations essential.

Legally speaking, each foundation is a separate entity, independent in its decisions and bears responsibility for those decisions. However, measures taken by each foundation's administration without consulting others, and decisions taken by individual foundations to provide financial support to cover budget deficits at schools has become a threat to the future of foundations, schools and, subsequently, the Armenian community.

Coordination between foundations is essential, but different approaches can be developed on how to achieve this and what the boundaries will be. A regulation that will not eliminate the autonomy of foundation administrations but will ensure resources are used efficiently and in a way that secures the future of each foundation and school is required. Even though such an arrangement could be

created on a voluntary basis, the examples of VADİP and ERVAB show that such coordination does not function well on that basis. One needs to find an intermediate formula. For example, a working office could be established that is not dominated by one or two foundations, operates according to democratic procedures and whose work, meeting and decision-making methods are bound by written rules. Although this office is not empowered to make decisions beyond the will of foundations, foundation administrations can be encouraged and directed to seek advice and opinions from this office when undertaking certain projects and making certain decisions. After this consultation, the foundation administrations themselves decide in which direction they will act, but if they act contrary to the recommendations of this office, they will have to explain this to the Armenian community, that is, their voters.

This organization or office can be established as an association. Since associations are organizations of people, Armenian foundation administrators can belong to this association/office, and membership fees paid by the administrators from the budget of each foundation, in proportion to its financial strength, would constitute the office's budget. This funding would enable it to hire people to fulfill the aforementioned functions. It may have departments in education, financial affairs, legal affairs, real-estate management and development, governance and political affairs and social affairs. Work the office would undertake may include:

-Examining budget deficits at foundations and ways to close the gaps,

-Preparing reports on how much financial support can be transferred between foundations,

-Consulting foundations on national and international funds for which they can apply,

-Organizing annual financial audits of foundations,

-Organizing foundation elections,

-Tracking and archiving lawsuits filed by foundations and providing legal consulting, if needed,

-Consulting foundations on real-estate management,

-Providing the framework and organization for educators and school administrators to hold regular meetings,

-Connecting at-need students with people and institutions that can provide scholarships.

For example, this office could hire reliable international auditing firms that will provide detailed financial assessments of foundations, then share the results with the public through reports. As for elections, the main tasks are preparation of voter lists, organizing the vote and resolving potential conflicts. Pragmatism and principles require these duties be assigned to people outside of foundation administrations. This office may also be responsible for election organization and security before and during the vote.

In addition, all of these, along with working principles and procedures, can be recorded in the association's bylaws.[55] Unlike previous attempts, a set of written rules to follow will create a more stable, disciplined, fair, egalitarian and efficient administrative style.

Establishing coordination among foundations with such an association – as a union of people – will preclude debate on whether foundations can establish associations or common structures as legal entities, which arises from Article 25 of the Foundations Law. The article under the heading of International Activity states: "Foundations may engage in international activities and cooperation, open branches and representative offices abroad, establish superior organizations and become members of organizations established abroad, in line with their purpose or activities, provided that it is included in the foundation charter." That final clause creates the first problem for minority foundations, because, as we have repeatedly explained, these foundations do not have such charters, since they were not created as foundations. If this is put forth as a condition, it means minority foundations cannot benefit from the opportunities listed in the law. In addition, the heading of the article being "international activity" also leads to uncertainty as to whether the transactions listed are limited to the international arena.

On the other hand, regardless of how coordination among foundations is established, the ambiguity in the law should be eliminated. It should be made legal for minority foundations to establish joint organizations, unions and federations at home and abroad for coordination or other purposes. It is essential for the foundations of minority communities to collaborate, and the manner in which this is realized will be decided by the foundations of the minority community, and

55 As an example, see the bylaws of RUMVADER: http://www.rumvader.org/Assets/Upload/ContentImage/rumvader-tuzugu-pdf14082015034541.pdf

this should be codified into law.[56] It is possible to find solutions that make coordination among foundations essential without abrogating the autonomy of each foundation, and the office or association can be one of these solutions. Another extremely vital issue is that the organizations for coordination among foundations be established in such a way that it does not allow state control over the foundations. The initiative in the formation and operation of these organizations lies entirely with minority groups. Establishing a common organization like an association will also reduce such a risk.

56 An example in the history of the Turkish Republic sets a precedent for this: "In 1954, the Democrat Party government formed an elected 'central board of trustees' of 14 people in order to ensure coordination among the delegations that undertook management of Armenian foundations. However, the central board of trustees, which operated with the government's special permission without a new legal regulation, was abolished by the order of Refik Tulga, the military governor of Istanbul, after the military coup of May 27, 1960." (Bakar, 2001, p.265-268; Özdoğan & Kılıçdağı, 2011, p.100).

MINORITY SCHOOLS

As discussed in the chapter Credo, the Treaty of Lausanne and current standards on human and minority rights provide the basic criteria for tackling the problems of minority groups in education and other fields. The treaty's Articles 40 and 41 refer to the educational rights of minorities and guarantee their right to establish, manage and supervise their own educational institutions, where they can provide education in their own language. It also notes that these groups will enjoy the right to education on an equal basis with the rest of Turkey.

The international literature shows the right to education has developed significantly since the post-World War II period and that basic education is accepted as an indispensable human right. Education and language cannot be treated separately, and there is a close relationship between education and language preservation. The state has the obligation to help sustain language, a basic component of minority identity. Minorities recognized by the Treaty of Lausanne were to receive state support to protect their language. Not just the speakers of the language, but the language itself should be protected, requiring the state to invest in a policy on the language and its instruction.

UNESCO, the United Nations' culture and education agency, has determined that accessible education free from discrimination and equal in opportunity and treatment is a fundamental human right and obliges member states to provide this right.[57] The U.N.'s Committee on Economic, Social and Cultural Rights identifies four basic principles for education and makes states responsible for the realization of these principles: availability, accessibility, acceptability and adaptability.[58]

57 https://en.unesco.org/themes/right-to-education/fundamental-principles

58 https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/d)GeneralComment-No13Therighttoeducation(article13)(1999).aspx

Availability means the existence of sufficient and functioning educational institutions under the jurisdiction of the state. In order to function, the necessary conditions are wide-ranging, from physical buildings and facilities to a supply of trained teachers with adequate salaries.

The principle of accessibility refers to the right of everyone under a state's jurisdiction to access education. The U.N. committee finds that this principle has three dimensions. First, anyone, especially less disadvantaged members of society such as ethnic or religious minorities, must have access to education without any legal or de facto discrimination. Second, education must also be physically accessible. The first thing to understand is geographical proximity; that is, the institution must be accessible by reasonable means of transport. On the other hand, as technology develops, it will no longer be sufficient to consider accessibility only in physical terms. Online education requires adequate and widespread internet access and should also be considered a part of accessibility. The third dimension of accessibility is financial, meaning no one should be denied basic education due to lack of money.

Acceptability is the principle that the content, curriculum and method of the education is acceptable to students and, in some cases, parents. Acceptability has different dimensions, such as the quality of education or its cultural relevance. In other words, the education provided is expected to meet certain universal standards.

Adaptability means that education has the flexibility to meet the changing needs of society and communities over time, as well as the needs of students in different social and cultural settings. It means showing flexibility to meet the needs of children from different groups in legal regulations and in practice, rather than applying a single model to all schools and students across a country. Therefore, adaptability is a fundamental principle for solving the problems of the schools that this report highlights.

In addition to these, inclusive education, as defined by UNESCO[59] and included as a guiding principle in the Turkish Ministry of National Education's publications (Öztürk et al., 2017, 15-16), supports the realization of an approach

59 http://www.ibe.unesco.org/sites/default/files/Guidelines_for_Inclusion_UNESCO_2006.pdf

to education that takes into account the varying needs of children from different social groups and cultural backgrounds. What is essential here is that the school conforms to the students, not the students to the school. Even if Turkey is not a signatory, the documents that serve as references for the current standards of minority rights go beyond this. Article 4 of the U.N.'s 1993 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities guarantees the rights of minorities to receive an education in their mother tongue and on their history by stating: "States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or have instruction in their mother tongue," and "states should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory."[60] Furthermore, the Council of Europe's 1995 Framework Convention for the Protection of National Minorities obliges states to take the necessary measures to promote the culture, history, language and religion of minority groups and, in this context, to train teachers and provide access to textbooks (Article 12). Article 13 of the same convention guarantees the right of minorities to establish and manage their own educational institutions, while Article 14 not only affirms that states belonging to the convention are committed to the right of individuals in minority communities to learn their own language, but when there is sufficient demand, they are obliged to provide opportunities for persons belonging to minority groups to learn or take lessons in their mother tongue within the framework of their education systems.[61]

If we were to condense the above into a single sentence, it is that today's advanced understanding of education is based on diversity, not on uniformity. Adopting an approach that takes into account flexibility, diversity and the different needs of pupils would better serve the resolution of the problems that we will discuss below.

60 https://www.ombudsman.gov.tr/document/mevzuat/716b2--Ulusal-veya-Etnik%2C-Dinsel-veya-Dilsel-Azinliklara-Mensup-Olan-Kisilerin-Haklarina-Dair-Bildiri.pdf

61 https://rm.coe.int/168008c131f

THE PROBLEMS OF ARMENIAN SCHOOLS IN TURKEY

Today, there are 16 Armenian schools in Turkey, all of them in Istanbul and five of which are high schools. Each is affiliated with an Armenian foundation and operates as the charitable benefactor of the foundation. In the 2021-2022 academic year, the number of students was 3,016 and decreased to 2,865 in 2022-2023.[62] Putting aside the first half-century of the republic, when the number of schools and students was far higher in line with the size of the Armenian population, by 1970 the number of schools was 32 and the student population was 7,400. By the early 2000s, these figures had fallen to 18 schools and 3,800 students. This shows how severe the meltdown in absolute terms has been. If we look at the ratio to the total numbers of schools and students in Turkey today[63] , the scale of the collapse becomes even more dramatic. Those state policies that affect the quality of education, along with Turkey's broader political and sociological conditions, exacerbate the decline.In this chapter, we will try to explain the problems related to education and offer solutions.

PROBLEMATIC LEGAL STATUS

A problematic legal status is one of the main issues that affects and even creates other problems for minority schools. This stems from the reality that the regulations to which they are subject and their legal definition are at odds with their true identities and function. Like other minority schools in Turkey, Armenian schools are subject to the National Education Basic Law No. 1739, from 1973; the Private Educational Institutions Law No. 5580, from 2007; and the Education Ministry's Private Educational Institutions Bylaw No. 28239, from 2012, which define them as for-profit private schools. However, these are institutions that

62 Agos. 23 September 2022.

63 For the sake of comparison one may look at the total number of schools and students in Turkey in the 2021-2022 school year. The number of schools was 70,383, and the total number of students was 19,155,571. This shows how miniscule the numbers of Armenian schools and students are in Turkey. 2021-2022 ÖRGÜN EĞİTİM İSTATİSTİKLERİ AÇIKLANDI (meb.gov.tr)

provide public educational services that do not charge tuition fees so that no student is turned away due to a lack of money, and they often cover other expenses, such as meals and school buses. In other words, they are defined as private schools in the regulations, but in fact operate like public schools. Although the laws make minority schools responsible for the financial, administrative and even architectural obligations that private institutions are beholden to, they are not able to make a profit by charging for tuition and thus fulfill those obligations. On the contrary, many of the Armenian schools run large budget deficits every year as they struggle to cover expenses. Yet they are not completely exempt from certain requirements as private schools are, such as teacher employment, which we will explore below.

These schools serve a special function in teaching Armenians their language, literature, culture and identity. Since this cannot be fulfilled by public schools in Turkey, it is clear that the survival of these schools is of vital importance for Armenians.

Since Armenian schools are managed by citizens of Turkey and serve the indigenous communities of this land, naturally they cannot be considered foreign schools. The Private Educational Institutions Law No. 5580 covers private educational institutions opened by real persons who are citizens of Turkey, private legal entities or legal entities governed by private law provisions, as well as private educational institutions opened by foreigners (Article 1). This way, minority schools and foreign schools, which have different histories and identities, are classed together within the status of private schools. In the same law's Article 5, these institutions are discussed together under the heading "international private educational institutions, foreign schools and minority schools." Minority schools are discussed in Clause C of this article as follows: "Matters that should be specially considered for schools referred to in Articles 40 and 41 of the Treaty [of Lausanne] related to Law No. 340, dated August 23, 1923, shall be determined by regulation. *This regulation is to be prepared by considering reciprocal legislation and practices of relevant countries in these matters"* (emphasis added by the authors).[64]

64 As explained in the report's chapter Credo, the principle of reciprocity should not be referred to when determining the legal and administrative framework of the state's relationship with these groups.

When we look at their functions, identities and how they operate, Armenian schools are not public, foreign nor private, but special schools. Viewing these schools as institutions that fulfill the public right of basic education of certain citizens is more in line with reality on the ground. In fact, legislators also accepted this feature in the aforementioned Clause C, titled Minority Schools, that "matters that should be specially considered for [these] schools shall be determined." However, there is currently no regulation specific to minority schools.

Another problem created by defining Armenian schools as private schools is the standards and physical requirements for school buildings and equipment that are imposed on private educational institutions. For example, these regulations require school buildings to have certain sections such as an infirmary or separate garden for younger children and a certain square meter of indoor and outdoor space per student, thereby limiting student numbers according to certain physical criteria. If a primary, middle and secondary school are all housed in the same building, entrances and exits, playgrounds, corridors, toilets and sinks must be arranged separately for the different schools.[65] While these are objectively positive criteria, they are practically impossible to fulfill at Armenian schools, most of which were built in the 19th or early 20th century. It is unfair to expect these historical buildings to have the same standards as newly built modern spaces. In fact, state authorities turn a blind eye to Armenian schools that fail to meet these standards, but that does not resolve the problem. Schools that cannot meet these physical criteria set out in regulations they are subject to could face serious problems and the threat of closure at any time.

65 Regulation on Private Educational Institutions, Article 12: https://ookgm.meb.gov.tr/meb_iys_dosyalar/2022_02/21165820_Ozel_OYretim_KurumlarY_YonetmeliYi_19.02.2022.pdf

FINANCIAL PROBLEMS

The most serious consequence of the ill-defined legal status is financial problems, in which all but a few Armenian schools do not have enough income to cover expenditures and so run a regular budget deficit. Classifying these schools as private creates two problems financially: First, they are treated as if they do have regular income from tuition and face tax and other fee collections; second, they cannot benefit from public support, except for one brief exception that we will explain below.

Lack of resources and tax problems

The main source of income for Armenian schools is funds allocated by the foundation with which they are affiliated. In very few instances are these inflows enough (or more than enough) to pay for the school. The second source of income is donations. As mentioned earlier, these schools do not receive a fixed tuition fee from each student and no student will be turned away because their parents cannot afford to make a certain payment. But schools do accept donations. Donors include parents who have children at that school, as well as alumni and philanthropists. As can be expected, donations are both materially and morally valuable, but they are insufficient in quantity and far from stable.

Meanwhile, the Education Ministry expects these schools, which it views as private, to announce their registration fees for the next school year by the end of May every year. Since they do not charge students, the schools report this amount as "zero." Despite this, they face financial liabilities, such as private school operating fees, corporate tax and VAT because they are defined as for-profit institutions. In fact, donations made by some parents were deemed fees, and the corporate tax was sought from schools. In 2015, the Directorate General of Foundations (VGM) sent a letter stating that schools would be considered economic enterprises and be subject to corporate tax if they received donations from families, and in this event, the school should continue its activities by establishing an economic enterprise. This was followed by the arrival of financial inspectors at some Armenian schools. According to information we obtained from school administrators, the inspectors were not content with examining the

financial records; they also questioned students in one-on-one interviews to understand whether the schools were being paid or not. In order to resolve this, a meeting was held between then-finance minister Mehmet Şimşek and Armenian representatives. The minister informed them that these practices are required by law and that the state even collects taxes from the Turkish Red Crescent, a public humanitarian organization.[66]

In past years, Armenian schools have faced a number of lawsuits over financial disputes. Examples include a case filed in 1984 by the tax office directorate in Üsküdar, Istanbul, against the Kalfayan Armenian Orphanage and School Foundation before the Istanbul Third Tax Court on the grounds that the foundation did not file a corporate tax return. The court ruled in favor of the foundation in 1993, finding it was not an income-generating business, and the Istanbul Regional Administrative Court upheld the decision in 1994. In 1988, the same tax office had filed a lawsuit with the same claim against the Surp Haç Tıbrevank Armenian High School Foundation at the Istanbul Second Tax Court. That court reached a decision similar to the judgment decreed in 1997 that was upheld by the Council of State's Fourth Department the same year. Furthermore, the same lawsuit could be opened at different times in different courts. For example, in 1991 the Üsküdar tax office sued Surp Haç Tıbrevank Armenian High School Foundation based on the same claim at Istanbul's Ninth Tax Court, which reached the same decision in 1995 that was upheld by the Council of State's Fourth Department in 1996.

Besides these, in 2005 the tax office in Istanbul's Bakırköy district requested the private school operating fee and related late penalties from Yeşilköy Armenian School on the grounds that it was a private school, since it had the word "private" on its sign. The school filed a lawsuit against this request, stating the school operates not as a profit-making institution, but as a charity of the Yeşilköy Surp Istepanos Armenian Church School and Cemetery Foundation, and informed the court that the word "private" on the sign was used to indicate the difference between minority schools and public schools. Upon the request of the foundation, the letter of the Istanbul Directorate of National Education authority, dated March 12, 2008, which confirmed that the school was "a community school beneficial to general education without the aim of generating income," was added to the case file. Ultimately, the school won the case.

66 http://www.agos.com.tr/tr/yazi/12955/vergi-krizine-formul-araniyor

These judicial victories do not resolve the problem, because winning such a case does not mean that others will not be subsequently opened. As long as the legislation remains as it is, the threat of lawsuits hangs over the schools like the sword of Damocles. The problem has not been solved, and a solution will not come from the judiciary, but the legislature, as we will discuss in the reform proposals at the end of the chapter.

Lack of public support

Another problem that stems from defining Armenian schools as private schools is that they do not receive a *regular and meaningful* share of the public budget. When requests for public funds for minority schools come to the fore, one reason offered by state officials to deny the request is that it is contrary to the Treaty of Lausanne. The basis of this claim is the wording in the treaty's Article 40, which states that minorities have the right to establish, manage and supervise all kinds of social, religious, charitable and educational institutions "at their own expense." However, in the following Article 41, it is stipulated that in cities or towns where these groups have a "considerable proportion" of the population, a share should be allocated from state, municipal "or other budgets" to be spent on social, religious and educational activities.[67] In fact, minority schools were given a share of the public budget in accordance with Article 41 until the 1970s, although the sums were not adjusted for inflation and the practice was later discontinued.

Between 2014 and 2017, financial support was given to some students at Armenian schools, within the scope of financial support to private school pupils. This incentive was not made to schools but to individual students who applied, while schools acted as intermediaries for these applications and received the payment on behalf of the student. Criteria such as household income or whether the child had a father were considered in the applications, but some school principals said the criteria were ambiguous. The financial support continued until each student's graduation, but was not offered again in the following school years, and today there are very few students who continue to benefit from this support. All

67 In fact, the Press Advertising Institute cited the Treaty of Lausanne as the reason for its annual financial assistance to minority newspapers, albeit that is in a different field. For related news, see: https://www.agos.com.tr/tr/yazi/25430/basin-ilan-kurumu-ndan-yeni-aciklama-azinlik-basinina-yardim-yapilacak

individual applications made by students in Armenian schools were accepted in the first year of the program, but in its last year, only 60 of the 800 Armenian students who applied were granted the support.[68]

Besides the lack of direct cash aid, there is no public support for expenses such as electricity, water and heating. Minority schools are charged for these utilities, as well as telephone, water and natural gas, just like private schools are. According to the information we received from some school principals, the word "private" in the names of schools may sometimes prompt municipalities not to fulfill their obligations to offer the same services to minority schools that they offer to public schools.

As for teachers' pay, no contribution from the public budget is made for the salaries of teachers working in Armenian and other minority schools, except for the Turkish and Turkish Culture Courses (TTKD) teachers and the vice principal who are appointed and paid by the state, which we will detail below.

ADMINISTRATIVE PROBLEMS

Vice principals

In minority schools today, a principal is appointed by the management of the foundation to which the school is affiliated, and a vice principal is appointed by the state and is sometimes described as "Turkish" in regulations, official documents and correspondence.[69] In addition, we learned in our interviews with school principals that the vice principals are referred to as the "Turkish principal of the school" in the provincial and district education directorates.

68 http://www.agos.com.tr/tr/yazi/16571/azinlik-okullarinda-tesvik-dibe-vurdu

69 For example, in a letter sent to schools from the Beyoğlu District Directorate of National Education on November 11, 2009, Muammer Yıldız, the then-provincial director of education, announced he would hold a meeting with "private minority school principals and the Turkish vice principals." Likewise, in a letter sent to the Istanbul governorate on June 24, 2010, from the Istanbul Provincial Directorate of National Education, there is a statement that the enrollment of candidate students in minority schools is "kept under control by the Turkish vice principals." It is possible to cite further examples of official documents and correspondence in which this description is used. It should be noted that this is not consistently used, but it would be best to completely drop this description, which connotates discrimination.

The Education Ministry first appointed vice principals to minority primary schools and head vice principals[70] to high schools in 1937. This practice was halted in the 1948-1949 academic year, but in 1962 the position was reinstated under circular No. 5887 and has survived to this day. This timeline shows us that political, rather than educational, motivations are at the fore; namely, the office was created amid rising fascism around the world and in Turkey in the 1930s, was abolished in the hopeful, liberal environment following World War II, when Turkey was moving toward a multiparty political system, then restored at a time of hostility toward minorities amid geopolitical tensions with Greece over Cyprus. Rather than educational, the role assigned to these people is to police the schools as a kind of informant, which stems from state officials' view of minorities as "untrustworthy and should therefore be kept under surveillance." Until recently, these appointees were the embodiment of the state's view of minorities, creating a tense work environment in schools. One principal said, "Over 23 years, there were times when I suffered a great deal because of the vice principal. In the mid-2000s, someone was going to the education authorities every day to complain, 'The Armenians did this, the Armenians did that.'" Principals told us that in recent years some vice principals have been dismissed following complaints of discrimination, which is an improvement, because in the more distant past neither could the school administration complain about the discriminatory acts of the vice principals, nor would those vice principals be dismissed due to the complaints.

With the Private Educational Institutions Regulation dated 2012 and the Education Ministry's circular dated June 28, 2015, issues with TTKD teachers and vice principals have "noticeably" improved. Under the revised rules, TTKD teachers personally apply to the schools where they want to work by choosing from a list of schools and disciplines that are available. The school principal then prepares a list of candidates from these applicants and submits it to the provincial educational directorate. The Education Ministry makes its appointments in accordance with this list, and the vice principal is selected in consultation with the school principal.[71] While this practice has not completely eliminated problems,

70 The literal translation of the title *müdür baş yardımcısı* is "head vice principal," indicating that the state seeks to underline or strengthen the position of this office in schools. In the English text, we preferred to simply use " vice principal" as it is more consistent with English usage.

71 https://ookgm.meb.gov.tr/meb_iys_dosyalar/2016_06/06025012_azinlik_okullarina_ogrenci_kaydi_28_06_2015.pdf

the work environment is now more comfortable, according to principals with whom we spoke. However, it should be noted that the degree and continuation of this improvement depends on the character and goodwill of the vice principal. Furthermore, the school principal is unable to give instructions to the person who is in the position of his assistant, because he is not employed by the school and his duties and authority are defined by the state. This is also a distortion of administrative mentality.

The workload, duties, powers and responsibilities of the vice principal's office are another matter of debate. Some principals said the vice principals fulfill the duties of the post, but most are not willing to share the administrative and academic workload at the school. In the latter, principals said they need an assistant, but due to a lack of resources, they cannot hire another vice principal whose salary would be paid by the foundation, not the state.

Enrollment problems

While minority schools are defined as private schools, unlike such institutions, they cannot accept any student they choose; they may only accept applications from students who belong to their particular community. This stems from the wording in the Private Educational Institutions Law No. 5580's Articles 2 and 5, in which minority schools are defined and which states that only the children of citizens of Turkey who are part of the religious minority can study at these schools. No such restriction is found in the Treaty of Lausanne. The question that inevitably arises from this rule is how and on what basis will the child's affiliation to that community be determined. Until the Civil Code was changed in 2001, only children whose fathers were Armenian were admitted to these schools. The amendment recognised equality in marriage, and children whose father or mother are Armenian could enroll at Armenian schools. However, this change only shifted the requirement for "the proof of Armenianness" from the child to the parent. How and by whom would the Armenianness of the parent be determined? The issue becomes even more complex when the existence of Islamized Armenians, some of whom have reverted to Christianity, is considered.

Until 2010, parents had to apply to commissions formed by the Education Ministry and obtain a document stating that they could register their child. The is-

suance of this document depended on the commissions' research into the population registry , the aim of which was in fact to determine whether the guardian in question was a "real and pure" Armenian. If any conversion in the family's history was detected, it was possible that child would not be allowed to register. In 2010, the task of researching this was transferred from the commissions to the vice principals. Approval was still contingent on what emerged at the population directorates; the only difference was that the approval for registration would be given by vice principals, not by the commissions.

How the population directorates tracked this information came to light in an official letter dated June 27, 2013. Upon the application by a student to an Armenian school in the district of Şişli, an official letter from the Istanbul provincial educational authority to the district directorate stated that the student's registration was contingent on the child's entry at the population registrar showing a "secret lineage code" of 2 (the code used for Armenians), then he or she would be permitted to register. The same letter said this profiling had been conducted since 1923.[72]

Although state authorities provided no explanation for the "secret lineage code" in the wake of the scandal caused by revelation of the letter, decisions on who may register were taken from the vice principals and assigned to the school principals in an official circular in 2015.[73] This was a positive development, but because the rule that only the children of those belonging to the Armenian minority may enroll in its schools stands, it did not eliminate the question and problem of how to determine a child's Armenianness. In our interviews with principals, we saw confusion about what concrete proof of Armenianness entailed. While some principals consider a parent's statement sufficient, some want a certified copy of the family's entry at the population registrar or a record of a family tree. Other principals ask for a baptism certificate, but this is not an official document accepted by the state and falsely equates being Armenian with a religion. Separately, a non-Christian parent's permission or the child's baptism certificate is sometimes requested so that children born into mixed marriages may attend religion lessons at schools.

72 http://www.agos.com.tr/tr/yazi/5383/90-yildir-soy-kodu-ile-fislemisler

73 https://ookgm.meb.gov.tr/meb_iys_dosyalar/2016_06/06025012_azinlik_okullarina_ogrenci_kaydi_28_06_2015.pdf

We can say this causes a certain degree of uneasiness among principals, because administrative investigations have been opened in the past over enrollment, which principals describe as a weighty responsibility. They do not know which specific document they can cite to defend an enrollment in the event such an investigation occurs again. The state has given principals the right to take responsibility or show initiative in enrollment, but not explicit authority; this authority is vaguely limited by both the state and the Armenian community.

Another problem caused by the provision that only children of citizens of Turkey who belong to the minority group may study in these schools pertains to nationals of Armenia and Armenians of Syria living here. These children, who cannot be primary students in Armenian schools because they are not citizens, can only study in these schools as guests and cannot receive a diploma, as stated in Article 51 of the Regulation on Private Educational Institutions from 2012.

A document is issued by the school administration stating the courses and grades a child has taken. While it is possible for these students to get a diploma if they attend public schools, there is no just and reasonable explanation for disqualifying them from a diploma if they attend Armenian schools. Moreover, during our interviews, we learned that a citizen of Armenia who married a citizen of the Turkish Republic wanted to enroll her child in an Armenian school and although the child was a citizen, he or she was not considered a member of the community and was not enrolled. In another example, it was technically possible for Armenian families from Syria to enroll their children with a residence permit (and a Turkish ID number assigned to foreigners), but an investigation was subsequently opened against principals for registering these children.

TEACHING STAFF PROBLEMS

Turkish and Turkish Culture Courses (TTKD) teachers

Law No. 6581, enacted on May 27, 1955, stipulated that teachers who are civil servants and appointed by the Education Ministry to minority schools teach history, geography, Turkish language and literature and sociology (or social studies in primary school). This regulation was not passed in order to support the schools

but as a means to control and pressure them. Based on their content, the state considered these courses "dangerous" which could not be left in the hands of "random" teachers, resulting from the state's categorical suspicion of some of its citizens. Despite improvements, which we discuss below, the fact that these courses must still be taught by civil servants appointed by the state reveals that this attitude has not changed.

Until 2012, school administrations had no say in these appointments or the ability to object to teachers appointed by the ministry. As discussed previously, the Regulation on Private Educational Institutions in 2012 and the circular of 2015 allowed principals to recommend teachers from those who applied for TTKD posts. Giving school administrators a say in these appointments fostered a more harmonious climate at the schools. Furthermore, pursuant to the Ministry of Education Records Administrators' Regulation published in the Official Gazette on April 24, 2011, transferred the responsibility of evaluating TTKD teachers' annual performances from the vice principal to the principal, which corrected a defect in the administrative hierarchy.

These teachers must still be civil servants, and their initial five-year appointments to minority schools, with an option to extend for one year, bring with them their own problems. The weekly course loads at minority primary schools are less than at other schools because these teachers have fewer students, and the small student body means they have fewer opportunities to open extra study classes or supervise extracurricular examinations to earn supplemental income, as their counterparts at public schools do. TTKD teachers at Armenian high schools do not encounter this problem because there are fewer secondary schools, and so the student body is larger – to the point where some high schools require extra facilities.

School administrators said the five-year appointments to minority schools, regardless of the option to extend for one year, creates fears about job security for the instructors, while their counterparts at other schools are able to remain at their posts unless they request a new appointment. In addition, the appointment of a handful of TTKD teachers for one year, rather than five, in the 2021-2022 academic year has raised concerns it could become a permanent practice.

Since TTKD teachers working in minority schools earn less on average than their counterparts in other schools and experience relative job insecurity, fewer of them apply to minority schools, which means sometimes teachers cannot be placed for these courses and so the lessons cannot be taught.

We also learned that sometimes problems arise between the TTKD teachers and the school administration. When administrators ask these teachers to participate in additional activities or in-service training, as they do of all teachers to increase the quality of education, some TTKD teachers resist because it will increase their workload. To express it in the words of some of the principals, this in turn, can harm the TTKD teachers' sense of commitment and belonging to the school. Since they are civil servants, they may act with the knowledge that they do not have to adhere to the administration's directives, creating a serious imbalance in the workload between teachers employed directly by the school and state-appointed teachers. The difference in the salaries of Armenian teachers in schools with budget deficits and TTKD teachers' state salaries creates financial disparities that make the unequal distribution of work even more striking. Two sets of teachers emerge at the school, negatively affecting the quality of education and the work environment.

The competence and quality of TTKD teachers is another issue. Since school administrations select these teachers from a relatively limited pool, they cannot always find excellent teachers. Another potential concern is that their political leanings could affect their attitudes at the school, and so sometimes "mediocre TTKD teachers can be accommodated as long as they aren't racist or discriminatory," according to some administrators.

Armenian language instructors and class teachers

Schools have difficulty recruiting teachers for classes on Armenian language and literature, religion and ethics, mathematics and science which are meant to be taught in Armenian, as well as primary school class teachers who need to teach in Armenian. In particular, finding teachers with the requisite training and knowledge of Armenian to teach language and literature or serve as class teachers is a serious problem.

The primary language of instruction at Armenian schools is Western Armenian, distinct from Eastern Armenian, which is spoken in the Republic of Armenia. One of the world's oldest languages, Western Armenian is today listed on UNESCO's Atlas of the World's Languages in Danger.

Since there is no opportunity to study Western Armenian language and literature at a university in Turkey[74], any college graduate with a pedagogy degree who is able to speak Armenian teaches Armenian language and literature courses out of necessity. New teachers are trying to fill gaps in their knowledge by taking lessons from older, more experienced teachers or by attending courses opened by the Turkish Armenian Minority Schools Assistance Foundation (TEAOV).

In summary, the lack of an institutional and stable resource in Turkey to fill positions for Armenian language and literature and class teachers is a major issue for Armenian schools.

COURSE SCHEDULE AND MATERIAL PROBLEM

Need for Armenian-language textbooks

Currently, Armenian schools have no language book that is in line with the requirements of the day and contemporary language-teaching methods, and there is no current Armenian literature book to be taught at the high school level. The book that is used is from the 1920s. In addition, each school produces its own language and literature course materials, thanks to the efforts of teachers. Putting to one side the quality of the materials produced, each school producing separate material is an inefficient use of resources, including time and labor.

There is little demand from teachers, students or parents for the instruction of science in the Armenian language at the high school, or even middle school, (second set of four years), levels. This is because students must prepare for university and high school entrance exams that are held in Turkish. Considering the effect of these exams on the future of the student, the motivation to prepare in the best possible way for these exams overrides the will to conduct lessons in Armenian. Yet learning in Armenian in primary school and studying mathematics, social studies and sciences in Armenian is of vital importance when establishing the bond between the

74 In Turkey, there are two Armenian Language and Culture Departments, at Kayseri Erciyes University and Ankara University, and one Armenian Language and Literature Department at Trakya University. However, all of them teach in Eastern Armenian. In addition, they are focused on other fields, such as international relations or tourism, rather than on training Armenian language and literature instructors.

child and his or her language and the world that forms with and around language. Therefore, textbooks are needed to teach these courses in Armenian. The Education Ministry translated into Armenian the mathematics and science books used in the first three grades of primary school and distributed them free of charge in the 2010-2011 academic year. The books were criticized for failing to use Armenian names and underrepresenting Armenian identity. Also, the books' preparation and approval process took so long that the curriculum had already changed by the time the books were distributed. No new books have been published since, and so the lack of appropriate textbooks for these classes continues.

History lessons

There are serious problems with the content of the history courses taught in the schools of Turkey. One of them is the stance displayed against non-Turkish and non-Sunni groups, including Armenians, which we can define as others, and the manner in which these groups are covered. This is a lengthy subject in its own right, but some of the issues that occur are as follows. When describing the history of the territory that today constitutes the Republic of Turkey, Armenians, who are among the indigenous peoples of these lands, are hardly mentioned; only when recent history is being covered do Armenians suddenly enter the scene, when they are categorically described with terms including "traitor," "terrorist," "murderer," "enemy," "backstabbing" and "infidel."

In general, the word Armenian is avoided in textbooks. Even when discussing the BCE period, it is taboo to use phrases such as "Armenian kingdom" or "Armenian state." In the past, this reached tragicomic proportions. For example, an Education Ministry's Board of Education circular dated July 1, 1983, and numbered 611, ordered that the word "Armenia" (Ermenistan in Turkish) be erased from historical maps!

This is a problem not only for Armenian children, but for all children. They learn the history of the land in which they live incompletely and incorrectly. Armenian children, on the other hand, are exposed to the negation of their identity; they either do not see themselves at all in the history that is taught or they see themselves with only negative, even racist, descriptions. They are exposed to the same perspective not only in their textbooks, but also in "supporting education material" and the related homework that are occasionally sent to schools within the framework of the "Armenian issue."

OTHER PROBLEMS

Lack of an education commission

A common complaint from school administrations is about the inadequate communication, exchanges of views and cooperation among Armenian schools. Principals noted the lack of a joint education commission, which would ensure coordination between the schools, as well as between schools and the Education Ministry, seek common solutions to shared problems and develop joint projects, which would all save time and human resources.

Such a commission could only be established informally and in the past, such initiatives were soon dissolved because they were unable to obtain official status and a permanent structure. It would be more sound to provide a legal basis for such a commission in order to make it more sustainable, determine its powers and responsibilities and make the bureaucracy responsive to it . Presently there is no such legal framework. We will discuss the details of such a commission in the resolution section.

Declining demand for Armenian schools

Although the exact number is unknown, some estimates indicate that only half or perhaps slightly more than half of school-age Armenian children attend Armenian schools. There are several reasons behind this, as we will explore in greater detail in the next chapter. The main reasons are demographic changes as some families move to districts without an Armenian school; the decision to send children to private schools where parents think they can better prepare for the high school and university entrance exams; or the restrictions we discuss in this report that ultimately affect the quality of education. Improving the finances of the schools so that they can provide higher quality of education and overhauling enrollment and the school profiles and stock, which we will address below, will also increase the student population at these schools.

Restructuring school profiles and stock

There is a need to restructure and diversify the quantity and quality of Armenian schools according to the changing demographic, social and technological

realities of the day. The Armenian population in Istanbul was traditionally concentrated in certain districts, such as Feriköy, Kurtuluş, Bakırköy, Yeşilköy, and Kadıköy, but Armenian families, in parallel with the general trend in Istanbul, have begun to settle in districts far from these old centers.. Newer districts have almost no Armenian schools. In order to understand what is needed, a study should be undertaken to determine where Armenians now live in Istanbul, the number of school-age children and their parents' views of Armenian schools.

A current debate among Armenians is whether to merge existing schools in order to remedy student shortages and budget shortfalls at some of the institutions. Those who support the proposal argue that combining the operating expenses of multiple buildings would reduce the cost per student. The principals we interviewed argue that schools should not be merged unless there is an opportunity to open new schools, and they emphasized that kindergartens and primary schools should remain as they are because younger children should attend schools as close to home as possible. Given that each school has a distinct student profile and its own culture, there is concern these distinctions would disappear with a merger. If two primary schools were combined, and later a need to re-open a middle school in the same building were to arise, problems may occur in obtaining the permission to do so. Some principals did say mergers might be preferable, but that institutions should still not be closed. In short, the issue of school mergers should be discussed not only from a financial aspect but while keeping other needs in mind.

Another view we frequently encountered is the need to diversify the high schools, such as establishing a vocational school where students can learn trade healthcare, business, computing and goldsmithery, or allowing some schools to specialize in certain studies, such as the humanities, math and science or foreign language tracks. Educating students in specific fields may better address the educational needs of the community.

Another part of diversification – and a reality of today's world – is offering online education. Permanent online education in Armenian schools should be made possible and like many issues, this also requires a legal basis. This would allow students to attend Armenian schools, regardless of the physical distance. Since Armenian schools only exist in Istanbul, regular online education would also create equal opportunity to access education for Armenian children who live outside of Istanbul.

REFORM PACKAGE

Solving the problems outlined above requires a holistic approach. Attempting to solve each problem one by one would be like trying to find the end of a thread in a tangled ball of yarn. Instead, rebuilding everything from the ground up will provide a more inclusive and lasting solution. This requires the restructuring of Armenian and other minority schools, and the first step is redefining the legal status of these institutions.

Legal status

As we have explained, the schools' legal status, the source of so many other problems, is also the beginning of the solution; it is the foundation on which to build the solution. Resolving the legal status requires legally defining a fourth status – in addition to public, private and foreign schools – for minority schools that fits their characteristics. This law may include general provisions that would apply to all Lausanne minorities, since it will already have the status of the Treaty of Lausanne's implementing law, and will detail how the abstract principles specified in the treaty should be realized. At the level of regulations, it would be more appropriate to issue policies that take into account the unique social and demographic features of each minority. Issuing orders or regulations for a single minority group has precedents; namely, the government published the Istanbul Armenian Schools Regulation in November 1936, which was replaced by the Private Armenian High Schools and Middle Schools Regulation and the Private Greek and Armenian Minority Primary School Regulation in February 1975. Those particular policies are obsolete today, but new regulations can be prepared along the same categorization, provided that a new status is created for these schools.

The content of this law and the regulations will be shaped by the practices that we will discuss below, which can also be read as the titles or articles of the regulations. Defining and securing the following are the key to improvement and a lasting solution. It is worth reminding that the source of many of the problems covered in this report are laws enacted in the recent or distant past. These are not practices that are eternal and should not be treated as such. What is decreed by legislation can be changed with legislation, as long as there is a wish and will to do so.

An extremely important point is that all of these legal texts should be prepared in consultation, or even collaboration, with the communities in question. Experience has shown that regulations handed down from above cause new problems, rather than resolving old ones.

Fiscal regulations and public support

With the newly recognized status, a regular share of the Education Ministry's budget should be allocated on an annual basis to Armenian minority schools. Even if the Treaty of Lausanne's stipulations on public support to minority institutions appear at times to be conflicting, Article 41 clearly states that funds will be transferred from the state budget to these institutions and this amount will be given to "authorized representatives of the relevant establishment." Furthermore, when such ambiguity occurs, interpretation and implementation that favors rights is required by today's standards for minority and human rights. It should not be forgotten that minorities are also taxpaying citizens, and so it is only fair and egalitarian for them to receive a share of the public education budget, just as every other tax paying citizen is entitled to.

There are different ways to provide this public resource, but it would be equitable to allocate a certain amount per student, as well as a fixed amount per school. The resource to be transferred per student can be as much as the figure the government spends per student in its own schools. Since the number of students currently studying in Armenian schools is around 3,000, the amount to be generated will correspond to a very small figure within the ministry's budget, while providing the schools serious relief. In addition, public support should be given for minority schools' expenses, such as electricity, telephone, water and natural gas.

Just like state schools, minority schools would not be subject to the taxes, fees and other financial obligations under this newly defined status. This situation should be safeguarded with a provision in the law, and any future lawsuits, investigations or similar risks must be avoided.

Student enrollment

The restriction that only the children of minority citizens of Turkey can study in minority schools should be abolished, since this is not derived from the Treaty

of Lausanne and paves the way for discriminatory practices. **School administrations should be completely free in their enrollment decisions and in setting the criteria with which they will choose students. Anyone who *knows and accepts the curriculum of these schools and the content of their courses* should theoretically be able to send their children to them.** On the other hand, we cannot disregard the uneasiness in the Armenian community in general and school administrations in particular about opening schools to everyone because of the role they play in preserving Armenian culture. The way to overcome this uneasiness may be to allow schools to use quotas and gradual enrollment. In other words, schools can accept students from the Armenian community for a certain period of time, and if space permits, they can then open registration to the public at the end of that period. The main principle should be to leave such practices to the schools' initiative.

Likewise, there is no justification for the ban on non-citizens studying at these schools. Since non-citizens can obtain diplomas from other schools, this discrimination. These schools are the only places in Turkey where Armenian children from Armenia, Syria or other countries can receive an education in the Armenian language. Children from Armenia attend the Hrant Dink School in the Gedikpaşa neighborhood of Istanbul, but it cannot issue official diplomas because of obstacles in the legislation. Preventing these children from attending Armenian schools amounts to a violation of their right to education, and it would be correct to end this restriction.

Restructuring teaching and administrative staffs

After the authority to enroll students and hire TTKD teachers was correctly transferred from the vice principal to the principal, the role of the vice principal has become vague and no longer serves a clear purpose. Most of the principals we spoke with are in consensus on this point. They will certainly need assistants in administrative affairs, but they should be able to fill these positions themselves.

The same discretion should be exercised in the hiring of TTKD teachers. **Just as they do for other courses, school administration should have the chance to add any teacher they choose to their staff to teach these classes, *without the requirement that he or she be a civil servant.*** The only concern of school administrators is that if they choose these teachers themselves, it will create an additional salary burden on already strained budgets. *If the state financial support*

we discussed above is provided, the requirement for administrators and teachers to be civil servants should be abolished, and all administrators and teachers should be chosen by the school administration itself.

Both the state and the Armenian community have an obligation to remedy the shortage of Armenian-speaking class teachers and Armenian language and literature teachers. But the first project is opening an undergraduate program in Western Armenian in Istanbul that will have the objective of training Armenian language and literature teachers for minority schools. Cooperation with a higher-education institute abroad that already provides this training, or even creating a joint program, is one option that could be considered.

While all of these are being done, joint work should be carried out with a commission, not with just one or two people from the Armenian community.[75] We previously discussed the lack of an education commission, which is necessary to conduct such research and collaboration.

Until such an undergraduate program is established, sending students to similar programs outside of Turkey may be considered. In order for these people to work in Armenian schools in Turkey, it will be necessary to prepare legislation that will facilitate the recognition of their diplomas.

However, finding the teaching staff and other requirements to open such a department or sending students overseas to complete their training are relatively long-term initiatives. A more immediate solution would be to bring Armenian language and literature teachers to Turkey. The current rules do not preemptively bar this, yet bureaucratic delays could still occur. The education commission could assume a role here, too, in mobilizing the Armenian community's resources and connections to find such candidates.

The Armenian community is also responsible for class teachers. In the early 2010s, Armenian university students studying to become class teachers were awarded service commitment scholarships by various foundations, but most left

75 It is worth noting here that a proposal, developed with the participation of the Armenian Patriarchate, to establish a department to train teachers of Armenian language, literature and religion courses at Istanbul's Marmara University was submitted to the Council of Higher Education (YÖK) in 2018, but there has been no development on this matter yet.

Armenian schools after fulfilling the period of service. There is consensus that this practice should be renewed, with the scholarship terms and other details considered separately.

Curriculum and course materials

Since the Education Ministry prints and distributes the textbooks used in public schools free of charge, it should prepare[76],print and freely distribute the textbooks for Armenian-language classes in Armenian schools. This is in accordance with the equality principle found both in the Treaty of Lausanne and the Turkish Constitution. From a practical perspective, publishing books for 3,000 students will not impose a significant burden on the ministry's budget. No rational or practical explanation can be made for excluding Armenian proper names from the books, a previous complaint. Given the pedagogical importance of children, especially those in primary school, seeing their identities represented in textbooks, such restrictions should be avoided.

Armenian schools in Turkey are bilingual educational institutions. Restricting the instruction of subjects – other than language courses, such as Turkish, Armenian or English – to one particular language is not only contrary to the schools' characters, it is a violation of rights. There is no reason why history, geography, sociology and other subjects that are called "Turkish culture courses" must be taught only in Turkish, and their instruction should be bilingual. Legal obstacles to the integration of Armenian into these lessons should be removed, as these lessons play an important role in the relationship children and young people form with language and their development of a conceptual world and vocabulary. The choice should be left to schools. Due to practical considerations and requirements, no school would teach these lessons only in Armenian, but it is essential to remove restrictions and to give people freedom to make their own choices.

76 Foundations with which the schools are affiliated can also prepare these books if they receive budgetary support from the public and submit them to the Education Ministry for approval.

Education commission

We discussed the need for a permanent joint education commission between Armenian schools in order to communicate, coordinate and seek common solutions to common problems and that it should have a legal basis. The commission's main function will be to coordinate Armenian schools on the basis of a common educational strategy. The commission will also be the forum in which this strategy will be discussed and determined.

Such a commission may also be included in the law that will determine the new status of minority schools; practical matters, such as how and by whom the commission will be composed and its duties and powers, budget and working principles, may be determined in the relevant regulation. The most reasonable thing would be for the commission to consist of school representatives. When deemed necessary or on a project basis, support can be obtained from experts. Working groups can also be formed on subjects such as preparing textbooks and restructuring schools. Additionally, providing this entity with a permanent office and secretariat will enable it to work efficiently.

A critical issue is how these commissions will make decisions, with what percentage of votes. Seeking unanimity on many issues will lead to an effective deadlock, rendering the commission inoperable. On the other hand, decision-making by simple majority can also lead to divisions between schools and an uneven dominance of one half of the schools over the other half. From this point of view, decisions can be taken with a qualified majority such as two-thirds or three-fourths. Decisions will be made by vote and will be binding, and regulations will have to be set accordingly.

Opening and merging schools

One of the main duties of the education commission will be to reorganize the quantity and quality of the schools. This commission will provide the grounds and mechanism to discuss the opening of new schools, the unification of schools and the opening of new types of institutions, such as vocational high schools which do not presently exist for Armenians, in line with the changing population and needs of society. The legal legislation should also make this restructuring possible.

As we said above, it is important for younger students to attend schools as close to their homes as possible, so there is no need to merge primary schools. On the other hand, gathering five high schools on one campus with more modern buildings and other physical conditions and separating them according to areas of study, such as vocational education, science and mathematics, social sciences and language, can be discussed as a specific project. This way, resources can be used more efficiently and students can have more options that suit their interests and abilities.

THE ARMENIAN PATRIARCHATE, ARMENIAN SOCIETY AND REPRESENTATION

The Armenian Patriarchate of Turkey is a historical institution whose foundations were laid in the 15th century and whose area of influence and authority expanded over time.[77] The Ottoman state itself laid these foundations, and so the patriarchate and its patriarchs were the state's interlocutors until the last day of the empire. The patriarchate was recognized as an official institution, even functioning as a part of the Ottoman bureaucracy at times. Its work went far beyond the religious sphere. For example, the Armenian Patriarchate acted as an intermediary in collecting various taxes from the Armenian community, supplying the army with manpower and communicating the problems of the Armenian community to the state. Until the modernization and enlightenment movements began to influence Armenian society in the late 18th and early 19th centuries, although they occasionally share power with the *amira*, the elite class of Armenian moneychangers, merchants and court technocrats, the patriarchate and patriarchs were the primary representative before the state and authority figure of the Armenian community.

During this time, the ideas of reason, scientific thought, methodology and secularism that originated in the West and spread to various parts of the world in different phases had an impact on the Ottoman Armenian community. Although this did not completely abolish the power and representative authority of the Armenian Church and the patriarchate, their leadership was contested by intellectuals who had been educated at Western universities. The conflict within the Ottoman Armenian community starting in the 1830's– whose parties were the Church, the *amiras*, small bourgeoisie and new intellectuals – and pressure from France and Britain, who were the Ottoman state's allies in the Crimean War

77 On the establishment and history of the Armenian Patriarchate, see: Bardakjian, K., "The Rise of the Armenian Patriarchate of Constantinople," in *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society*, Benjamin Braude and Bernard Lewis. (ed.) (Holmes & Meier Publishers, 1982)

of 1855-1856, to improve the plight of Ottoman Christians resulted in the state's approval of a document it called the *nizamname* and Armenians called a constitution that went into effect in 1863.[78] This document regulated the inner workings and the educational, civil, religious and social affairs of the Ottoman Armenian community. It restricted the powers of the patriarch and the patriarchate, subjecting them to the control of civilians, while still recognizing their representative characteristics and codifying their duties and powers in a written document. This *nizamname* gave the religious figure of the patriarch the power to regulate lay councils and represent the community, and it made the patriarch an office subject to election, regulation and even dismissal by the laity, thereby creating a mixed, lay-religious structure with checks and balances.

When it came to the Republic of Turkey, the state developed an ambiguous approach toward the patriarchate. The republic neither made the 1863 statute a part of its own legislation, nor did it enact another law defining the patriarchate's duties, powers and responsibilities. In the process, the Armenian Patriarchate has been deprived of a legal status to this day.[79] In other words, the patriarchate has no legal personality, and from a legal point of view, we cannot speak of the existence of such an institution. Since it does not have a legal personality, the patriarchate cannot take any administrative or economic action as an institution, and it has no legal authority over other Armenian institutions.

Despite the lack of a legal basis, Turkish governments and the bureaucracy have treated the patriarchs as representatives of the Armenians of Turkey throughout the history of the republic. The patriarch, as a real person, appears on paper as a salaried employee of the Kumkapı Mary Mother of God Church Foundation. Even though the current patriarch, Sahak II Mashalyan, says that the state sees Armenians as a religious community and the patriarch as the leader of that reli-

78 Equivalent documents were accepted and entered into force for the Greek and Jewish peoples.

79 Our discussion is about the Armenian Patriarchate, but it largely applies to other religious institutions, such as the Greek Orthodox Patriarchate and the Chief Rabbinate of Istanbul.

gious community,[80] the state considers the patriarch an interlocutor not only in religious but in social and political issues, discussing the problems of Armenians with him and inviting him to celebrations on national and religious holidays as the representative of the community. This has led to an ambiguous, uncertain and inconsistent situation regarding both the legal and actual status of the patriarchate and the patriarch and the definition and position of the Armenian community in Turkey. Patriarch Mashalyan describes this situation as follows:

> "To the secular state, we are the spiritual heads of a religious community. This way, the whole community is squeezed into a religious space, and this is the only way to reach the state, and in this sense, troubles naturally arise there. The biggest problem is the community is not clearly defined, what the Armenian community is, what its organization vis-à-vis the state and its place in society relative to the general public of Turkey are, producing ad hoc solutions."

In this de facto situation, both elected governments and the bureaucracy expect patriarchs to work within certain unwritten parameters. In general, patriarchs are expected to verbally report the problems of the Armenian community to the authorities, await their response regardless of how long it takes, accept the result and forgo seeking justice beyond this in national or international courts.[81] Patriarch Mashalyan says that state officials do not like lawsuits, especially in international courts, and views this as a betrayal of the nation.

This indicates how the authorities use the image of "collaborator minorities," which has a long history, as an obstacle to rights-seeking activities. That image is used as a tool of intimidation. Yet state officials are not the only source of this intimidation. Public opinion is also an indirect element of intimidation, because of the fear that if the patriarch (or any Armenian) appears "impudent and demanding" in public, it will increase hate speech against Armenians. Patriarch Mashalyan says that a patriarch who sticks out with methods like filing a lawsuit and is depicted doing so in the media will fuel hate speech against Armenians and that the patriarch cannot assume this risk. He notes that discourse about Armenians

80 Patriarch Mashalyan in an interview at the Armenian Patriarchate on May 18, 2022. Quotations attributed to him are his statements from this interview unless another source is cited. This part of the report is largely based on Patriarch Mashalyan's interview.

81 Due to the issue concerning lack of legal personality, the patriarch as an individual rather than the patriarchate as an institution would be able to file suit.

being traitors is instilled in people beginning in primary school. As a result, members of the community have withdrawn into their shells throughout the history of the republic. Patriarch Mashalyan states that the image of "a patriarch in conflict with the state" is not popular among Armenians; for example, if the patriarch seeks justice in any matter through litigation, he will not find support from the Armenian community, except for a limited group that he defines as "intellectuals." He says, "In short, neither the state nor the community's prominent members or benefactors want a patriarch who is in conflict with the state or gives the appearance of such a conflict and appears to be challenging the state, and this is how patriarchs are elected. *You become a patriarch here after going through that strainer, that filter*" (emphasis added).

The areas where the patriarch can operate and make requests have "invisible" boundaries that are declared verbally. Demands for basic regulations, such as a statute that would define the general structure of the patriarchate and determine the nature of relations between it, the Armenian community and the state are either put off with remarks such as, "We'll look into it," or that patriarchs should not raise those issues. Since those matters have not changed for years and won't in the future, they should instead make requests for things that can change. Patriarch Mashalyan says he was well-received by state officials, but because of a lack of enough public pressure, the state does not give what it does not want to give, resulting in an impasse.[82]

The general picture that emerges when we take these altogether is this: The patriarchate has been erased as an institution, patriarchs have been largely neutralized as individuals, and their existence has been reduced to an almost symbolic, ceremonial level to produce a veneer of legitimacy. Although patriarchs are elected by the Armenian community, the state uses many methods to prevent the election of a candidate it does not want, or produces obstacles if it cannot find them. In short, patriarchs are elected, but it is debatable how much these elections reflect the free will of society, due to the restrictions placed upon them.

82 Patriarch Mashalyan says that one of the reasons the state does not give the Armenian and Greek Patriarchates and the Chief Rabbinate a legal identity is the potential for property suits. If the state gives these institutions a legal identity, it will be possible for the institutions to file law suits for the return of properties such as churches, monasteries and school plots which were under their hold during Ottoman times. Another reason Patriarch Mashalyan mentions is, if these institutions are given legal identity, other religious groups, particularly the Alevis and along with them religious sects, will have a basis to make claims for legal identity.

Once elected, the patriarch can only operate within the narrow boundaries that are effectively drawn for him by the state.

It is not possible to say that the Armenian community is unanimous that the patriarchate should be the official representative of the Armenians of Turkey. The patriarchate is ultimately a religious institution, and the patriarch is a religious figure. Accepting him as the official representative of Armenians would mean forcing a religious identity onto the community. But Armenians belong to sects other than the patriarchate's Apostolic Church, and there are atheist and nonreligious Armenians. The living descendants of Armenians who were Islamized in the past, which has been a prevalent topic in the last 10 to 15 years, make such an equation even more controversial. Moreover, it is clear that accepting the Armenian Patriarchate as the official representative of Turkey's Armenians does not comply with the principle of secularism in the national constitution. Similarly, the patriarch's interventions in nonreligious affairs or assuming a role in such civil areas do not enjoy a consensus of support. For example, although it is not possible to give a percentage, a large number of people do not approve of the patriarch's involvement in education and schools. On the other hand, there is no doubt that the Armenian Patriarchate of Turkey is the religious and spiritual representative of the Apostolic Armenians in Turkey, and therefore he is the primary interlocutor when it comes to their problems concerning religious life and institutions.

So does the Armenian community need another representation at the state level? This issue also lacks consensus among Armenians. Some think civilian representation outside of the Patriarchate is needed, while others think the problems of Armenians should be resolved within citizen-state relations. If there were to be a civil representative, the question of how and by whom this would be implemented arises. The state has treated the chairman of the board of the Yedikule Surp Pırgiç Armenian Hospital Foundation, considered the largest foundation, as a kind of community leader, similar to the example of the patriarch. This practice, whose source and legitimacy are unclear, currently has no legal basis. The community only gives the head of this foundation the authority to manage the hospital[83]. Any role beyond that is a *fait accompli*.

83 Additionally, as explained in the section on foundations, the most recent election regulation has separated elections of foundations with hospitals from other foundations and postponed them. As such, when the other foundation directors are elected, the board and director of the foundation with a leadership claim does not have the public consent.

PATRIARCHAL ELECTION PROBLEMS

The 1863 *nizamname* standardized the election of the patriarch in detail. The patriarch was elected by the General Assembly, which consisted of representatives chosen by popular vote. With the de facto abolition of the *nizamname* during the Republican era, a legal vacuum for patriarchal elections formed. Mesrop I Naroyan was elected patriarch in 1927 according to the rules of the 1863 regulations. After his death, the period from 1944 to 1951 was one of division and tension within the Armenian community.[84] During this period, Bishop Kevork Aslanyan served as the patriarchal governor without being elected, but he was not widely accepted within the Armenian community. In 1951, Karekin Khachaduryan was elected patriarch by the delegates of people through a decree issued by the government of the Democratic Party. Patriarchal elections in 1961, 1990 and 1998 were also held according to instructions issued by the governments at those times. Each time it was carefully underscored that the directive was specific to a particular election, would not have any legal consequences in the future and did not make any commitments. This way, the state did not bind itself with any permanent rules and regulations. As we will see in the example below, it kept the possibility of issuing new instructions whenever it pleased under the conditions it wanted. This also forced the Armenian community to appeal to the state time and again during each patriarchal election. In other words, the Armenian community was unable to elect a patriarch without obtaining permission from the state.

The result of a lack of a clear, written and permanent legal regulation for the patriarchate and patriarchal elections could be seen in the crisis that lasted more than 10 years before the election that was held in 2019. The late Patriarch Mesrop II Mutafyan was diagnosed with a neurological condition in late 2007, rendering him unable to fulfill his duties before he succumbed to a vegetative state. Opinions in Turkey's Armenian community differed on how to respond, since patriarchs are elected to serve for life, unless they resign or are dismissed; Patriarch Mutafyan had not resigned or been dismissed and was not dead. While some in the community thought that a "co-patriarch" should be chosen, others argued

84 Please see this source for details about this era: Suciyan, T. (2015). *The Armenians in Modern Turkey: Post-Genocide Society, Politics and History* I.B. Tauris.

no such rank and title existed and a new patriarch should be elected. Thus, two different applications were made to the state by the Armenian community: one for a new patriarch and the other for a "co-patriarch." For its part, the state exploited this disagreement and invented a title that had no precedent, instructing that a "patriarch general deputy" be elected by the clergy alone. This instruction precluded an election, the most important point of consensus in the two divergent demands. Archbishop Aram Atesyan, without consulting the Armenian community, embraced this instruction and convened the Spiritual Council to be elected as "deputy general of the patriarch" in 2010. This set off a period of tension that would last for almost a decade as many in the community did not accept this *fait accompli*. During this time, attempts to hold an election by the community were blocked by the state on the grounds that Patriarch Mutafyan was still alive. He died in March 2019.

After that, the election process began, and again a directive was published that was valid only for that election. However, the state added a condition not issued in previous decrees that required that the candidate be " from the class of bishops peculiar to the Istanbul Armenian Patriarchate."[85] This wording cannot be found in the decrees issued during the Republican period, but was taken verbatim from the 1863 *nizamname*. What is meant by "peculiar to" has been a matter of debate. Some experts explained the meaning of this term in the historical context of the 1860s, and in line with the Armenian Church's own hierarchy, it meant a bishop ordained by the Catholicos of all Armenians at the Mother See of Etchmiadzin, located outside of Yerevan.[86] The state, Sahak Mashalyan – who would eventually be chosen patriarch – and the Initiator Committee – which conducted the election – interpreted "peculiar to" to mean candidates who were first ordained by the Istanbul Patriarchate.

The real reason why this condition, disregarded throughout the history of the republic, was evoked in 2019 was to block the candidacies of certain prominent figures who lived overseas and whom the state did not wish to see as a patriarch, in particular that of Archbishop Sebouh Chouldjian, who was born in the Turkish city of Malatya but served as the spiritual leader of the Gugark region of Armenia.

85 https://www.agos.com.tr/tr/yazi/22949/icisleri-nin-patrik-secimi-talimatnamesi-tartisma-yaratti

86 https://www.agos.com.tr/tr/yazi/22968/Patrikhaneye-mahsus-episkoposlar-ile-ne-kastediliyor, https://www.agos.com.tr/tr/yazi/22998/tekrar-istanbula-mahsus-episkoposlar-uzerine

The strategy worked; several potential candidates were disqualified before they could even enter the election. Archbishop Karekin Bekjian, the spiritual leader of Armenians in Germany, fulfilled the criterion, but he abstained from the election to protest the decree, leaving a two-candidate race between Ateşyan, the "deputy general of the patriarch" during Mutafyan's illness, and Mashalyan, in which the latter was chosen patriarch.

The controversy that we have sought to summarize is a perfect example of the attitude of the state toward patriarchal elections. It seeks to arbitrarily set the rules according to the circumstances of the moment, without binding itself with a permanent legal arrangement. The 1863 *nizamname*, which has never been officially recognized by the state's executive branch throughout the history of the republic, suddenly became the basis for the state's requirement for the patriarchal candidates in 2019 (possibly prompted by certain members of the Armenian community).

It is worth noting that Patriarch Mashalyan does not think the patriarch should be elected directly by the people. According to Mashalyan, it would be sounder for a mixed assembly consisting of clergy and "laity who are knowledgeable about social affairs and the candidates" to elect the patriarch. We will return to this subject in the section on proposed solutions, but for now let us state that objective criteria to choose the laypersons who will join this mixed assembly must be specified, and that will lead to various disagreements. In addition, it should be said that if the patriarch's duties, authority and representation were restricted to religious matters, then it would not pose a problem for him to be elected only by the clergy. However, the person who assumes a position considered to be the representative of all Armenians should be elected by all Armenians.

Constitutional Court Decision

During this matter, two community members, Ohannes Garbis Balmumcuyan and Levon Berç Kuzikoğlu, filed a suit to the Constitutional Court on October 30, 2014, on the grounds that blocking their demands for a patriarchal election was a violation of religious freedom.[87] The Constitutional Court published its reasoned

87 https://kararlarbilgibankasi.anayasa.gov.tr/BB/2014/17354

decision on May 22, 2019, that blocking the election was a violation of religious freedom. In addition to the finding of the violation, this decision included other important findings for Armenians and other minorities. In fact, it may be the most important high judicial decision regarding the "Lausanne minorities" in the history of the republic. Although it is beyond the scope of this report to assess the ruling in detail, summarizing the main findings will inform the solutions for both the legal status of the patriarchate and patriarchal elections.

The primary universal principle evoked by the Constitutional Court is that "interference with freedom of religion cannot be considered in line with the requirements of democratic social order, unless it fulfills a social imperative and is proportionate to meet this imperative" (Paragraph 93 of the ruling). "Freedom of religion also encompasses the organization of religious communities outside of arbitrary interference by the state. Accordingly, the state has to refrain from interfering in the internal affairs of religious communities unless it is necessary for a democratic society," the court said. Furthermore, the court referenced the European Court of Human Rights in saying that it is a violation of freedoms for the state to become a party to a disagreement within a community or to subject the entire community to a single leadership, which is precisely what happened with the imposition of a "patriarchal deputy general." On top of that, a patriarch deputy general was not sought by the Armenian community. The Armenian community had made two proposals: for the election of a new patriarch and for the election of a "co-patriarch." But a deputy general chosen by the Spiritual Council precluded a popular election, the most important point in both applications, while the Constitutional Court assigned the state a mediation role in community disputes, in Paragraph 126:

> "In the application at hand, however, the administration did not explore the possibility of resolving the issue through dialogue. More generally, the state did not develop policies to bring together Armenian opinion leaders, clergy, intellectuals and other segments of society *to resolve the issue in accordance with Armenian traditions and religious requirements*. Instead, the administration determined the religious practices of the Armenian community by implementing its own proposal for a resolution" (emphasis added).

The court's emphasis on Armenian customs and traditions as an important reference point for the state in addressing the problems of the community should not be overlooked.

The Constitutional Court states that an "intervention in a fundamental right and freedom that becomes accessible and predictable by gaining continuity will not turn the state's action, which is the basis of the intervention, into a 'law'" (Paragraph 78) and underscores that : "According to Article 13 of the Constitution, an abridgement of fundamental rights absolutely requires a law" (Paragraph 80). However, in the case at hand, there is no "accessible, foreseeable, and definite legal provision, as stipulated by Article 13 of the Constitution, that serves as the basis of the authority to limit the freedom of religion and faith of the applicants by preventing arbitrary acts of the organs exercising public power and that helps people to know the law ." Therefore, in patriarchal elections, previously established election rules, be they set by election decrees or administrative procedures, and practices demanded by the administration, regardless of when they were created, are not necessarily considered valid and accepted today, if they controvert human rights and freedoms. Restriction of these freedoms must be proportionate, meet a compulsory need and only be done by law. Since there is no such law, the interference in the running of the patriarchate and the election of the patriarch has always been arbitrary.

This reasoned decision by the Constitutional Court reflects a very advanced understanding in the context of Turkey's minority policies in the role it assigns the state and in the positioning of the Armenian community. With this judgment, the Constitutional Court has opened a wide range of possibilities and horizons, but if it is not referenced as a precedent for future cases, its benefits will not be seen. Here, the Armenian community in general and lawyers in particular have a role to play. In relations with the state, this ruling and the determinations in the decision should always serve as a reference point. After all, it is the highest court of the state of the Republic of Turkey.

PATRIARCHATE'S OTHER PROBLEMS

Training clergy

There is currently no seminary in Turkey where Armenians who want to become high-ranking clergymen in the church's hierarchy following their initial consecration as priests can attend. Those who want this type of higher education must attend seminaries or theological schools abroad. This naturally causes some difficulties and financial needs for those who want to advance in the field. According to Patriarch Mashalyan, the main problem here is that joining the clergy is not a popular choice and that no one from the younger generation wants to enter the priesthood, and so there would be no students to study at the seminary. The patriarchate is trying to fill educational gaps by offering courses and does not demand a seminary, because the main problem is a lack of students, he says. Another issue related to this problem is a lack of teachers and academics to train the clergy.

Repair and reopening of churches to worship

At the beginning of the 20th century, the number of church buildings of various sizes under the administration of the Armenian Patriarchate of Istanbul was about 2,000. Today there are 33 in Istanbul, two in Diyarbakır, one in Kayseri, one in Vakıflıköy and one in İskenderun for a total of 38 churches.

Across Anatolia, there are many Armenian churches, mostly in ruins. Some have been restored, and those are neither owned nor managed by the Armenian Patriarchate as in the case of the Akhtamar Church in Van. They are either state museums, as in the case of Akhtamar; used as a cultural center or library, such as the Taş Horan Church in Malatya; or under private ownership. At most of these churches, holding religious services is out of the question, while in some, one day of worship is allowed each year. Patriarch Mashalyan says that restoring, maintaining and preserving these historical churches would exceed the capabilities of the Armenian Patriarchate and expresses the view that it is more appropriate for Akhtamar and Taş Horan to remain under the protection of state or local authorities. However, he adds that worship and other rituals in restored churches are limited and that the authorities could be more "tolerant" in this regard.

All this aside, the fact that historic churches are owned or managed by public institutions or private individuals is an anomaly and distortion in and of itself. It is, without question, the result of a long history. Dealing with that history far exceeds the parameters of this report, but it must be said that the present state of Armenian churches in Anatolia is a clear testament of the violations of rights that spanned a century.

Financing issues

According to information we received from Patriarch Mashalyan, the Armenian Patriarchate in Istanbul has insufficient income. The source of its income consists of the amounts received as donations for weddings, funerals and baptisms at churches, which are inadequate to meet the patriarchate's expenses and to realize projects it plans. The patriarchate's lack of a legal personality creates difficulties in carrying out financial transactions, and it cannot receive direct fees for the religious services it provides. By failing to provide the patriarchate with a legal foundation, the state, the executive branch and, to some extent, the legislative branch muddle its financial operations, placing the patriarchate in a vulnerable and hopeless position.

The state does not provide direct, regular financial support to the patriarchate, and since the Patriarchate does not have a legal personality, such support could only be done indirectly. Clergy are not paid by the state. Expenses such as electricity and water are not covered, wholly or in part, by the state, which only pays for the utilities consumed inside places of worship, but not for structures seen as auxiliary buildings. Because the patriarchate is seen as an auxiliary building, its expenses are not covered by the state, Patriarch Mashalyan says. "The important thing for us is that we receive regular assistance from our foundations," he says, and that this would be possible if a central organization was established. He argues Armenian foundations should make a regular transfer of funds to the patriarchate.

Security issues

The Istanbul Armenian Patriarchate's building and the patriarch himself are subjected to verbal and physical attacks from time to time. Patriarch Mashalyan states that he has not experienced this problem, but that his predecessor, Patriarch Mesrop Mutafyan, was frequently threatened. In fact, Mashalyan says

that a security precaution from those days remains in place, and the patriarchate's windows are kept closed to protect against a potential sniper attack. He described the situation as follows: "During Patriarch Mesrop's primacy, an armored minibus was purchased. Wherever he traveled, notification was given, police guards would go. This is naturally an element of pressure on its own." He says that he felt this pressure, albeit to a lesser degree, during the Second Nagorno-Karabakh War between Armenia and Azerbaijan in 2020. However, he added that he did not experience a significant problem during the conflict and that Azerbaijan's victory was likely a factor:

> "The patriarchate [and] Armenians had more problems during the First Nagorno-Karabakh War [of 1988-1994] because there was negative propaganda. But after the [last] war, the victors' spirit was reflected in a way. We did not experience any problems, any threats, but it could happen at any time, because, as I said, there is a phobia about minorities that is cultivated in people's conscious world and in their subconscious. We talk about Islamophobia, and it is true that it exists in the West, but here there is also Christophobia. Let's remember that about 10 years ago, the killing at Zirve Publishing[88] because it was missionary work. They can easily convince their own people of lies, because they are primed. That's why they can revive this at any moment ... Of course, this deep-rooted issue starts in schools, it's about education. Teachers need to be retrained."

Patriarch Mashalyan says the state took necessary protective measures during the Nagorno-Karabakh conflict, not only at the patriarchate but also at churches, that the authorities showed diligence when attacks such as vandalizing the church buildings occasionally did occur and that the incidents were not covered up.

These protective measures show that the authorities fulfill their responsibility to provide physical security. Yet it still raises questions about the conditions in Turkey that necessitate the measures. What kind of a political and cultural environment is there in Turkey that Armenians and other minorities live in constant fear for their security?

88 On 18 April 2007, three Christians, one German and two Turkish, were tortured and killed by a group of five in the office of Zirve Publishing in Malatya on the allegations that they had been engaged in missionary activities.

Relations with local governments

The patriarchate and the Armenian community's relations with local governments change depending on the circumstances and the administration, making a broad diagnosis about whether relations are good or bad less useful than an assessment of the stance of a specific municipality. Patriarch Mashalyan says the attitude of a city administration is generally in line with that of the central government, , if the government takes a positive stance then so too do the local municipalities. He pointed to the Istanbul Metropolitan Municipality's establishment of a Faiths Desk, where a priest from the patriarchate works as a salaried municipal employee, as a positive development that has helped promote more egalitarian service to members of different religions.

No significant problems appear in the delivery of municipal services to the patriarchate and foundations. However, some municipalities display negative attitudes and actions, especially when it comes to foundation properties and property-related lawsuits. Patriarch Mashalyan described this as follows: "But of course, there are some things that have nothing to do with the central government anymore, but the attitude of local governments. For example, some properties that were returned to us were immediately declared green areas. Now, this is not a sign of goodwill. You do not gain anything, you lose your property again, and you have to make do with what has been given to you."[89]

Lack of accessible archives

As described at the beginning of this chapter, for centuries the Armenian Patriarchate of Istanbul worked with the bureaucracy of both the Ottoman Empire and the Turkish Republic on various issues and took the lead in the administration of the Armenian community. It also became a center of the system established with the 1863 nizamname, and information and many documents were collected here from across Anatolia by representatives of the patriarchate, often a bishop. One might expect that these roles and functions would have engendered a large archive with tens of thousands of documents. However, the Armenian Pa-

89 Once a piece of land is declared as green land by the public authority, it becomes legally impossible to build any construction on that land. This issue is discussed in detail in the section focusing on the foundations.

triarchate presently has no such archive where historians and other researchers can work. This is a significant void for historical and social science studies that is worth noting among the deficiencies of the patriarchate.

The destruction and depredation suffered by the Armenian community for more than a century helps explain why there is not a fully-fledged archive at the patriarchate today. But it is incomprehensible that almost nothing is accessible. It is known that a large portion of the patriarchate's archive was moved outside of Turkey during World War One. What is not known is what was left behind. Patriarch Mashalyan says the remaining archive is not open to researchers because it has not been cataloged, adding that it does not contain much anyway. It is not possible to be sure of the quantity and quality of the documents without work on classification. Officials at the patriarchate have long maintained a secretive attitude about its archives. Patriarch Mashalyan says that researchers can make use of the library through an appointment system. While this is valuable, most important are the official documents consisting of the patriarchate's correspondences with the state, representatives, clergy sent to the provinces and other officials of the Armenian Church. This issue still awaits clarification.

REFORM PACKAGE

Legal status and patriarchal elections

Without doubt, the first step to solve the patriarchate's problems is to end the ambiguity of its status. It is necessary to clearly define what the Patriarchate is and is not, as well as its rights, duties and jurisdiction. The only way to do this under the rule of law is based on legally binding texts, such as laws and regulations. It is imperative that the patriarchate be given a legal status; without this, other measures will not solve the problem. The policy of the state has always been to create a deliberate gap and uncertainty by not establishing such a legal framework. This way, it does not limit itself, and it can engage whatever the circumstances require to realize its own priorities. There was and there continues to be no foreseeability. Legal regulations are required to eliminate the ambigu-

ity, and the state must carry out such work in dialogue and consultation with the patriarchate and the Armenian community. The example of the regulation on elections of foundation administrators makes clear that a law imposed from the top down creates rather than solves problems.

So, what should this status be, what should its limits be? Patriarch Mashalyan says: "What we want as a legal entity is to be, first, recognized as an institution, and second, recognized with its historical context." If "historical context" covers all the roles and functions that the patriarchate has played in the past, it would be a highly controversial position today. The historical roles of the institution and its leader went far beyond the religious sphere. But something does not have to be the same today as it was in the past. The proposal to restore the patriarchate to its historical position and function has no concrete basis nor applicability, neither in terms of the Armenian community's internal dynamics nor the characteristics of the state or society. It is highly doubtful that making the patriarchate the only and official representative position would find sufficient support from the Armenian community and that foundations would accept the patriarchate's authority over them. On the other hand, it is natural that religious institutions such as churches and cemeteries are run by the patriarchate. A legal arrangement that directly and exclusively connects the administration of these institutions to the patriarchate and defines it as an institution that meets the spiritual needs of the Apostolic Armenian community and tries to solve problems related to these needs would be more compatible with the reality on the ground. The critical point here is that the patriarchate must be defined as an autonomous institution. In other words, it must regulate its inner workings itself. Activities such as education, social services and advocacy can be defined within the scope of foundations, as we explained in the section on foundations.

In the event that the patriarchate were to have such a status, in which it only deals with religious affairs, then the patriarch could be chosen by a mixed delegation consisting of clergy and some laypeople, or even just clergy, as described by Patriarch Mashalyan. However, it would be contradictory to give the patriarchate the role of the Armenian community's representative and to eliminate the community's election of the patriarch. Regardless of how the patriarchate's status is defined and whether or not there is a popular vote, the election of the patriarch must be a permanent legal arrangement.

Financing

Such a legal arrangement that positions the Armenian Patriarchate of Istanbul as an institution that serves the religious needs of citizens should also envisage allocating a certain share of funds from the state budget to the patriarchate. Since the Presidency of Religious Affairs has a large budget to serve the religious needs of Sunni Muslim citizens, the constitutional principle of equality would prescribe that public money be allocated for the religious needs of citizens belonging to other religions and sects, including Apostolic Armenians. The salaries of clergy and expenses of the patriarchate, such as electricity, water and heating, should be covered by this budget. In addition, the legal basis for the patriarchate to receive fees and donations should be set with this regulation.

Repair of and reopening churches for worship

Armenian churches across Anatolia should be returned to the Armenian Patriarchate, the historical owner of these structures, with the necessary resources for their repair, maintenance and preservation. These structures were taken from the patriarchate and the community as a result of long-running oppressive and discriminatory policies, and their return would be the eradication of an injustice, the reparation for a wrong.

Training clergy

We quoted Patriarch Mashalyan earlier on the lack of sufficient demand to establish a seminary to train clergy. However, it could be said that the absence of such an institution contributes to this lack of demand. Those from the Armenian community who want to join the priesthood may be refraining from doing so because there is no school of higher learning; leaving Turkey for many years is both materially and morally difficult. Nevertheless, if we accept the premise that a separate school to train Armenian clergy is unnecessary, closing this gap in Turkey, by opening a department at a university in Istanbul, for example, could be considered, in consultation with the Armenian Patriarchate, the interlocutor for this matter.

Security

Physical protection measures, such as placing police at the door of the patriarchate, is the last link in the chain of security problems. While it is important to ensure physical security, eradicating the social and political climate that targets the Armenian identity would tackle the problem at its root. To do this, hate speech must be confronted. Here we can mention the negative and positive obligations of politicians and bureaucrats. Negative obligations mean that authorities themselves should avoid discriminatory hate speech which normalizes it. It is no surprise that those who hear such discourse from the mouths of state officials and therefore normalize it, then target Armenian individuals and institutions. Their positive obligations are to take the necessary legal, political and social measures against discriminatory and racist hate speech and hate crimes. These measures are not just about enacting laws; authorities must also produce educational and social projects against the racist and discriminatory politics of hate.

Archive

Finally, we must mention the archive issue, the importance of which we outlined above. Of course, the state could offer support on this, but the solution lies primarily with the patriarchate itself. Understandably, the patriarchate lacks expertise in administering an archive, but external assistance can be and should be obtained. The patriarchate should form a group of experts to determine the extent of the archive for its categorization and prepare the ground for such a committee to work in a transparent manner. Finding the necessary financing for such a project is not an insurmountable problem.

CONCLUSION: MINDSET CHANGE FOR A SOLUTION

The first requirement to resolve the problems we have discussed in this report is a change in the mentality at the state level. All along, the overwhelming majority of politicians and bureaucrats in Turkey have approached the problems of non-Turkish, non-Muslim groups as if it were a zero-sum game. One side's "gain" is perceived as the other's "loss." The state has viewed minorities as enemies and everything it has "given" them as a concession, which is why it has avoided "giving" as much as possible. Until it discards this mentality and accepts that addressing the problems faced by Armenians and other minority groups are a matter of respecting their rights, a permanent resolution does not seem possible. The state must treat these groups as equal citizens who have the right to claim their rights. Because the preponderance of the existing problems is the result of the violations of rights over a long period of time, the solution will mean repairing those violations. This must be the basic understanding.[90]

The change in mindset toward minorities and their problems must also be found in the constitution, which is a country's foundational legal document where the socio-political order is shaped. This year marks the 100th anniversary of the signing of the Treaty of Lausanne, and the provisions regarding minorities it sets out have not yet been incorporated into the legal acquis of the Republic of Turkey, and the required laws for implementation have not been enacted. The first step

90 Patriarch Mashalyan describes this situation as follows: "I think the main question is this: Is what is done to minorities, non-Muslims in particular, done voluntarily or involuntarily? So the reason why it is done. 'These people are oppressed, let's give them their rights, we should give them their rights, we need to lift them up, so that Turkey can rise. Everything that we will give them is our debt, because this was their true homeland, and now we return them. We should have these islands in a sea of 85 million Muslims, and they should appear well, let them be our display case.' Or is it, 'Their voices should be silent, let's give them a few things so they are quiet and we look good to the outside world. Their leaders should also appear and say positive things'? I think both of these are important. When it's the latter, you face resistance, not just with the state but with [individual] bureaucrats. Even when a few laws are implemented, when you have your rights, the bureaucracy protects the state against you, because that's how it's set up. I do not know how we will overcome this, and we really are left to the mercy of the individual judge, police officer, governor or mayor. Of course this sometimes complicates things. It becomes incomprehensible to us."

should be the constitution. For example, it should be recorded in the constitution that the measures to be taken and practices to protect the existence and identities of these groups are within the scope of the positive obligations of the state and cannot be considered contrary to the principle of equality.

Following the fundamental change in approach, we can examine the problems from a more technical point of view, and we see that the problems faced by foundations, schools and the patriarchate arise either from their lack of a legal status or from the mismatch between their reality and practical functions and their legal status. Therefore, one of the first things to be done is to make the necessary legal arrangements to provide these institutions with a legal status compatible with their real-life identities and functions, which is among the duties of the state. While enacting these laws, the differences and characteristics of these institutions must be considered and the flexibility required must be reflected in law.

Another topic is whether there is a need for a single structure, authority or institution to represent the Armenian community of Turkey. In the chapter on the patriarchate, we stated that its role as the representative of the Armenian community is problematic due to various reasons, especially its religious identity, and that it is difficult to find general acceptance for that role within the community. Does the Armenian community need civil representation? If so, what should it be? Considering that both the problems of Armenian institutions and the search for solutions are common, having a coordinated civilian representation would be appropriate in terms of democratic principles and functional in terms of practice. Just as professional chambers, unions, associations and others represent common groups' interests and efforts to resolve their problems, advocate for their rights and try to make their voices heard, Armenian institutions also need similar representation. In other words, seeing them as non-governmental organizations would be the right approach in terms of a democratic solution.

As for how this will be implemented, as we explained in the foundations section, an association whose members administrate Armenian foundations would put forth the problems of the Armenian institutions and the solutions to these problems. It can operate as a non-governmental organization that defends the rights of these institutions and through them, the individuals. The board of directors of this association, which would consist of elected administrators, can convey the Armenian community's problems and proposals for solving them to the state and foster communication between society and the state.

Advocacy

To solve the problems discussed in this report, both the issues and solutions should be explained to the public and necessary initiatives should be taken in the name of rights advocacy. The Armenian community's foundation administrators, lawyers, activists and media, as well as non-governmental organizations working in the field of human and minority rights in Turkey, all have responsibilities. In the workshop where we discussed with representatives of such institutions, the following topics on what can be done for advocacy came to the fore:

1- An important point is that the struggle for rights is carried out in communication and solidarity with other groups whose rights have been violated, whether they are the "Lausanne minorities" or not. Ultimately, the violation of the rights of minorities is a general democracy issue and stems from the lack of democracy, and so a joint struggle to develop democracy will play an important role in the gains of individual groups. Human rights advocacy should be accepted as the common basis for defending and realizing the rights of many groups. Sociologist Ferhat Kentel, a participant in the advocacy workshop, says: "It is necessary to ensure a policy that expresses the diversity of the subaltern against the encompassing, overwhelming, all-consuming language of populism. Viewing it from the perspective of a single identity is one of the things that the state likes most, the capacity to be easily targeted emerges right here... When you put forth just one identity, it can give you a much stronger identity war with stronger propaganda materials."

Those in the Armenian community who are seeking their rights should base their discourse on human rights and internalize the reflexes and practices of the human rights movement. In this context, it is beneficial to be in coordination and communication with non-governmental organizations such as the Human Rights Foundation of Turkey, the Human Rights Association and bar associations. In addition, programs, videos and podcasts can be produced to educate administrators and activists from the Armenian community about human rights and rights advocacy.

2- When applying the principles of solidarity and communication to the law and litigation, the necessity for communication and cooperation with organizations, such as those mentioned above, becomes apparent. Pools can be created to add case files, and platforms can be created for consultation and information and document sharing between Armenian foundations, their lawyers and non-governmental organizations. Support for campaigns and communication from civil society can

be provided for these cases. Encouraging bar associations to be more engaged in minority rights, for those lacking one to establish a minority rights commission and for them to work in the field of minority rights could be undertaken.

It should be added here that there is a general reluctance among the administrators of Armenian and other minority foundations to foster relations with rights groups due to "political appearances" and concern this will make them targets of the state and society. This concern leads minority institutions to choose to "see their own case through." This needs to be overcome, because individual and isolated quests for rights consume more resources and make it more difficult to obtain structural and permanent results.

3- Another path that can be pursued is strategic litigation, meaning lawsuits that are not filed necessarily for the aim of winning, but to make discrimination visible, to create a campaign, to draw the public's attention and to show the failure of certain practices. For example, Article 216 of the Turkish Penal Code, which pertains to the crime of "inciting the people to hatred and enmity," is used almost exclusively when Sunni Islam or Turkishness is allegedly denigrated. To expose this to the public, filing a criminal complaint on the grounds that Armenians or Christianity have been insulted in a particular incident can be an example of strategic litigation. In addition, strategic litigation based on the Treaty of Lausanne's tenets may also be considered.

4- Representatives of the Armenian community can seek to explain their problems to political parties. Establishing one-to-one contacts with political parties as much as possible, holding meetings, sharing texts that describe the problems and conducting workshops can be considered.

5- A similar effort can be undertaken for media establishments and journalists. Joint training activities and workshops with the media can be held on minority rights law, minority rights journalism, the fight against hate speech and the correct style of journalism on these issues.

6- As stated in this report, Turkey has either not signed or signed with reservations many international agreements on minority rights. Lobbying for Turkey to sign these agreements or remove its reservations can be undertaken, public awareness campaigns can be made, and a solidarity network with non-governmental organizations working on this issue can be established. It is the more

plausible option, in terms of both capacity and results, for non-governmental organizations and bar associations to do these, rather than Armenian individuals and institutions.

The recommendations of our report, together with their addressees, can be listed as follows.

State:

- International minority rights agreements should be signed and reservations should be lifted
- Minority rights should be constitutionally guaranteed
- Article 101 of the Civil Code should be amended or abolished
- Legislative processes concerning the Armenian community should be carried out transparently and in consultation with the relevant bodies.
- Distinct laws for Armenian schools and foundations should be enacted
- A share of the Ministry of Education's budget should be allocated to Armenian schools; these schools should be exempted from financial obligations such as taxes, fees, etc. to which public schools are not subject
- Legal barriers preventing Armenian schools from directly employing Turkish and Turkish Culture Courses (TTKD) teachers should be removed
- The assistant principal position in Armenian schools should be eliminated
- The necessary financial and infrastructure support should be provided for the training of Armenian language and literature teachers
- Textbooks should be cleansed of discriminatory and racist language
- Minority foundations should be granted the status of foundations working for the public benefit
- A comprehensive and facilitating legal arrangement should be made in consultation with the foundations for the return of confiscated properties
- The patriarchate should be given a legal personality and a share of the budget
- Ownership of Armenian churches in Anatolia should be transferred to the Armenian Patriarchate, with the necessary financing for their conservation

- In order to meet the needs of the Armenian community, it should be possible for clergy to receive higher education in a department of a public university in Istanbul.
- Place names which have been changed should be returned or memorialization efforts should be undertaken to keep these place names alive in the collective memory.
- Individuals from minority groups should be able to become civil servants without facing any difficulties due to their identity.
- The Ministry of Culture should develop projects for the promotion of the culture and history of minorities and should undertake efforts for the memorialization of minority individuals who have contributed to Turkey's culture and art.

Political parties:

- The problems of minority groups should be learned by listening to the interlocutors.
- Policies regarding minority rights should be included in the programs of political parties.
- These issues should be brought onto the public agenda and the agenda of the legislative assembly and other platforms.
- These issues should be brought onto the agenda in the legislative assembly and other platforms.
- Where possible, parliamentary candidates from minority groups should be nominated.
- Local municipalities in areas where minorities are concentrated should be in dialogue with minority institutions, members from minority communities should be employed by municipalities in order to develop inclusive projects and departments such as equality units should be formed within municipalities.

Armenian institutions/foundations:

- A mechanism for coordination between foundations should be created.
- A joint education commission should be established.

- Relations should be established with civil society groups and political parties, and the community's problems should be explained.
- Solidarity and communication networks should be established with those who face similar rights violations.
- Transparency should be ensured, and all information and documents related to foundations, including financial matters, should be shared with the public.
- The required physical, technical, pedagogical and legal foundation to meet the daycare center needs of the Armenian community should be researched and such daycare centers should be operated.
- The fields of activity of the foundations should be widened and developed through projects such as supporting entrepreneurs, contributing to the occupational learning of youth and the advocacy of social and political matters concerning the Armenian community.

Patriarchate:

- Necessary studies should be undertaken to create an archive.

Civil society organizations:

- Rights based civil society organizations should implement projects based on minority rights.
- Legal support should be given to minority institutions in litigation and other matters.
- Support for communication and public awareness should be provided to publicize minority issues.

Bar associations:

- Minority rights commissions should be created at bars.
- Long-standing communication should be established with minority communities.
- Campaigning and lobbying should be carried out for Turkey to sign and lift reservations in international treaties on minority rights.

National media:

- Minority rights journalism should be improved.
- Journalistic standards and a correct discourse about minorities should be developed and implemented.
- Articles containing hate speech directed at minorities should not be published.

Universities:

- Lectures, seminars and panels on minorities and their rights should be organized, and research should be encouraged.

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