



# A look at Turkey's evolving charity law

**N**ine articles from the Law of Charitable Foundations, previously approved by the national assembly in February, have been vetoed by Turkish President Ahmet Necdet Sezer. The vetoed articles would have given minority foundations the right to acquire property and permitted charitable foundations to establish corporate and branch offices abroad. Community foundations may receive up to 160 foundation assets due to this law. The vetoed articles had been supported by the European Union. However, opposition political parties, CHP and MHP, opposed this law, saying it violates the Treaty of Lausanne, a peace treaty signed in 1923 following Turkey's Independence War, between the World War I allies and the Turkish parliament. The following includes details about the proposed law:

- ▶ Foundations can establish corporations or become partners in businesses to promote their aims and increase the benefit of their foundation on the condition they register this information with the General Directorate of Charitable Foundations. The profits gained from such economic activities will not be used for any purpose other than the foundation's benefit. As for the foundations whose founders are mostly foreigners or corporations owned by foundations, they are subject to laws regulating the acquisition of property for all charitable foundations. Company stocks or the exchange of more advantageous shares, their conversion into money, their assessment, the use of all rights related to these and the use of the rights dependent on partnership interest will be conducted by a general directorate.

- ▶ Foundations are allowed to participate in international business activities in accordance with their purposes and actions and establish branch offices abroad on the condition that these will be included in trust contracts. Moreover, foundations are allowed to establish administrative organizations and become members of organizations founded abroad.

#### Donation from abroad

- ▶ Foundations are allowed to accept cash donations, and donations in kind, from domestic or foreign individuals, corporations and organizations and they can donate to foundations or associations of similar kind, here and abroad.

#### Foreigners can raise funds

- ▶ According to the law of legal and actual reciprocity in Turkey, foreigners may raise new funds. The foundation council will determine the minimum quantity of goods required for establishment of the new foundation.

- ▶ The foundations which file a return against trust indenture will pay a fine of 500 YTL.

- ▶ Foundations are allowed to gain property and use this property as they wish. (President Sezer vetoed this arrangement on the grounds that community foundations should not be given economic and political privileges without taking the Treaty of Lausanne into consideration). Immovable properties, which cannot be used for the purpose they were intended,

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are allowed to be exchanged with properties that are more useful and more valuable.

- ▶ On the condition that foundations are not able to answer the requirements in the act of foundation, the Foundation Council has the authority to assess financial values in donation conditions to foundation income. (It should not be contrary to the will of the donor) (President Sezer vetoed this article saying community foundations should not be given economic and political privileges).

- ▶ Immovable properties of Community Foundations, which are used partially or completely as charities, could be given to another foundation belonging to the same community with the consent of the council if the foundation directorate demands it or it could be converted to income.

- ▶ The properties possessed by these foundations, included in the 1936 declaration and registered with fictitious names such as Saint Paul, Saint Pier and pseudonyms such as Jesus Christ and the Virgin Mary, could be registered for the name of community foundations. The aim of this arrangement is to preclude the cases in ECHR (European Court of Human Rights).

Sezer, the tenth President of the Turkish Republic, vetoed nine articles by noting that the articles gave community foundations privileges making them free of the Foundations Council's control and they would be given economic and political rights without taking the Treaty of Lausanne into consideration. During the legislative process, the Assembly made two changes to the articles during a new

meeting. These changes included that in new charitable foundations, the Foundation Council would take care of the certifying process of properties and, thus, the verdict of a jury may be overruled. Apart from this technical arrangement, the acquisition of property by foreign foundations would be attached to limits set for foreigners in the Deed Law.

#### What can communities buy?

A total of 160 properties, which were owned by community foundations between 1936 and 1971, will be returned to them. Eighteen of these properties are registered to fictitious names (Saints) and pseudonyms, 28 are those whose deeds were canceled by the Court of Appeals and given to Foundations, and 114 belong to the national treasury. "There are return conditions. First, the Foundations Council will decide what to do. Second, they will be included in the 1936 declaration. Third, they should dispose of these properties," said vice manager Hayati Yazıcı. At the same time, properties given to third persons will not be taken into account. The Community Foundations wanted 59 recorded foundations returned, as the properties had passed on to third persons. Further, these properties had been owned by the state since there had been no control of these properties for ten years or their communities had disappeared.

#### How many cases ECHR has?

Turkey has been fined 910.000 Euros as a result of the case regarding the Phanar Greek Orthodox College. ECHR now has before it 31 similar cases. This law has provisions which will rectify these problems as the Community Foundations deals with 2.263 immovable properties, besides those already mentioned. They have applied for these properties and been assigned the legal date of 3 August 2002. 365 of the properties were returned while 898 have been rejected. These cases may now be sent to the ECHR since Turkey has not objected to the higher court in the ECHR case. "One of the issues of the case was that the state was discriminating against minorities, however, ECHR did not accept this claim. If the higher court receives an appeal, all claims would have been reassessed," said Yazıcı, the state minister at that time.

## There are 161 minority foundations

There are 161 minority foundations in Turkey, predominantly made up of Greek, Orthodox, Armenian and Jewish communities. There are some regulations in the Treaty of Lausanne about minority rights to raise a fund and a declaration was sought from non-Islamic foundations in 1936. This record, called the 1936 Declaration, ordered that properties owned by minorities would be considered to be declarations of a foundation. According to these laws, it is not possible to create a new fund for communities. However, there is no law that limits the rights of a non-Muslim who wants to create a fund. Accordingly, the belief that the properties of 46.000 community foundations will be returned is not true. For there are 161 community foundations and an increase in this number is legally impossible.



Greek orphanage in Büyükdada. Hürriyet photo