

Press release issued by the Registrar

CHAMBER JUDGMENT
FENER RUM ERKEK LİSESİ VAKFI v. TURKEY

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Fener Rum Erkek Lisesi Vakfı v. Turkey* (application no. 34478/97).

The Court held unanimously that there had been a **violation of Article 1 of Protocol No. 1** (protection of property) to the European Convention on Human Rights.

The Court held that Turkey was to re-enter the property in question in the land register under the applicant foundation's name within three months of the date on which the Court's judgment becomes final. Failing such re-registration, the State was to pay the applicant foundation 890,000 euros (EUR) for pecuniary damage. Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant EUR 20,000 for costs and expenses. (The judgment is available only in French.)

1. Principal facts

The applicant foundation, *Fener Rum Erkek Lisesi Vakfı*, is a foundation under Turkish law which was set up at the time of the Ottoman Empire for the purpose of providing educational facilities in the Greek Higher Secondary School in Fener (Istanbul). Its constitutive documents comply with the provisions of the Lausanne Treaty of 1923 affording protection to foundations which provide public services for religious minorities.

In accordance with Law no. 2762 of 13 June 1935, by virtue of which it obtained legal personality, the applicant foundation filed a declaration in 1936 of its aims and immovable property.

In 1952 the applicant foundation received a gift of part of a building in Istanbul and purchased another part of that building in 1958.

In 1992 the Treasury applied to the Turkish courts for an order setting aside the applicant foundation's title to that property and deleting its name from the land register. By a judgment of 7 March 1996, Istanbul High Court granted the Treasury's application. Basing its decision on an expert report which referred to a Court of Cassation decision of 8 May 1974, the court held that foundations whose membership was made up of religious minorities as defined by the Treaty of Lausanne and whose constitutive documents did not contain a statement that

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

they had capacity to acquire immovable property were precluded from purchasing or accepting a gift of such property. Accordingly, their immovable property was restricted to that set out in their constitutive documents and finalised in the declaration made in 1936, so that they were precluded from acquiring immovable property.

On an appeal on points of law by the applicant foundation, the Court of Cassation upheld the judgment of Istanbul High Court in a decision of 9 December 1996.

In October 2000 the foundation *Fener Rum Erkek Lisesi Vakfı* applied to the Foundation Commissioners for permission to amend its constitutive documents to permit it to acquire immovable property. However, its application was turned down.

2. Procedure and composition of the Court

The application was lodged with the European Commission of Human Rights on 25 November 1996 and transmitted to the European Court of Human Rights on 1 November 1998. It was declared admissible on 8 July 2004. A Chamber hearing took place in public in the Human Rights Building, Strasbourg, on 20 September 2005.

Judgment was given by a Chamber of 7 judges, composed as follows:

Jean-Paul **Costa** (French), *President*,
András **Baka** (Hungarian),
Ireneu **Cabral Barreto** (Portuguese),
Riza **Türmen** (Turkish),
Volodymyr **Butkevych** (Ukrainian),
Danutė **Jočienė** (Lithuanian),
Dragoljub **Popović** (Serbian), *judges*,

and also Sally **Dollé**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

The applicant foundation complained of the order setting aside its title to the property. It argued that the Turkish legislation as interpreted by the domestic courts deprived foundations established by religious minorities within the meaning of the Lausanne Treaty of all capacity to acquire immovable property. It submitted that that incapacity amounted to discrimination when its position was compared to that of other foundations.

The applicant foundation relied on Article 1 of Protocol No. 1 (protection of property) and Article 14 (prohibition of discrimination) taken together with Article 1 of Protocol No. 1.

¹ This summary by the Registry does not bind the Court.

Decision of the Court

Article 1 of Protocol No. 1

The Court considered that the striking out by the Turkish courts of the applicant foundation's property title and its removal from the land registers, 38 and 44 years after the acquisition of the properties in question, had amounted to an interference in its right to the peaceful enjoyment of its possessions.

The Court further noted that the Turkish courts had based their decisions on a report stating that, under the 1974 case-law, foundations made up of religious minorities whose constitutive documents did not contain a statement that they had capacity to acquire immovable property were precluded from acquiring such property by any means. However, no provision in Law no. 2762 prohibited the foundations concerned from acquiring assets other than those which were included in the 1936 declaration. Furthermore, the applicant foundation's acquisitions had been validated by a certificate from the provincial governor's office and entered in the land register. The applicant foundation was thus certain of having acquired the properties lawfully.

Consequently, the setting aside of its property titles, in application of a precedent adopted 16 years and 22 years after their acquisition, could not have been foreseen by the applicant foundation. In addition, in issuing certificates confirming its acquisitions, the authorities had recognised its capacity to acquire property.

For 38 and 44 years the applicant foundation had been able to enjoy its property as a legitimate owner, paying the various taxes due in respect of its assets. Thus, the interference in its right to the peaceful enjoyment of its possessions seemed incompatible with the principle of the rule of law. The Court noted that the legislation governing the constitutive documents of foundations had been amended in 2002 and that they could now acquire immovable property; however, the applicant foundation had not benefited from that change in the law.

In those circumstances, the Court concluded that there had been a violation of Article 1 of Protocol No. 1 and considered that it was not necessary to examine separately the complaint under Article 14.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.