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TURKEY: No progress on religious property in 2009

By Otmar Oehring,

Turkish religious communities as diverse as the Alevi Muslims, Catholics, the Greek Orthodox, Protestants, and the Syriac Orthodox Church have seen no significant progress in 2009 in resolving long-standing property problems, Otmar Oehring of the German Catholic charity Missio notes in a commentary for Forum 18. Hopes were high, following meetings with Prime Minister Recep Tayyip Erdogan and US President Barack Obama's address to the Turkish Parliament, that some progress on this aspect of freedom of religion and belief would be made. But there has been, for example, no progress on recognising Alevi Muslim cem houses and continuing legal cases against the Mor Gabriel Syriac Orthodox Monastery, while two recent victories in the European Court of Human Rights (ECtHR) have not led to the recovery of confiscated property. Dr Oehring observes that the ECtHR appears to be the only realistic hope of resolving individual property cases – provided its judgments are implemented.

Religious communities in Turkey have seen no significant progress in 2009 in resolving the long-standing property problems faced by communities as diverse as Alevi Muslims, Catholics, the Ecumenical Patriarchate, the Greek Orthodox, Protestants, and the Syriac Orthodox Church.

Several legal cases in 2009 highlight the difficulties religious minority communities face in regaining or retaining their property. The Mor Gabriel Syriac Orthodox Monastery in Mardin in eastern Turkey is facing long-running legal cases aiming to deprive it of some of its lands. Despite appeals by Pope Benedict XVI, the Turkish government has refused to hand back for Christian worship St Paul's Church in Tarsus, a significant historical site for Christians and place of pilgrimage where worship has been curtailed since summer 2009. And victories by the Ecumenical Patriarchate and Greek Orthodox foundations in the European Court of Human Rights (ECtHR) in Strasbourg have not achieved the recovery of confiscated communal property. Nor has the Patriarchate's long-closed Halki seminary been allowed to reopen.

Hopes were raised in 2009 that there would be significant improvements for freedom of religion or belief in Turkey. Property problems – both affecting the buildings themselves and the uses to which they are put - are but one of a number of important issues, including: the ability of communities to acquire genuine legal status and have their leaders fully recognised; the need for fair teaching about religions and beliefs in schools; the need for the right to train clergy; the non-recognition of conscientious objection to military service; and continuing ultra-nationalist attacks on the full equality of citizens who are either not ethnically Turkish, or secular or Sunni Muslims (see F18News 22 October 2009 http://www.forum18.org/Archive.php?article_id=1365).

Legally-entrenched property problems

The largest group affected by property problems are Alevi Muslims, who make up perhaps 20 to 30 per cent of the population. Their places of worship (called cemevis or cem houses) are recognised only as cultural houses (see F18News 12 October 2005 http://www.forum18.org/Archive.php?article_id=670). No cem houses have been registered as places of worship in the land registry. Indeed, in September 2009 the military removed the body of a dead soldier from a cem house – against the wishes of the man's family – and took it to a Sunni mosque run by the Diyanet, the state Presidency of Religious Affairs. This non-recognition of cem houses as places of worship does not appear to be in line with Law No. 4928 Amending Various Laws, which was passed in July 2003 as the 6th EU Harmonisation Law. Article 9 of this Law states:

"The term 'mosque' appearing in Construction Law No. 3194 of 3.5.1985 has been replaced by 'place of worship', and Supplementary Article 2 of the said Law has been amended as follows:

Supplementary Article 2 – In drawing up development plans, provisions will be made for places of worship as necessary, taking into consideration the conditions and future needs of the locality or region. Places of worship may be established, provided the permission of the head of the public authority in provinces, districts and towns is obtained and that the development plan is complied with. Places of worship may not be allocated for other purposes in contravention of the legislation on development."

However, the regulatory statutes of this Law define "places of worship" as mosques, churches and synagogues - not cem-houses. On a number of occasions this issue was raised in Parliament, but always with no success. The objection to the recognition of cem houses as places of worship that the authorities give is theological, that "Muslims worship in mosques". For the state to use

theological reasoning to deny recognition of places of worship is clearly contrary to Turkey's international commitments, and raises serious questions about whether the state is interested in attempting to be neutral and non-discriminatory between followers of religions and beliefs.

Two legal cases are currently pending about cem houses, and three municipal councils have administratively recognised cem houses as places of worship. But 20 to 30 percent of the population cannot be served by a mere five legally or administratively recognised places of worship, even if both the pending legal cases are successful. A major national change of policy is necessary for the Alevis' right to worship in their own places of worship – which perhaps number over 1,000 - to be legally recognised.

Some had hoped that the 6th EU Harmonisation Law would enable places of worship – such as Protestant churches and Jehovah's Witness Kingdom Halls - to be built. However, the authorities still have wide discretionary powers in this Law. For example, development plans have to be complied with, the consent of the authorities is necessary, and it is unclear whether the law refers to new places of worship or the conversion of existing premises into places of worship. It is also wholly unclear who is entitled to apply for permission to do this, as no religious communities in Turkey has legal status in its own right – even if a few (mainly Protestant) communities have established associations which have (unlike the communities themselves) been recognised. In no case so far has this 2003 EU Harmonisation Law facilitated the building of a place of worship.

The most recent Foundations Law does not affect whether or not a place of worship can be built. And even for properties which were built as places of worship, no answer has been given to the question of what should be done regarding those properties which have been seized by the state and sold to third parties (see F18News 13 March 2008 http://www.forum18.org/Archive.php?article_id=1100).

Nor is there an answer to the question of what should be done regarding the so-called perished foundations (mülhak vakiflar). In many cases these foundations only "perished" because the state altered the regulation in such a way that the foundations could not fulfil these altered regulations. Then the state took over the assets of such foundations.

One new church has been opened in 2009. But this was in a different category from most places of worship, as it is on diplomatic territory. During his first visit to Turkey as newly-elected head of the Russian Orthodox Church in July, Patriarch Kirill was able to consecrate the first Russian Orthodox church in Turkey for many years. The church is located on Russian diplomatic premises, at the summer residence of the Consul in Büyükdere near Istanbul.

Legal cases launched to remove property

Possibly the best-known legal property cases are those over the Mor Gabriel Monastery in the south-eastern Mardin Province, brought by local people who allege that the Monastery is illegally using their land. The cases - which have been grinding on with no end in sight - are complex, and involve the three-way relationship between the Monastery, the state and local Kurdish tribes. It appears the first legal cases opened by two local villages - Eglence and Yayvantepe - against the Monastery were organised by Suleyman Celebi, the local tribal leader and a member of parliament for Prime Minister Recep Tayyip Erdogan's Justice and Development Party (AKP). A nearby Kurdish-populated village, Güngören, many of whose inhabitants gain their employment from the Monastery, have not joined the cases. Güngören's Mayor has stated that relations with the Monastery remain good and villagers see no reason to change their attitude, despite the rift this has caused with the two other villages. Relations between the Monastery and the mayors and inhabitants of Güngören have been good for many decades.

While it might appear to be a simple "land grab" by some villagers in Eglence and Yayvantepe, others have seen another underlying motive: to get rid of the Monastery entirely. This interpretation is supported by discussions Forum 18 has had with people in the area. Some local people see the Monastery as a weak target and believe the government would support them in their moves.

Many Kurds – like many Turks – have a deep-rooted hostility to Christians and other religious minorities, encouraged by the education system and the mass media (see F18News 15 April 2008 http://www.forum18.org/Archive.php?article_id=1115). Powerful forces in the so-called "deep state" support this intolerance (see F18News 22 October 2009 http://www.forum18.org/Archive.php?article_id=1365).

The Mor Gabriel Monastery has long faced pressure. After problems in the 1960s and 1970s, including physical attacks on Christian-populated villages and the burning of their crops, many local Syriac Orthodox Christians left for Western Europe, mainly Germany and Sweden. Christians that remain still face pressure, including occasional physical attacks.

One source of friction has been the recent preparation – for the first time – of a land registry to record who owns the land. The company drawing up the registry only recently came to the three villagers closest to the Monastery. Christians who had emigrated long ago found it hard to establish their ownership of their land, as the company relied heavily not only on old maps but on oral testimony from Kurdish villagers. This oral testimony – whose accuracy is open to question - has been to the detriment of the Monastery.

While the legal cases have not so far had a direct impact on the Monastery's status, they have affected the monastic community's

morale. Many irrelevant points and untrue accusations have come up in court, such as that the community favours the break-up of Turkey, that it supports the PKK Kurdish militant movement, that it engages in proselytism and makes use of small children of unknown origin for that aim. The Monastery rejects such charges, and points out that the forty or so children who live there attend normal state-run schools. Although the first judge dismissed such claims as irrelevant to the case, the media had already carried these charges and they set a climate that could prove dangerous or even life-threatening for the monks of the Monastery.

The community already suffers – as Forum 18 has observed in person - constant threats from local people. But despite appeals from the Abbot, the police have so far refused any special protection. Even the Turkish Parliamentary Foreign Affairs Committee has joined such appeals for protection – in vain.

When challenged about the case, government officials insist that they cannot intervene, as Turkey is a state governed by law and that it is the courts who will decide. Behind the scenes, though, it seems the government is trying to find a solution – while at the same time wanting the international community to see that the court has resolved it. Officials say locally that they cannot get involved.

An example of the kind of cases the Monastery currently faces is the one based on the regulations of Forest Law 6831 of 31 August 1956, which states that forests may not be owned privately. However, the land claimed to be "forest" in the case was owned and worked by the Monastery at the time the Law was promulgated, and the working of the land only stopped when the exodus of Christians – due to harassment by state authorities and local people from the 1970s to the early 1990s – meant that people were no longer available to work the land. Any land – not just the Monastery's land – legally becomes "forest" if it is not used agriculturally for more than 20 years. The Forest Law is a problem for many in Turkey, as land is often expropriated by the authorities for the same reasons used in the Mor Gabriel case. So there are those in Turkey who hope that this case will come before the European Court of Human Rights (ECtHR) in Strasbourg. This might be an effective – but costly and time-consuming – way of resolving these and other problems (see F18News 18 January 2007 http://www.forum18.org/Archive.php?article_id=901).

After discussions with state officials at a national level – who often reveal that they are very well informed about the Monastery's problems – Forum 18 has formed the impression that they want the Mor Gabriel cases to stop. Foreign interest – including from the Delegation of the European Commission to Turkey - has been intense, with many foreign visitors making the long journey to sit in the court room. This has disturbed the Turkish authorities, who did not realise the impact the cases would have. Had such interest not been shown, it is probable that the courts would already have ruled against the Monastery.

During the conflict with the PKK the state had an interest in the Mor Gabriel Monastery simply disappearing, as the authorities did not like foreign visitors to the Monastery witnessing a conflict the state preferred to keep hidden. Other monasteries – such as the Mor Hananyo (Deyrulzafaran) Syriac Orthodox Monastery near Mardin, a major tourist centre not far from the town's airport – have not recently faced such intense pressure. Nowadays, the government claims that the presence of such ancient monasteries is a benefit to the country.

Can those who own places of worship use them?

Catholics and other Christians have also been disappointed that St Paul's church at Tarsus – built in the 1800s in the town of his birth by the Greek Orthodox Church, but confiscated by the Turkish government in 1943 – has once again reverted to being a museum. The Turkish authorities rejected Pope Benedict XVI's repeated appeals for the church to be handed over to the Christian community for permanent use.

Christians had been allowed to use the church for worship between mid-2008 and mid-2009, during the Year of St Paul declared by Pope Benedict. Some think the Turkish authorities never intended to allow services in the church regularly, but bowed to international pressure. It was only in July 2009 that it became clear that this was a time-limited concession.

Now, local or foreign Christian groups wanting to hold worship in the church once again have to pay the museum admission fee, and get permission for their worship three days in advance from the Regional Council. The Council imposes time limits to prevent worship disrupting the museum's opening times. "It is a lack of respect for the right to religious freedom and freedom to worship," Bishop Luigi Padovese, the Apostolic Vicar for Anatolia and President of the Catholic Bishops' Conference of Turkey, told the Vatican newspaper L'Osservatore Romano on 1 August.

While being able to worship in the church is an immediate concern, the question of the Greek Orthodox Church regaining ownership of its church is another concern. The Orthodox have not voiced any concerns over Catholics using the church, and could file a legal case against Turkey to regain their property. As long as the property issue is not resolved, the most optimistic hopes are for a reversion to the arrangements made in 2008-9 - a "Turkish solution" as some describe it.

The Catholic Church as such has no legal status in Turkey, and so no properties. Churches, schools, and hospitals are owned by Catholic religious orders and congregations. Indeed, in some cases the authorities have argued that churches are owned by the individual saints the church is named after (see F18News 18 January 2007 http://www.forum18.org/Archive.php?article_id=901). For some property, the orders and congregations have documents proving their legal ownership. But in many cases this is not so, and the land registry has been altered – illegally – by the authorities to remove references to Catholic ownership of the land. However,

Turkish courts have in a significant number of cases forced the authorities to recognise the property rights of Catholic religious orders and congregations – in two cases the courts argued that a legal entity having legal status outside Turkey must also have legal status in Turkey.

But it is unclear in Turkish law what exactly a land title means. A definitive resolution may be found if such legal cases reach the ECtHR in Strasbourg (see F18News 18 January 2007 http://www.forum18.org/Archive.php?article_id=901). A basis for a resolution of this problem could be two lists from the early 20th century: the "Liste des couvents, Eglises, Chapelles, établissements de bienfaisance relevant de l'Ambassade de France annexe à l'Échange de lettres conclu entre la France et la Turquie les 9-10 novembre 1901, relatif aux établissements religieux, scolaires et hospitaliers français en territoire ottoman, dit traité de Mytilène"; and the related so-called "Liste Bompard", named after Maurice Bompard, a former ambassador to the Ottoman Empire and French negotiator of the 1923 Lausanne Treaty. The 1901 Mytilène Treaty is binding for the Republic of Turkey, as legal successor of the Ottoman Empire, and covers not only properties that are French in the strict sense, but all properties that are under the protection of France such as Catholic properties.

When will an ECtHR judgment make a difference?

The former church-run orphanage on the island of Buyukada near Istanbul – visited by Prime Minister Erdogan in August 2009 – has not yet been handed back to the Ecumenical Patriarchate, despite its victory in the ECtHR. The Strasbourg court ruled in July 2008 – in a judgment that became final in October 2008 (Application No. 14340/05) – that the orphanage is the property of the Patriarchate, and that it had been unjustly deprived of its ownership by the Turkish courts (see F18News 21 October 2008 http://www.forum18.org/Archive.php?article_id=1206).

The Greek Orthodox foundation of the Kimisis Teodoku Church, on the island of Bozcaada in the Aegean Sea, won another case in Strasbourg on 6 October 2009 (Application No. 37646/03). In this case the Turkish Land Registry had refused to list the foundation as the legal owner of properties it holds (see <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=855437&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>).

The Buyukada case – the only one that directly concerns the Ecumenical Patriarchate, as opposed to foundations affiliated to the Greek Orthodox community – has another important aspect: recognition of the Patriarchate as a legal entity should flow naturally from the ECtHR decision. But will the Turkish state now recognise the Patriarchate, something it has repeatedly refused to do? Other historic religious communities (such as Syriac Orthodox or Catholic dioceses) have never been recognised as legal entities, while newer religious communities have had to gain legal status (often with difficulty) as non-profit entities.

Perhaps predictably, nothing has happened on recognising the Patriarchate. During their August visit to Buyukada, which came at Prime Minister Erdogan's request, he and Patriarch Bartholomew had an opportunity to discuss the future of the former orphanage building. Asked by the Prime Minister what he would like to do with it, the Patriarch said he wished to use it as an ecology study centre and a place for inter-religious and inter-Christian dialogue. Asked by Erdogan how he intended to finance such a facility, Patriarch Bartholomew said he would have to seek funding for this. The Prime Minister then said he would try to help. However, over a year after the ECtHR judgment became final, there has been no sign from the Turkish authorities as to when and if at all they will implement the judgment.

A complication in this case is that the Turkish authorities might assign the property to an existing foundation that never owned the orphanage buildings and land, and whose members – all of Greek origin - have no connection with the Ecumenical Patriarchate. In the 1990s the Armenian Patriarchate had a similar problem, involving large amounts of property around an Armenian church in the picturesque Cicek-Pasaj area of Istanbul. It was only after long negotiations that the Armenian Patriarchate convinced the members of the foundation's council – all of whom were ethnic Armenians – that it would be shameful for them to sell the property to third parties and keep the money from the sale for themselves.

Expectations were high in 2009 – especially abroad - that the Orthodox theological seminary on the island of Heybeliada (Halki), which was ordered closed in 1971, might reopen. During his April 2009 visit to Turkey, US President Barack Obama told Parliament in Ankara: "Freedom of religion and expression lead to a strong and vibrant civil society that only strengthens the state, which is why steps like reopening Halki Seminary will send such an important signal inside Turkey and beyond." Speculation swirled in the Turkish media that a solution over the seminary would be found. At the Patriarch's suggestion during their August visit to Buyukada, he and Erdogan went the short distance to the hilltop Aiya Yorgi Church (see F18News 22 October 2009 http://www.forum18.org/Archive.php?article_id=1365). Over coffee outside, Patriarch Bartholomew gestured towards the building of the Halki seminary on a nearby island, telling the Prime Minister he would be very happy in future to welcome him there. Erdogan made no response.

No serious discussion of how to resolve issues

Discussion of the long-closed Halki seminary and related issues has now come to a halt. No proper dialogue between the Government and the Ecumenical Patriarchate has taken place. The Patriarchate has made it clear to the authorities that such a

dialogue could also take place between representatives of both sides, and not necessarily the Patriarch himself on one side and a top government member on the other.

No resolution to property problems in sight

Long-running obstructions to regaining or retaining religious property have continued and the authorities have not taken opportunities to improve the situation in 2009. Such a lack of implementation of a core part of the internationally-recognised right to freedom of religion or belief raises the question of whether Turkey sincerely has the desire and will to guarantee religious freedom in practice for all of its citizens.

A definitive solution to the property-related problems of all religious communities can only be reached if:

- all religious communities are recognised in their own right by the Republic of Turkey, in line with Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;

- and an implementation law, describing in detail how this recognition will be implemented, is passed by the Turkish Parliament.

Until these two steps are taken, solutions to religious property problems can only realistically be expected from the European Court of Human Rights. These rulings need to be implemented within the Court's timescale, and not left to be implemented – if at all – by the authorities at some unspecified point in the future. (END)

- Dr Otmar Oehring <http://www.otmaroehring.de/>, head of the human rights office of Missio, a Catholic charity based in Germany, contributed this comment to Forum 18. Commentaries are personal views and do not necessarily represent the views of F18News or Forum 18.

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A compilation of Organisation for Security and Co-operation in Europe (OSCE) freedom of religion or belief commitments can be found at http://www.forum18.org/Archive.php?article_id=1351.

A printer-friendly map of Turkey is available at <http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=mideast&Rootmap=turkey>.

If you need to contact F18News, please email us at:
f18news @ editor.forum18.org

Forum 18
Postboks 6603
Rodeløkka
N-0502 Oslo
NORWAY