

Press release issued by the Registrar

Chamber judgment¹

Bozcaada Kimisis Teodokum Rum Otodoks Kilisesi Vafki v. Turkey (Nº2)
(application nos. [37646/03](#), [37665/03](#), [37992/03](#), [37993/03](#), [37996/03](#))

INFRINGEMENT OF OWNERSHIP RIGHTS OF A RELIGIOUS FOUNDATION

Violation of Article 1 of Protocol No. 1 (protection of property)
of the European Convention on Human Rights.

Principal facts

The applicant is a religious foundation under Turkish law established in Çanakkale. Its constitution is in keeping with the provisions of the Treaty of Lausanne concerning minority religious foundations. The foundation alleged that it had acquired, by means of gifts and legacies, numerous items of real property (a cemetery, plots of land, buildings, a chapel and a monastery). However, although the properties had been in its possession for a very long time, they had not been registered in its name.

Because the applicant foundation had not submitted a declaration of property within a certain time, as required by Turkish law (Law no. 2762), no title to the properties in question had been entered in its name in the land register.

The applicant brought proceedings in relation to each of the properties before the Bozcaada Cadastral Court seeking to have the properties registered. The court granted the applications but the Court of Cassation quashed the first-instance judgments on the ground that the applicant had not submitted a declaration of property within the time allowed, as required by Turkish law, and that foundations could claim ownership of real property only on the basis of possession in the capacity of owner and not by adverse possession, consisting of acquiring the property on the basis of peaceable and continuous possession over a certain period of time.

Complaints, procedure and composition of the Court

¹ Under Article 43 of the Convention, 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.

Relying on Article 1 of Protocol No 1, the applicant foundation complained of the authorities' refusal to enter its real property in the land register. It also complained of that refusal under Articles 14 (prohibition of discrimination), 6 (right to a fair hearing), 9 (right to freedom of thought, conscience and religion) and 13 (right to an effective remedy) of the Convention.

The applications were lodged with the European Court of Human Rights on 15 October and 20 November 2003.

Judgment was given by a Chamber of seven (7) judges composed as follows:

Françoise **Tulkens** (Belgium), *President*,
Ireneu **Cabral Barreto** (Portugal),
Vladimiro **Zagrebelsky** (Italy),
Danutė **Jočienė** (Lithuania),
Dragoljub **Popović** (Serbia),
András **Sajó** (Hungary),
İşıl **Karakaş** (Turkey), *judges*,

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

Decision of the Court

The case concerned eight applications. In view of their similarity the Court decided to join the applications and examine them together.

The refusal by the domestic courts to enter the properties in question in the land register in the applicant's name had been based on two rulings by the Court of Cassation dated 8 May 2002 and 8 May 1974. The first of these rulings stated that acquisition by adverse possession had to be based on possession in the capacity of owner; the second stated that minority foundations could acquire real property in addition to that named in the declarations they had made in 1936 only if the declarations in question contained a specific clause to that effect.

With regard to applications nos. 37646/03 and 37665/03, the Court therefore took the view that the refusal by the domestic courts could not be said to have been sufficiently foreseeable for the applicant foundation, which had been in possession of the properties on a continuous basis for over twenty years for the purposes of section 14 of the Land Registry Act.

The interference by the authorities, which had prevented the foundation from acquiring ownership by adverse possession, had failed to satisfy the requirement of lawfulness and the requirements of Article 1 of Protocol No. 1.

The Court arrived at the same conclusions with regard to the other applications, even though, in contrast to the first two applications, the question whether the conditions for acquisition by adverse possession were met had not been decided by the domestic courts (despite the evidence submitted by the applicant, and not contested by the Government, in the form of expert statements, lease agreements, proof of payment of property tax, etc.).

The Court also noted that the applicant foundation had not benefited from a new law which had entered into force in 2002 amending Law no. 2762 and permitting the entry in the land register of real property in respect of which possession was established.

The Court held unanimously that there had been a violation of Article 1 of Protocol No. 1 in relation to all the applications.

Under Article 41 (just satisfaction), the Court awarded the applicant foundation 5,000 euros (EUR) for costs and expenses. It considered that the entry of all the properties concerned in the land register in the applicant's name would put the foundation as far as possible in the position it would have been in had the requirements of Article 1 of Protocol No. 1 not been disregarded.

In particular, in view of the specific characteristics of the properties concerned by applications nos. 37646/03 (Greek community cemetery on the island of Bozcaada), 37996/03 (a chapel) and 37999/03 (a former monastery), the Court considered that the restitution of the properties in question and their entry in the land registry in the applicant's name constituted the only adequate means of redress. If the respondent State did not likewise enter the properties concerned by applications nos. 37665/03, 37992/03, 37993/03, 37998/03 and 38000/03 in the applicant foundation's name, the Turkish Government would be required to pay EUR 173,000 to cover all heads of damage.

This judgment is only available in French. The press release is a document produced by the Registry; the summary it contains does not bind the Court. 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.