

## Turkish Foundations in Cyprus\*

■ by M. Serhat Yener\*\*

Köprülü defines the “foundation” as a religious-legal institution which has deeply affected both social and economical life for centuries.

In the Ottoman Empire, foundations were established and governed in accordance with Islamic rules.

According to Kazıcı, the Ottoman Empire can be simply described as a foundation civilization. The foundations developed and increased in number during the Ottoman Era in parallel with the political and financial power of the Empire. As the historical sources tell us, the Ottoman authorities were keen on protecting the existing foundations and the self-administration of the foundations which were established in the annexed territories in accordance with their own rules, without any harm.

It would be right to define the foundations that were established in Cyprus after 1571 when the island was conquered by the Ottoman Empire as “Turkish Cypriot Foundations.”

The Cypriot foundations had been administrated through the Administration of Foundations (*Evkaf İdaresi*) in accordance with the provisions of the “Code of Foundations” (*Ahkam-ül Evkaf*) of 1571 when the island was under Ottoman rule until 1878, the date when the island was leased to Britain.

As a result of research coordinated by the Republic of Turkey,

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\*\* This article was originally written in Turkish and translated by Cansu Akgün, Ece Yılmaz and Cihangir Karabiyik.

Prime Ministry General Directorate of State Archives, 54 Islamic (*Şeriye*) Registry Books belonging to the Ottoman Era, 9 Islamic Registry Books belonging to the British Era and the registry books kept by the courts, instead of Islamic Registries following the end of Islamic registry custom, in the archives of Cypriot General Directorate of Foundations, have been scanned through and 608 foundations, together with their assets, have been defined and categorized according to their locations.

The Code of Foundations had been regarded as valid and remained in force during the British Era, and between the period of 1878-1915, the foundations in Cyprus had been administrated by two representatives, one chosen among the Turkish Cypriot people and one appointed by the British authorities. However in 1915, the British dismissed the Turkish delegation and adopted a system in which two representatives, one having Turkish nationality and the other British, were appointed solely by the British administration.

In 1928, the Cyprus General Directorate of Foundations was attached to the Cyprus Colony Administration and thereby the Foundations were characterized as an official government unit. During the following period, although it had been stated in both the 1928 Cyprus Convention and the Treaty of "Lausanne" that the provisions of the Code of Foundations (*Ahkam-ül evkaf*) were to be applied in their entirety, upon the presentation of the required guarantee pertaining to the Cyprus Foundations, there were official findings of deviations in the administration of the foundations' property and the expenditure of their incomes. The codes on the real properties and statute of limitations which were enacted in this period should also be examined and evaluated in terms of the foundations' estate and within the framework of the provisions of the Code of Foundations (*Ahkam-ül evkaf*).

"The Code Amending and Unifying the Sacred Islamic Code on Foundations and the Code on the Administration of the Religious Assets of Muslims" was promulgated right after the drafting process, which included some findings such as that the foundations were not working until the year 1955 and the allocated monies at the banks became functionless. Upon the establishment of the Cyprus Republic in 1960, the foundations' affairs were assigned to the Turkish Community Assembly in accordance with the Constitution. The Code on the Organization of the Foundations and the Religious Affairs Department entered into force on April 12, 1961 and within the provisions of this law, the Foundations Department and the annexed foundations were governed under the administration of a director as an affiliated unit of the Executive Committee of the Turkish Community Assembly

until October 13, 1970. There are some notes stating that, during this period, the foundations had started to undertake their fundamental duties and thereby contributed to the financial and economical structure of the Turkish community in Cyprus.

After the peacekeeping operation on July 20, 1974, a considerable portion of the real estate, which had belonged to the Administration of the Foundations, was left in South Cyprus. It is known that the income of the Administration of the Foundations is not satisfactory for the foundations and their beneficiaries due to the facts that the real estate and the land remaining in the North region are not income-yielding, their upkeep and operation entail considerable expense, most are experiencing financial loss since their expenses are exceeding their income and also some cannot be operated due to the some of them being allocated to the South and transportation difficulties.

When the legal history of the island is analyzed, and despite the prevailing various dominations on the island, it can be seen that the Code of Foundations (*Ahkam-ül evkaf*), which is defined in every period as the fundamental provisions concerning foundations, has continued its effectiveness.

The “deed of trust for a foundation (*Vakfiye*)” is a legal document which contains the principles and conditions of a foundation’s establishment and operation as set forth by the founder of a foundation registered in accordance with the Code of Foundations.

Property endowed in accordance with the Foundation Law is deemed to belong to the foundation as a legal person. In other words, the legal consequence of the act of endowment is the transfer of the ownership of the endowed property to the legal person that is the foundation.

In the law of foundations, following the endowment, the property cannot be sold, donated, put under pledge, loaned or inherited. This legal status is explained in real estate law as the principle of “immunity of the endowed property”.

Subclause 7 of Article 8 entitled “Form of Endowment” of the “Foundations and Charitable Foundations Code” dated October 22, 1955, states that the endowed property shall cease to belong to the endower upon registration of the endowment and shall be considered charitable for all intentions and purposes, and Article 23 entitled “Nontransferability of Foundation” of the same code states that, upon registration of the endowed property, provided that it is in compliance with the provisions of the code, the endowed property may not be alienated or transferred either by the endower or the trustee, nor may it

be inherited by the heirs.

The Turkish legal system acknowledges that the deeds of trust for foundations, duly transferred to the land register, have the effect of a deed.

In conclusion, the Code of Foundations that stipulates the principles of the “law of foundations” and is applicable following the establishment of the foundations, must be taken as a basis in disputes relating to endowed property on the island, being handled either in domestic law or by the Court, in order to preserve the law of foundations.