

TURKISH FOUNDATION SYSTEM

Assoc. Prof. Dr. Davut AYDIN

I. INTRODUCTION

A foundation is a social, economic, legal and religious institution, which has had profound effects on economic, social and cultural life of Turkish society throughout the last 3-4 centuries.

These historic institutions have had a past of three, four thousand years in our country. Although the institution of foundation developed and improved together with islam, it is possible to see some kinds of foundations in Turkish societies before Turks accepted islam as their religion. The first written document of Turkish foundations is «Türk Eti Vakfiyesi» which was written before 1280 B.C. This first written document about Turkish foundations is kept in the Department of Oriental Arts in the İstanbul Archeological Museum.

Many services are now being undertaken by the state with the understanding of a modern state, having been undertaken throughout these centuries by foundations.

In historical perspective, it is possible to classify these services which have been undertaken by foundations into ten groups:

- Educational services
- Art and cultural services
- Health services
- Sport and physical exercise
- Social services
- Transportation services
- National defense
- Maintenance, protection and restoration of historical buildings and antiquities.
- Economic establishments and services
- Religious services

As will be understood from the above-mentioned services, the realization of many social and useful services has been practised through foundations.

At present, foundations are still continuing to help the state in a number of ways. In recent years, in order to increase the amount and quality of services being undertaken by foundations, the Turkish government has put into effect some tax incentives.

The aim of this article is to introduce, to explain and to discuss the Turkish foundation system which is very important for Turkish society.

II. DEFINITION AND KINDS OF FOUNDATION

A. DEFINITION

With a general definition the meaning of the term «foundation» is that a person relinquishes his property right of movable goods and real estates with his own consent, and with a charitable purpose the assigns them for ever to the the realization of some services of which the terms are determined by himself (1).

(1) GÜZEL, Ülker, Vakıf Eski Eserlerinin Korunması Hakkında Rapor, Devlet Planlama Teşkilatı, Mart, 1982, s. 1.

In Turkish System of Law, the institution of foundation is defined and organized by the Turkish Civil Code and its amended article (as amended 903).

In the amended article (as amended 73) of the Turkish Civil Code, the institution of foundation is defined as follows: «Foundation is the allocation of a property to a certain purpose on condition that it preserves its entity.» (2). In the second item of the same article, it has been stated that the whole of a property or all kinds of realized or expected income, or economic rights should be relinquished to a certain purpose.

As has been understood from the above definition, for a foundation to come into being, three basic elements should exist together. These are;

- property
- purpose
- allocation

1. Property

One of the basic components of foundation is property. As has been stated in item 73 of the Turkish Civil Code, any kind of realized income or income yielding asset or any right having an economic value can be considered as property.

Legally, there is no restriction on the amount of property which may be allocated for the purpose. Of course, the amount of property being allocated should be enough to meet the requirements of this purpose.

However, to be able to benefit from tax incentives, foundations should have properties worth TL 200 million or an income of TL 200 million per year, excluding donations.

2. Purpose

Purpose is the second necessary component for the formation of a foundation. It is essential that the purpose should be clearly defined.

(2) OĞUZHAN, Kemal and AKYOL, Şener, *Medeni Kanun, Borçlar Kanunu, Tatbikat Kanunu ve İlgili Kanunlar-Tüzükler-Yönetmelikler*, Fakülteler Matbaası, İstanbul, 1967, s. 30.

According to the Turkish Civil Code, it is forbidden to establish a foundation.

- which contradicts to the article of the law, moral and national interests,
- with objectives not possible to realize.
- with a purpose to support a political thought, or a certain race or the member of a certain community.

Apart from these, foundations can be established with any purpose such as social, economic, cultural, art, health and sport.

3. Allocation

The third element that helps foundations form an entity is allocation. This element combines property and purpose. It is necessary for the property to be allocated for a certain purpose.

B. KINDS OF FOUNDATION

In the process of their historical development in our country, it is possible to classify foundations into four major groups. These are (3):

- Mazbut foundations
- Mülhak foundations
- Minority foundations
- New foundations

1. Mazbut Foundations

They are managed directly by the General Directorate of Foundations (4). There are approximately 5047 foundations of this kind.

2. Mülhak Foundations

These foundations are managed by its trustees but supervised and audited by the General Directorate of Foundations. There are 437 foundations of this kind.

(3) Republic of Turkey Premiership General Directorate of Foundations, *Vakıflar Genel Müdürlüğünün Problemleri ve Öneriler*, Ankara, 1982, p. 2-3.
(4) It is a state organization established to preserve, to make them develop more healthily, to audit and to direct them.

3. Minority Foundations

These are foundations established by minorities to meet their religious, social and cultural needs. They are managed by the minorities but supervised and audited by the General Directorate of Foundations.

4. New Foundations

Those that are established according to the articles of Turkish Civil Code are included in this group. Their number is increasing day by day. At the end of 1987, this number was 1801 (5).

B. ESTABLISHMENT PROSEDURE

The relevant item of the Turkish Civil Code (as amended 74) reads, «A foundation is established by a formal, written document or the will of a person who makes over his property to the foundation and it achieves its legal identity by the registration of his address at the court of first instance. The court ex-officio notifies the General Directorate of Foundations about the registration...»

This means that the formal requirements of the foundations established by unilateral declaration of intention are registered by voucher of foundation.

1. Voucher of Foundation

Voucher of foundation is issued in two ways. a) in the form of an official certificate or b) in the form of a will.

An-Official certificate is necessary for living donors. In other words, if a donor wants to establish a foundation, he or she can only do this by an official certificate at the office of a notary public. However, if someone wants a foundation to be established in his name after his death, he/she can do this by an official certificate or a bill written in his own handwriting or by just stating his will orally.

The voucher of foundation (official certificate) should include the following information:

(5) This figure was obtained from the archive voucher of the General Directorate of Foundations.

- Founders' names.
- Title of the foundation
- Properties
- Income sources
- Managerial board
- Annulment of the foundation

2. Registration and Announcement

By being registered and announced, foundations achieve juridical personality by the registration of the donor's address at the court of first instance. Separately, its establishment is registered and announced in the official paper by the registration office of the General Directorate of Foundations.

III. MANAGEMENT AND AUDITING OF FOUNDATIONS

A. MANAGEMENT OF FOUNDATIONS

According to article 77 of the Turkish Civil Code, it is compulsory that a foundation should have a managerial organ. Other organs such as committees of auditing and consultancy, and boards of founders are optional. The managerial organ can consist of one or more persons. Management can be given to a juridical person.

B. SUPERVISION AND AUDITING OF FOUNDATIONS

The management of foundations can be studied by dividing it into two parts as (1) managerial supervision and 2) financial auditing.

1. Managerial Supervision

The management of foundations is supervised by the General Directorate of Foundations.

The General Directorate of Foundations supervises and audits whether the clauses in the official certificate of foundation are followed properly and whether the properties and financial sources are used appropriate to the stated purpose. It is compulsory for every foundation to be audited every two years.

2. Financial Auditing

Financial positions of foundations in terms of Turkish tax codes are studied by tax office controllers. These controllers study

the required books and documents of the foundations and audit accounts and transactions. In other words, foundations are institutions that are Ministry of Finance.

V. CONCLUSION

In short the institution of foundation which has had a 3-4 century-long past in our country, has a basic social role to play, that is, to help the state lessen its duties. Today, their contributions to the state continue in fields such as education, health, culture, scientific research and promotion. With the purpose of directing the contributions of foundations and helping them function more efficiently and better auditing them, the Turkish Government has brought into effect a number of incentives. In the next article, these incentives and policies will be discussed.

VI. REFERENCES

- AYDIN, Davut
SALEPÇİ, Hüseyin
KÖSE, Şükrü : **Case Study on the Awgaf Institutions and Awgaf Properties in Turkey**, presented at the İslamic Development Bank, 4-8-1984, Jidda.
- AYDIN, Davut : **Vakıflar ve Finansal Raporlama**, Anadolu University, Faculty of Economic and Managerial Sciences, Nov., 1982.
- DEMİRBILEK, Müslim : **Vakıf ve Vakıfların Vergilendirilmesi**, Republic of Turkey Ministry of Finance, Committee of Certified Public Accountants, 1981.
- State Planning
Organization : **Forth Five-year Development Plan; Fifth Five-year Development Plan Vakıf Özel İhtisas Komisyonu Raporu.**

GÜZEL, Ülker

: **Vakıf Eski Eserlerinin Korunması Hakkında Rapor**, State Planning Organization, 1982.

OĞUZMAN, Kemal
AKYOL, Şener

: **Medeni Kanun - Borçlar Kanunu. Tatbikat Kanunu ve İlgili Kanunlar-Tüzükler-Yönetmelikler**, Fakülteler Matbaası, İst-1967.

General Directorate of
Foundations

: **Vakıflar Genel Müdürlüğünün Problemleri ve Önerileri**, Ankara-1982.