

Press release issued by the Registrar

CHAMBER JUDGMENT
FENER RUM PATRIKLİĞİ (ECUMENICAL PATRIARCHATE) v. TURKEY

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Fener Rum Patriklığı (Ecumenical Patriarchate) v. Turkey* (application no. 14340/05).

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

The Court found that the question of the application of Article 41 of the Convention was not ready for decision and reserved it in its entirety. (The judgment is available only in French.)

1. Principal facts

The applicant, Fener Rum Patriklığı (the Ecumenical Patriarchate), is an Orthodox church in Istanbul. It currently brings together and represents the Orthodox minority in Turkey. It is represented by His All Holiness the Ecumenical Patriarch Bartholomew I.

The case concerned the annulment by the Turkish authorities of the applicant church's title to certain real property.

In January 1902 the Ecumenical Patriarchate acquired real property using its own capital. The property consisted of a 23,255 m² piece of land on the top of the main hill on the island of Büyükada (Istanbul), on which stood a main five-storey building and a secondary two-storey building.

In 1903 a foundation of the Orthodox minority, the "Foundation of the Büyükada Greek Orphanage for Boys" ("the Orphanage"), was given the use of the property. When the Foundations Act entered into force on 13 June 1935 the legal personality of the Orphanage was officially recognised and the property concerned was mentioned in the declaration registered by it in 1936. In 1964, for safety reasons, the Turkish authorities ordered the Orphanage to vacate the premises. The Ecumenical Patriarchate maintains that it took over the possession and management of the property again that same year.

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.

On 22 January 1997 the Directorate General for Foundations issued a decision to the effect that the Orphanage was a “defunct” foundation. The decision stated, among other things, that the Orphanage’s governing body had been dismissed and that the Directorate General for Foundations had taken over its management. The Orphanage appealed in April 1997, seeking the annulment of the decision. In November 2003 the Supreme Administrative Court upheld the dismissal of the appeal. An application for rectification lodged by the Orphanage is still pending.

On 16 March 1999 the Directorate General for Foundations took proceedings to have the applicant’s title annulled and the property re-registered in the name of the Orphanage, which since 1997 had been under the management of the Directorate. In December 2002 the District Court ordered the disputed property to be registered in the name of the Orphanage, noting, among other things, that the Patriarchate had carried out no maintenance work on the property, which was a historical monument of international importance. The applicant appealed against that judgment, which was set aside by the Court of Cassation in September 2003 for procedural irregularity.

In February 2004, however, the District Court again annulled the applicant’s title to the property and ordered it to be registered in the name of the Orphanage. The Court of Cassation upheld that decision. It held that since the declaration registered by the Orphanage in 1936, the property had belonged to the Orphanage and no longer to the applicant.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 19 April 2005 and declared admissible on 12 June 2007. A public hearing was held in the Human Rights Building, Strasbourg, on 27 November 2007.

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

Françoise **Tulkens** (Belgian), *President*,
András **Baka** (Hungarian),
Ireneu **Cabral Barreto** (Portuguese),
Rıza **Türmen** (Turkish),
Mindia **Ugrekhelidze** (Georgian),
Antonella **Mularoni** (San Marinese),
Danutė **Jočienė** (Lithuanian), *judges*,

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

3. Summary of the judgment¹

Complaint

The applicant church alleged in particular that by ordering the registration of its real estate in the name of the Orphanage, under the management of the Directorate General for Foundations, the domestic courts had breached its right to the peaceful enjoyment of its possessions. It relied on Article 1 of Protocol No. 1 (protection of property).

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

Decision of the Court

Article 1 of Protocol No. 1

The domestic courts annulled the applicant church's title to the property in question and decided to transfer it to the Orphanage. The applicant was thus deprived of its possession. The Court accepted that the annulment of the title was based on the Foundations Act of 13 June 1935. The aim of that Act was to protect the public interest.

The Court indicated that it was not in dispute that the property in question had been acquired by the applicant church with its own capital. Even though, immediately after its acquisition, the property had been earmarked for a specific usage, the applicant church had always been regarded as its owner. Moreover, only part of the property had been concerned by that usage.

The Court pointed out that the ownership of the property had not been called into question by the courts or the administrative authorities, neither after the acquisition in 1902 nor after the declaration of 1936, until 1997 when the action for annulment of title was brought. The ownership had thus remained unchallenged from 1964, when the property was vacated for safety reasons, to 1997. From 1964 onwards, the use of the property by the Orphanage had in fact virtually ceased.

Since it first obtained the use of the property in 1903, the Orphanage had never claimed to be its owner, neither at the time it registered its declaration in 1936 nor at a later date. That claim was not made until it had been considered "defunct" by the Directorate General for Foundations in 1995, when the Directorate, acting on behalf of the Orphanage, claimed ownership based on the 1936 declaration. However, the declaration had stated that the Orphanage ran the "Greek Orphanage for Boys" but not that it was the "owner" of the premises.

In the light of those observations, among others, the Court found that, even supposing that the property in question had been set aside for a specific usage over a long period of time, there was nothing to suggest that that usage had had the effect of nullifying the original title.

In the Court's view, the Turkish authorities were not entitled to deprive the owner of its possession without providing for appropriate compensation. The applicant church, in the present case, had not received any compensation at all. In those circumstances, the applicant having had to bear an individual and excessive burden, there had been a violation of Article 1 of Protocol No. 1.

Article 6 and Article 14 in conjunction with Article 1 of Protocol No. 1

Having regard to its finding in respect Article 1 of Protocol No. 1, the Court considered that it was not necessary to examine the other complaints separately.

Judges Baka, Ugrekhelidze and Mularoni expressed a concurring opinion, which is annexed to the judgment.

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

Press contacts

Adrien Meyer (telephone: 00 33 (0)3 88 41 33 37)

Tracey Turner-Tretz (telephone: 00 33 (0)3 88 41 35 30)

Sania Ivedi (telephone: 00 33 (0)3 90 21 59 45)

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.