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Mor Gabriel Manastırı under siege

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*“You are Italian, you are an European citizen.
You are free .
I live in Turkey, I am not free.”*

September 2011

Abstract

The thesis is focused on the struggle between the Monastery of Mor Gabriel, the Holy place of the Assyrian minority living in Turkey, located in the South-East of Anatolia, and the Turkish Government. Starting from the study of the lawsuit concerning the real estate of the Monastery's foundation, this analysis will show the several human rights violations handled every day by the Süryaniler in Turkey.

The aim of the research is to explain how the battle over the lands of Mor Gabriel must be seen not only as a strive to preserve one of the most ancient place of Christianity all over the world, but it is mainly the latest representation of the never-ending conflict which the Assyrians in Turkey are dealing with.

The last verdict of the Supreme Court of Appeals of Ankara (Yargıtay), could represent the final blow inflicted to the Assyrian minority to completely erase its roots in the Turkish Republic, a process whose origins date back directly to the mass-slaughter perpetrated by the Young Turks Regime at the beginning of the 20th century. Since the Seyfo (1915-1918) in fact, the Community must daily fight against the injustices which is subject in order to preserve its identity and pass on its culture. Almost a century later, we are witnessing a change in the practice and the concept of genocide: the use of State's laws to withdraw the historical memory of a region and to include definitely a minority in the State, denying its identity and its rights.

But now, with the candidacy of Turkey to become an EU member, the Assyrians' battle for survival could give to them, and to all the not-recognized minorities living in the Country, the opportunity to claim about the acknowledgement of their basic individual and community human rights under the surveillance of the European Union. The Assyrians have promptly the chance to fight against the discriminatory policy of Turkey towards its less protected citizens, with the fundamental contribution of the Turkish Civil Society.

Keywords: Mor Gabriel Monastery, Assyrians, Turkey, Seyfo, Human Rights

INTRODUCTION

In a world increasingly focused on globalization and multiculturalism, the protection of human rights and its spread must necessarily turn to the safeguard of those rights which are being overshadowed by the most resounding violations of the right to Life, Liberty and Religion¹. Today, alongside the ever-present action against the violations of the above mentioned rights, the entire civil society is working for the radical improvement in the enjoyment of all the basic rights enshrined in the fundamental declarations on human rights, to make them enjoyable for the whole human being. At the present time, the rising attention to the respect of human rights, the omnipresence of media in conjunction with the major will to protect the rights of vulnerable people, have brought the entire civil society to cope with those crimes affecting the daily life of the people involved, intervening before that the abuses turn into mass killings. The current situation of the Assyrian minority in Turkey represents the perfect example of how, nowadays, the misbehaviour towards the human rights is carried out with the arbitrary use of state laws. Even from those bodies who should guarantee them. The life of the Assyrian Community, or what remains of it, is a daily struggle against the Turkish Government and its policies towards the not-recognised minorities living in its territory. As if that were not enough, the enclave and its status is too often neglected: the Kurdish struggle to acknowledgement, conducted in the same region in which the minority lives since ever, overshadows the Assyrian issue and that of the other, smaller and almost unheard minorities living in the country. Moreover, the current situation of the community can be analysed according to the *Turkification* process, arisen at the beginning of the 20th Century by Mustafa Kemal Atatürk, founder of the modern Turkey. In my opinion, to better understand the contemporary Turkey, its behaviour towards minorities and religion and the role of Mor Gabriel, is fundamental to remember the guiding principles of the Atatürk's policy, especially the *Turkification* and the *Secularism*² ones. These two principles are the pillars of the Turkish Constitution (TC)³ and the postulates of all the Turkish laws, primarily for the Turkish Criminal Code (TCC)⁴. Starting any

1 Universal Declaration of Human Rights <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/043/88/IMG/NR004388.pdf?OpenElement> ;

Charter of the Fundamental Rights of the European Union http://www.europarl.europa.eu/charter/pdf/text_en.pdf

2 Hakan Yeşilova, 2010, "*Kemalism: Ideology, Tutelary Regime and Incompatibilities*", Turkish Journal of Politics, no.1 vol.2 <http://tjp.fatih.edu.tr/docs/articles/84.pdf>

3 Art. 2 of the Turkish Constitution

http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

4 Art. 301 and art. 312 Turkish Criminal Code http://www.justice.gov.tr/basiclaws/Criminal_Code.pdf

analysis concerning the safeguard of human rights from these theorems, it is easier to cope with the several violations suffered by the Syriacs everyday since the birth of Turkey.

Brief History

The Assyrians⁵ are just one of the countless minorities excluded by the Treaty of Lausanne⁶ (1923), the founding act of the Turkish Republic. Precisely because of this exclusion, the Mor Gabriel's case represents one of the most important examples of the issue regarding the non-Muslim minorities living in the country.

The birth-place of the community is the former Mesopotamian area, nowadays divided into Iraq, Iran, Syria, Lebanon and Turkey. The Turkey-based Assyrians are, since ever, the original inhabitants of the Tur Abdin region, located in the south-eastern part of the Anatolian peninsula. With the advent of the revolutionary regime of the Young Turks in the early twentieth century, their lives radically changed. The nationalistic ideals of the new Turkish era, steeped in secularism, caused the genocide of the Christian population of the area. *Seyfo* (1914-1918)⁷, the Aramaic name for the genocide, was a mass-slaughter that decimated all the worshippers of the region. Today, the largest part of the community does not live in its native territory, but it has been obliged to migrate to the western part of Turkey or to different countries to avoid any kind of discrimination. Only few families are still in their native land, trying to gentle their faith with the not-recognised status of a non-Muslim minority in Turkey.

The situation of the Tur Abdin based group, in particular the condition of the Mor Gabriel's Monastery, the most relevant Turkish site of worship for the entire community all over the world, is now under the EU's regard due to the lawsuit between the Süryani Community and the Turkish Government. The Süryanis could now, thanks to the Turkish candidature to the EU, lay their claims as a non-Muslim minority suffering from human rights violations since the birth of Turkey.

Hidden among the mountains of the Tur Abdin plateau, Deyrul Umur Manastırı is one of the oldest Christian monasteries in service to date. Founded in 397 A.D. by Saint Shmuel, the

5 The term Assyrian refers to the minority; the group is also known in English as Arameans or Syriacs. In Turkey they are known as Süryaniler and, in their mother tongue, as Suryoye

6 Text of the Treaty of Lausanne: http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne

7 Seyfo Center, <http://www.seyfocenter.com/index.php?sid=7>

Monastery, also called the *second Jerusalem*⁸ by the Assyrian Community, has been one of the most significant worshipping place for the entire Christianity since its birth. Since its inception, Saint Gabriel Monastery has been a focus point of the liturgical language and tradition of the Syriac Church, especially for the Syriac Orthodox Church⁹.

The contemporary developments of the Assyrian question in the South-East of Anatolia, since the arrest of Fr. Akbulut in Diyarbakır in 2000 for the acknowledgement of the Assyrian genocide¹⁰, the uninterrupted denial of *Seyfo* by the Turkish Government¹¹ and the discriminative discourses on the Syriacs contained in the high school history textbooks¹², demonstrate that the Turkey's primary objective is to rewrite its modern history, perpetrating the Seyfo with different and more political tools¹³.

8 Mor Gabriel, <http://www.morgabriel.org/history.html>

9 Mor Gabriel, <http://www.morgabriel.org/en.html>

10 Hürriyet Daily News, <http://www.hurriyetdailynews.com/diyarbakir-dgm-postpones-syriac-bishop-case-again.aspx?pageID=438&n=diyarbakir-dgm-postpones-syriac-bishop-case-again-2000-12-22>

<http://www.hurriyetdailynews.com/turkish-court-clears-priest-of-backing-armenian-genocide-resolution.aspx?pageID=438&n=turkish-court-clears-priest-of-backing-armenian-genocide-resolution-2001-04-06>

11 AINA (Assyrian International News Agency), <http://www.aina.org/releases/turkishpressure.htm>
<http://www.aina.org/releases/yusuf2.htm>

12 Today's Zaman <http://www.todayszaman.com/news-258035-discriminative-discourse-in-history-textbooks--upsets-syriacs.html>

13 According to the opinion of Günal Kurşun, Chairman of the Human Rights Agenda Association, the concept of "cultural genocide" could be efficiently used to describe the evolution of the Assyrian legal matters http://rightsagenda.org/index.php?option=com_content&view=article&id=680:lawyers-to-take-dersim-massacres-to-icc-despite-hurdles&catid=82:aliasinternational-human-rights-mechanisms&Itemid=121

1. Mor Gabriel's Foundation against Turkey

One year after the entry into force of the omnibus decree regarding the restitution of properties forcibly taken over by the State to the non-Muslim minority religious foundations (REMİ GAZETE, August 27, 2011), in the expectation of the upcoming centenary of Seyfo, the situation of the Tur Abdin-based Syriac community and that of meaningful worshipping Place has drastically worsened. The latest judgement of the Supreme Court of Appeal of Ankara (Yargıtay), according to which the judges ruled against the Arameans living in the Monastery of Mor Gabriel, defining them as illegal occupiers of lands belonging to the Treasury, has created a serious concern in all the actors involved in the protection of minorities rights and in the EU's institutions: its role as an international actor and a negotiating country to the EU, its current improvements in the safeguard of citizens' rights, make the sentence even more incomprehensible from several perspectives. Especially about the accession procedure to the European Union, the recent verdict could represent a step back for the country's candidature: the respect of human rights and the protection of minorities, joined to the application without discrimination of the democracy and the rule of law are, indeed, essential entry requirements to the EU¹⁴.

The Trial

The modern plight of the Aramean Community has reached mediatic recognition only in 2008, but the querelle between the Mor Gabriel's Foundation and the Turkish Government began in 2004¹⁵, owing to a governmental initiative which challenged the rightful ownership of lands surrounding the Monastery. In 2005, taking advantage of the opening of the *cadastral land registry* works, the neighbouring villages of the area tried to illegally occupy some of the lands of Mor Gabriel. The attempts were brought to the attention of the European Union and the Turkish Government by the Assyrian Foundation. The EU and Turkey immediately intervened stopping that unlawful acts. But in 2008, in compliance with the EU's instructions, the Tur Abdin plateau was involved in a new process of compulsory purchase, based on the 11th Chapter of the Acquis Communautaire, the "Agriculture and Rural Development Chapter". Following the guidelines set by

14 European Union Enlargement Policies, http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm
http://ec.europa.eu/enlargement/policy/conditions-membership/chapters-of-the-acquis/index_en.htm

15 Omtzigt "The alarming situation of the monastery of Mor Gabriel and the Aramaic-speaking Christians in Turkey The Syrians" Initiative Policy Document addressed to the government of the Netherlands

the EU for the candidate countries concerning the successful fulfilment of each chapter of the Treaty¹⁶, Turkey started the "*Cadastre Modernization Project*". The aim of the project was to improve the effectiveness and efficiency of the land registry and cadastre service. This new initiative entailed the formal registration of all cadastral (real estate) land: the main result of the implementation program has been an arbitrary alignment of the boundaries around and inside the Monastery, put into effect by the Land Registration Officials.¹⁷ The process of harmonization to the European standards, strictly connected with the position of Turkey as a negotiating country, has given to the authorities and the neighbouring villages of Syriacs the opportunity, strengthened by the State law, to expropriate the Monastery's lands.

Investigating the entire history of the recent judicial problems coped by the Monastery with, we are able to re-enact the trial and to understand how it is not only a lawsuit directed to the confiscation of a religious property, but it is another possible violation of human rights for the Süryani community all over the world. The EU's attention to this trial is giving the chance to the community to see recognised its primary rights. It is noteworthy that the lawsuits opened against the Syriac community is almost of 300, most of them started when Assyrian members in diaspora begun to come back to their motherland.

Land Boundaries Cases: the villages of Yayvantepe and Eğlence against Mor Gabriel

The Monastery of Mor Gabriel and its lands are located within the administrative boundaries of the Güngören village in Mydiat district, Mardin province. Moreover, the boundaries of the Monastery are settled in the government records of the Cadastre Map and in the Provincial Private Administration.¹⁸ In August 2008, three muhtars filed a complaint against the Monastery of Mor Gabriel alleging it "illegally occupied territory by building a wall."¹⁹

. **Eğlence Village:** the crossing point of the town and the monastery is on the northern boundary of Mor Gabriel, located in the administrative limits of Güngören village. During the cadastral implementation works, the village of Eğlence litigated against the Foundation, claiming the ownership of the reaching point called Miştağa Pire. The self-serving nature of the demand of the town is confirmed by aerial photographs of the area, used to draw the official map of the

16 To join the European Union, every candidate country must fulfil each chapter of the Acquis Communautaire

17 Report by H.E. Aktas (2008) <http://www.aina.org/reports/rotipftsmomg.pdf>

18 *Ibidem* p. 3

19 Pr. Swarna "*The Great Monastery of St. Gabriel in Captivity*"

administrative boundaries, and by a plan registered into official after its acceptance and signatures by the majors of the villages of Güngören, Eğlence, Tulgalı and Çandarlı. In addition to the above-mentioned documents, there is a further evidence, represented by the Tax records, confirming that Mor Gabriel is paying taxes on the real estate since 1937.

. **Yayvantepe Village:** similarly to the claims raised by Eğlence village, the town of Yayvantepe started a dispute on the boundary between itself and the monastery, formerly identified in Hete Raza.²⁰

In 2008 the case arrived at the Midyat Cadastral Court that, according to the new boundaries settled by the Cadastre works, decide in favour of the Monastery at first instance. Despite the Court's verdict, the villages, to which was added the village of Güngören, started to occupy the lands of Mor Gabriel. Due to the illegal expropriation, the Monastery lost more than 110,000 square meters of its own lands. In 2010 the Ankara Court decide that the Midyat's local Court did not have jurisdiction for hearing the case. In the same year (September 2010), the case has been transmitted to the Administrative Court in Mardin for a definitive decision. It is noteworthy that the Mardin Court has decided to base its verdict on the case file, avoiding to rehear the claimants²¹. The charges moved against the Foundation by its neighbours were not only related to the illegal occupation of lands: the muhtars²² of the villages falsely claimed that the Sanctuary was acting against the Turkish State with a suspicious behaviour:

- Ⓟ Illegal occupation of the forest lands
- Ⓟ Missionary activities conducted through children ages 10-12
- Ⓟ The above-mentioned children living in the Church had no identity declaration
- Ⓟ The building of Mor Gabriel was classified as a historical museum and the Community didn't have the legal permission required for praying
- Ⓟ The children in the Community underwent religious and anti-Turkish activities
- Ⓟ The educative role of the Community Foundation was opposite to the Unity of Education Law
- Ⓟ The Assyrians of the Monastery were trying to destroy national unity²³.

20 Report by H.E. Aktas (2008), *cit*

21 Syriac Universal Alliance: 2012 Turkey Report

http://www2.ohchr.org/english/bodies/hrc/docs/ngos/SyriacUniversalAlliance_Turkey_HRC104.pdf

22 Elected head of the villages in Turkey

23 Baskin Oran "Reconciled by Mor Gabriel" <http://www.suryoyo.uni-goettingen.de/news/morgabriel-Baskinoran.html>

Forestry Land Cases

The Syriac Foundation has faced two different lawsuits related to its forestry lands: the first one related to the forestry estate inside the outer wall of the Monastery (approximately 276,000 square meters), the second case focused on the forestry area outside the outer wall of the Sanctuary (approximately 60,000 square meters). The verdicts of both cases were the same: the Midyat Court rejected the claims of the Foundation and the Monastery's appeal at the Ankara Supreme Court confirmed the decision of the district court (January 2011). On account of the judgements, the Sanctuary has decided to appeal the European Court of Human Rights, trying to maintain its real estate rights²⁴.

Kuryakos Foundation Case

Owing to the Forestry cases, the chief prosecutor of the Midyat Court has started a criminal lawsuit against Mr. Kuryakos, chairman of the Religious Foundation of the Monastery. The trial is based on the complaints of the neighbouring villages: the president of the Foundation is indicted of illegal occupation of forest land²⁵, accomplished with the lawless construction of a new boundary wall. The development of the Kuryakos' lawsuit depends on the final verdict of the Forestry Land case: if the Court of Cassation confirms the decision of the Midyat Cadastral Court, the chairman could be criminally punished²⁶.

*State Treasury Land Case*²⁷

On June 2009 the Treasury opens a case against the Mor Gabriel's Foundation at the Midyat Cadastral Court. Object of the lawsuit the 244,000 square meters area, registered as Monastery land during the Cadastral survey (12 parcels of land outside the Monastery's wall and 12 parcels inside). The Assyrian Foundation won the trial at the district court, but the Treasury appealed the Ankara Supreme Court (2011) that rejected the decision of the Midyat Court and stated that the land belongs to the Treasury. The Supreme Court based its verdict on the statement of the Cadastral Law no. 3402:

24 Syriac Universal Alliance: 2012 Turkey Report, *cit*

25 Baskin Oran "Reconciled by Mor Gabriel", *cit*

26 Syriac Universal Alliance: 2012 Turkey Report, *cit*

27 *Ibidem p. 24*

“ According to the art. 14 of the Cadastral Law no. 3402, when a plot of non-registered land is claimed by someone who can prove that he has been its de facto possessor for at least 20 years, this land cannot exceed 100,000 square meters in dry places, whereas the land registered here is 244,000 square meters.”

But, according to the law and thanks to Baskin Oran²⁸ analysis, analysing the judgement of the Ankara Court it is noticeable the uncorrect use of the law by the state court. The art. 14 of the Cadastral Law continues affirming:

“if it is possible to submit several documents proving the legal ownership, the extension of the land could be enlarged”

The necessary documents are mainly composed by the *"Tax records prior to 31 December 1981"*. In accordance with the Land Registry Law, the Monastery has been paying taxes on the land since 1st September 1937. The Supreme Court totally ignored the Monastery's ownership documents²⁹. After the decision, the Foundation appealed the same court to use its second right for appeal, known as the *decision correction claim*³⁰. The claim has been requested to the Supreme Court to confirm that the verdict delivered on January 2011 was a mistake in law. In June 2011, the Ankara Court decided against the Foundation for a second time. When the case came back to the Midyat Court, the judge rejected the judgement of the Supreme Court, affirming the Foundation's claims³¹. The file returned back to the Ankara Court and, on June 2012, has had an unexpected end: the court ruling has allowed the state to seize up to sixty percent of the Foundation's real estate, affirming that the Treasury, rather than the Monastery, is the legal owner of the lands³².

Promptly the entire civil society all over the world raised its voice: the verdict, according to prominent lawyers, journalists and human rights defenders, is a legal scandal occurred in a moment

28 Baskin Oran "Reconciled by Mor Gabriel", *cit*

29 *The 1936 Declaration and The Tax Records prior to 31 december 1981*

30 Syriac Universal Alliance: 2012 Turkey Report, *cit*

Orhan Kemal Cengiz on Today's Zaman 10 July 2012 <http://www.todayszaman.com/columnist-286349-how-was-a-monastery-robbed-in-turkey.html>

31 Syriac Universal Alliance: 2012 Turkey Report, *cit*

32 National Turk, 14 July,2012 <http://www.nationalturk.com/en/turkish-court-rules-state-can-seize-assyrian-monasterys-land-21746>

Kamil Pasha on Mor Gabriel <http://kamilpasha.com/?p=6020>

Bianet, 10 July, 2012 <http://bianet.org/english/minorities/139630-petition-campaign-underway-for-historical-syriac-monastery>

Orhan Kemal Cengiz on Today's Zaman, *cit*

in which Turkey is changing its behaviour towards minorities living in its territory³³. In response to the Yargıtay judgement, many personalities have joined themselves in a petition campaign to safeguard the Monastery and to stop the compulsory expropriation of its lands.³⁴

2. *The Assyrian Struggle in Turkey*

In my opinion, to better understand the Turkish policies towards minorities living in its boundaries, it is necessary to examine the basic principles of the state. Turkey, like many other regions in the Middle East, is an heterogeneous land in which are living several ethnic, linguistic and religious groups³⁵. The melting pot existing in the nation is a legacy of the former Ottoman Empire. But, differently from modern Turkey, the behaviour of the Ottomans towards the minorities existing in their territories was a mixture of acceptance and inclusion: the maximum expression of the inclusive policy has been the so-called *millet system*³⁶The dhimmis³⁷, the non-Muslim inhabitants of the empire, lived in complete harmony with the Muslim population of the reign until the arrival of Mustafa Kemal Atatürk. In the early years of the 20th century, during the Turkish War of Independence, the collapse of the Ottoman Empire aid the growth of the nationalistic movement of the Young Turks, leaded by Atatürk himself. After the defeat of the allied forces, the former army officer started the transformation of the disintegrated empire with several reforms, aiming to turn his birthland in a modern, westernized and secular nation.³⁸Core principles of the newly born state, which are still the fundamental values of Turkey, have been the *Turkification* process of the territory and the *Secularism*.

Turkification Process: this action started in early years of the republican era, with the "Citizen speaking Turkish" campaign. The process was reinforced with the "Names and Surnames

33 Orhan Kemal Cengiz on Today's Zaman *cit*

İhsan Yılmaz on Today's Zaman 25 July 2012 <http://www.todayszaman.com/columnist-287667-mor-gabriel-monastery-and-the-new-akp.html>

Roger Pearse, 13 July 2012 <http://www.roger-pearse.com/weblog/2012/07/13/harassing-the-monastery-of-mor-gabriel-in-turkey/>

34 Bianet, *cit*

Signature forum of the petition <http://beraberbuyudukbuulkede.com/index.php/imza-formu>

35 Dilek Kurban "A Quest for Equality: Minorities in Turkey", Minority Rights Group Report, 2007

<http://translate.google.com/#it/en/massima%20espressione%20di%20questa%20politica%20dell%20inclusion>

P. R. Kumaraswamy "Problems of Studying Minorities in the Middle East" pp.244-264, Alternatives, Turkish Journal of International Relations, Volume 2, Number 2, Summer 2003

<http://www.alternativesjournal.net/volume2/number2/kumar.pdf>

36 The term indicates the legally protected minorities inside the Ottoman Empire. Even nowadays, it is considered one of the first examples of religious pluralism.[http://en.wikipedia.org/wiki/Millet_\(Ottoman_Empire\)](http://en.wikipedia.org/wiki/Millet_(Ottoman_Empire))

37 Political Islam, <http://www.politicalislam.com/blog/the-dhimmi-2/>

38 Hakan Yeşilova, 2010, *op. cit.*

law"(1934), that required, for every person living in the nation, the replacement of the original name with a turkified one.³⁹ The integration policy was expressed in two different ways: the voluntary adherence (Türkleşme) and the forced one (Türkleştirme).

Secularism: it is one of the fundamental pillars of the Kemalist ideology, also known as the *Six Arrows'* ideology (in Turkish *Altı ok*⁴⁰). The laiklik concept⁴¹ is directly driven from the french notion of laïcité and it is founded on two main characteristics: 1) ban of any religious control on legal and judicial processes, 2) no constitutional establishment neither a state religion nor atheism⁴². The Turkish state stands at an equal distance from every religion and its behaviour rests on a complete neutrality in the religious affairs. Every aspect related to religion is analysed and evaluated by the Directorate of Religious Affairs (Diyanet), a Government's department.

1. The Süryaniler: who are they?

The Assyrians are just one of the several minorities living in Turkey, long time before the establishment of the modern republic in 1923. Homeland of the Aramean minority is the Tur Abdin⁴³ plateau, Mardin province in the south-eastern part of the Anatolian peninsula. The modern Christian Arameans in Turkey are the direct descendants of the former nation of the Southeastern Anatolia. The Syriac enclave in Tur Abdin region is an ethnic-religious minority group, arbitrarily neglected by the state after the signing of the Treaty of Lausanne. Beyond this lack of recognition, the Syriacs are still fighting for the acknowledgement since ever. According to historical sources⁴⁴, the genocide suffered by the minority caused the mass-slaughter (also known as Seyfo⁴⁵) of over 750,000 people belonging to the Assyrian community. Some source declares that Seyfo has been one of the first jihad of the modern times against Christians in the Middle-East. The numbers of the Christians living in the area before and after the massacre support this thesis: the percentage of the Christian population passed from the 33% during the Ottomans to the 1% after the establishment of Atatürk. Nowadays, the Syriac living in Turkey are divided between the Mardin province and the city of Istanbul⁴⁶. Only 15,000 – 20,000 people are still in Turkey (the largest part of them is living

39 Senem Aslam, 2009, "Incoherent State: the controversy over Kurdish Naming in Turkey", p. 4, <http://ejts.revues.org/index4142.html>

40 Hakan Yeşilova, 2010, *op. cit.*

41 Laiklik has been declared a founding principle of the Turkish Constitution with an amendment in 1937 Art. 2 of the Turkish Constitution

42 Ahmet T. Kuru, http://www-rohan.sdsu.edu/~akuru/docs/Kuru_Oxford.pdf

43 Tur Abdin means "Mountain of the servants of Lord", due to the high presence of monasteries and churches.

44 Mordechai Nisan, 2002, "*Minorities in the Middle-East*"

45 Seyfo (translated in sword) is the Assyrian word to indicate the mass-slaughter occurred in the early 20th century. <http://www.seyfocenter.com/index.php?sid=6>

46 UNPO, <http://www.unpo.org/members/7859>

in Istanbul, while just 2,000 – 3,000 live in their motherland). While presenting all the objective characteristics accepted by international standards⁴⁷, the life of Assyrians in Turkey as a minority group has never existed⁴⁸. The impossibility of enjoying the basic minority rights is based on Turkey's refusal about the recognition of all the minorities existing on its soil and, consequently, their inability to make use of the international and european rights in the country, is founded on the restrictive use of the term “minority”, according to domestic laws. Now, with the legal battle over Mor Gabriel and thanks to Turkey's EU application, the bevy has the opportunity to affirm its identity within the Turkish state, starting from the preservation of the historical Foundation of Deyrul-Umur ending with the acknowledgement of its individual and political rights. The respect for rights and freedoms of all the non-Muslim, not-recognised minorities (as the Syriacs) in Turkey is, therefore, an essential element in the country's EU candidacy. From a european perspective, allowing the Syriacs to live peacefully their legal ownership, woul consent to Turkey to show its will to join the EU, respecting both non-recognised non-Muslim minorities and the the Acquis Communautaire. So far, indeed, the respect towards non-Muslim minorities has been granted guaranteeing low-profile rights only to minorities accepted under the Lausanne Treaty rule: the Jews, the Armenians and the Greek Orthodox⁴⁹.

<p>Treaty of Lausanne: it is the founding act of the modern Turkey and it was considered as the key legal instrument to ensure legal protection to all the minorities living in the country. Articles 37 to 44 of the Treaty guarantee the international protection and rights of all “non-Muslim minorities”⁵⁰.</p> <p>Turkish Constitution and Turkish Law: except from the Art. 10 of the Constitution⁵¹, which declares the equality before the law of every person, without any discrimination. There are no specific laws on the protection of minorities or any safeguard against discrimination.</p>
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47 The objective characteristics recognised by the International Community are:

.A shared group identity, based on culture, ethnicity, religion or language.

.Relative lack of power compared with the dominant group.

Louis Wirth , 1945, "*The Problems of Minority Groups*"

48 The non-inclusive policy of Turkey towards minorities has been object of a brief focus point by Mr. Hunault, rapporteur to the EU Committee on legal affairs and human rights, doc.no.11860, 2009, "*Freedom of religion and other human rightsfor non-Muslims minorities in Thrace*".<http://assembly.coe.int/Documents/WorkingDocs/Doc09/EDOC11860.pdf>

49 Although recognised by the Lausanne's Treaty, these minorities are subjected to important restrictions, Orhan Kemal Cengiz, 2003, "*Minority foundations in Turkey: an evaluation of their legal problems*" and

50 Artt. 37-44, treaty of Lausanne, http://wwi.lib.byu.edu/index.php/Treaty_of_Lausanne

51 Turkish Government website,

http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

2. Mor Gabriel's Religious-Community Foundation

The recent battle over Mor Gabriel's lands is just the last, legal attempt conducted by the Turkish Government to eradicate the Aramean Community from its motherland. The latest verdict of the Supreme Court of Appeal of Ankara sparked several protests all over the world, leaving to the Monastery, as the last chance of survival, the appeal to the European Court of Human Rights to preserve its ancient territories. In order to better understand the leading role of the Mor Gabriel's Foundation in the struggle for the affirmation of minority's rights in the nation, it is necessary to understand the meaning and the legal status of the community religious foundations in Turkey.

Deyrul-Umur Foundation, as all the non Muslim religious foundations in Turkey, is a legacy of the Ottoman Empire. Until the collapse of the reign, these foundations served their communities in several fields, from the religious to the educational one. With the birth of the Turkish Republic, the achievement of *Secularism* and the beginning of the *Turkification* process, the role and the power of the religious foundations has completely changed. According to Turkish law provisions, the state does not allow neither Muslim nor non-Muslim communities to legally exist in their own right. Moreover, the religious communities are not allowed to own their places of worship. For most non-Muslim communities, the worshipping places are owned by their community foundations. According to Law no.2762, the foundations are establishments with legal entity belonging to non-Muslim Turkish citizens (art. 3 Law no. 5737). The restrictive policy has lead to serious problems: from the impossibility of practising the own faith, to the prohibition of maintenance works on historical buildings. The term and legal status of a community foundation (VAKIF⁵²) was invented to provide a legal framework for properties belonging to non-Muslim minorities in the Ottoman Empire.

Brief overview on minority foundations' legal framework

The establishment of the republican regime on foundations has been characterized by the abolition of the religious and foundations charges in 1924 and the constitution of the General Directorate for Foundations (Vakıflar Genel Müdürlüğü), with the purpose of dealing with the

52 A VAKIF "is an inalienable religious endowment in Islamic law, typically denoting a building or plot of land for Muslim religious or charitable purposes." <http://www.vgm.gov.tr/sayfa.aspx?Id=85>

administration of the foundations. After the parliamentary adoption, in 1936, of a new law on foundation (Law on Foundation no.2762⁵³), almost all the religious communities lost their autonomy and their legal status passed under the authority of the General Directorate of Foundation (a governmental institution with legal personality, established in 1924, responsible for the management of foundations in the country). The organ is still active and set up under the Prime Ministry(art. 1, law no.2762; art.35, law no. 5737). The administration and control of the foundations were put in order and the legislation of the foundations took its final form with the law no.5737⁵⁴ that was put into force the rear. According to the law, Vakıf established before the entry into force of the Turkish Civil Code⁵⁵, are distinguished in terms of: nature, possessions and managements.

Analising the current law on Foundations, the modern community establishments can be sub-divided in two groups: the first one based on the type of administrations and the other one in term of utilization patterns. The Arameans' Religious Foundation is included in the first group, in the sub-category of the Community Foundations⁵⁶. These foundations gained legal entity according to the Law on Foundations, no. 2762. The administrators of the community foundations are elected by their members, between each other.

Another fundamental control on the autonomy of the minorities' foundations introduced by the law no. 2762 has been the so-called *1936 Declaration*⁵⁷: according to the content of the rule, the foundations were obliged to declare the sources of their incomes and the way they would use them. The Declaration fills of great importance in community foundations' disputes against the State⁵⁸ even now. Studying the recent lawsuit against Mor Gabriel, one can see how the *1936 declaration*, or rather its non-acceptance as a valid defensive file, is one of the clues of the 2012 Supreme Court of Appeal's verdict⁵⁹ in the *State Treasury Land Case*. The current Treasury's claims are based on the non-validity of the documents provided by the Monastery, as sanctioned by the Court. According to the files provided by the Monastery's lawyers, the Mor Gabriel's *1936 declaration* shows that the Community Foundation is the legal owner of the territories in dispute. The judgment of the Court de facto erases the Deyrul Umur's ownership and, following a path connected to the 1974 Ankara Court's decision, states that the Community has been an illegal possessor of the lands until now. The

53 Law on Foundations No. 2762, <http://legislationline.org/documents/action/popup/id/7018>

54 Law on Foundations No. 5737, <http://www.vgm.gov.tr/icerikdetay.aspx?Id=168>

55 The complete law on Turkish Foundations can be found on the General Directorate of Foundations' website, <http://www.vgm.gov.tr/sayfa.aspx?Id=86>

56 Faik Ahmet Sesli, 2010, "*Foundation Administration and Foundation landownership in Turkey from past to present*", African Journal of Business Management Vol.4(9), pp. 1769-1777, www.academicjournals.org/AJBM

57 The Law no. 2762 is also known as the 1936 Declaration

58 For a complete review of the historical-legal evolution of the situation of minorities' foundations: Orhan Kemal Cengiz, 2003, *op.cit.*

59 Orhan Kemal Cengiz on Today's Zaman 10 July 2012, *cit.*

1974 Yargıtay's decision, better its justifications, is fundamental to understand minorities' policies. In 1974, the Appeal Court stated that the declarations made by the minority community foundations were charters and the possessions acquired after the declaration itself were not a legal valid instrument. But, at the same time, the 1974 verdict of the Appeal Court⁶⁰ has created an important judicial precedent concerning the minorities' issue in the country. By examining the pronouncement, we see how the verdict fits into the broader context of State's behaviour towards the ethnic-religious minorities of the country. The Appeal Court's verdict states:

*“It appears that the acquisition of real estate by corporate bodies composed of non Turkish people was forbidden. This is because corporate bodies are stronger than individuals and it is clear that the State may face various dangers in case there is no restriction on them to obtain real estate.”*⁶¹Yargıtay, 8.5.1974⁶².

The ruling marks a turning point in the treatment of minorities: the assimilation process started with the Atatürk's policies, the application of the Lausanne's Treaty (artt.37-44) and the specifications included in the law no. 2762, were completely disregarded by the Yargıtay pronouncement. Why? First of all, we have to look back at Atatürks' principles. Summarizing them, we see two different branches of the same assimilative process: the only minority groups acknowledged in Turkey are that one included in the Treaty of Lausanne, in compliance with the Turkish interpretation. The other ethnic-religious groups living in the country do not belong to a minority group (this sub-category includes both Muslim and non-Muslim minorities), but all the people living in Turkey are Turkish citizens. The 2012 Ankara Court's verdict against Mor Gabriel, the mistreatment of Süryanis in the country and the Treasury's claims, in my opinion, fits in a common path with the 1974 Appeal Court's judgment in disputes between the central state and its citizens. The ethnic-religious origins have played a key-role both in the 1974's ruling that in the recent judgment on Mor Gabriel's controversy. The individuals belonging to a minority group are seen as *second-class citizen*, as *non-Turkish people* or as *indigenous foreigners*⁶³. At the same time, it is imperative to remember that all laws relating to minorities' affairs are applicable only those groups arbitrarily included under the protection of the Treaty of Lausanne and not to all minorities

60 Issued amid the political tensions with Cyprus

61 Orhan Kemal Cengiz, 2003, *op. cit.*

62 Balıklı Rum Hastanesi Foundation, formed by Turkish citizens of Greek origins, Orhan Kemal Cengiz, 2003, *op. cit.*

63 "Protection against Sabotage" Regulation, 1988, Orhan Kemal Cengiz, *op. cit.*

in the country. As told before, the Arameans are one of them and the struggle over Mor Gabriel's real estate reaches a higher level in term of violation of their human rights. Studying the Turkish society from a legal-sociological point of view, we could say that the Syrians are seen as a "third-class" citizens.

Proceeding with the historical analysis of the Law on Foundations, we can see how the regulation has undergone several amendments over the last decade. The changes occurred coincide with the rise to power of the AKP and the Europeanization process. In 2004 the Government abolished the Secondary Committee for Minorities, an organ established with a secret decree in 1962 with supervisory duties on minorities, replacing it with the Minority Assessment Board, responsible for the non-Muslim minorities' issues. In 2008, a new Law on Foundation no. 5737 allowed some of the minorities community foundations to submit their applications for returning the seized properties. The Law no. 5737 has been strongly criticized by Kurban and Hatemi in the report "*A story of an alien(ation)*"⁶⁴: for the aim of this study the most important criticism relates to the return of seized properties to the non-Muslim minorities. Precisely the aspect criticized by Kurban, has become the subject of an omnibus decree issued in August 2011⁶⁵. The Decree⁶⁶ amended the Law no. 5737 and entered into force on the same day of the adoption. With the new regulation individuals and institutions belonging to non-Muslim minorities could apply for the restitution of properties not included in the 1936 Declaration (art. 17 of the Omnibus Decree no.651, included as art. 11 in Law no. 5737)⁶⁷. Although welcomed as a radical change in relationships between state and minorities, the law enacted in August 2011 was subjected to a time-limit: only the applications received within twelve months after the entry into force of Article 11 of the decree⁶⁸ would be accepted.

Art.11, Decree no. 651, 27 August 2011

64 Dilek Kurban and Kezban Hatemi, 2009, "*A story of an alien(ation)*", TESEV Foundation

65 Today's Zaman, 28 August 2011, <http://www.todayszaman.com/news-255244-govt-gives-go-ahead-for-return-of-seized-property-to-non-muslim-foundations.html>

66 RESMI GAZETE, 27 August 2011, no. 28038, <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2011/08/20110827.htm&main=http://www.resmigazete.gov.tr/eskiler/2011/08/20110827.htm>

67 Library of the Congress, 6 September 2011, "*Turkey: Minority Religious Congregation Properties to be returned under historic measure*", http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402795_text

68 General Directorate for Foundations, <http://www.vgm.gov.tr/duyurudetay.aspx?Id=42>

For a deepen analysis on the Restitution Decree:

Orhan Kemal Cengiz, Today's Zaman, 2011, <http://www.todayszaman.com/columnist-255514-their-properties-have-been-given-back-what-about-seized-foundations.html>

Baskin Orhan, Forum 18, 2011, http://www.forum18.org/Archive.php?article_id=1621

Compass, 2011, http://www.compassdirect.org/english/country/turkey/article_116880.html

– *The minority (community) foundations’;*

a) *Immovable properties registered in the 1936 Declaration, which are registered as open in the title deeds’ owner section,*

b) *Immovable properties registered in the 1936 Declaration, which are registered in the name of Treasury, Directorate General of Foundations, municipality and special provincial administration other than the registration for the expropriation, sales and barter.*

c) *The cemeteries and fountains registered in the 1936 Declaration, which are registered in the name of the public institutions,*

shall be registered by the related property registry office in the name of the minority (community) foundation with the rights and obligations written in the title deeds, in case of applying within 12 months beginning from the enforcement of this article, after the affirmative decision of the Council.

The current value determined by the Ministry of Finance of the immovable properties registered in the property registry office in the name of the Treasury or Directorate General of Foundations despite the fact that they had been purchased by minority (community) foundations or bequeathed or endowed to the minority (community) foundations which are registered in the name of third parties, are paid by Treasury and Directorate General of Foundations.

The rules and procedures concerning this article shall be governed by a regulation.”

On the 1st October 2011, a regulation implementing the Decree in relation to the time limit has been issued. The clause related to the deadline of the application has been improved but only if: 1) property is purchased by a community foundation, 2) property is acquired as a legacy with those ownership is registered but in the name of a third party⁶⁹. In the cases above-mentioned there is no limit of time to submit the community foundation application.

Deyrul Umur's latest development

Deyrul Umur foundations is one of the Community Foundations operating in Turkey. The complete list can be found in the Official Gazette, Publication No. 25003, issued by the State

⁶⁹ Baskin Orhan, Forum 18, 2011, http://www.forum18.org/Archive.php?article_id=1621

Announcement of the General Directorate for Foundations, VGM's website, <http://www.vgm.gov.tr/index.aspx?Dil=EN>

Ministry and the Vice-Prime Ministry in 2003. In line 151 of the Official Gazette, the record declares still active the “*Foundation of the Syriac Monastery of Deyrulumur (Mor Gabriel) in Midyat*”⁷⁰.

In a moment in which Turkey is acting in a positive way to improve the minorities' rights, thanks to the increasing international attention but also to the political action, the recent ruling in the case over Mor Gabriel seems inconceivable: the last verdict on the Monastery's “State Treasury Land Case” creates a rift between the Assyrians and the State, suggesting that the primary intent of the state could not only be the seizure of the current Monastery's lands, but to eradicate the minority from its homeland depriving it of the most important Süryani's worshipping place. The “seized foundation” practice is an habit started with the Law no.2762: the law included non-Muslim foundations ‘affiliated foundations’, creating the legal basis for including the foundations subsequently among ‘seized foundations’.⁷¹ The expropriation put in place against the monastery is part of a broader behaviour towards all minorities living in the country. In fact, studying the Monastery's lawsuit, we can see how the Yargıtay Court stated that the Community Foundation is an illegal occupier of Treasury's land, although the monastery provided all the documents required to prove its legal ownership of the lands. The Ankara Court's verdict is in stark contrast with the provisions of the founding act of the Republic, the Lausanne Treaty⁷². In fact the protection of non-Muslim minorities is ensured by artt. 37-45, Part I, Section III of the Treaty: focusing on the provisions of some articles, one can immediately observe the role of the non-Muslims in the newly-born Republic of Turkey. First of all, art. 37 stated the key-role of the Section III, sanctioning its value as “*a fundamental law of the state*” and its superiority over subsequent laws. The following articles stated the absence of discrimination by the republic towards minorities members and religious freedom (*art. 38*), the peaceful enjoyment of political and civil rights (*art. 39*), the right to receive primary instructions in their mother language (*art.41*), the respect and full protection towards religious establishments belonging to non-Muslim minorities (*art.42*). Moreover, art.30, Section II of the Lausanne Treaty sanctions, ipso facto, the Turkish nationality of all the inhabitants living in its territory at the moment in which the pact was undersigned. As we can see, the members of minorities are fully protected from a constitutional point of view but, acting the law, their claims have been violated with no regard to the republic fundamental provisions.

70 VGM's website, <http://www.vgm.gov.tr/sayfa.aspx?Id=89>

Report by H.E. Aktas, 2008, *op. cit*

71 Dilek Kurban and Kezban Hatemi, 2009, *op. cit*.

72 Turkish Government website,

http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

It is quite clear that, as a non-sense, the Yargıtay decision is against the agreement which establishes the legal acknowledgement of the Republic at an international level. First of all, we should not forget the words used in the Balıklı Rum Hastanesi Foundation judgement. Pointing at the Greek minority members, parts of one of the three recognised groups, as *non-Turkish people*, the Yargıtay has undertaken a discriminatory behaviour still enduring in its branches. The judicial stance typifies the disputes between State and minorities since then, passing through the *Fener Rum Erkek Lisesi*⁷³ to the current lawsuit against Mor Gabriel Monastery. A further look at the way in which the state behaves in seizing non-Muslim real estates and at the Turkish law is required: the minorities policies adopted after the Lausanne's Treaty have shown, since the Turkey's inception, a deep ill will towards the groups, displayed both with laws and with unwritten practises. The most known one is the "*seized foundations*" practice which is, similar to the Community Foundations category, a legacy of the former Ottoman Empire⁷⁴. But, differently from the Ottoman rule, the "seized foundations" practice, legally based on the Law no. 2762, is a trick used to implement state properties taking them away from their legal owner. Claiming that the possessors or the proprietors belonging to minorities are illegal occupiers of the lands, even if their status and their declarations fulfill all the basic requirements needed for the peaceful enjoyment of the real estates, places itself in the broader, uninterrupted attempt of *turkifying* the country. Moreover, the effort is carried out in sharp contrast with the national constitutional law. We must no linger just on the latest Yargıtay judgement, but we should look at the entire lawsuit to examine the seriousness of the allegations facing by the Monastery.

As stated in the "*Land Boundaries Case*", the charges against the Community Foundation were not only related to the real estate's possession: to increase its judicial position, the Monastery has been charged of pursuing *anti-turkish* activities. From the charge of celebrating not-allowed religious services to the falsely claimed indictment of undermining the national unity, all the accusations reflect the non-acceptance of the minority in its motherland and the general discriminatory behaviour towards its members: the lack of recognition, the limits handled everyday are supported even by the state law. The charge of giving religious and scholar education to Assyrian children is forbidden: according to the law, due to the exclusion from the recognition ensured by the Treaty of Lausanne (*artt. 40-41*), the Syriacs, differently from the members of the recognised ones⁷⁵, have no right to undergo any kind of education to their children. The charge

73 ECtHR, *Fener Rum Erkek Lisesi Vakıf v. Turkey*", application no.34478/97

74 Dilek Kurban and Kezban Hatemi, 2009, *op. cit.*

75 Only the Greek, the Armenians and the Jews are allowed to provide cultural informations to their scholars, under the control of

claiming a sovversive behaviour by the Community fits in the provisions contained both in the amended anti-terror law⁷⁶, in the constitution and in the Turkish Criminal Code⁷⁷. The attempt to destroy national integrity is sanctioned in art. 14 (*sanctity of integrity and secularism of the nation*)⁷⁸TC, which must be read together with art. 216 § 1 and art. 310, TCC, and art. 1, Law no. 3713/1991. Alleging the minority of anti-state behaviour, the villagers tried to benefit of the provision of art. 54 (*seizure of property*), TCC. As we can see, the charges against the Monastery reached a high seriousness.

Deyrul Umur under the EU harmonization process

The current role of Turkey as a candidate country to the EU membership, is giving the chance both to the country and the Assyrians to fill the gap of recognition existing in the country towards the minorities. The problem handled by the Monastery have been a serious concern for the EU since 2008⁷⁹. To join the European Union, Turkey shall accept and recognised the multiculturalism of its territory and the EU's founding principles against the social exclusion and discriminatory policies (art.3, Treaty on the European Union)⁸⁰. The Mor Gabriel's trial adopts a significant role in EU perspective in several field of respect for human rights. In fact, avoiding to avoid to undersign the UN International Covenant on Civil and Political Rights, regarding minority' rights, and the UN Covenant on Economic, Social and Cultural Rights, regarding the right to education, Syriacs do not have the possibility to enjoy their fundamental rights. Moreover the country has not subscribed the Europe Framework Convention for the protection of National Minorities. The neverending discrimination and the Turkey's restrictive behaviour the minority still continues. Even in the high school educational field, the minority suffers of state bias: in the history text book of the 2011-2012 school year, Ministry of National Education allowed the use of an highschool history book in which the Assyrians were described as traitors of the Turkish republic⁸¹. This attitude stands in the reverse position with respect to the openness to Armenians⁸².

the Education Ministry.

76 Law on fight against Terrorism, No. 3713/1991, amended 2010

77 Law No. 5237

78 Turkish Government website,

http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

79 Written questions No 563 and 570 to the Committee of Ministers, 2010, "*Expropriation of the lands of the Mor Gabriel Monastery in Tur Abdin, Turkey Rights of minorities in Turkey*", <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12123.pdf>

80 Treaty on the European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF>

81 Today's Zaman "*Discriminative discourse in history textbooks upsets Syriacs*", 2011, <http://www.todayszaman.com/news-258035-discriminative-discourse-in-history-textbooks--upsets-assyrians.html>

82 In the 2010-2011 academic year, mathematics and introduction to science textbooks were translated into Armenian and distributed free of charge. Moreover, Armenian children will, as of the school year 2011-2012, be allowed to attend Armenian minority schools as

Approaching the freedom of expression matter, we see that Turkey does not fulfill the basic European standards included in the chapter 23 of the Acquis Communautaire. The example of the arrest of Fr. Akbulut, head of Assyrian church in Diyarbakır, represents, even nowadays, the state behaviour against the acknowledgement of *Seyfo*. The non-recognition creates several perspectives of indictment under the domestic laws, jeopardizing the minority's status⁸³.

The Deyrul Umur's trial represents a serious concern in the Turkey's EU candidature even if analysed from a property rights perspective: according to the EU's 2011 progress report on Turkey, the lack of recognition and the abuses perpetrated by the state to the Community Foundation are violating basic human rights. Moreover, evaluating the lawsuit under EU laws, we see that the provision of art. 1, Protocol no. 1 annexed to the European Convention on Human Rights (ECHR)⁸⁴, ensuring the free enjoyment of the possessions, is completely disattended by Turkey.

The Mor Gabriel's case has, in my opinion, several similarities with the case "*Fener Rum Erkek Lisesi Vakıf v. Turkey*"⁸⁵, the scope of Article 1 must be read together with art. 14 ECHR (prohibition of discrimination) and art. 6 ECHR (right to a fair trial). In my opinion there are several similarities between the two lawsuits:

- Failure to comply with the provision of art.1, protocol no.1 ECHR
- Violation of the art. 14 ECHR
- Violation of art. 6 ECHR but common points between in the case of Mor Gabriel, in the

The 2007 ECtHR's verdict could be useful to understand the Turkey's policies towards minorities but we must underline a significant difference between them: the Fener Greek High School Foundation was, and is still now, an establishment of a minority included under the protection of the Treaty of Lausanne; the Mor Gabriel Foundation is a Community Foundation of a non-recognised ethnic-religious group living in the country, with no protection ensured by the Treaty. In 2006, when the Parliament was amending the Law on Foundation no. 5555 and was thinking about granting new rights privileges to non-Muslim foundations, the former Turkish

guest students. EU Turkey Progress Report 2011.

83 Artt. 301-312 Turkish Criminal Code, Art.101 Law on Association, Artt. 81A and 82 Law on Political Parties, the amended Law on the fight against Terrorism.

84 Grgić, Mataga, Longar, Vilfan "The right to property under the European Convention on Human Rights", 2007, Human Rights Hand Books, <http://echr.coe.int/NR/rdonlyres/97564258-437D-4FFD-A54D-2766DE255CCA/0/DG2ENHRHAND102007.pdf>

85 ECtHR *Fener Rum Erkek Lisesi Vakıf v. Turkey*", application no.34478/97

President Sezer posed his veto stating that " an improvement in minority rights is considered to be a threat against Turkish Republic's national interests and fundamental principles"⁸⁶. This State discriminative behaviour is underlined even by the European Parliament doc. no.11860/2009, under the paragraph " *The Treaty of Lausanne: divergent interpretations*"⁸⁷, points. 24-25:

24. Although the two countries regularly refer to the Treaty of Lausanne in connection with the issue of religious minorities, their interpretations diverge on specific points.

25. Whereas the Treaty of Lausanne uses the expression "non-Muslim minorities" without specifying any particular minority, the Turkish state grants minority status to only three communities (Greek and Armenian Orthodox Christians and Jews).

To become an effective member of the European Union, Turkey must not only achieve all the chapters of the Acquis Communautaire, but also should embrace the founding values of the EU; the provision of art.2 of the Treaty on European Union clearly states that the values of pluralism, non-discrimination and tolerance must prevail among the Members. Moreover, art. 21 of the Charter of Fundamental Rights of European Union has introduced the notion of national minority as a term of EU primary laws. As a term of EU primary law, each state member of the European Union have to respect the national minorities living in its national territory and must not discriminate the group. Besides that, the respect of cultural, religious and linguistic diversity is fundamental in an EU perspective⁸⁸. The abundance of the laws on minorities represents an important purpose for the country's EU membership achievement.

86 Soner Onder, 2012, "Minority Rights in Turkey: Quo Vadis, Assyrians?", in the book "The slow disappearance of the Syriacs from Turkey".

87 Doc. no. 11860/2009, <http://assembly.coe.int/Documents/WorkingDocs/Doc09/EDOC11860.pdf>

88 In this perspective, we must note that Turkey has still not ratified the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions