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Foundation administrations and foundation landownership in Turkey from past to present

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The traces of foundation civilization are seen in every period of Turkish history. During the Seljuk period, the foundations occupied an important position in the community life and this importance peaked during the Ottoman period. During the last periods of the Ottoman, feeling the necessity to assemble the administration of the foundations under one center and administrate them, the Ministry of Imperial Foundation was established, and by this way, the foundations were assembled under the same roof for the first time. Since the proclamation of the Republic, the foundations have been serving the society by executing the purposes, written under the administration and control of the General Directorate for Foundations, contingent upon the Prime Ministry and in their endowment. It is possible to examine the foundations of the Ottoman period in various categories like their entities, landownerships, administrations, the way they are rented, benefitted and their incomes. Together with the laws, that were put into force during the Republic period, 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. 5737 that was put into force the rear. The foundations in Turkey are still under the administration and control of the General Directorate for Foundations, which is contingent upon the Prime Ministry and they execute the foundation services by evaluating their immovables, by favour of 25 Regional Directorates. In this study, the foundations in Turkey have been examined from the point of administration and landownership, from past to present; foundation occurrence and basic problems have been tried to be revealed by making a detailed research about the foundations in the instance of the province of Samsun.

Key words: Ottoman period, foundation, landownership, real estate.

INTRODUCTION

Considering the traditions of the Turkish nation, there are humanitarian aids like helping the ones in need, feeding the ones that are hungry, dress one's wound who is sick or wounded. This sense of cooperation, which lies in the national character of the Turkish people, has directly affected the social structure of the established Turkish governments and as a result, the Foundations emerged as essential cooperation and solidarity organizations. Particularly after the acceptance of Islam, everyone in the Turkish societies with opportunities established a foundation and put the foundation works into the service of the deprived (Cezar, 1985). Developing rapidly during

the Seljuk and Ottoman periods, the foundations had a significant place in the social and economic life of the society (Barkan, 1963). Moreover, after the proclamation of the Republic, the foundations were still paid a special attention and they were enabled to provide a better service with the new laws.

In Turkey, the Foundation (Waqfs) is described as a person's allocating his movable and immovable properties of his own accord and request by excluding from his personal landownership, in order to enable them to be used under the conditions and services, determined by himself for the purpose of charity and good, forever.

Foundation is an establishment, based upon the right of landownership and is the use of this right for the benefit of the society (Veziroglu et al., 2000). Other concepts, concerning the foundations are as follows:

- i. Endowment (Vakfiye in Turkish): Documents, containing the assets, foundation terms of the regular, appendant and community foundations and the requests of the founder.
 - ii. Charities (Hayrat in Turkish): Described as the property or the service, presented by the regular, appendant, community and artisan foundations and new foundations, directly to the benefit of the society without any charge.
 - iii. Real property (Akar in Turkish): Movables and immovables, obliged to be evaluated in a way to yield money in order to accomplish the purposes and activities of the foundations.
 - iv. Tithe (Asar in Turkish): The tax, collected from the harvest products at the rate of tenth.
- Duties (Rusum in Turkish): The plural of duty. Duty means tax, here.

FOUNDATIONS IN THE TURKISH HISTORY

The Old Turks gave place and importance to the establishment of foundation even during the civilisations, they had founded before the acceptance of Islam. It is possible to see it on the scriptures, located at the Southern front of Kül Tigin Monument, which is among Orkhon Monuments (Ergin, 1973). As a result of the excavations, carried out in the Eastern Turkistan, Uyghur Endowments of B.C 12th and 13th centuries were revealed. The first Turkish Foundation in Anatolia was established in Erzurum, Hasankale, in 1048 (Veziroglu et al., 2000).

Foundations during Ottoman period

During the Ottoman empire period, all the services except of security and judicial services, from health to environment, from substructure to urbanism, from education to social services, were carried out by foundations (Yediyildiz and Ozturk, 1996). The cities in the Ottoman were generally established around foundation complexes and the districts were founded around the structures like foundation mosques, Turkish baths, fountains and so forth. Nevsehir is a good example for the role, played by the foundations in the Turkish city life (Agmanvermez, 1999). The cities were deprived of the municipal organization until 1856. Examining the endowments, it is seen that the municipal services like water, transportation, illumination, cleaning and public order were usually accomplished by the foundations before this date (Agmanvermez, 1999). The first foundation in the Ottoman belongs to Orhan Bey. The sultans, being in

in the first place, grand viziers, all senior government authorities and the wealthy could establish foundations in accordance with their power (Malkoc, 2009).

The types of foundations during the Ottoman period

It is possible to analyse the Ottoman period foundations in six groups, in terms of their entities, possessions, administrations, chartering patterns, utilization patterns and their incomes (Figure 1).

In terms of their entities

- a. Charity foundations: Foundations with incomes being completely and partially allocated to various charity provisions and services.
- b. Posterity foundations: Foundations with incomes being completely allocated to the descents of the foundation without any charity provision. In case the descents of the foundation were dissolved, they could be allocated to a charity service.

In terms of their possessions

- a. Precise foundations: Foundations with every kinds of physical assets, whose landownership belongs to themselves. In such foundations, the endowed movables and immovables constitute the property landownership of the foundation.
- b. Non-precise foundations: Foundations, established on the public land by the head of the state or with his permission. If the right of utilization of tithe or duty from a public land is endowed, then such foundations are given the name, Non-precise foundation. Here, the bare landownership of the land belongs to the government.

In terms of their administrations

- a. Registered foundations: Foundations, established by the members of the palace and administered and controlled by the charge of the pious foundations.
- b. Appendant foundations: Foundations, conditioned to the descendant of the endower, being administered by the administrators and controlled by the charge of the pious foundations.

In terms of their chartering patterns

- a. Icare-i vahideli foundations: Foundations, leased in return for a certain leasing, temporarily.
- b. Icare-i vahide-i gradual foundations: Foundations, leased for an indefinite period of time. In such foundations, the right of tenancy is given for an

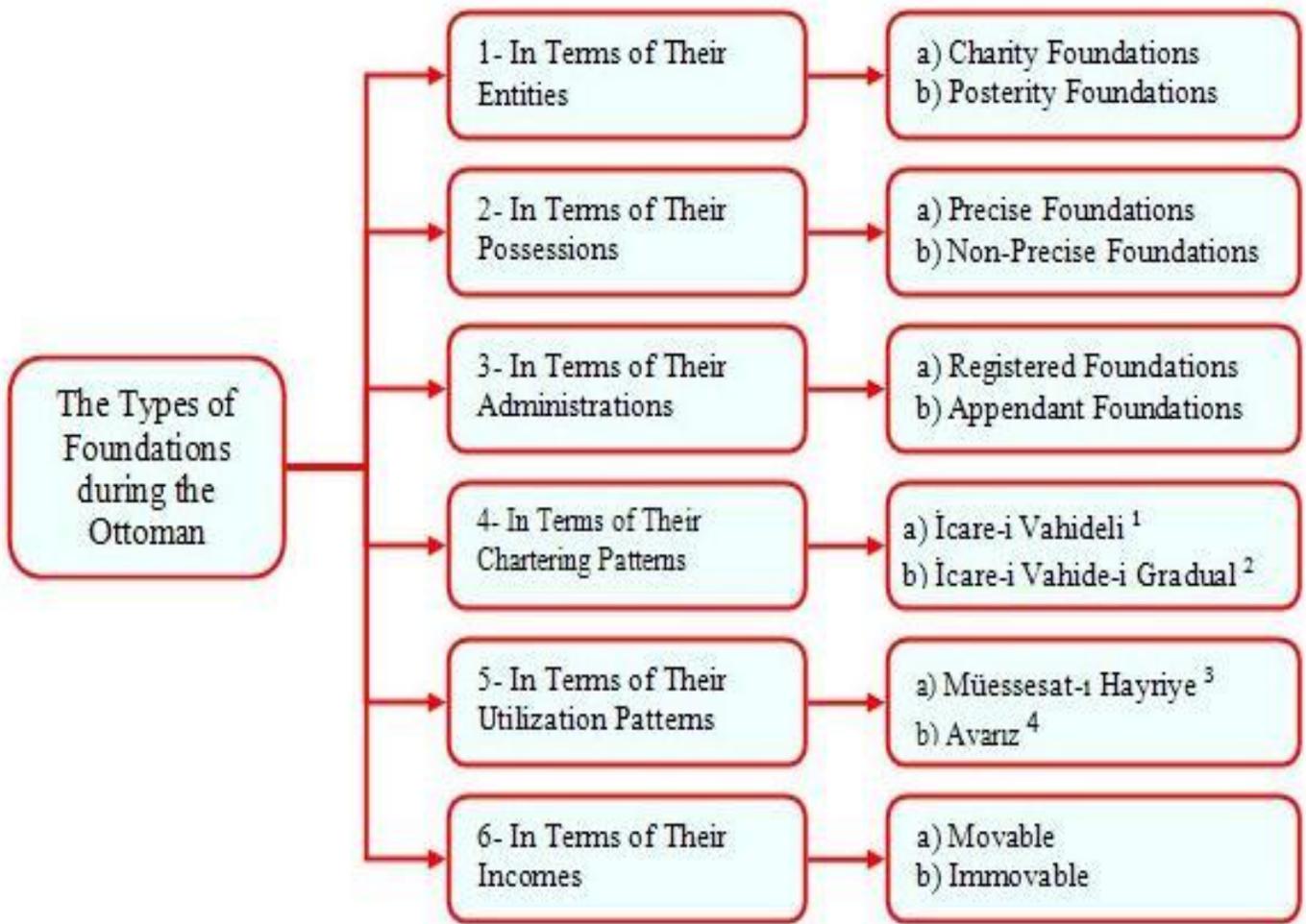


Figure 1. The types of foundations during the Ottoman period. ¹Foundations, leased with a certain value, temporarily. ²Foundations of leasing during the Ottoman period. ³An organization that is based on charity. ⁴A temporary tax, collected by the Ottomans from the public.

indefinite period of time, by getting the current price for once only and a determined hire purchase year by year. In case of the death of the tenant, the right of tenancy is inherited to his inheritors. During the Republic period, the leasing method of icare-i vahide-i gradual was abolished and the possessions of the immovables, having already been leased, started to be given to the tenants against a determined remuneration and such kinds of immovables were called the concessional immovables (Veziroglu et al., 2000).

In terms of their utilization patterns

a. Muessesat-i hayriye: Foundations like sanctuary, madrassa, library, fountain, established to be directly presented to the use of the public.

b. Avarız foundations: Foundations, established to meet the urgent needs of the public or occupational groups in a district or a village.

In terms of their incomes

a. Movable: Foundations, constituted of movables like money, gun, machine, horse, etc.

b. Immovable: Foundations, constituted of immovable properties like house, land, orchard.

Foundations during the republic period

In 1924, religious and foundations charge was abolished and a new unit was constituted with the name of the

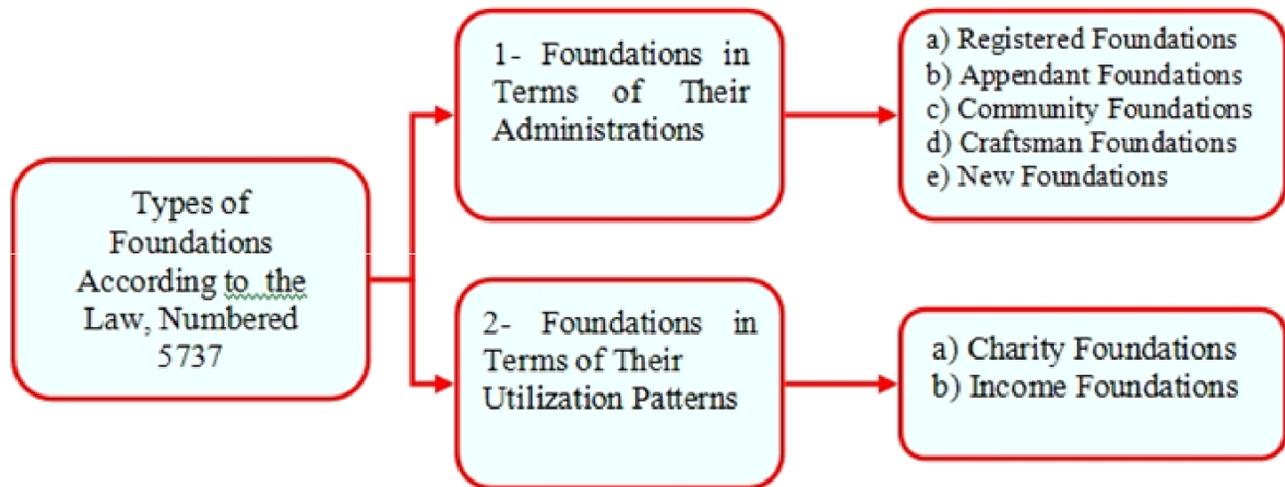


Figure 2. Types of foundations according to the law, numbered 5737.

General Directorate for Foundations, contingent upon the Prime Ministry, for the purpose of dealing with the administration of the foundations. This law is also a milestone for the General Directorate for Foundations (Veziroglu et al., 2000). The foundations, established after the Turkish civil law, dated from 17th February 1926 and numbered 743, were subjected to the provisions of the civil law. In accordance with the 74, 78 and 679th articles of the Turkish civil law, which were replaced by the 1st article of the law, dated from 13th July, 1967 and numbered 903, the opportunity to establish foundations emerged again. Before this date, there was no possibility to establish foundations, but facilities.

According to this law, the entirety, all kinds of incomes - unrecognised or to be recognised - and rights – which also means economic value - of a property could be endowed. Together with the Turkish legal civilisation entering into force, establishment of a community foundation became impossible. The legislation of foundations was rearranged with the Law of Foundations, numbered 2762, entering into force in 1935 and the foundations began to be administered by the General Directorate for Foundations, contingent upon the Prime Ministry. Together with the effectiveness of this law, the craftsman foundations could no longer be established. With the law, numbered 5737, entering into force in 2008, the legislation of foundations took its final form. According to this law, foundations have legal entity of special law and acquisition provisions can not be applied to the foundation properties by possession. During the Republic period, the number of foundations and donations to the foundations rapidly increased as a result of the encouragement policy of the government. Considering their establishment purposes, there are foundations almost in every respect, from education to culture, from health to cultivations today.

Types of foundations during the republic period

According to the current Law of Foundations, numbered 5737, the foundations can be examined in 2 groups in terms of their administrations and utilization patterns (Figure 2).

Foundations in terms of their administrations

a. Registered foundations: Foundations, established before the enforcement date of the Turkish legal civilisation, abolition numbered 743 and administered by the General Directorate for Foundations according to the Law of Foundations, numbered 2762, with the foundations to be administered and represented by the General Directorate.

According to the law, numbered 5737, the immovables of the General Directorate for Foundations and the registred foundations, can benefit from the privilege of the Government property; they can neither be levied nor held in pledge.

b. Appendant foundations: Foundations, established before the enforcement date of the Turkish legal civilisation, abolition numbered 743, and with an administration, conditioned to the descendants of the endowers. According to the articles of the endowment, that do not constitute an opposition to the constitution, it is administered and represented by the administrators to be assigned by the Foundations Council. Appendant foundations with no administrators assigned for ten years or with no managing body constituted, are administered and represented by the General Directorate for Foundations by court decision. Today, there are 288 appendant foundations.

c. Community foundations: Foundations of the

Non-Muslim communities in Turkey, whose members are the citizens of the Turkish Republic. These foundations gained legal entity according to the Law of Foundations, numbered 2762, without considering whether they had endowments or not. The administrators of the community foundations are elected by their members, between each other. Today, there are 161 community foundations. Community foundations are free to acquire immovables, make every kinds of savings on the immovables and use them for commercial purposes. However, they have to notify all kinds of properties they acquire, to the General Directorate for Foundations.

d. Craftsman foundations: Foundations, established before the enforcement of the Law of Foundations, numbered 2762, and administered by the board of management, elected by the craftsman.

e. New foundations: They are established and they operate in accordance with the provisions of the Turkish civil law. The managing body is constituted according to the foundation voucher and most of the assigned positions shall be settled in Turkey. Today, 4530 new foundations operate. They are free to acquire immovables and make every kinds of savings on the immovables. They have to notify the immovables they acquire, to the General Directorate.

Foundations in terms of their utilization patterns

a. Charity foundations: Foundations like sanctuary, madrassa, library and fountain, established to be put directly into the service of the public.

b. Income foundations: Foundations, established in a way to bring income, which enable the actualization of the conditions in their endowments with the help of the acquired income.

LEGAL BASIS OF THE FOUNDATIONS IN TERMS OF LANDOWNERSHIP

The landownership issue of the Law of Foundations, numbered 5737, was regulated by the articles 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 26 and 27. In these articles; the issues like property acquirement of the foundations, selling, exchange and evaluation of immovables in a way to bring income, registration of the foundation immovables to the title deed in behalf of their foundations, purpose and function change of the foundation immovables, quality change and evaluation of charity immovables, allocation of charity immovables in the direction of their foundations, etc. were regulated. The articles of Turkish civil law, numbered 4721, between 101 and 117 contain the issues concerning the establishment, control and administration of the foundations and the issues like, 105. article, acquirement of properties and rights,

113. article, acquirement of the foundations, selling and exchange of immovables, 117. article, acquirement provisions shall not be applied on the foundation properties by possession were regulated concerning the landownership. The articles of the law related to the relationship of associations and foundations with public institutions and organizations between 1 and 5 regulate the issues of purpose, basic principles and penalties of foundations and associations.

ADMINISTRATIVE STRUCTURING CONCERNING FOUNDATIONS IN TURKEY

Foundations started to be administered and controlled by the General Directorate for Foundations, contingent upon the Prime Ministry together with the Law of Foundations, numbered 2942, which came into force in 1935. According to the 35th article of the Law of Foundations, numbered 5737, of the General Directorate for Foundations, it is a special budgeted government administration with a public legal entity, contingent upon the Prime Ministry. In accordance with the 6th article of the Law of Foundations, it is the representator of the registered foundations, which has the complete entity of private law provision. The General Directorate for Foundations is the organization that enables the administration, activities and control of the foundations; the registration, protection and maintenance of the movable and immovable foundation culture entities inland and abroad; operation and evaluation of the foundation entities economically.

The General Directorate for Foundations evaluates the immovables under their administration by making investments like hotels, houses, villas, business centers, sports complexes, Formula 1 Tracks, student residences, hospitals, autoparks with their own facilities or the methods of build-operate-transfer, flat for land or restore-operate-transfer. The immovables, acquired as a result of investments are evaluated through leasing and the daily distribution of hot food in soup-kitchens in 81 city centers and monthly distribution of dry food package in 794 districts are made for the ones in need, with the income earned. Besides, the students of secondary education are given scholarship; the elders and the disabled are given wages. Additionally, the foundation culture entities under the administration of the General Directorate for Foundations, which are in need of restoration, are restored with the incomes earned. 3363 pieces were restored between 2002 - 2008 (Anonymous, 2009).

Landownership status of the foundations

By 2006, there are 62211 foundation immovables available, administered by the General Directorate for

Table 1. Distribution of the immovables, administered by the General Directorate for Foundations by provinces

The name of Province	The number of real estate	The name of Province	The number of real estate	The name of Province	The number of real estate
Adana	4198	Edirne	623	Malatya	225
Adıyaman	56	Elazı	1602	Manisa	332
Afyon	429	Erzurum	733	Mardin	464
Aksaray	97	Erzincan	555	Mersin	416
Amasya	682	Eski ehir	6458	Mu la	566
Ankara	618	Gaziantep	1287	Mu	75
Antalya	3320	Gümü hane	48	Nev ehir	137
Ardahan	9	Giresun	177	Ni de	258
Artvin	333	Hakkari	2	Ordu	53
Aydın	1964	Hatay	2149	Osmaniye	18
A rı	15	Isparta	227	Rize	69
Balıkesir	2407	I dir	12	Sakarya	86
Bartın	39	stanbul	15389	Samsun	667
Batman	14	zmir	2088	Sinop	60
Bayburt	55	K.mara	138	Sivas	324
Bolu	138	Karabük	121	Siirt	768
Burdur	153	Karaman	317	anlıurfa	1829
Bursa	765	Kars	22	ırnak	73
Bilecik	96	Kastamonu	282	Tekirda	92
Bingöl	5	Kayseri	1565	Tokat	454
Bitlis	571	Kırkkale	13	Trabzon	249
Çanakkale	385	Kırklareli	95	Tunceli	187
Çankırı	323	Kır ehir	79	U ak	65
Çorum	190	Kocaeli	135	Van	178
Denizli	269	Konya	1174	Yalova	19
Düzce	32	Kütahya	295	Yozgat	134
Diyarbakır	1351	Kilis	253	Zonguldak	60
Total	18514	Total	35839	Total	7858
				Final total	62211

Foundations and 19825 of these immovables are old buildings. Distribution of the immovables by provinces is shown in Table 1.

Foundations under the control of the general directorate for foundations

According to the data of the General Directorate for Foundations, there are 5007 new foundations in Turkey, established in accordance with the provisions of the Turkish civil law by 17.02.1926 and 4530 of them are still in activity. The statistical distribution of the New Foundations, established in accordance with the Turkish civil law, in respect of their activities is as follows (Table 2). As well as the new foundations, there are still 288 appendant foundations and 161 community foundations, sustaining their activities.

SAMSUN REGIONAL DIRECTORATE FOR FOUNDATIONS

Samsun Regional Directorate for Foundations was established in accordance with the regulations, concerning the duties, practices, methods and principals of the central and country organization, which was put into effect with the decision of the Law and Foundations Council, numbered 5737, dated 28/05/2008 and numbered 339 and it is an administration, contingent upon the General Directorate for Foundations. Samsun Regional Directorate for Foundations is responsible for inspecting the foundations within the boundaries of the region, proceeding the duties related to accomplishing the endowment essentials of the foundations under their administration, operating their properties in an economic way, protecting and constructing the old buildings of the foundation with architectural and historical values and

Table 2. The distribution of the foundations under the control of the General Directorate for Foundations in respect of their purposes.

Type of the new foundation	Number	Proportion
Public assistance foundations	1937	42
Education foundations	1118	24
Culture foundations	621	14
Charity foundations	524	12
Health foundations	258	6
Other foundations	72	2
Total	4530	100

Table 3. The statistical distribution of the new foundations in respect of their activities.

Type of the new foundation	Number	Proportion
Public assistance foundations	46	53
Education foundations	13	15
Culture foundations	17	20
Charity foundations	10	12
Total	86	100

maintaining the establishments of the foundation arbitrarily. Provinces of Samsun, Sinop and Ordu are within the context of responsibility. By Samsun Regional Directorate for Foundations; daily hot meal is distributed to totally 2.250 people in need in the soup kitchens of Ordu, Samsun and Sinop city centers and monthly dry food packages are distributed to totally 3.475 people in the districts and in the provinces of Ordu, Samsun and Sinop, monthly wages are given to 210 deprived, orphan and disabled people; monthly scholarships are given to 344 students by 2009. Between 2006 - 2009, 3 commercial buildings were constructed with the facilities of the General Directorate for Foundations in the provinces of Samsun and Ordu, 1 business center was established with the model of build- operate-transfer in the Center of Samsun; 27 houses and 8 shops in total were constructed with flat for land method. Additionally, 28 old building restorations in total were completed by 2006 (15 in Samsun province, 6 in Ordu, 7 in Sinop).

Foundations under the control of Samsun regional directorate for foundations

According to the data of Samsun Regional Directorate for Foundations, there are 86 new foundations still operating within the regional boundaries of Samsun, that were established in accordance with the provisions of the Turkish civil law by 23/10/2009 and 45 of them activate in the Province of Samsun, 28 of them activate in the Province of Ordu and 13 of them activate in the Province of Sinop. The statistical distribution of the New

Foundations, established in accordance with the Turkish civil law, in respect of their activities is as follows (Table 3).

Landownership status

By October 2009, there are totally 2825 registered incomes, 177 registered charities, 10 appendant incomes, which means totally 3012 immovables in the provinces of Samsun, Ordu, Sinop, which are the responsibility areas of Samsun Regional Directorate for Foundations (Table 4). As a result of the application of recording deeds and endowments in cadastral studies, carried out in Samsun, the number of immovables is expected to be over 8000. 2431 of the immovables are of field quality and they are generally centered in the districts of Carsamba and Ayvacik. A great majority of the field-quality immovables are occupied by the villagers. The office-quality immovables, on the other hand, are generally centered in the districts of Samsun Center and Vezirkopru District. The distribution of the immovables in accordance with their qualities is shown in Table 5.

RESULTS

Upon evaluating the foundations, generally the following results were gained

(i) The foundations, which emerged before Islam and developed significantly during the Ottoman period, have

Table 4. Foundation immovables under the administration of Samsun Regional Directorate for Foundations

Property list of Samsun regional directorate for foundations				
Province-District	Registered income	Registered charity	Appendant income	Total
Samsun-City Center	170	21	10	201
Ayvacik	1980	0	0	1980
Alaçam	0	9	0	9
Bafra	22	8	0	30
Çar amba	319	19	0	338
Havza	10	3	0	13
Kavak	2	3	0	5
Ladik	8	11	0	19
Tekkeköy	40	0	0	40
Terme	2	6	0	8
Vezirköprü	236	18	0	254
(Samsun) total	2789	98	10	2897
Sinop-City Center	9	23	0	32
Ayancik	1	2	0	3
Boyabat	1	11	0	12
Dura an	1	3	0	4
Erfelek	1	0	0	1
Gerze	8	1	0	9
(Sinop) total	21	40	0	61
Ordu-City Center	9	10	0	19
Akku	0	1	0	1
Fatsa	0	7	0	7
Gölköy	0	2	0	2
kizce	0	1	0	1
Kabadüz	0	1	0	1
Mesudiye	1	0	0	1
Per embe	0	5	0	5
Ulubey	3	1	0	4
Ünye	2	11	0	13
(Ordu) total	15	39	0	54
Final total	2825	177	10	3012

Table 5. Distribution of foundation immovables under the administration of Samsun Regional Directorate for foundations in accordance with their qualities

Province	Type of the foundation real estate						Total
	Mosque and tomb	Field	Land	Office	House	Other	
SAMSUN	85	2410	45	281	66	10	2897
ORDU	33	9	3	8	1	0	54
S NOP	27	12	2	1	0	9	61
Total	145	2431	60	290	67	19	3012

undertaken many public services, accomplished by the government and public administrations for many years and they have sustained their entities until today, being

spreaded to almost every area of the public life. Although, some of these foundations disappeared in time, some of them have sustained until today and some others

continued their applications in different ways with new legal regulations.

(ii) The foundations during the Republic period, on the other hand, gained more judicial quality. Together with the establishment of the General Directorate for Foundations, the foundations were gathered under the same roof and they acted within the frame of the legislation and regulations, determined by Directorate. This played a significant role for the understanding of foundation to rally.

(iii) Although, the foundation immovables were chained during the Ottoman period, they were generally not subjected to cadastral proceedings. This problem has been tried to be removed from the Republic period until today with various legal regulations like –primarily – Turkish civil law, Law of Foundations, Law of Cadastre, Deed Law and Zoning Law.

(iv) In order to access to the data about the foundation immovables more efficiently, foundation immovable system was established. This system, which is called VaGIS, has almost solved one of the problems concerning the foundation immovables.

The following determinations have been made concerning foundations and foundation landownership by samsun regional directorate for foundations

(i) There are some problems with the application of recording deeds and endowment borders, due to the fact that the borders are generally indicated with personal names and that it is hard to apply on the land, concerning the cadastral studies.

(ii) During the cadastral studies and the process of case, chiefs of villages and authorities avoid witnessing for the benefit of foundations.

(iii) As a result of the cadastral studies, carried out between 2006 - 2009, it is revealed that nearly 2000 deeds are registered in behalf of foundation in 22 villages and 5 neighbourhoods of Samsun province, Ayvacık, Asarcık, Carsamba and Tekkekoy districts and nearly 5000 deeds are on the onset of registration. Since a great majority of the villagers on these immovables have not made a rental contract with Samsun Regional Directorate for Foundations, almost 6000 immovables shall become under occupancy after the cadastre studies. This condition allows foundations and citizens come face to face.

(iv) Application, zoning and parcellation plannings, carried out by municipalities and other public institutions and organizations, concerning the immovable properties of the General Directorate and registered foundations, shall be notified to the General Directorate in accordance with the law, numbered 5737, before being suspended. Additionally, in accordance with the Law of Foundations, it is obligatory to accomplish the immovable in a way to protect its income quality, while performing the zoning regulation. In spite of this, the municipalities generally behave conversely.

(v) During the applications of zoning, mosque organizations and citizens are given share at the available mosques of the foundations by municipalities, although, it is against the law.

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