
PROPERTY LAW — MEDIEVAL CHARITABLE TRUSTS — TURKEY'S HIGHEST ADMINISTRATIVE COURT ANNULS ATATURK'S 1934 DECISION CONVERTING THE HAGIA SOPHIA INTO A MUSEUM. — Daniştay, Onuncu Daire [Council of State, Tenth Chamber] Matter No. 2016/16015, Decision No. 2020/2595, July 2, 2020.

Last July, Turkey's President Erdogan sparked global controversy by ordering that Istanbul's Hagia¹ Sophia reopen as a mosque.² A UNESCO World Heritage site, the Hagia Sophia was a cathedral and then a mosque before it became a museum, thus standing as a symbol of interfaith harmony for many.³ Many saw President Erdogan's move as an attempt to energize his base in the face of declining poll numbers,⁴ but the decision technically came from a court. On July 10, 2020, the Council of State, Turkey's highest administrative court,⁵ held that the 1934 conversion of the Hagia Sophia into a museum constituted misappropriation of an Islamic charitable trust (*waqf*) and ordered that it revert to being a mosque.⁶ Despite claims that President Erdogan influenced the outcome,⁷ the decision was in fact legally correct. Where the court erred, however, was in its reasoning, as its cursory application of Ottoman law made an already controversial decision more vulnerable to criticism.

Built in 537 A.D., the Hagia Sophia stood as the premier cathedral of the Byzantine Empire until 1453, when Ottoman forces under Sultan Mehmed II conquered Constantinople and turned the cathedral into a mosque.⁸ A few years later, Mehmed endowed it as an Islamic charitable trust.⁹ It remained a mosque until 1934 when President Ataturk, founder

¹ Pronounced "Aya."

² See Carlotta Gall, *Erdogan Signs Decree Allowing Hagia Sophia to Be Used as a Mosque Again*, N.Y. TIMES (July 24, 2020), <https://nyti.ms/3gZbtfl> [<https://perma.cc/3JM5-B7UW>].

³ See Editorial, *The Hagia Sophia Was a Cathedral, a Mosque and a Museum. It's Converting Again.*, N.Y. TIMES (July 22, 2020), <https://nyti.ms/2OKBtW> [<https://perma.cc/A2PP-TU37>].

⁴ See Ragip Soylu, *Vulnerable and Flagging in the Polls, Erdogan Rattles His Base*, MIDDLE E. EYE (July 27, 2020, 1:19 PM), <https://www.middleeasteye.net/news/turkey-erdogan-hagia-sophia-coronavirus-economy-support> [<https://perma.cc/PX4S-QW7A>].

⁵ See *Duties*, PRESIDENCY OF THE COUNCIL OF STATE, <https://www.danistay.gov.tr/eng/official-5-duties.html> [<https://perma.cc/4EJE-D4ZY>].

⁶ Daniştay, Onuncu Daire [Council of State, Tenth Chamber] Matter No. 2016/16015, Decision No. 2020/2595, July 2, 2020, *translated in Court Decision Annuling Cabinet Decision of 1934 Converting Hagia Sophia into a Mosque*, SHARIASOURCE (July 28, 2020), <https://beta.shariasource.com/documents/3778> [<https://perma.cc/3Z2S-EZJ4>] [hereinafter *Hagia Sophia Case*].

⁷ Judith Herrin, *Opinion, Converting Hagia Sophia into a Mosque Is an Act of Cultural Cleansing*, WASH. POST (July 15, 2020, 8:00 AM), <https://www.washingtonpost.com/opinions/2020/07/15/converting-hagia-sophia-into-mosque-is-an-act-cultural-cleansing/> [<https://perma.cc/S7YG-2ESH>].

⁸ See *id.*

⁹ See Halil Inalcik, *The Policy of Mehmed II Toward the Greek Population of Istanbul and the Byzantine Buildings of the City*, 23/24 DUMBARTON OAKS PAPERS 229, 243 (1969/1970).

of the secular Republic of Turkey, converted it into a museum.¹⁰ The beginning of the end of the museum came on August 31, 2016, when the plaintiff — the Turkish Association for the Protection of Historical Monuments and the Environment¹¹ — petitioned the Prime Ministry to reopen the Hagia Sophia for worship.¹² On October 19, the Prime Ministry denied the petition, and on December 20, the plaintiff appealed to the Council of State.¹³

The Tenth Chamber¹⁴ of the Council of State granted the appeal and annulled the 1934 decision. The court's ruling contained three opinions, two of them advisory. The first, by the Investigating Judge,¹⁵ merely stated that he or she was "of the opinion that the [1934 decision] be annulled."¹⁶ The second, by the Prosecutor,¹⁷ disagreed and argued for denying the appeal.¹⁸

The Prosecutor began with two procedural concerns: preclusion and the statute of limitations. Regarding preclusion, the Prosecutor argued that a final judgment already existed on the issue because the Council of State had rejected a similar claim by the plaintiff in 2008.¹⁹ Regarding the statute of limitations, the Prosecutor argued that the plaintiff must have at least been aware of the 1934 decision by 2005, when it filed the prior claim, meaning the filing of this case in 2016 exceeded the statute of limitations.²⁰ The Prosecutor then addressed the substantive claims, concluding that the Hagia Sophia's status as a UNESCO World Heritage site made its use subject to government discretion and thus supported the legality of the 1934 decision.²¹

¹⁰ See *Ataturk's Decision to Convert Hagia Sophia into a Museum*, SHARIASOURCE (July 28, 2020), <https://beta.shariasource.com/documents/3779> [<https://perma.cc/C56B-BDDV>].

¹¹ The Association is the legal personality of an elderly former teacher who has been pursuing similar claims for years. See Niko Efstathiou, *The Vow of Ismail Kandemir*, EKATHIMERINI (July 12, 2020), <https://www.ekathimerini.com/254614/article/ekathimerini/community/the-vow-of-ismail-kandemir> [<https://perma.cc/Z87D-2XX7>].

¹² *Hagia Sophia Case*, *supra* note 6, at 1, 5.

¹³ *Id.*

¹⁴ A chamber is a subdivision of the court with a fixed panel of judges.

¹⁵ In civil law systems, investigating judges investigate cases before the court and prepare case records but do not sit on the panel. See JOHN HENRY MERRYMAN & ROGELIO PÉREZ-PERDOMO, *THE CIVIL LAW TRADITION: AN INTRODUCTION TO THE LEGAL SYSTEMS OF EUROPE AND LATIN AMERICA* 114–15 (4th ed. 2018).

¹⁶ *Hagia Sophia Case*, *supra* note 6, at 2.

¹⁷ In civil law systems, prosecutors serve multiple functions, among them "present[ing] their own independent view of the proper interpretation and application of the law." MERRYMAN & PÉREZ-PERDOMO, *supra* note 15, at 106.

¹⁸ *Hagia Sophia Case*, *supra* note 6, at 2–4.

¹⁹ *Id.* (citing Daniştay, Onuncu Daire [Council of State, Tenth Chamber] Matter No. 2005/125, Decision No. 2008/1858, Mar. 31, 2008).

²⁰ *Id.*

²¹ *Id.*

In an unsigned opinion, the panel unanimously disagreed with the Prosecutor.²² Regarding the statute of limitations, the court reasoned that a plaintiff appealing an executive decision may also challenge any decision upon which it rests, and since the denial in this case rested upon the 1934 decision, the plaintiff could challenge it anew.²³ Regarding preclusion, the court reasoned that the 2008 case did not involve allegations concerning the Hagia Sophia's trust status and so did not address the issue at hand.²⁴

The court then began its substantive analysis by noting that, according to the Turkish Civil Code both in 1934 and today, events preceding the 1926 adoption of the Civil Code are governed by Ottoman law.²⁵ The court added that, also according to the Civil Code, Islamic charitable trusts may only be modified if they "have become useless" or "contravene[] law or public policy."²⁶ The court therefore concluded that Turkish law preserves the legal status of Ottoman trusts and the intent of their endowers.²⁷

The court then turned to precedent. It first cited a decision by the Court of Cassation²⁸ holding that evaluation of a trust under Ottoman law requires examining the trust's charter.²⁹ As an example, the court pointed to the case of Istanbul's Kariye Mosque, which, like the Hagia Sophia, was a church then a mosque before it became a museum.³⁰ In 2019, the Council of State invalidated its conversion into a museum as violating the trust's charter.³¹ Finally, regarding its obligations to the European Court of Human Rights (ECHR),³² the court reasoned that violating an Islamic trust's charter "contravene[s] ECHR caselaw" in

²² See *id.* at 18. The court did agree with the Prosecutor on one point: it rejected the argument that the signatures on the 1934 decision should be analyzed for forgery. See *id.* at 3–4.

²³ *Id.* at 5.

²⁴ *Id.* at 6.

²⁵ See *id.* at 6–7 (citing KANUNU MEDENİNİN SURETİ MERİYET VE ŞEKLİ TATBIKI HAKKINDA KANUN [LAW ON THE APPLICATION AND ENFORCEMENT OF THE CIVIL CODE] no. 864, art. 1 (June 19, 1926), *repealed by* TÜRK MEDENİ KANUNUNUN YÜRÜRLÜĞÜ VE UYGULAMA ŞEKLİ HAKKINDA KANUN [LAW ON THE APPLICATION AND ENFORCEMENT OF THE TURKISH CIVIL CODE] no. 4722, art. 1 (Dec. 3, 2001)).

²⁶ *Id.* at 7 (citing SAYILI VAKIFLAR KANUNU [WAQF LAW] no. 2762, art. 10).

²⁷ See *id.* at 9.

²⁸ The Court of Cassation is the final venue for most private and criminal matters. See Serap Yazıcı, *A Guide to the Turkish Public Law Order and Legal Research*, HAUSER GLOB. L. SCH. PROGRAM, N.Y.U. SCH. L. (Sept. 2006), <https://www.nyulawglobal.org/globalex/Turkey.html> [<https://perma.cc/S4B7-WJ2Z>].

²⁹ *Hagia Sophia Case*, *supra* note 6, at 9 (citing Yargıtay Hukuk Genel Kurulunun [Assembly of Civil Chambers of the Court of Cassation] Matter No. 2007/18-293, Decision No. 2007/310, May 30, 2007).

³⁰ *Id.* at 9–10.

³¹ *Id.* at 11 (citing Danıştay İdari Dava Daireleri Kurulunun [Council of Chambers of Administrative Matters] Matter No. 2018/142, Decision No. 2019/3130, June 19, 2019).

³² Turkey bound its courts to the ECHR in 1990. Yazıcı, *supra* note 28.

light of a 2008 decision annulling the Turkish government's seizure of an Armenian church complex on the grounds that it was protected by an Ottoman-era trust.³³ The court then considered whether the UNESCO Convention could prevent the Hagia Sophia's becoming a mosque. Quoting the Convention as "fully respecting the sovereignty" of nations "without prejudice to property rights provided by national legislation,"³⁴ the court concluded that the Convention supported the full application of domestic law to a UNESCO site.³⁵

Based on this analysis, the court determined that the state has both a positive obligation to ensure trusts are used according to the endower's intent and a negative obligation to avoid interfering with trusts in contravention of the endower's intent.³⁶ The court therefore concluded that there was no legal basis for the 1934 decision, which disregarded these duties and turned the Hagia Sophia into a museum.³⁷

Though the court purported to apply Ottoman law, it failed to engage with the distinct legal issues raised at each of the three critical junctures of the Hagia Sophia's history: its conversion into a mosque in 1453, its endowment as a trust a few years later, and its conversion into a museum in 1934. Had the court conducted this analysis, it would have arrived at the same conclusion, but through the more specific reasoning that: 1) Mehmed was entitled to convert the Hagia Sophia into a mosque; 2) Mehmed was entitled to endow the Hagia Sophia as a trust; and 3) President Atatürk was not entitled to alter that trust.

Before beginning this analysis, it is first useful to clarify that Ottoman law is essentially Hanafism, one of the four schools of Sunni Islamic law, which the Ottomans officially adopted.³⁸ However, Hanafism, and Islamic law more broadly, is the product of a decentralized, transnational enterprise of jurists and judges stretching from Muslim Spain to Indonesia and from the eighth century to today. Where, then, is its binding precedent? Most agree it lies in "the scholar's book" — meaning the genre of legal commentaries authored by jurists.³⁹ Of course, jurists often disagree, but commentaries catalog those disagreements and select one ruling as binding precedent while preserving

³³ *Hagia Sophia Case*, *supra* note 6, at 14 (citing *Samatya Surp Kevork Ermeni Kilisesi, Mektebi Ve Mezarlığı Vakfı Yönetim Kurulu v. Turkey*, App. No. 1480/03 (Dec. 16, 2008), <http://hudoc.echr.coe.int/eng?i=001-90264> [<https://perma.cc/N6LN-UHAM>]).

³⁴ *Id.* at 15 (quoting UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, art. 6, *adopted* Nov. 16, 1972, 27 U.S.T. 37).

³⁵ *See id.* at 16.

³⁶ *Id.* at 17.

³⁷ *Id.* at 18.

³⁸ *See* GUY BURAK, *THE SECOND FORMATION OF ISLAMIC LAW: THE HANAFI SCHOOL IN THE EARLY MODERN OTTOMAN EMPIRE* 2 (2015).

³⁹ *See* TALAL AL-AZEM, *RULE-FORMULATION AND BINDING PRECEDENT IN THE MADHHAB-LAW TRADITION* 11 (2017).

minority opinions.⁴⁰ Luckily for the court, the legal literature shows that Hanafi jurists were overwhelmingly aligned on each of the issues relevant to this case.

First, the court could have shown that Mehmed's conversion of the Hagia Sophia into a mosque was valid based on Hanafi jurisprudence regarding conquest by force. Some critics of the decision argued the opposite, stating that the initial conversion was invalid because Islamic law protects places of worship, as evidenced by early Muslim rulers like the Caliph Umar, who preserved places of worship in Jerusalem after conquering the city in 637.⁴¹

However, this argument dismisses Islamic law's distinction between conquest by surrender and conquest by force. According to Hanafi jurists, surrender necessitates respecting existing property rights,⁴² particularly for places of worship.⁴³ This explains the example of Jerusalem, which surrendered, after which Umar guaranteed the safety of its people, property, and churches.⁴⁴ In contrast, under Hanafi law, conquest by force permits voiding existing property rights,⁴⁵ including for places of worship.⁴⁶

This distinction bore out in Mehmed's conquests. Before besieging Constantinople, Mehmed accepted the surrender of nearby Galata in exchange for the safety of its people and property, including an assurance that no churches would be turned into mosques.⁴⁷ By contrast, though Mehmed twice offered similar terms to Constantinople, Emperor Constantine XI famously refused, stating "it is our common resolve willingly to die."⁴⁸ Constantinople was then conquered by force,⁴⁹ which by Hanafi doctrine entitled Mehmed to convert the Hagia Sophia into a mosque.

Next, the court could have shown that Mehmed validly endowed the Hagia Sophia as a trust. This is a surprisingly tricky question because trusts, whether in Islamic law or Western law, ordinarily require private

⁴⁰ See *id.* at 162–66.

⁴¹ See, e.g., Mustafa Akyol, Opinion, *Would the Prophet Muhammad Convert Hagia Sophia?*, N.Y. TIMES (July 20, 2020), <https://www.nytimes.com/2020/07/20/opinion/hagia-sophia-mosque.html> [<https://perma.cc/W42H-A3WD>].

⁴² 1 MOLLĀ ḤÜSREV, DURAR AL-ḤUKKĀM FĪ SHARḤ GHURAR AL-AḤKĀM 285 (1912).

⁴³ ḤASAN AL-SHURUNBULĀLĪ, AL-ATHAR AL-MAḤMŪD LI-QAHR DHAWĪ AL-'UHŪD 63 (2009) ("As for cities conquered by surrender, their places of worship should be preserved as they were before conquest.").

⁴⁴ See MOSHE GIL, A HISTORY OF PALESTINE, 634–1099, at 54 (1992).

⁴⁵ 4 BURHĀN AL-DĪN AL-MARGHĪNĀNĪ, AL-HIDĀYA 239 (Na'im Ashraf Nūr Muḥammad ed., 1996); 1 ḤÜSREV, *supra* note 42, at 285.

⁴⁶ AL-SHURUNBULĀLĪ, *supra* note 43, at 63.

⁴⁷ JONATHAN HARRIS, THE END OF BYZANTIUM 217–18 (2010).

⁴⁸ *Id.* at 190; see also Inalcik, *supra* note 9, at 232.

⁴⁹ See Inalcik, *supra* note 9, at 233 n.11 ("The tale that the entire city, or part of it, surrendered on terms is a fiction . . .").

property; people cannot endow what they do not own.⁵⁰ However, the Hagia Sophia could not have become Mehmed's property after the conquest. According to Hanafi jurists, a conquering ruler has discretion over whether to honor some or all existing property rights.⁵¹ If he does seize any property, he is entitled to make one-fifth of seized property public for the benefit of the poor, but otherwise must divide it among his soldiers according to specific guidelines.⁵² Neither option would have allowed Mehmed to take property as his own.

The trust charter further supports that the Hagia Sophia became public property after 1453. While the original is lost, a copy made in 1490 lists all of Mehmed's Istanbul trusts.⁵³ They number in the thousands and include schools, hospitals, and libraries, as well as shops and income-generating properties to fund those facilities.⁵⁴ Far from looking like Mehmed's private property, these are the city's civic institutions, fitting well within the category of property made public after conquest.

Meanwhile, the two arguments for the Hagia Sophia's having become Mehmed's property are unsound. The first, which went viral online, says that Mehmed purchased the Hagia Sophia from the Christians, but there is no historical evidence of this,⁵⁵ and the "purchase document" circulating as proof is a random page of the trust charter that mentions nothing about purchase.⁵⁶ The second, put forward by some historians, claims that Mehmed owned the Hagia Sophia according to his Turco-Mongol conception of sovereignty.⁵⁷ These historians admit this conception conflicts with Islamic law, since Islamic law,⁵⁸ like medieval English law,⁵⁹ distinguishes between a king's "two bodies": one

⁵⁰ See 2 HÜSREV, *supra* note 42, at 132; JOSEPH SINGER ET AL., PROPERTY LAW 739 (2017).

⁵¹ See 1 HÜSREV, *supra* note 42, at 285.

⁵² *Id.*

⁵³ See T.C. FATİH SULTAN MEHMET VAKİH ÜNİVERSİTESİ, AYASOFYA ÖZEL SAYISI 1-168 (2014) [hereinafter *Trust Charter*]. Professor Halil Inalcik dates it to 1490. Inalcik, *supra* note 9, at 243 & n.67.

⁵⁴ See Inalcik, *supra* note 9, at 243. See generally *Trust Charter*, *supra* note 53.

⁵⁵ See Laith Itmaiza, *Sultan Mehmed II Never Bought Hagia Sophia*, MISBAR: FACTCHECK (July 16, 2020), <https://misbar.com/en/factcheck/2020/07/16/sultan-mehmed-ii-never-purchased-hagia-sophia> [https://perma.cc/G82R-VWVN].

⁵⁶ Compare Shahid Qureshi, *Sultan Mehmet "Bought" Haiga [sic] Sophia Before Converting into (Mosque) Masjid — Purchase Documents Submitted to Turkish Supreme Court*, LONDON POST (Lahore, Pakistan, July 13, 2020), <http://thelondonpost.net/sultan-mehmet-bought-haiga-sophia-converting-mosque-masjid-purchase-documents-submitted-turkish-supreme-court> [https://perma.cc/3ZSN-FXK4], with *Trust Charter*, *supra* note 53, at 13.

⁵⁷ Ovaamir Anjum, FACEBOOK (July 25, 2020, 10:04 PM), https://www.facebook.com/permalink.php?story_fbid=10111220072801047&id=8642218 [https://perma.cc/5E68-3DUM].

⁵⁸ See generally Mu'taz al-Khaṭīb, *al-Tamyīz bayn al-Shakhṣī wa-l-Sultānī fī al-Fiqh al-Islāmī* [Differentiating Between the Sovereign's Private and Public Capacities in Islamic Law], INT'L UNION FOR MUSLIM SCHOLARS (July 30, 2020, 2:52 AM), <http://iumsonline.org/fal/ContentDetails.aspx?ID=12097> [https://perma.cc/J9QM-TK88].

⁵⁹ See Case of the Duchy of Lancaster (1561) 75 Eng. Rep. 325, 326; 1 Plowd. 212, 213; see also Daphna Renan, *The President's Two Bodies*, 120 COLUM. L. REV. 1119, 1127-29 (2020).

personal (by which he owns private property) and one political (to wield sovereign powers). However, these historians argue that Mehmed believed he owned all he conquered and that sovereign will trumps law,⁶⁰ echoing Chief Justice Marshall's declaration that "[c]onquest gives a title which the Courts of the conqueror cannot deny."⁶¹ But even if Mehmed believed this, Islamic law, as a transnational regime, is well positioned to limit — and historically often did limit — a sovereign's claim to title.⁶² This is doubly true here because the issue is the legal validity of the trust, and triply true because the charter shows that a judge validated it.⁶³ If the trust took effect by Hanafi law, it should be governed by it. Legally, then, the Hagia Sophia was public property, which at first glance undermines the trust's validity, and therefore the court's decision.

Luckily for the court, although the Hagia Sophia was public property, Hanafi law permits sovereign rulers (like Mehmed) to endow public property as a trust so long as the trust's beneficiary is the general public.⁶⁴ Jurists call this an "earmark trust (*waqf irṣādī*),"⁶⁵ since rulers use it to earmark public property for particular uses. However, earmark trusts come with a major caveat: "[T]hey are not true trusts."⁶⁶ Rather, because future rulers are also sovereign over public property, future rulers are "entitled to contradict the terms" of earmark trusts.⁶⁷

This leads to the court's third oversight: its failure to show that President Atatürk, though a sovereign dealing with the Hagia Sophia's earmark trust, was not entitled to contradict its terms. Here, Hanafi jurists offer two explanations: either that earmark trusts of mosques are a special case, or that a ruler cannot entirely repurpose an earmark trust.

The first explanation appears in an advisory opinion (*fatwā*) by Ebussuud, chief judge of the Ottoman Empire in the mid-sixteenth century, who mentions the Hagia Sophia by name.⁶⁸ He writes that rulers are only entitled to modify earmark trusts of income-generating properties that implicate the state's financial affairs.⁶⁹ But mosques, he says, lack this financial dimension, and so earmark trusts of mosques, including the Hagia Sophia, are binding against future rulers.⁷⁰

⁶⁰ See Anjum, *supra* note 57.

⁶¹ Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 588 (1823).

⁶² See al-Khaṭīb, *supra* note 58.

⁶³ *Trust Charter*, *supra* note 53, at 13.

⁶⁴ See 4 IBN 'ĀBIDĪN, RADD AL-MUḤTĀR 596 ('Ādil Aḥmad 'Abd al-Mawjūd & 'Alī Muḥammad Mu'awwaḍ eds., 2003).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* at 183.

⁶⁸ Ebussuud, *Min al-Masā'il al-Muhimma* 48v (Suleymaniye Library, Reşid Efendi Collection No: 1036).

⁶⁹ *Id.*

⁷⁰ *Id.*

The later jurist Ibn ‘Ābidīn gives the second explanation. He writes, “by saying that a ruler is not required to obey the terms of [earmark] trusts,” jurists mean that a ruler “is entitled to add or remove terms, not to completely repurpose the trust.”⁷¹ Ibn ‘Ābidīn cites historical evidence for this, stating that jurists have prevented many rulers from repurposing earmark trusts,⁷² and that one jurist — when asked about Sultan Jaqmaq’s earmark trust of a mosque in fifteenth-century Egypt — ruled that “no future ruler may undo it.”⁷³ While the line between “modifying” and “repurposing” is unclear, turning a mosque into a museum seems squarely like the latter. By either justification, then, the court was correct that President Atatürk’s 1934 decision was invalid.

Ultimately, the practical effects of this decision were surprisingly limited; tourists can still visit the Hagia Sophia, just not during prayer services, but now with free admission.⁷⁴ Nor does the decision violate international heritage law,⁷⁵ as many other UNESCO sites — like Notre-Dame Cathedral and Westminster Abbey — also function as places of worship. This underscores that the real controversy was of course symbolic: the move was a step away from Turkey’s secular identity and back toward its Ottoman identity.⁷⁶ One could therefore see this controversy as yet another example of the frustration caused when dead-hand control prevails over public opinion,⁷⁷ a problem common to all property law regimes.⁷⁸ Still, as the court noted, it is President Atatürk’s own Civil Code that applies Ottoman law to old events. Moreover, Ottoman *waqf* law also protects sites of Turkey’s religious minorities,⁷⁹ highlighting the potential danger of courts selectively ignoring the law. Thus, no matter their feelings on the politics and symbolism of this event, supporters of the rule of law should acknowledge that the court’s decision, though incomplete, was correct.

⁷¹ 4 IBN ‘ĀBIDĪN, *supra* note 64, at 654–55.

⁷² *Id.*

⁷³ *Id.* at 393 (citing the major Hanafi jurist Ibn Quṭlūbughā).

⁷⁴ See Gall, *supra* note 2.

⁷⁵ See Lando Kirchmair, *Turning Hagia Sophia into a Mosque (Again): Has International Law Anything to Say About That?*, VÖLKERRECHTSBLOG (July 21, 2020), <https://voelkerrechtsblog.org/articles/turning-hagia-sophia-into-a-mosque-again> [<https://perma.cc/5M89-DVQ9>] (“[T]he status change seems not to be forbidden by international law . . .”).

⁷⁶ See Herrin, *supra* note 7.

⁷⁷ Outsiders should also scrutinize whose “public opinion” matters; the international community condemned the move, but around seventy-three percent of Turks supported it. See Arwa Ibrahim, *Turkey’s Hagia Sophia and the Battle to Reconvert It to a Mosque*, AL JAZEERA (July 2, 2020), <https://www.aljazeera.com/news/2020/7/2/turkeys-hagia-sophia-and-the-battle-to-reconvert-it-to-a-mosque> [<https://perma.cc/8MLJ-HJQU>].

⁷⁸ See SINGER ET AL., *supra* note 50, at 740.

⁷⁹ See *Samatya Surp Kevork Ermeni Kilisesi, Mektebi Ve Mezarlığı Vakfı Yönetim Kurulu v. Turkey*, App. No. 1480/03 (Dec. 16, 2008), <http://hudoc.echr.coe.int/eng?i=001-90264> [<https://perma.cc/N6LN-UHAM>] (returning a Christian church complex to the ownership of the Armenian community based on an Ottoman-era *waqf*).