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DIASPORA ARMENIANS AND THEIR INITIATIVES FOR COMPENSATION: THE REFLECTIONS OF THE MOVSESIAN CASE

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Diaspora Armenians speeded up their efforts to seek out compensation from Turkey before 2015. Especially the legal and political issues that had been settled with the Treaty of Kars and then the Lausanne Treaty are tried to be brought to the agenda again in the California courts and in the United States. These Armenians who are now US citizens are attempting to utilize the US legal system to seek compensation for the abandoned properties on Ottoman territories or confiscated during relocation and their life insurances made before the relocation. Claiming that the life insurances of the Ottoman Armenians, of which they are the inheritors, were never compensated and were subjected to genocide by the Ottoman government, they were able to obtain successful results from the lawsuits they had filed to French and American insurance companies until now. However, the German insurance company Munich Re has opposed this jurisdiction of US courts. In fact, it could be seen that a decision reached last week has blocked other initiatives that the Diaspora Armenians could have taken before 2015 before the US Courts. The Fortress of the Diaspora: The State of California In the state of California where the Diaspora Armenians are most concentrated and organized, an article has been included in the California Code of Civil Procedure in 2000 together with a definition of Armenian Genocide Victim within the California legal system. Section 354.4 has introduced a regulation where the Armenian Genocide Victim or their heirs seeking benefits under the insurance policies of 1875-1923, could file suits until 31 December 2010 (In 2011, this date has been extended to 31 December 2016). Therefore, some individuals, asserting that they are the heirs of Ottoman citizens of Armenian origin, have filed various lawsuits in Californian courts. In February 2004, New York Life Insurance (NYLI) company have agreed to give 20 million dollars to the Armenians through a deal. Later on, as a result of the negotiations held with the French AXA insurance company, the French company has accepted to pay 17 million dollars, but from what could be understood later on, a very small amount of this money has been paid to the families of the policy owners. (The lawyers of the policy owners have engaged in a lawsuit among themselves due to disagreement and the payments they were to receive from both cases. According to the statements and news in the press, a great portion of the compensations have been paid as attorney fees.) These two cases are the results the Diaspora Armenians obtained through compromise before the cases were concluded. However, the lawsuit filed in 2003 by Priest Vazken Movsesian

against the German insurance company Munich Re has not been concluded in a similar manner. The matter in dispute, as in the cases of NYLI and AXA, is the insurance policies alleged not to have been paid. In reference to the definition of the Armenian genocide victim in section 354.4 of the California CCP, both lawsuits have been filed in the court of California with the allegation that they are victims of genocide and their insurance policies have not been paid. While AXA and NYLI have taken the path of compromise, the German Munich Re company has continued the case. The decision reached by the court against Munich Re was appealed and the court of appeal ruled on August 2009 that section 354.4 of the California CCP, within the framework of foreign policy doctrine, violated the foreign policy preference of the US executive power. Accordingly, the executive branch had until now publicly opposed in the US House of Representatives the bills on the recognition of the Armenian Genocide becoming laws. In US Constitution, Federal Law is preempted under any state law conflicting with itself. By using the term Armenian Genocide of section 354.4, Judge Thompson has indicated that it conflicts with the US Presidents open foreign policy preference. In fact, Thompson has put forth that the real purpose of the law in California is not to compensate for the insurance claims of a certain group of individuals but that the California legislative expressed its discontent towards the foreign policy preferences of the Federal government and that this has been made in contradiction with the Constitution. Despite this very explicit legal situation, the decision being appealed upon the objections of the Armenians has been changed on 10 December 2010 in the panel formed by the same judges. This time with 2 votes against 1, it has been decided that section 354.4 is not contradictory to federal foreign policy preference, because no such federal policy exists and by putting forth that there is no federal policy that prohibits states from using the term Armenian Genocide, have reversed their previous decision. By sending an amicus curiae to the court, the Republic of Turkey has indicated that section 354.4 directly concerns Turkish-US relations and that the Turkish government has never consented to being accused of genocide in its past in any US forum. Thus, Munich Re has objected to this decision and has proposed a en banc hearing to take place consisting of all members of the court. This panel took place on December 14th 2011 and the attorneys of both sides have for the last time conveyed their views regarding applicability of section 354.4 in front of the en banc hearing. The Decision of 23 February In its decision of 23 February, the court has reviewed section 354.4 from the aspect of Foreign Policy Doctrine and has reached the following results: 1. The Constitution gives the federal government the exclusive authority to administer foreign affairs. 2. Under the foreign affairs doctrine, state laws that intrude on this exclusively federal power are preempted. So these laws are no longer valid. This could be determined in two different ways. a. Conflict Preemption: a state law must yield when it conflicts with an express federal foreign policy b. Field Preemption: a state law may be preempted if it intrudes on the field of foreign affairs without addressing a traditional state responsibility. 3 ☀ Supreme Court recognized that the Constitution implicitly grants to the federal government a broad foreign affairs power. The existence of this general foreign affairs power implies that, even when the federal government has taken no action on a particular foreign policy issue, the state generally is not free to make its own foreign policy on that subject. Considering the tradition powers of states, Section 354.4 does not concern an area of traditional state responsibility and intrudes on the federal governments foreign affairs power ☀ 4 ☀ section 354.4 applies

only to a certain class of insurance policies and specifies a certain class of people. The purpose of the section is not to compensate the insurance policies, but it is clear that the real purpose of section 354.4 is to provide potential monetary relief and a friendly forum for those who suffered from certain foreign events. But this purpose remains outside the traditional state responsibility ☀ 5 ☀ Section 354.4 has more than some incidental or indirect effect on foreign affairs. The statute expresses a distinct political point of view on a specific matter of foreign policy. It imposes the politically charged label of genocide on the actions of the Ottoman Empire and expresses sympathy for Armenian Genocide victims ☀ holding that, even in the absence of a conflicting federal policy, a state may violate the constitution by establishing its own foreign policy ☀ 6. In conclusion, section 354.4 expresses a distinct point of view on a specific matter of foreign policy. Its effect on foreign affairs is not incidental; rather, section 354.4 is, at its heart, intended to send a political message on an issue of foreign affairs. The law imposes a concrete policy of redress for Armenian Genocide victims, subjecting foreign insurance companies to suit in California by overriding forum-selection provisions and greatly extending the statute of limitations for a narrowly defined class of claims. We remand the case to the district court with instructions to dismiss all claims revived by that statute. This decision has caused the Movsesian case to be concluded in favor of Munich Re. We will evaluate the possible consequences of the claim for damages filed in Californian courts against the Republic of Turkey and its institutions in our next article.

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