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Lawsuit Seeks Return of Seized Lands: Incirlik Airbase Sits on Disputed Territory

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Overview of Incirlik Airbase

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LOS ANGELES — The struggle for justice concerning the Armenian Genocide has taken many forms. Armenians have tried to use academia, the media, legislation and diplomacy, protests and even, briefly, violence in this struggle. Until recently international political and scholarly recognition of the Armenian Genocide's very existence was the primary goal, but with this seemingly largely accomplished, despite some important exceptions, Armenian efforts have turned to the issue of compensation and land. American and international courts have furnished new arenas to pursue these efforts. The California-based lawyer Vartkes Yeghiayan has been the most active single individual in initiating lawsuits for compensation to Genocide victims and their descendants. Most recently, after a series of suits against insurance companies withholding payments to the heirs of Armenian victims, he filed suit directly against the Republic of Turkey and two Turkish banks concerning Armenian-owned land now either near or part of an airbase used by the United States in Incirlik, Turkey.

This airbase, seven miles east of the city of Adana in southeastern Turkey, has played an important role in supporting the US wars in Iraq and Afghanistan. Its construction began in 1951 and was completed in 1954 as part of US Cold War efforts. Its strategic location turned it into a primary host for U2 spy missions into the Soviet Union and for the 1958 US intervention in Lebanon. It also has served as a hub for US humanitarian aid to Turkey. The US operates there as part of NATO. Nuclear bombs are stored at the base. More mundanely, but pertinent for the lawsuit, large American corporations like Baskin- Robbins, Taco Bell and Pizza Hut operate on the territory of the base. The properties on which the base lies were entrusted to Ziraat Bank from 1915 to 1923, and to the Central Bank of Turkey thereafter.

The three Armenian-American plaintiffs — Rita Mahdessian, Alex Bakalian and Anais Haroutunian — are represented by the Yeghiayan Law Firm, together with Los Angeles attorneys Kathryn Lee Boyd and David Schwarcz of Todd, Ferentz, Schwarcz & Rimberg. Michael Bazyley from the Chapman University School of Law, a specialist on genocide law and restitution, is serving as a consultant. The three plaintiffs, acting on behalf of their respective relatives and families, have deeds and documents proving that their grandparents owned part of the land of the base. The lawsuit, filed on December 15, 2010, asks for “fair market rents and other relief” for roughly 122.5 acres of property estimated to be worth \$63.9 million based on data from the US Department of Defense. Roughly \$100 million is sought as compensation.

One of the plaintiffs in particular, Mahdessian, is Yeghiayan's wife, adding no doubt an additional personal

element to the suit, though Yeghiayan did not initiate it for this reason. Yeghiayan said in a recent interview, “Many survivors from Incirlik found me. We had about 14 property deeds and we have another 16 deeds of other people who want to join the lawsuit but are still negotiating conditions. In almost every property deed they mention the names of neighbors, three out of four of which are Armenians. So there are a lot more Armenians for whom we are looking. I put ads in papers to find them but am still awaiting further contacts.”

Yeghiayan provided additional information about the background of the plaintiffs. In his words, “plaintiff Alex Bakalian is a resident of Washington, DC, and lawful heir of three relatives, each of whom owned property in Turkey. Bakalian’s first relative is his paternal grandfather, Dikran Bakalian, who was born in 1868 in Adana and died June 1950 in Beirut, Lebanon. Dikran Bakalian and his family were forced to flee in 1921, leaving behind all their possessions and properties. Bakalian’s second relative is his paternal grandmother, Kalina Hatun (Gulenia) Shamassian. Born in 1892 in Adana, she married Dikran Bakalian in 1903. She died in Beirut, Lebanon, in 1978. Kalina Hatun (Gulenia) Shamassian’s only surviving son, Guiragos Bakalian, currently lives in Beirut, Lebanon, and Bakalian is his nephew. Bakalian’s third relative is Ahsapet Shamassian (born Bouldoukian), the sister-in-law of his paternal grandmother. She was born in Adana, married Hovsep Shamassian (the brother of Kalina Hatun (Gulenia) Shamassian), and eventually settled in Damascus, Syria.”

The second plaintiff, Anais Haroutunian, “is a United States citizen and resident of Pasadena, Calif. Anais Haroutunian is the granddaughter and lawful heir of Apraham Geovderelian. Apraham Geovderelian owned four pieces of property in Incirlik. In 1915, when the Armenian Genocide began, he was murdered together with his wife and three of his children. The four remaining children all relocated to Beirut, Lebanon, and are now deceased.”

The third plaintiff, Mahdessian, representing the Boyadjian family, including maternal cousin Mihran Boyadjian, is “related to Mihran Boyadjian Sr., who owned two properties in Adana. Mihran Boyadjian Sr., fled Adana in 1915 at the outset of the Armenian Genocide. When the province of Adana was given to France as a mandate at the end of World War I, Mihran Boyadjian Sr., returned to Adana to reclaim his properties. However, when the French mandate was removed in 1922 and the region returned to Turkey, Mihran Boyadjian Sr., had to escape from the province of Adana/Incirlik again, with his family, and relocate to Hama-Homs, Syria. The family then moved to Cyprus.”

In a May 17, 2011 article in the Turkish newspaper *Hürriyet* by Vercihan Ziflioglu, Yeghiayan stated the rationale behind his lawsuit, “In this case our clients are able to sue the government of the Republic of Turkey, the Central Bank of Turkey and the Ziraat Bankası because of the following reasons: Turkey committed a violation of international laws and proceeded to illegally confiscate properties from their rightful owners; in the process, Turkey also proceeded to violate its own constitution and the Lausanne Treaty. But more importantly, they have used these ill-obtained properties to run commercial operations.”

Turkey refused to accept service of the lawsuit, so the plaintiffs had recourse to US diplomatic channels. Turkey was given sixty days (by August 19, 2011) to answer but did not, while the two banks, the Central Bank of Turkey and T. C. Ziraat Bank, received an extension allowing them to respond by September 19. They proceeded to hire several US attorneys, including David Saltzman from the firm of Saltzman and Evinch. Saltzman has served as counsel for the Turkish embassy in Washington in the past, and counsel for the Turkish Coalition of America. He has been involved in a number of other lawsuits on behalf of Turks or Turkey against various

Armenian parties, and has promoted denial of the Armenian Genocide. The bank's newly hired attorneys filed replies on September 19 asking for dismissal of the case on a number of grounds. They argued that though banks, the two institutions qualify as "foreign states" with sovereign immunity from the jurisdiction of the California court; furthermore, they claimed that the Act of State doctrine, according to which the courts of one country may not judge the domestic acts of another government, bars the suit, while the 1934 claims agreement between Turkey and the US, and the 1980 agreement for cooperation on defense and economy between the same two countries also conflict with this suit. The court and the state of California would be impermissibly interfering with US foreign affairs. The convenience of the parties involved and the interests of justice require a different forum for this action.

The defendant banks argued that all applicable statutes of limitations bar the suit, and finally, they asserted that there is no relevant claim given for which relief can be granted. Now it is the turn of the plaintiffs represented by Yeghiayan to give their counterarguments to the court against the banks.

The Republic of Turkey, unlike the banks, has continued to take a different approach. Consequently, on August 29, the plaintiffs asked the US District Court for the Central District of California to declare the Republic of Turkey to be in default, which could eventually result in a variety of penalties and a decision in favor of the plaintiffs. As Yeghiayan said in the May 17 *Hürriyet* article, "Choosing to ignore the lawsuit won't make it go away." The court agreed that Turkey was in default on September 1.

In addition to the newspaper *Hürriyet*, the lawsuit has received further coverage in other Turkish media outlets like *Vatan* (September 2, 2011), *Today's Zaman* (September 9) and *haber7.com*. In the latter's September 7 issue, an article entitled "Incirlik Ermeni degil, vakıf malı çıktı!" argues that the Incirlik property actually belonged to the Ramazanoglu Foundation. Journalist and researcher Fatih Bayhan claims that his evidence concerning the Incirlik properties goes back to the 1500s, and wonders how the Armenians would have obtained these properties. The Ramazanoglu Foundation has opened thousands of lawsuits, according to Bayhan, to get back its properties in the Adana area and elsewhere, and has already won some of them. A writer in *Today's Zaman Mobile Edition* (September 15) summarizes an interview of Yeghiayan in the Turkish-Armenian weekly *Agos*, wonders about the statute of limitations, and promises to follow the case as it develops.

In the Republic of Armenia, Naira Hayrumian in a December 23, 2010 *Iragir.am* article speculated that the United States was somehow behind this lawsuit, and other actions against Turkey concerning the Genocide, as a way to threaten and pressure Turkey to carry out various US policies. In this particular case, she wrote that it was connected to talks Turkey was holding with Iran concerning a new NATO anti-rocket defense system. However, Hayrumian has not presented any evidence to back up this theory, while Yeghiayan's dedication to the issue of compensation and justice for the Genocide seems enough to ensure that similar lawsuits will continue to be filed. Yeghiayan commented on the claim of US manipulation behind the scenes: "Absolutely not true. We represent the clients who have justifiable claims as will be proven in court and we have no connection to the US Government nor are we trying to put pressure on the US Government."

Yeghiayan continues his work on other Armenian Genocide-related legal issues while pursuing the Incirlik case. In 2007, a US district court judge ruled that Armenian Genocide survivors' heirs could use a law passed by the California legislature in 2000 extending the statute of limitations to sue German insurance companies, but this was reversed in a 2009 ruling by a three-judge panel of the US Ninth Circuit Court of Appeals. This reversal was

overruled in December 2010. This case, *Movsesian v. Victoria Versicherung*, still is unresolved as the defendants now have requested a panel of judges to rehear the case. There are a number of other Armenian Genocide-related lawsuits that Yeghiayan is involved in at the present.

There is also an outstanding dispute between Yeghiayan and his former partners, Mark Geragos and Brian Kabateck, concerning the disposition of money jointly won from the French insurance company AXA for Armenian Genocide victims' heirs, which hopefully will be settled quickly, justly and openly, thus restoring confidence in the judicial route for compensation for Armenian Genocide victims. According to Roman M. Silberfeld, the lawyer representing Yeghiayan on this particular matter, Yeghiayan has already provided through a voluntary and cooperative process documents which Silberfeld expects will satisfy Geragos and Kabateck that in fact nothing improper has taken place. As far as AXA is concerned, there will be a hearing before Judge Christina A. Snyder in Los Angeles on September 26. The three parties (Yeghiayan as represented by Silberfeld, Geragos and Kabateck) and their law firms are intensively conducting an investigation. They intend to file a joint report for the court outlining what they discover about the settlement administration, which was not conducted directly by any of the three lawyers. There are some half a dozen problems to be sorted out involving a significant sum of money. Some 75 people who were issued multiple checks say that they did not receive all the checks to which they were entitled.

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