



Turkish Banks Not Immune From Suits in U.S. Courts From Genocide Victims

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On March 26, 2013, a U.S. federal district court in Los Angeles sided with Armenian plaintiffs in a hard-fought case involving reparations for land seized from Armenians in Turkey during the Armenian Genocide. Nearly 15 months after the Turkish Central Bank and T.C. Ziraat Bankasi, a state-owned agricultural bank, asserted sovereign immunity and asked the court to dismiss the lawsuit, the court in a landmark decision determined that the Banks can be held to answer for the alleged expropriation of property of Ottoman and Turkish nationals when the taking is incident to mass human rights abuses, including genocide.

The lawsuit, filed by three descendants of Armenian Genocide victims in December 2010 under named plaintiff Alex Bakalian, Case Number 2:10-cv-09596, names as defendants the Republic of Turkey, the Central Bank of Turkey, and T.C. Ziraat Bankasi. The complaint accuses the defendants of stealing and then profiting from land that was illegally seized during the Armenian Genocide, when the Ottoman Turks drove Armenians from the Adana region of southern Turkey. The Republic of Turkey never appeared in the case despite being validly served with the complaint.

The recent decision also applies to a related case, styled as a purported class action under named class representative Garbis Davoyan, Case Number 2:10-cv-05636. The Banks filed similar motions to dismiss in both cases and the court issued a joint opinion focused on the facts alleged in Davoyan and the separate arguments developed by the two sets of plaintiffs.

Following long-established rules of immunity recognized by all nations, U.S. law abrogates the immunity from suit in U.S. courts that is traditionally afforded to foreign states and their agencies and instrumentalities in a few limited situations. The court was not persuaded by arguments that the Banks were not immune from suit because the allegations concerned commercial activity with a connection to the United States. The court also rejected an argument pursued by the Davoyan plaintiffs that the expropriation exception to the immunity rule applied because the plaintiffs' ancestors had effectively been stripped of their Ottoman nationality at the time of the taking. Rather, the court adopted the Bakalian plaintiffs' argument that focused on the well-developed body of human rights law that has emerged in recent decades and argued successfully that international law is violated even when a state expropriates the property of its own nationals, if the taking occurs in the context of massive human rights abuses. This decision is in line with those of other federal courts around the country, as well as human rights treaties that Turkey has signed and ratified.

Although the court's jurisdiction to hear the case is now established, the court ultimately determined that both cases should be dismissed because they presented political questions. That issue is now subject to appeal before the Ninth Circuit Court of Appeals.

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