

# COURT REJECTS ARMENIAN GENOCIDE CASE

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Category: [Opinions](#)



By Carol J. Williams, [Los Angeles Times](#), 21 August 2009

Armenian Americans descended from victims of the 1915-18 massacre by Ottoman Turks can't sue foreign insurance companies for unpaid claims because the U.S. government doesn't legally recognize that an Armenian genocide occurred, a federal appeals court ruled Thursday.

By Carol J. Williams, [Los Angeles Times](#), 21 August 2009

Armenian Americans descended from victims of the 1915-18 massacre by Ottoman Turks can't sue foreign insurance companies for unpaid claims because the U.S. government doesn't legally recognize that an Armenian genocide occurred, a federal appeals court ruled Thursday.

A Glendale priest and thousands of other Armenians whose relatives were among the 1.2 million killed had won a partial victory two years ago. U.S. District Judge Christina A. Snyder said then that a 2000 law passed by the California Legislature gave the descendants standing to sue three German insurance companies.

But a divided three-judge panel of the U.S. 9th Circuit Court of Appeals overturned that ruling, saying the California law attempted to undercut the president's diplomatic authority and had to be preempted by the federal policy against acknowledging the genocide.

Congress has considered resolutions three times in the last decade that would have provided official recognition of the genocide. Each time, the White House has stepped in to urge that the bills be scuttled, out of fear that passage would damage relations with Turkey, whose government disputes that a genocide took place.

"I think the decision is outrageous. If taken to its logical extension, what this decision means is that all 40 states that have recognized the Armenian genocide have to set aside that recognition," said Brian S. Kabateck, a Los Angeles lawyer representing the plaintiffs whose own maternal grandparents died in the genocide.

"This is a sad day for Armenian Americans," he said, adding that the decision would make recovery of victims' bank accounts, insurance proceeds and other property impossible. He vowed to appeal for rehearing by a larger panel of judges.

Vartkes Yeghiayan, the lawyer for lead plaintiff Father Vazken Movsesian of St. Peter Armenian Church, described the ruling as "devastating."

The attorney representing the German insurers, Neil M. Soltman, called the decision "a straight-down-the-middle determination that in the area of foreign affairs, federal power has to prevail."

Judge Harry Pregerson dissented from the majority opinion by Judges David R. Thompson and Dorothy W. Nelson. Pregerson wrote that the District Court had correctly judged the California statute as "within the state's traditional area of competence" in regulating the insurance industry.

The plaintiffs sought settlement of claims under policies issued by German insurers Victoria Versicherung and Ergo Versicherungsgruppe, as well as their parent company, Munchener Ruckversicherungsgesellschaft.

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### **Below are the comments made by attorney Vartkes Yeghiayan:**

"The decision of the Ninth Circuit in Movsesian case is a blow to the balance of federal and state power. In an age of globalization of even the most domestic legal realms: insurance, family law, property and tort, the decision today leaves states handcuffed to act in these areas when it may potentially conflict with the vicissitudes of political rhetoric.

Without requiring there to be any formal Executive policy on the issue that may have the mere potential to touch on international relations with Turkey – no statute, no Executive Order, and no formal foreign policy – the Court has held that states are prohibited from passing measures designed to remedy the economic damages by private institutions who perpetrated those wrongs during the time of the Armenian Genocide – wrongs that if occurred today would be recompensed in court for the same victims against the same insurance companies.

Without requiring there to be any formal Executive or federal policy against California's decision to allow citizens to bring claims for stolen insurance proceeds that have been wrongfully held by insurance companies for almost a century, the Court has left the owners of those proceeds without recourse -- merely because they are in a class of victims identified in the statute as heirs of the Armenian victims of a time in Turkish history known as the Armenian Genocide, a term which has produced political rhetoric but no formal foreign policy statement, order, or treaty.

In identifying no formal foreign policy of the Executive Branch, the decision goes far past the limits set by the Supreme Court on federal power to govern foreign affairs to the exclusion of state power to act to provide a forum for traditional property claims.

The Court has radically limited the states from providing their own citizens traditional remedies against companies doing business within the state with judicial remedies in areas traditionally reserved for state power".

### **Lawyers to Appeal 9th Circuit Court Ruling**

By Ara Khachatourian, [Asbarez](#), 28 August 2009

LOS ANGELES—Attorneys representing heirs of Armenian Genocide victims seeking life insurance payments on relatives' policies before 2010 will appeal a ruling by a federal court, which rejected a California law that allowed the pursuit of such matters, attorney Mark Geragos told Asbarez Thursday. The appeal is set to be filed prior to September 10th.

 In a telephone interview, Geragos, who is one of three attorneys representing the victims' heirs, said that attorneys will appeal the August 20 decision, which said the law amounted to unconstitutional meddling in US foreign policy, and ask for the matter to be heard by the entire US 9th Circuit Court of Appeal panel, what is known in legal terms as an "En Banc" hearing.

"It's an absurd ruling... A wrongheaded ruling and we hope to get an 'En Banc' hearing," said Geragos, explaining that the state law is preempted.

"Feds have not expressed an opinion they've said they have no opinion," said Geragos. "This is purely an insurance issue. We are suing a company that's in Europe. They had policies to pay."

Representative Adam Schiff also called the court's reasoning "peculiar and misguided."

"This decision was focused on a law that Chuck Poochigian and I crafted when I was in the State Senate. I didn't believe that our work was preempted by federal law then, and don't believe it is preempted now," Schiff told Asbarez.

The California Legislature passed the law giving heirs of Armenian Genocide victims until the end of next year to file claims for old bank accounts and life insurance policies, effectively extending the statute of limitations on such matters.

Schiff also said that the fact that California and 41 other states have recognized the Genocide should have prompted the court to make a different ruling.

"The decision by the U.S. Court of Appeals is an affront to the Armenian American community and, if allowed to stand, sets a dangerous precedent by rewarding the Turkish Government's efforts on the federal level to deny and cover-up the Armenian Genocide," said Armenian National Committee-Western Region board chairman Vicken Sonentz-Papazian.

"The message this decision sends is that if you can threaten, cajole and stonewall the U.S. government into inaction on a 'foreign policy' issue, you can eliminate a valid and righteous claim of an American citizen in a U.S. court of law," added Papazian.

Class-action lawsuits brought by heirs of Genocide victims in California and other states led to a \$20 million settlement with New York Life Insurance Co. in 2005 and a \$17 million settlement the same year with French life insurer AXA.

Geragos said the time had come for Armenians throughout the world to focus on the reparations issue.

"Clearly we should be bringing suits all over the world," said Geragos, adding that in a society where such matters are decided by the judiciary, the community should become more active in the pursuit of large corporations, such as insurance companies and banks, that might be holding assets that belonged to Genocide victims.

"We have been focusing on the political aspects of the Genocide. We need to marry the political

with the legal," added Geragos.

"There should either be a reversal by a higher court or legislative action to reframe the statute," said Schiff who called on the community to urge an appeal. He also said he would be looking into possible federal legislation that might rectify the situation.

Geragos also urged the community to become more active in this matter, urging community organizations such as the ANC, the Armenian Bar Association and others to file amicus briefs in support of the 'en banc' review.

"This is a temporary setback and we will overcome this," said Schiff. "Unfortunately, it just adds injury to injury."

Text of [ANCA](#) letter to President Obama

August 25, 2009

The Honorable Barack Obama  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear Mr. President:

 I am writing to urge you to take immediate steps to publicly reject the flawed ruling of a three judge panel of the U.S. Court of Appeals for the Ninth Circuit in the case of *Movsesian v. Versicherung A.G.* (No. 07-56722, August 20, 2009), that struck down a California law providing remedies for Armenian Genocide-era wrongs, and argued that state level recognition of this crime contradicts "express federal policy" and is therefore unconstitutional.

You bear direct responsibility, Mr. President, by virtue of your failure to keep your repeated, crystal clear pledges to recognize the Armenian Genocide, for the Court's judgment that it is the official policy of the Executive Branch of the United States government to actively oppose proper recognition of this crime and, upon this basis, to thus prohibit states from passing laws to help Armenian Genocide-era victims seek to reclaim lost or stolen property. The Court's interpretation of your broken promise marks an unmistakable and historic low in our government's long complicity in Turkey's campaign of genocide denial.

As you know, over 1.5 million Armenians lost their lives and, of course, many more were deprived of their property as a result of the Ottoman Turkish government's systematic and deliberate campaign of race extermination. It is particularly tragic, given the thorough understanding that you have articulated regarding the moral, historical, and political meaning of this crime, that, it is under your leadership that the United States government is today not only engaged in complicity in genocide

denial, but also, according to a judicial ruling, actively working to ensure that the remaining survivors and their families are denied avenues to seek to reclaim property lost during these massacres.

Your Administration's policies, as understood and affirmed by the Court, in addition to blocking legal redress for U.S. citizens, have now opened the door – in unprecedented and profoundly dangerous ways – for interests aligned with the Turkish government to seek to roll back several generations of American civil society efforts to mark this tragedy, including through formal recognition by 42 U.S. states. As such, we once again urge you to publicly reject the Court's interpretation of your Administration's position and call upon you to honor your covenant with American voters to properly recognize the Armenian Genocide.

In closing, I would like to stress to you, once again, how broadly and profoundly disappointing your failure to honor your many commitments on issues of special concern to Armenian American citizens has been for the ANCA, a grassroots organization that, based upon your track record and series of publicly stated commitments, enthusiastically endorsed your candidacy and successfully mobilized an unprecedented community drive to help secure your election. In the wake of your many broken campaign commitments, your silence in the face of this profoundly misguided judicial action would compound the Armenian American community's sense of betrayal regarding your Administration's behind the scenes efforts to block adoption of the Armenian Genocide Resolution, your White House's use of Turkey's cynically-inspired "roadmap" to defer U.S. recognition, and your State Department's shameless pressure on Armenia to accept the artificial "historical commission" that Ankara has long advanced to prevent the proper recognition of this crime.

We remain ready, as we have shared with you on a number of past occasions, to meet with you to discuss these matters personally and in greater detail.

Kenneth V. Hachikian  
Chairman

