OLD INSURANCE POLICIES

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Some American or European insurance companies during the First World War had provided life insurances to mainly non-Muslims of the Ottoman Empire. The dear conditions of the war years, the Ottoman Armenians being relocated and losing their lives of some of them have caused lawsuits to be filed between the insured or their descendants and insurance companies. Eventually, their lapse of time has run out and the lawsuits have come to an end.

By putting forth that the descendants of those victims of genocide have suffered due to the lapse of time, some Armenian organizations in California have asked and obtained in 2000 that a law of the California State Assembly extends the statute of limitations until the end of 2010.

Instead of continuing the lawsuits, some concerning insurance companies have chosen to compromise with the plaintiff Armenian organizations. Within this framework, New York Insurance Company and AXA Company which is more active in Europe (and Turkey), have paid a total amount of 37.5 million dollars to the plaintiffs so that the case would be dropped. The reason for the companies to act this way was that the term genocide was used in Californias law of 2000 and they were concerned that their commercial credit would be harmed, because if they continue the lawsuits, they would be confronted with accusations of Armenian propaganda that they have participated in the genocide or have supported those committing the genocide etc. On the other hand, 37.5 million dollars is not a huge amount for these companies whose financial capabilities are enormous and most likely, there has been a deduction from tax.

On the other hand, one of the defendants, a German group of companies (Munich Re), has not compromised with the Armenian organizations and has appealed to a higher court arguing that the term Armenian Genocide victims in the 2000 law is preemptive to the foreign affairs doctrine; in other words, has indicated that it is contradictory to the foreign affairs policy of the US and as evidence, has provided the US Governments opposing the adoption of the draft resolutions of 2000, 2003 and 2007 in the House of Representatives concerning the Armenian genocide allegations. The higher court has ruled in August 2009 that Californias law of 2000 is unconstitutional because it included a reference to the Armenian genocide and the State of California has infringed on the foreign affairs reserved by the US Constitution to the federal government. The higher court has adopted

this decision with two votes against one.

This decision has been a destructive blow to the Armenian organizations. Firstly, it has become evident that the decisions of state parliaments (44 of 50 US states have adopted such decisions) will bring no results if the federal government has not made a decision in this direction. Moreover, the possibility of New York Insurance and AXA to repay the 37 million dollars has emerged.

The Armenian organizations have strongly objected to the decision of the higher court which in another decision adopted on 10 December 2010 with the same judges, had been concluded that there is no express federal policy forbidding states to use the term Armenian Genocide. This decision has also been adopted with two votes against one. However, opposite to her vote of 2009, Judge Dorothy W. Nelson has used her vote this time in favor of Armenian views.

This new decision has created a situation where it is impossible to come up with logical answers.

Firstly, the August 2009 decision of the higher court should have been definite and could only be opposed in another higher court. Although this has not been the case and the lawsuit has concluded, the court has reversed its own judgment and has adopted an opposite decision. If Munich Re opposes this decision and provides other evidence, will the higher court reverse its last judgment again? When will this process of reversing its own judgment come to an end?

Secondly, since there has been no change in the demands put forth and evidence presented to the case file during the 15 months which has passed between the decision of August 2009 and 10 December 2010, it is not logically possible to adopt a new decision.

Third of all, why has Judge Dorothy W. Nelson changed her opinion? She has not provided any explanation for this.

Taking these into account, it is possible to say that the decision of the higher court has been adopted with political considerations and not legal ones.

Munich Re has the right to appeal to a higher court to oppose this decision. However, the attorney of this company has refrained from giving any statements on this issue. Time will show whether Munich Re, just as New York Life Insurance and AXA, will choose to pay the amount and drop the case rather than being accused of supporting the genocide.

There are some articles in the Turkish press with headlines that this decision will cause trouble for Turkey, constitute a threat, and could act as a visa to file a suit for damages against Turkey. This lawsuit is between the insurance companies and those having the insurance policies of the companies and therefore, has no legal connection to Turkey. However, constantly mentioning the Armenian genocide allegations constitutes propaganda against Turkey and politically is to its disadvantage.

In one of our upcoming articles, we will deal with another lawsuit filed in California again but which this time directly concerns the Turkish state and two Turkish government banks.

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