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The Case of the Armenian Catholicosate in Sis: Places of Worship and Religious Freedom Claims Before the European Court of Human Rights

Carla Gharibian*

ABSTRACT

On April 27, 2015, the Armenian Catholicosate ("Armenian Church" or "Church") filed a lawsuit with the highest court in Turkey to recover the Sis Catholicosate ("Sis"), its ancient headquarters that was seized during the Armenian Genocide. The Church’s legal team has been careful to frame the suit primarily as a property claim, distinct from a call to Turkey to recognize the events of 1915–23 as genocide. Following the Turkish Constitutional Court’s rejection of the Church’s lawsuit the following year, its attorneys submitted the case to the European Court of Human Rights ("ECHR" or "Court") on December 6, 2016, alleging violations of both property and religious rights under the European Convention on Human Rights ("Convention"). Following the Court’s rejection of the lawsuit in March 2017 for failure to exhaust domestic remedies, the Catholicosate is evaluating its next steps, including whether to file the lawsuit in Turkey’s lower courts.
Framing the lawsuit primarily as a property dispute is wise as a tactical matter, given Turkey’s ongoing refusal to acknowledge the massacres as genocide. However, as a legal question, a property claim is potentially troublesome for two reasons. First, the Court’s typical characterization of property seizures as “instantaneous violations” prevents the application of its “continuing violation” doctrine, which provides jurisdiction over events that took place before the Convention’s entry into force, but which continue to have effects into the present. Second, and more significantly, the damage of the seizure goes beyond the physical bounds of Sis. The centrality of the Church itself to Armenian spiritual, cultural, and social life underscores how this dispossession was but one manifestation of the concerted eradication of an entire people. This Note argues that the Church’s most convincing route to restitution before the Court is a claim for violation of the freedom of thought, conscience, and religion under Article 9 of the Convention because such a claim can conversely be conceived of as a continuing violation. Short of recognition of the Armenian Genocide, this approach would also most explicitly acknowledge the issues of cultural erasure inherent in the dispossession of Sis.

More broadly, this Note also argues that claims for access to places of worship before the Court are most cogent when construed primarily as violations of the freedom of thought, conscience, and religion under Article 9 rather than as property claims. A May 2016 ECHR decision involving Jehovah’s Witnesses in Turkey may provide guidance for future lawsuits in this area.
III. A Claim for Freedom of Thought, Conscience, and Religion Before the European Court of Human Rights

A. Initial Admissibility Considerations Under Article 9
B. Limits on the Court’s Article 9 Jurisprudence
C. Religious Property and Article 9
D. Association for Solidarity with Jehovah Witnesses v. Turkey

Conclusion

INTRODUCTION

On April 27, 2015, the Armenian Catholicosate filed a lawsuit with the Constitutional Court of Turkey to recover the Sis Catholicosate, its ancient headquarters in the modern-day Turkish city of Kozan from 1293 until approximately 1921, when it was seized during the Armenian Genocide. Described by the Church’s leader, Aram I, as the “first legal step” in the goal to reclaim all Armenian property seized by the Turks and their Ottoman predecessors, the lawsuit came on the heels of the centennial commemorations of the 1915–23 killings of 1.5 million Armenians under the Ottoman Empire.

The Church’s lead international attorney, Payam Akhavan, was careful to frame the suit primarily as a property claim distinct from a call to Turkey for recognition of the events of 1915–23 as genocide, emphasizing that “[w]e have a property claim. . . . We’re not asking for recognition of the Armenian genocide. We have a very pragmatic claim.” Following the Turkish Constitutional Court’s rejection of the Church’s case the following year, his legal team submitted the case to the ECHR on December 6, 2016, alleging violations of both property and religious rights. Under the Convention, all domestic remedies must be exhausted before a case can be heard before the Court. In a press conference following the filing, Akhavan reiterated that “[t]he main claim is property rights under Article 1 of Protocol 1 to the European Convention and the supplementary claim is to the right of religious worship.”

1. The holy see, or seat, of the Armenian Apostolic Church.
3. Id.
4. Id.
On October 19, 2017, Aram I revealed during a conference of the Armenian Cause in the European Parliament in Brussels that the lawsuit had been rejected by the Court. A single judge rejected the lawsuit because it was not first submitted to a lower court in Turkey in order to exhaust all domestic remedies. Akhavan stated that the next steps for the lawsuit are either to “re-submit the case with some new facts such as the impossibility of going back to the Turkish courts under current circumstances, or to go back to the Turkish courts, waste a lot of resources, and come back to the [ECHR] once again.” Either route has the potential to once again bring the lawsuit before the ECHR.

As the Church evaluates its options, the framing of the lawsuit primarily as a property dispute is wise as a political matter. A property claim addresses the immediate needs of worshippers while sidestepping the ongoing controversy of labeling the massacres as genocide. However, as a legal question, a property suit is potentially troublesome for two reasons. First, the ECHR’s typical characterization of property seizures as “instantaneous violations” means that the “continuing violation” doctrine—intended to provide jurisdiction over events that took place before the Convention’s entry into force, but which have effects that continue into the present—is unhelpful in establishing the ECHR’s jurisdiction over the 1921 seizure. Second, and more significant to issues of cultural erasure, the damage of the seizure goes beyond the physical bounds of the expropriated property. The centrality of the Sis Catholicosate to Armenian spiritual, cultural, and social life in Ottoman Turkey and the larger Middle East underscores how this dispossession was but one manifestation of the concerted eradication of an entire ethnic group.

This Note argues that the Church’s best route to restitution is a claim for violation of the freedom of thought, conscience, and religion under Article 9 of the Convention because such a claim can conversely be conceived of as a continuing violation. In this region, the potential return of Sis also represents “perhaps the most meaningful starting point for the restoration of Armenian identity,” a critical part of which is its belief system. An Article 9 suit thus offers the best likelihood of both finding a cognizable injury under the Convention while also confronting matters of cultural erasure.

More broadly, this Note also argues that claims for access to places of worship before the ECHR are strongest when construed primarily as violations of the freedom of thought, conscience, and religion under Article 9 rather than

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9. Id.

10. Id.

as property claims. A May 2016 ECHR decision also involving Turkey supports this assertion. In Association for Solidarity with Jehovah Witnesses v. Turkey, the ECHR found a violation of Article 9 where the Turkish government closed prayer rooms and imposed legislative restrictions on the construction of places of worship for congregations of Jehovah’s Witnesses. The Court relied on Article 9 to find that administrative authorities used the potential of zoning legislation to impose rigid and prohibitive conditions on the religious exercise of minority denominations. Though the property in that case was seized on the ground that it violated urban planning legislation, the same core facts are still present, namely the restriction of access to places of worship on superficial public interest grounds.

I. BACKGROUND

A. World War I and Post-War Turkey

The Sis Catholicosate, the subject of the Church’s suit, was once the epicenter of Armenian Christian life in the region. In the waning days of the Ottoman Empire, it was among the tens of thousands of Armenian properties commandeered and plundered amidst the scattering of Armenian Genocide survivors. From 1915–23, the Ottoman Empire and then Turkish Republican nationalist forces committed genocide against Armenian, Assyrian, and Greek minorities. According to estimates, 1.5 million Armenians, out of a total population of 2.5 million, were killed in the process. Eyewitness accounts describe how tens of thousands of women and girls were forced—either directly or by circumstance—into sexual servitude, domestic servitude, or “marriage,”


13. ECHR, Refusal to Provide, supra note 12, at 3.

14. Id.

15. See Gladstone, supra note 2.

which included forced or coerced conversion to Islam. The tens of thousands of children were either “adopted” by Turks or other Muslim populations or placed in Turkish-run orphanages, where they were forcibly “Turkified” in an attempt to erase their Armenian identities.

The government’s expropriation of property was an essential element of the destruction of Armenian identity in Ottoman Turkey. The regime devised both legal workarounds and purely coercive methods of stealing Armenians’ movable and immovable wealth. Eyewitness accounts testify to the expropriation of Armenian property in the aftermath of arrests, executions, and deportations. In an August 1915 report to US Ambassador to the Ottoman Empire Henry Morgenthau, the American consul in Aleppo described the government’s confiscations as “a gigantic plundering scheme as well as a final blow to extinguish the [Armenian] race.” Morgenthau described how government officials told the Armenians that “since their deportation was only temporary . . . they would not be permitted to sell their houses.” As soon as the Armenians were deported, however, “Mohammedan mohadjirs—immigrants from other parts of Turkey—would be moved into the Armenian quarters.”

Holy sites, in particular, were a critical part of Armenian identity in the region. The 2,530 churches across Ottoman Turkey were not merely places of worship but rather civic centers “where Armenian culture was collected and presented as part of the artistic and historic life of the community.” Akin to small museums, Armenian churches housed artifacts like rare scriptures and books, paintings, frescoes, gold-and-jewel-studded chandeliers, and other similar objects of cultural and pecuniary value. American consul Leslie Davis noted how the Turks and Kurds “seemed determined not only to exterminate the Christian population but to remove all traces of their religion and even to destroy the products of civilization.”

The history of Armenian survivors’ attempts to reclaim their property following the Armenian Genocide demonstrates the likely futility of any lawsuit in a domestic forum. The modern Turkish state, successor to the Ottoman

18. Id.
20. Id. One such transparent legal scheme was the Temporary Law of Expropriation and Confiscation, which was passed in September 1915. Id. The Law was allegedly designed to register the properties of deportees, safeguard them, and dispose of them at public auctions, with revenues held in trust until the deportees’ return. Id.
21. See id. at 188.
22. Id.
23. Id. at 188–89.
24. Id. at 189.
25. Id. at 233.
26. Id.
27. Id. at 243.
Empire, created a legal system that prevented both the reentry of Armenians into Turkey after the Armenian Genocide as well as any subsequent restitution of their properties.\textsuperscript{28}

Historian Taner Akçam considers “three fundamental bases” for understanding how abandoned property laws from both the Ottoman era and beyond played into the larger genocidal scheme.\textsuperscript{29} First was the issue of how to settle Armenians in the new locations where they had been deported.\textsuperscript{30} Second was whether or not the Armenian properties that had been left behind would be given back to their original owners and, if so, how this would be accomplished.\textsuperscript{31} Third was the question of who would manage the properties left behind and how they would be managed.\textsuperscript{32}

There is notably nothing in the laws of the period addressing the first question of how Armenians were going to be settled, save a single decree that was issued at the beginning of the deportations.\textsuperscript{33} Concerning the second question of whether the properties left behind would ultimately be returned, there was a statement that the properties’ true owners were the Armenians and that the state would manage the properties on their behalf.\textsuperscript{34} However, there was no language in any law or decree indicating how and when Armenian properties would be returned to their original owners.\textsuperscript{35}

Following the events of World War I and the Armenian Genocide, the most pressing question became what to do when the original owners did indeed return, or if their heirs demanded restitution. Armenians who returned to Turkey immediately after World War I were given back their properties without precondition in accordance with the Treaty of Sevres.\textsuperscript{36} Article 144 of the Treaty required the Ottoman government to accept that its 1915 law on abandoned properties and all related legal arrangements were illegal and to commit officially to the repatriation and reemployment of all non-Turkish Ottoman citizens who had been forced out after August 1, 1914.\textsuperscript{37} In furtherance of this provision, all legal transactions performed on “abandoned” properties after that date were to be voided, with all movable and immovable properties returned to their true owners and just compensation made by the Ottoman government.\textsuperscript{38}

In 1922, the Kemalist regime of Mustafa Kemal Atatürk, founder and first president of the Republic of Turkey, took control of Istanbul and forced a new

\begin{itemize}
\item \textsuperscript{29} Id. at 381.
\item \textsuperscript{30} See id. at 382.
\item \textsuperscript{31} See id.
\item \textsuperscript{32} See id.
\item \textsuperscript{33} See id.
\item \textsuperscript{34} See id.
\item \textsuperscript{35} See id.
\item \textsuperscript{36} See id. at 387–88.
\item \textsuperscript{37} See id. at 388.
\item \textsuperscript{38} See id.
\end{itemize}
treaty that would be far more lenient to post-war Turkey and significantly curtail reparations. The latter was facilitated through a complementary domestic legal framework, the primary objective of which was to prevent both the possible reentry of Armenians into Turkey and their subsequent demands for their property. After Turkey signed the Treaty of Lausanne in 1923, the Allies recognized the Republic’s sovereignty within its new borders. Under Articles 65 and 72 of the Treaty, Turkey agreed to return confiscated Armenian properties. The state also recognized that Armenian exiles naturalized as foreign nationals theoretically could not be barred from entering the country and demanding the return of their properties. The government ultimately permitted Armenians who were present in Turkey when the Lausanne Treaty went into force in August 1924 to reclaim their properties. However, the government deemed the property of absentee owners “abandoned” and put it under state management. Since Lausanne and throughout the Republican era, Turkey has enacted dozens of administrative obstacles for Armenians who wish to return and assert their property rights.

This ensuing history of legal and administrative obstacles underscores the fundamental objective of cultural erasure that accompanied the property seizures. Beyond the human toll, the Armenian Genocide manifested the government’s intent to destroy those sites that perpetuated Armenian culture and community in the Ottoman Empire. An April 1916 telegram sent from Interior Minister Talat Pasha to Governor of Syria Cemal Pasha most clearly expressed this sentiment in relation to Sis:

Basically the goal of the abolition of the Sis Catholicate and, at the first opportunity, the expulsion of the Catholicos from there is completely removing the existence of this place, which possesses a very great historical and national value in Cilicia for Armenians and is presented by them as supposedly the final seat of an Armenian government.

As Professor Peter Balakian explains, “the genocidal aftermath is inseparable from the predicament of both exile and exclusion from the historical past,” as evidenced by the fact that most Armenian buildings in Turkey today, sacred and secular, have been appropriated, demolished, or left to deteriorate.

39. See id. at 388–89.
40. See id. at 383.
41. BALAKIAN, supra note 19, at 369–72.
44. Id. at 392.
45. Id.
46. See id.
47. Id. at 379.
One particularly revealing example has been the Turkish government’s restoration of the tenth-century Church of the Holy Cross, which the government has appropriated as a secular museum and has refused to allow for the hosting of Christian services. Until recently, the government prevented the restoration of a cross on the roof; the church’s full Armenian name is nowhere to be found on the structure; the word “Armenian” rarely appears in Turkish texts about it; a Turkish flag has been mounted on the site; and large images of Mustafa Kemal Atatürk were on display at the opening ceremony of the “museum.” Critics saw the restoration as another act of Turkification, and one Turkish journalist described it as “a continuation of cultural genocide against the Armenians.”

By viewing the events of 1915 as a cultural genocide, the continued dispossession of Sis can be understood as an extension of Ottoman policies aimed at suppressing Armenian heritage and custom. As lead attorney Akhavan explained in a 2015 press conference in reference to Sis, “given the tremendous religious significance of this property, the denial of the property rights in this relation... implicates the right of Turkey’s Christian minority, in this case the extended minority that exists in much smaller numbers in Turkey, to freely worship.” When framed primarily as a freedom of religion claim, this is precisely the sort of continuing violation that stands the best chance for victory before the ECHR.

B. Contextualizing the Sis Case in Modern Genocide Discourse

Though the Church maintains that its efforts to achieve international acknowledgment of the Armenian Genocide remain important, the lawsuit is part of a larger shift in Genocide discourse from recognition to reparation. The concern with reparations was initially a minor strain in the larger movement for Armenian Genocide recognition, even derided by many Armenian scholars and community leaders in favor of dialogue with Turkish authorities. However, scholars and activists publicly began to emphasize reparations in the early 2000s, after a failure to change Turkey’s continued policy of denial. Among these efforts were the Armenian Genocide Reparations Study Group and lawsuits for the recovery of individual funds from banks and insurance companies. By 2010, reparations had become part of mainstream Armenian Genocide discourse.

49. Id. at 73.
50. Id.
51. Id.
52. The term “cultural genocide,” as used here and throughout this Note, connotes the destruction of cultural heritage.
54. Theriault, supra note 16, at 221.
55. Id. at 221–22.
56. Id. at 222.
Notably, in 2012, the Armenian National Committee of America successfully campaigned for a resolution in the United States Congress calling on Turkey to return Armenian Church lands, buildings, and other properties within its borders that had been confiscated during the 1915–23 massacres.57

Amidst this backdrop, the Church lodged the Sis lawsuit with the Turkish Constitutional Court in 2015. Following this initial filing, the Turkish Justice Ministry urged the Court to drop the case in May 2016.58 The Church presented its appeal on May 26.59 When the Turkish Constitutional Court ruled that it had no jurisdiction over the matter, the lawsuit was submitted to the ECHR on December 6, 2016.60

In a December 7, 2016 press conference, Akhavan outlined the Church’s nine-hundred-page case before the ECHR, asserting violations of both rights to property and religious worship:

The case, in simple terms, is that the property rights of the Church to the monastery and cathedral [of the Sis Catholicosate] were never extinguished, and that both in terms of the property rights of the Church and the rights of religious worship of Armenians within Turkey and in the Diaspora, including the countless number of so-called “hidden Armenians” that were Islamized in order to be able to survive following the massacres and deportations of 1915, that this case is both about the property rights of the Church and about the right of religious worship, and that entails the right of the Church to restore ownership, possession, use, and restoration of the monastery for the purposes of religious worship.61

Akhavan also described the Catholicosate’s desire to once again make Sis a place of worship, explaining that, in the hands of the Armenian Church, what is now a “pile of rubble” could ultimately play a role in restoring the cultural heritage of the Armenian people in the region.62

On October 19, 2017, Aram I announced to the Conference on the Armenian Cause at the European Parliament in Brussels that the Court had rejected the lawsuit.63 A single judge rejected the case because it was not first submitted to a lower court in Turkey in order to exhaust all domestic remedies.64 In an interview following the Catholicosate’s announcement, Akhavan stated

57. Id.
59. Id.
60. ARMENPRESS, supra note 5. The European Court of Human Rights does not, however, hear every application that is filed with it. Assigned judges must make the final decision about whether the case is admissible. Id.
61. Id. at 7:33.
62. Id. at 12:13.
63. Sassounian, supra note 8.
64. Id.
that the next steps for the lawsuit are either to “re-submit the case with some new facts such as the impossibility of going back to the Turkish courts under current circumstances, or to go back to the Turkish courts, waste a lot of resources, and come back to the ECHR once again.” Akhavan further described the case as “a hot potato the ECHR doesn’t want to handle,” given the political climate of post-coup Turkey. Either route thus has the potential to bring the case before the ECHR once again.

The centrality of Sis to Armenian spiritual, cultural, and social life raises significant questions about the future religious practice of this minority group in Turkey and takes the litigation beyond its primary characterization as a property claim. As discussed below, this will bear on future claims before the ECHR, particularly in the context of the right to religion.

II.
CONTINUING VIOLATIONS IN PROPERTY SUITS BEFORE THE ECHR

The Church’s lawsuit is for violations of both property and religious rights, but the ECHR’s lack of retroactive jurisdiction may ultimately prevent a property claim from even being considered. The continuing violation doctrine may offer some hope, but the typical characterization of a “deprivation of ownership” as “an instantaneous act which does not produce a continuing situation of ‘deprivation of a right’” by the European Commission on Human Rights (the “Commission”) and the Court indicates that a property claim is not the Church’s best recourse for reparation. This characterization of instantaneous violations assumes that the harm, committed at a discrete point in the past, does not continue to be perpetrated by the culpable party. Thus, though a property suit can be praised as a “pragmatic claim,” a suit for violation of freedom of thought, conscience, and religion under Article 9 of the Convention is a more convincing route to restitution. Such a suit avoids the continuity issues present in property cases while also addressing the cultural genocide that persists to this day. An exploration of the ECHR’s case law on the continuing violation doctrine in property disputes is helpful here.

In considering the Court’s case law, it is important to note that the ECHR does not follow precedent as that concept is understood in the common law

65. Id.
66. Id.
tradition. The President of the ECHR described a “moderated doctrine of precedent” that serves the interests of legal certainty and equality before the law, yet is moderated by the need to ensure that the Convention “continues to reflect changes in society’s aspirations and values.” ⁶⁸ This means the Court is not bound by a formal notion of precedent and is thus more amenable to shifts in societal mores. However, past ECHR decisions still play a critical role in the Court’s jurisprudence, and this Note will rely heavily on case law in its analysis.

A. The Continuing Violation Exception to Ratione Temporis Jurisdiction

The ECHR’s lack of retroactive jurisdiction is a major obstacle for any attempt to litigate the far-reaching consequences of expropriations during the Armenian Genocide. ⁶⁹ Occurring decades before the existence of any international tribunal that may have exercised jurisdiction over its events, the Armenian Genocide raises the question of what, if any, Genocide-era property claims against Turkey might continue to be cognizable today. ⁷⁰ As the properties themselves were taken under the guise of being held for absentee owners, the Ottoman government presumably did not violate any laws at the time of these seizures. Further, Turkey ratified the Convention in 1954 and recognized the Court’s compulsory jurisdiction in 1990, decades after the expropriations took place. ⁷¹ As such, any hope for a successful property claim would hinge on the Court’s acceptance that the current dispossession of the Church’s property is a “continuing violation” that extends beyond its instantaneous seizure by Ottoman officials a century ago.

The continuing violation doctrine is derived in large part from the issue of human disappearances, a distinct challenge for human rights courts beginning in the 1970s. ⁷² The Inter-American Court of Human Rights (“IACHR”) was particularly instrumental in the doctrine’s development. The IACHR came to assert jurisdiction over human rights violations arising out of enforced disappearances by authoritarian regimes, regardless of whether the disappearances occurred before or after the Court’s ratione temporis jurisdiction was established. ⁷³ The IACHR reasoned that an enforced disappearance continued to be a human rights violation until the fate of the disappeared person was discovered. ⁷⁴ As such, the defendant State could be held responsible for

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⁶⁹. See Mégret, supra note 67, at 317.

⁷⁰. See id.

⁷¹. Id. at 318; Chart of Signatures and Ratifications of Treaty 005, COUNCIL OF EUR. (Jan. 7, 2018), http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/005/signatures?p_auth=5GqxnbwQ [https://perma.cc/2VW8-27M9].

⁷². Mégret, supra note 67, at 318.

⁷³. Id. at 318–19.

⁷⁴. Id. at 319.
failing in its obligation to investigate cases of disappearances adequately, a failure that the Court deemed an independent and ongoing breach in and of itself.\textsuperscript{75} Both the United Nations Human Rights Committee and the ECHR ultimately endorsed this interpretation.\textsuperscript{76}

B. Property Claims as Instantaneous Acts

Beyond disappearances, property seizures have also raised questions about the character of continuing violations, though courts have demonstrated decidedly more reluctance in extending case law into this realm. Even the IACHR has resisted extending the doctrine in at least some cases of property dispossession.\textsuperscript{77}

The Commission and the Court have characterized the deprivation of property rights, which are protected under Article 1 of Protocol No. 1 of the Convention, as instantaneous.\textsuperscript{78} The Court has held that “[d]eprivation of ownership or of another right in rem is in principle an instantaneous act and does not produce a continuing situation of ‘deprivation of a right.’”\textsuperscript{79}

The ECHR’s case law illustrates its unwillingness to classify property expropriations as continuing violations. In \textit{Posti v. Finland}, the Court held that fishing regulations that affected the applicants’ right to peaceful enjoyment of their possessions, “which allegedly comprised a right to fish certain waters,” did not constitute a “continuing situation.”\textsuperscript{80} The Court defined “continuing situation” as “a state of affairs which operates by continuous activities by or on the part of the State to render the applicants victims.”\textsuperscript{81} Specifically, the Court noted that the petitioners’ complaints had “as their source specific events which occurred on identifiable dates” and that “[t]he fact that an event has significant consequences over time—such as the restriction on the applicants’ fishing during

\textsuperscript{75}. \textit{Id.}
\textsuperscript{76}. \textit{Id.}
\textsuperscript{77}. \textit{Id.; see, e.g.,} Cantos v. Argentina, Preliminary Objections, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 85, ¶ 39 (Sept. 7, 2001) (finding, in a case involving the deprivation of a businessman’s property, that it was not necessary to examine the legal theory of ongoing illicit acts). \textit{But see} Moiwana Community v. Suriname, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 124, ¶ 135 (June 15, 2005) (holding that the forcible expulsion of villagers and deprivation of their property by state agents was a continuing violation of their right “to the communal use and enjoyment of their traditional property” due to the state’s failure to adequately investigate the events).
\textsuperscript{78}. Article 1 of Protocol No. 1 of the Convention states, “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.” Convention, supra note 6, Protocol No. 1, art. 1. The provision also qualifies this paragraph by noting that “[t]he preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.” \textit{Id.}
specific periods in 1996 and subsequent years—does not mean that the event has produced a ‘continuing situation.’”

Further, in *Merzhoyev v. Russia*, the Court found no continuing violation where Russia had denied the applicant access to his savings account before it ratified the Convention in 1998. The Court established that the applicant’s rights to his savings were “extinguished by relevant decisions taken in 1996” by the Management Board of the Savings Bank of Russia. This included the Board’s suspension of all operations with respect to deposits with the Chechen Savings Bank, where the applicant had held his funds. However, the Court ultimately found that subsequent decisions in 2000 by domestic courts established “the existence of obligations” under the agreements between the applicant and the bank, creating a “new entitlement” under Article 1 of Protocol No. 1. Article 1 of Protocol No. 1 did “not oblige a state to maintain the purchasing power of sums deposited with financial institutions,” though, meaning that any loss in value of the applicant’s deposits in the intervening years, as well as any delay in a judgment conferring the new entitlement, was not a violation of Article 1 of Protocol No. 1.

The Court’s reluctance to characterize violations of *in rem* rights as continuing violations is evidenced by a multitude of suits similarly involving property seizures in former communist countries in Central and Eastern Europe, which joined the Council of Europe in the 1990s. Even if these seizures were indeed unlawful, the Court deemed them instantaneous violations outside its *ratione temporis* jurisdiction, denying petitioners any recourse under the Convention and ensuring that the vast majority of such long-term expropriations were ultimately never adjudicated.

As the expropriation of Sis is a violation of an *in rem* right, the Court will likely consider it an instantaneous violation outside its *ratione temporis* jurisdiction. Though *Merzhoyev* involved an instantaneous pre-ratification expropriation, giving rise to a violation following the Convention’s entry into force, the applicant in that case was only able to recover because decisions in domestic courts created a “new entitlement” that survived the original

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82. *Id.* ¶ 40.
85. *Id.* ¶¶ 24, 48.
86. *Id.* ¶¶ 48, 50.
87. *Id.* ¶¶ 50, 54.
88. The ECHR is a body of the Council of Europe, which is not to be confused with the European Union, a distinct institution.
89. For more information on the Court’s jurisprudence in this area, see Mégret, supra note 67, at 322.
90. *Id.*
deprivation of the in rem right. Merzhoyev thus presents an example, not of a
continuing violation, but rather of a completely new property right created through a domestic legal regime after the entry into force of the Convention in
Russia. With no such parallel regime in Turkey, the Armenian Church’s best hope for recovery on a property claim is one of four exceptions establishing a
continuing violation under Article 1 of Protocol No. 1. However, it seems
unlikely that any of these exceptions will be applicable to the Sis case.

C. Continuing Violations of Article 1 of Protocol No. 1

The Court has recognized continuing violations of the right to property in circumstances where (1) a procedural hurdle or other peculiarity allowed for it;
(2) the initial deprivation was completed after the Convention entered into force in a state; (3) property could not be considered to have legally changed hands in
the first place; and (4) the applicant maintained a “legitimate expectation” of
restitution.

1. Procedural Hurdle or Other Peculiarity

In Papamichalopoulos v. Greece, the Court found a continuing violation as
a result of a procedural peculiarity. The Court noted that “[a]dmittedly, Greece did not recognise the Commission’s competence to receive ‘individual’
petitions . . . until 20 November 1985 [after the expropriations in question] and
then only in relation to acts, decisions, facts or events subsequent to that date.”
However, the Court found that “the Government did not in this instance raise any
preliminary objection in this regard and the question does not call for
consideration by the Court of its own motion. The Court notes merely that the
applicants’ complaints relate to a continuing situation, which still obtains at the
present time.”

Though doubtful, even if a procedural peculiarity allowed the Church’s
case to survive a temporal jurisdiction hurdle, such a peculiarity is still an
unlikely route to success given that the Sis case does not “relate to a continuing situation” as Papamichalopoulos did. Much as in Merzhoyev, in
Papamichalopoulos, the pre-ratification expropriation was the subject of
decisions in domestic courts establishing the applicant’s land rights after the
initial violation. These decisions were accompanied by largely unsuccessful
attempts by Greece to provide the former landowners with land of equal value
as recompense for property expropriated under the former regime. As a result of
these failed state-level attempts to remedy the situation, the ECHR found a
“continuing situation.” With no such comprehensive effort in Turkey to restore

92. Id.
93. Id. ¶¶ 9–13; Merzhoyev, App. No. 68444/01, supra note 84.
94. Id. ¶¶ 14–22.
95. Id. ¶ 40.
Armenian Genocide-era expropriations or provide other recompense, Papamichalopoulos is unlikely to be helpful precedent in establishing a violation under Article 1 of Protocol No. 1.

2. Gradual Deprivation That is Completed After the Entry into Force of the Convention in a State

The Commission has also found continuing violations in property cases where the expropriation took place gradually and was completed after the ECHR’s jurisdiction was established.\(^{96}\) In Agrotexim v. Greece, the state submitted that the violations in question “were instantaneous acts which occurred and caused their allegedly prejudicial effects before the critical date of 20 November 1985,” when the Commission gained its authority to examine individuals’ applications against Greece.\(^{97}\) However, the Commission held that the property seizures by the Athens municipal council were admissible because they constituted a “continuing situation” and thus a violation of Article 1 of Protocol No. 1 of the Convention.\(^ {98}\) Specifically, the Commission emphasized that “the applicants do not complain of any ‘instant’ effect of these measures on their rights but of a continuing situation created by the said measures and still existing . . . [which] persisted after 20 November 1985.”\(^ {99}\) The Court agreed that because the measures in question continued after Protocol No. 1’s entry into force, “it may be possible” to classify the actions of the state “as a series of steps amounting to a continuing violation” and not merely an instantaneous act.\(^ {100}\)

Conversely, in the Sis case, the complained-of deprivation took place in a single instantaneous step, not a gradual process that continued past the entry into force of the Convention in Turkey. Though one could argue that the Armenian Genocide-era deprivations consisted of a series of steps aimed at seizing all Armenian properties in the Ottoman Empire, those expropriations, and the events of the Armenian Genocide itself, ended decades before Turkey ratified the Convention. Thus, this exception is also an unlikely contender.

3. Property Did Not Change Hands in the First Place

Another context in which property violations may be deemed continuous, despite taking place before the entry into force of the Convention, is where the

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96. In 1998, the Court became a full-time institution. As a result, the European Commission of Human Rights, which used to decide on the admissibility of applications to the Court, was abolished by Protocol No. 11. See European Court of Human Rights, INT’L JUST. RES. CTR., http://www.ijrcenter.org/european-court-of-human-rights [https://perma.cc/H7ZD-FHP8].
98. Id. ¶ 57.
100. Agrotexim, 330 Eur. Ct. H.R. (ser. A) ¶ 58. The Court did not ultimately consider it necessary to give a final ruling on this issue, instead first examining the objection to the applicant companies’ “victim” status. Id.
property did not legally change hands in the first place. *Loizidou v. Turkey* concerned a Cypriot citizen’s loss of access to her property following the Turkish invasion of Cyprus in 1974, which led to the establishment of the Turkish Republic of Northern Cyprus (“TRNC”). That case hinged on whether the applicant could “still be regarded . . . as the legal owner of the land.” The Court found that the applicant “cannot be deemed to have lost title to her property” because the TRNC was not internationally recognized as a state and consequently “the Court cannot attribute legal validity for purposes of the Convention” to its laws, including those permitting the expropriation of “abandoned” properties. Specifically, because the “applicant has been refused access to the land since 1974, she has effectively lost all control over, as well as all possibilities to use and enjoy, her property” and this “continuous denial of access must therefore be regarded as an interference with her rights under Article 1 of Protocol No. 1.” This was in spite of the fact that the TRNC constitution, which had deprived the applicant of her property, was adopted five years before Turkey recognized the jurisdiction of the ECHR.

The decision in *Loizidou* was ultimately dependent on the unique circumstances of an unrecognized government taking partial control of an otherwise autonomous state. The Court took this opportunity to characterize the violation as continuous adverse interference with enjoyment of property rather than as a clear-cut expropriation, providing a workaround for a potential *ratione temporis* hurdle.

Despite the objectionable circumstances of the expropriation of the Sis Catholicosate a century ago, the legitimacy of the Ottoman government or its successor was never in question, and *Loizidou* is likely an idiosyncratic example of this category of continuous violation. Thus, the Court will likely refuse to find that Sis never changed hands in the first place and instead characterize this violation as an instantaneous property expropriation.

### 4. New Entitlements and a Legitimate Expectation of Restitution

A final instance where the Court has found that expropriations taking place before the entry into force of the Convention did indeed constitute continuing violations is where there was a “legitimate expectation” of a property right.
An applicant can allege violations of Article 1 of Protocol No. 1 “only in so far as the impugned decisions related to his ‘possessions’ within the meaning of this provision,” which can be either “existing possessions” or “assets . . . in respect of which the applicant can argue that he or she has at least a ‘legitimate expectation’ of obtaining effective enjoyment of a property right.” The Court has defined “legitimate expectation” strictly, noting that mere “hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a ‘possession’” for purposes of Article 1 of Protocol No. 1.

In particular, Article 1 of Protocol No. 1 does not impose any general obligation on states to restore property transferred to them before they ratified the Convention. States “enjoy a wide margin of appreciation” in excluding certain types of former owners from such entitlement, and where these owners are excluded in this manner, “their claims for restitution cannot provide the basis for a ‘legitimate expectation’ attracting the protection of Article 1 of Protocol No. 1.”

However, once a state that has ratified the Convention “enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1.” The same applies to “arrangements for restitution or compensation established under preratification legislation, if such legislation remained in force after the Contracting State’s ratification of Protocol No. 1.”

In Kotov v. Russia, the Court found that a liquidator’s distribution of a bank’s assets two years before the entry into force of the Convention in Russia was an instantaneous act and thus would normally be beyond the Court’s ratione temporis jurisdiction. However, the Court went on to conclude that the applicant’s attempt to restore his rights in domestic proceedings after the entry into force of the Convention gave the Court “temporal jurisdiction to examine whether the applicant’s rights under Article 1 of Protocol No. 1 to the Convention were properly secured.”

The Kotov Court made a distinction between its jurisdiction to examine “what could have been done by the State to avoid the [initial] unlawful distribution of the bank’s assets,” for which it had no ratione temporis jurisdiction, and its current jurisdiction to determine whether Russian courts’ interpretation of domestic remedies after the Convention’s entry into force were

109. Id.
110. Id.
111. Id. ¶ 35(d).
112. Id.
113. Id.
115. Id. ¶ 69.
sufficient.\textsuperscript{116} Specifically, the Court noted that “first-class creditors of the bank, the applicant included, had received much less than they could \textit{legitimately have expected} to receive, given the bank’s financial situation.”\textsuperscript{117} The Court held that it “may ascertain if any remedial mechanisms” in the years following the Convention’s entry into force were “capable of redressing the wrong done to the applicant by the liquidator’s unlawful actions, and, if such mechanisms existed, why they were not effective in the applicant’s case.”\textsuperscript{118}

Similarly, in \textit{Broniowski v. Poland}, the Court demonstrated how delays in compensation might affect the currentness of a dispossession where a state enacts legislation to restore property expropriated under a previous regime.\textsuperscript{119} In that case, the expropriations were consummated via the initial seizures, taking the matter beyond the Court’s \textit{ratione temporis} jurisdiction.\textsuperscript{120} However, this was not true for subsequent delays in the assessment and payment of final compensation for that property. The Court implemented its “pilot judgment”\textsuperscript{121} procedure to find that the “applicant’s entitlement to compensatory property . . . was vested in him by Polish legislation on the date of the Protocol’s entry into force.”\textsuperscript{122} Such an entitlement, then, could be viewed as producing a legitimate expectation on the part of the applicants.

Specifically, the \textit{Broniowski} Court found that via legislation in 1985 and 1997, Poland had chosen to “reaffirm its obligation to compensate the Bug River claimants and to maintain and to incorporate into domestic law obligations it had taken upon itself by virtue of international treaties entered into prior to its ratification of the Convention and the Protocol.”\textsuperscript{123} The Court ultimately held that these measures were insufficient because the State, after “having conferred on [the applicant] an entitlement to compensatory property,” had continuously failed its legislative duty to regulate the matter and had by “obstruction and inaction, both legislative and administrative, and by extra-legal practices” rendered the obtainment of compensatory property impossible in practice.\textsuperscript{124}

\textsuperscript{116} \textit{Id.} ¶ 118.
\textsuperscript{117} \textit{Id.} ¶ 89 (emphasis added).
\textsuperscript{118} \textit{Id.} ¶ 118.
\textsuperscript{120} \textit{Id.} ¶ 122.
\textsuperscript{121} The ECHR’s pilot judgment procedure was developed as an efficiency tool, identifying structural problems underlying repetitive cases against a state and imposing an obligation on states to address those problems. When the Court receives multiple applications against a state that share a common root cause, the Court may select one or more of these cases for priority treatment to both decide whether a violation occurred in those specific cases and also identify the larger systemic problem at issue and the remedial measures a state must take to address it. The pilot judgment procedure was first implemented in \textit{Broniowski}, which concerned the common grievances of some 80,000 people and their properties situated beyond the Bug River in Poland. \textit{See EUROPEAN COURT OF HUMAN RIGHTS, FACTSHEET—PILOT JUDGMENTS 2017,} http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf [https://perma.cc/65AC-XKMG].
\textsuperscript{123} \textit{Id.} ¶ 162.
\textsuperscript{124} \textit{Id.} ¶ 145.
Conversely, Turkey has not implemented a parallel domestic regime aimed at addressing the 1915–23 expropriations of Armenian properties. As such, the Sis case is distinguishable from Kotov and Broniowski because the Turkish government never created a new entitlement and thus a “legitimate expectation” of property rights.

Given the low likelihood of success on a property claim under any of these four continuous violation exceptions, the Church’s best option for overcoming the Court’s ratione temporis jurisdiction is a claim for freedom of thought, conscience, and religion under Article 9.

III.
A CLAIM FOR FREEDOM OF THOUGHT, CONSCIENCE, AND RELIGION BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

The ECHR’s case law leaves little doubt that it does not typically characterize expropriations that predate the Court’s jurisdiction as continuing violations. More likely than not, expropriations outside of the Court’s ratione temporis jurisdiction will be deemed instantaneous acts. If the dispossession of Sis cannot be said to constitute a cognizable property violation today, recourse to other provisions of the Convention is necessary. A suit under Article 9 for a violation of freedom of thought, conscience, or religion is ultimately the Church’s most feasible route to restitution. Such a claim will survive the jurisdictional hurdles present in a property suit while providing a more authentic means of addressing the issues of cultural erasure that surround this case.

Under the Convention, “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.” Paragraph 2 qualifies this right, stating that “[f]reedom to manifest one’s religion or beliefs shall be subject only to such limitations as are

125. In 2015, Turkey announced efforts to pay compensation for seized properties once owned by the religious foundations of the Armenian, Greek, and Jewish communities, which were seized as part of discriminatory state policies. Ranging from historical buildings and churches to schools, these properties were mostly sold to third parties after their confiscation in 1936, the year Turkey enacted a regulation banning the donation of real estate to the churches and temples of non-Muslim communities. A subsequent 1974 ruling by the Turkish Supreme Court of Appeals enabled the state to seize the properties minorities acquired after 1936. Consequently, the current case by the Armenian Catholicosate for property seizures during the 1915–23 Armenian Genocide likely does not qualify under this compensation regime. See Turkey to Pay Reparations for Minorities’ Seized Properties, PANARMENIAN NETWORK (Nov. 21, 2015), http://www.panarmenian.net/eng/news/201040 [https://perma.cc/6QB5-ARJD].

126. The perverse incentives of this decision are noteworthy and may discourage any state’s decision to implement similar legislation by subjecting it to the potential scrutiny of the ECHR. In the Armenian Church case, the ECHR could find that any such legislation reaffirms Turkey’s previous commitments under both Lausanne and Sevres—and their respective obligations concerning the return of Armenian properties.

127. Convention, supra note 6, art. 9, ¶ 1.
prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Given the genocidal context of the Sis Catholicosate’s expropriation, which I have framed as the initial act in a continuing violation of religious freedoms by the modern Turkish state, this Note will proceed on the assumption that none of the limitations present in the second paragraph of Article 9 apply.

A. Initial Admissibility Considerations Under Article 9

Determining what kinds of cases are within the ambit of Article 9 requires an understanding of what constitutes “thought, conscience and religion” as well as its “manifest[ation].”

With regard to the former, the Court’s approach to Article 9 is somewhat narrow in practice, despite the potentially wide scope of its definition. The Commission and the Court have not given a precise interpretation of “religion,” but case law indicates that so-called “mainstream” religions are readily accepted as belief systems falling within the scope of Article 9’s protections. Minority variants of mainstream religions are covered as well. Armenian Orthodoxy, the variant of Christianity at issue in this case, can likely be characterized as either a mainstream or minority variant of “religion.”

Manifestation of this belief is an integral part of Article 9’s guarantees. A “manifestation” may involve both individual and collective activity and “implies a perception on the part of adherents that a course of activity is in some manner prescribed or required.” In Ewida v. The United Kingdom, a 2013 decision concerning manifestations of belief in the employment context, the Court explained:

In order to count as a “manifestation” within the meaning of Article 9, the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However,

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128. MURDOCH, supra note 68, at 11–12. “Consciousness” of belonging to a minority group, and consequently seeking to protect its cultural identity, does not give rise to an Article 9 violation. Further, “belief” is not equivalent to “opinion.” Rather, in order for personal belief to fall within Article 9’s guarantee of freedom of religion, it must relate to a “weighty and substantial aspect of human life and behavior” and be deemed “worthy of respect in a ‘democratic society.’” Campbell v. United Kingdom, 48 Eur. Ct. H.R. (ser. A) ¶ 36 (1982). This excludes beliefs in assisted suicide and disposal of human remains following death, as well as language preferences, but does encompass pacifism, atheism, veganism, and political ideologies. Further, Article 9 encompasses both non-belief and non-religious belief. In Kokkinakis v. Greece, the ECHR noted that “[Article 9] is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it.” Kokkinakis v. Greece, 260 Eur. Ct. H.R. (ser. A) ¶ 31 (1993).

129. MURDOCH, supra note 68, at 12.


131. MURDOCH, supra note 68, at 15.
the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case. In particular, there is no requirement on the applicant to establish that he or she acted in fulfillment of a duty mandated by the religion in question.\textsuperscript{132}

The Commission also noted in \textit{Arrowsmith v. The United Kingdom} that a manifestation “does not cover each act which is motivated or influenced by a religion or belief.”\textsuperscript{133} In that case, the applicant had been convicted for handing out leaflets critical of government policies.\textsuperscript{134} Though the applicant was a pacifist, the Commission noted that the leaflets in question had expressed, not her own pacifist values, but instead critical observations of a government policy, and were thus \textit{motivated} by her belief rather than critical to the expression of it.\textsuperscript{135}

Though the modern debate surrounding Armenian Genocide recognition has been politically tinged, the Church’s case is distinguishable because it concerns the expression of religious belief via worship, not the Church’s critique of Turkish policy on the Genocide question. The act of worship in this context is arguably a political act in itself, but the ultimate purpose of the lawsuit is to allow adherents to practice their faith in a manner central to its expression. As such, the manifestation element is likely met here.

In addition to a guarantee of individual freedom of belief, Article 9 also covers manifestations of belief with others in both public and private, including restrictions upon adherents’ ability to participate in services or observances.\textsuperscript{136} In these circumstances, Article 9 is interpreted in light of the protection accorded by Article 11’s guarantee of freedom of assembly and association.\textsuperscript{137} This collective aspect of Article 9 is also reflected in the definition of victim status under Article 34 of the Convention.\textsuperscript{138} Under Article 34, the Court may recognize

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\textsuperscript{134} Id. ¶ 58.
\textsuperscript{135} Id. ¶¶ 71–72. Similar reasoning can be found in case law concerning the distribution of anti-abortion materials outside of a clinic, refusal to work on a particular day, refusal to hand over a letter of repudiation to a former spouse, and choice of forenames for children (this last case falls under the category of “thought” in Article 9). The cases that have given rise to interferences of the right to manifest belief tend to involve the public sphere (e.g., proselytism and the wearing of religious symbols). The key consideration is whether there is “likely to be the need for state action or its proportionality.” See MURDOCH, supra note 68, at 16.
\textsuperscript{136} MURDOCH, supra note 68, at 16.
\textsuperscript{137} Id.
\textsuperscript{138} Id. at 17. Article 34 states, “The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.” Convention, supra note 6, art. 34.
a religious body like the Armenian Catholicosate as having the right to challenge interferences with religious belief and practice if it can demonstrate that it is bringing a challenge in a representative capacity on behalf of its adherents. Given its status as the official spiritual authority of the Armenian people, the Armenian Catholicosate is the only conceivable body to bring such a suit.

B. Limits on the Court’s Article 9 Jurisprudence

Although the Sis case likely meets initial admissibility requirements, a suit will also need to contend with the circumscribed nature of Article 9’s application. Until recently, the Court’s case law under Article 9 focused on discrete issues like freedom of religion in prisons and respect for belief in the workplace. In recent years, however, the Court has broadened the scope of its case law under Article 9, addressing issues as diverse as proselytism, refusals to grant authorization for places of worship or registration for religious bodies, and prohibitions on wearing religious symbols in public. Nevertheless, case law under Article 9 remains comparatively rare, and the Court has often concluded that the issues raised under that provision can be better resolved by reference to related guarantees under Articles 10 (freedom of expression) and 11 (freedom of association).

However, the Sis case is distinguishable from the Court’s Article 10 jurisprudence because it concerns access to a religious minority’s historical place of worship rather than explicit speech in a secular forum. It can thus be differentiated from a case like Feldek v. Slovakia, which concerned the conviction of a publicist who had criticized the Slovak Minister of Culture and Education for having a “fascist past.” There, the Court concluded that the matter was more suitably examined under Article 10, finding no separate issue under Article 9 because “the impugned measure constituted an interference with the applicant’s exercise of his freedom of expression.” Similarly, Van den Dungen v. The Netherlands involved an applicant who was prohibited from addressing people and distributing leaflets in the direct vicinity of an abortion

139. MURDOCH, supra note 68, at 17.
142. MURDOCH, supra note 68, at 9–10. Issues concerning religion, conscience, and belief may also arise elsewhere in the Convention. Article 14 of the Convention also makes explicit reference to religious belief in defining prohibited grounds for discriminatory treatment in “[t]he enjoyment of the rights and freedoms set forth in this Convention.” Convention, supra note 6, art. 14. Further, Protocol No. 12 establishes a more general prohibition of discrimination beyond the rights prescribed in the Convention, providing that “[t]he enjoyment of any right set forth by law shall be secured without discrimination on . . . religion.” Id. Protocol No. 12, art. 1.
144. Id. ¶ 92.
The Commission considered the prohibition an interference with the applicant’s right to freedom of expression under Article 10, but held that the applicant’s activities did “not constitute the expression of a belief within the meaning of Article 9 para. 1.” Specifically, the Commission noted that Article 9 “protects acts which are intimately linked to [personal beliefs and religious creeds], such as acts of worship or devotion which are aspects of the practice of a religion or belief in a generally recognised form” and that Article 9 “does not always guarantee the right to behave in the public sphere in a way which is dictated by such a belief.”

The Sis suit is also distinguishable from cases held by the Court to fall under Article 11’s guarantee of the right of association. For example, Refah Partisi (The Welfare Party) v. Turkey concerned a Turkish political party’s dissolution amidst accusations that it had become a “centre of activities contrary to the principle of secularism.”

Though that case involved a religious element with respect to the theology of individual party members, the central issue was the association of members of a politically oriented group. The Court emphasized “the State’s role as the neutral and impartial organiser of the exercise of various religions, faiths and beliefs,” and that Convention institutions have expressed that “the principle of secularism is certainly one of the fundamental principles of the State which are in harmony with the rule of law and respect for human rights and democracy.” The Court held that “[a]n attitude which fails to respect [secularism] will not necessarily be accepted as being covered by the freedom to manifest one’s religion and will not enjoy the protection of Article 9 of the Convention.”

The Armenian Church case is distinguishable from Refah Partisi because it concerns private belief and not religious practice in a public forum. Though the Refah Partisi Court reasoned that Turkey’s actions promoted “religious harmony and tolerance in a democratic society,” this does not apply to the suppression of religious practice in private houses of worship wholly disconnected from the public sphere. With no overlap between private belief and public institutions in the Sis case, Article 9 must govern.

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146. Although it found an interference with the applicant’s right to freedom of expression under paragraph 1 of Article 10, the Commission ultimately held that the interference was justified because it was proportionate to the legitimate aim pursued (namely, that it could reasonably be considered “necessary” for the protection of the rights of others). Id. ¶ 1–2.
147. Id. ¶ 1.
148. Id.
150. Id.
151. Id. ¶¶ 91, 93.
152. Id. ¶ 93.
153. See id.
154. See id. ¶¶ 51–52.
Of most relevance to the Sis case, the deprivation of a religious group’s material resources has been held to fall not under Article 9, but rather within the ambit of Article 1 of Protocol No. 1’s protection of property. However, as discussed below, the Armenian Church’s case is distinguishable because the property in question is a place of worship and thus intended primarily for religious use. This distinguishes Sis from other properties that do not serve such a singularly spiritual purpose.

C. Religious Property and Article 9

The centrality of the physical ruins of Sis to this case may transform the matter from one of freedom of religion into one of property rights, removing it from the temporal jurisdiction of the Court. A major obstacle will thus be differentiating this suit from cases where the Court has rejected an Article 9 claim in favor of finding a property violation instead.

_Holy Monasteries v. Greece_ is helpful in this regard. The case concerned a 1987 law providing that unless the Greek Orthodox Church could prove title, Greece would become the owner of all of its monasteries’ “immovable property.” Greece defined “immovable property” as “agricultural land and land capable of agricultural use, forests and wooded areas in general, pastures, meadows . . . and quarries, mines and fish farms.” The applicants maintained that the law “deprived them of the means necessary for pursuing their religious objectives and preserving the treasures of Christendom” and “would impede the carrying out of their ascetic mission,” in violation of Article 9. In rejecting the applicants’ Article 9 claim, the Court explained that the relevant provisions of the Greek law “in no way concern the objects intended for the celebration of divine worship and consequently do not interfere with the exercise of the right to freedom of religion.”

The Court’s distinction between properties intended for religious practice and properties more incidentally connected to the functioning of the Church bears favorably on the Sis lawsuit. In _Holy Monasteries_, the property in question was possessions the Greek Orthodox Church had acquired through donations and adverse possession over the centuries, specifically, land put to commercial and agricultural use. This is distinguishable from property that is specifically intended for religious practice, particularly houses of worship. The land in question, though providing revenue for the functioning of the Greek Orthodox monasteries, was not critical or even necessarily relevant to the worship and practice of the Church’s adherents.

156. _Id._
157. _Id._ ¶ 24–29
158. _Id._ ¶ 25.
159. _Id._ ¶ 86.
160. _Id._ ¶ 87.
Conversely, the Sis Catholicosate is a property that is critical to the practice of the Armenian Orthodox in Turkey. As once the most holy site in the world for Armenian Christianity, it was a house of worship specifically intended for religious use and not merely an incidental property like agricultural land. As such, this suit likely would not be excluded from Article 9 protection. Though there are other churches available to Turkey’s Armenian population, an Article 9 claim should still prevail because of the centrality of this particular house of worship and its potential to revive Armenian Christian identity in Turkey.

Indeed, the Court has held that curtailing access to places of worship and restricting the ability of adherents to participate in religious observances will amount to “interferences” with Article 9 guarantees. In *Cyprus v. Turkey*, Greek Cypriots living in the TRNC-controlled Karpas Peninsula were restricted in their access to places of worship. Specifically, “restrictions were placed on their access to the Apostolos Andreas Monastery as well as on their ability to travel outside their villages to attend religious ceremonies.” Further, TRNC authorities “had not approved the appointment of further priests for the area, there being only one priest for the whole of the Karpas region.” For the Commission, “these restrictions prevented the organisation of Greek Orthodox religious ceremonies in a normal and regular manner.” In accepting the facts found by the Commission, the Court held that “the restrictions placed on the freedom of movement of that population during the period under consideration considerably curtailed their ability to observe their religious beliefs, in particular their access to places of worship outside their villages and their participation in other aspects of religious life,” amounting to a violation of Article 9 for Greek Cypriots living in northern Cyprus.

The Court did not address whether the Apostolos Andreas Monastery was the only, or even the most important, site of worship for the Greek Cypriot community. It even implied that alternative places of worship were available within local villages. However, the Court held that Turkey’s restrictions on Greek Cypriots’ travel outside their villages to attend religious ceremonies—not the restriction of Greek Orthodox practice more broadly—was enough to constitute an Article 9 violation.

Though Armenians in Turkey similarly have access to alternative places of worship, the continuing deprivation of the Sis Catholicosate in particular has key significance to both the past destruction and potential future reestablishment of Armenian identity in the region. Its expropriation marked the exile of the Armenian Church’s leadership from the Ottoman Empire and, concurrently, the

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162. *Id.* ¶¶ 242, 300.
163. *Id.* ¶ 243.
164. *Id.*
165. *Id.*
166. *Id.* ¶¶ 245–46.
exile and genocide of the region’s Armenian populace. Denying access to this specific house of worship is thus representative of the larger cultural genocide that has taken place in Turkey since 1915 and also denies Armenians in that country their spiritual leadership. As Akhavan emphasized in the December 2016 press conference, “[T]his case is unique in the sense that it focuses on the historical headquarters of the Church and it’s a property that is inextricably tied to the right of religious worship . . . not a property that can be substituted by any other property.”167 Allowing the Sis Catholicosate to once again become the center of worship for Armenians in Turkey could herald the return of the Church’s leadership to the region in a way that no other property could, enabling the restoration of a robust Armenian Orthodox identity in that country.

D. Association for Solidarity with Jehovah Witnesses v. Turkey

Association for Solidarity with Jehovah Witnesses v. Turkey presents a recent example of how the Court should rule on the Sis case.168 In the Jehovah Witnesses case, authorities closed prayer rooms in private premises where two separate Jehovah’s Witnesses congregations had worshipped for many years, citing an urban planning law that imposed restrictions on the construction of places of worship on sites not designated for that purpose.169

The first part of the dispute focused on an apartment where the Mersin Jehovah’s Witnesses congregation had been meeting since 1988.170 Turkish officials searched it in 2000 and closed it down on the grounds that assembly on those premises was unlawful.171 Officials similarly informed the congregation that it could not worship in an apartment in another local district, which was ultimately closed by government officials in 2003.172 Finally, in August 2003, the municipal urban planning department informed the congregation that there were no sites in local development plans available as alternative houses of worship.173 The applicants filed an appeal to set the decision aside with the administrative court, but their application and subsequent appeals were all ultimately dismissed by 2009.174

The second part of the dispute focused on the Izmir Jehovah’s Witnesses congregation, which had been worshiping in a ground floor apartment before being informed it would have to apply for a building permit for a new place of worship.175 In February 2004, the congregation submitted a request for an allocation of land to its municipality with the aim of constructing a new site for

167. ARMENPRESS, supra note 5, at 28:10.
168. ECHR, Refusal to Provide, supra note 12.
169. Id.
170. Id. at 1.
171. Id.
172. Id. at 1–2.
173. Id. at 2.
174. Id.
175. Id.
adherents. In March and September 2004, the congregation also applied for an amendment to the local urban development plan so they could use their former apartment as a place of worship. These requests, as well as subsequent appeals, were all rejected by 2010.

In finding an Article 9 violation, the ECHR held that Turkey’s interference with the congregations’ searches for places of worship amounted to a direct interference with their freedom of religion that was neither proportionate nor necessary in a democratic society. In particular, the ECHR considered how the Turkish courts had not taken account of the specific needs of this small religious community, noting that the impugned legislation made no mention of how, given their small numbers, the congregations did not need a building that met specific architectural criteria, but rather a simple space in which to worship, meet, and teach their beliefs. The ECHR also found that administrative authorities used zoning legislation to impose prohibitive conditions on the freedom of worship by minority denominations.

The Jehovah Witnesses case demonstrates the Court’s willingness to find an Article 9 violation where a state interferes with worship by minority groups under the guise of property laws. As the ECHR explained in its “Information Note on the Court’s case-law,” “[t]he fact is that a religious community’s inability to obtain a place of worship nullifies its religious freedom.” Though Turkey has not explicitly outlawed the general belief and practice of Armenian Christians, the ECHR makes it clear that a state's denial of access to places of worship is tantamount to such a prohibition, underscoring the centrality of physical spaces to not only the spiritual needs of a community, but also to Article 9's protections. In the Church’s case, a meaningful Armenian Orthodox identity akin to that which existed before the Genocide will likely never again be reestablished in Turkey without the return of the Sis Catholicosate, and its continuing dispossession will quash this community’s religious freedom until that is the case.

CONCLUSION

The case of the Sis Catholicosate presents a property dispute that is inextricable from the religious belief and practice of Turkey’s Armenian community. Given the likely defeat of a property claim outside of the ECHR’s temporal jurisdiction, the Church’s best recourse for restitution is an Article 9 claim for freedom of religion. An Article 9 claim not only provides the best

176. Id.
177. Id.
178. Id.
179. Id. at 2–3.
180. Id. at 3.
181. Id.
182. EUROPEAN COURT OF HUMAN RIGHTS, INFORMATION NOTE ON THE COURT’S CASE-LAW NO. 196, at 19 (2016).
likelihood for the property’s return, but also the most authentic means of confronting the larger context of cultural erasure that accompanied the Sis Catholicosate’s expropriation. Short of an explicit call for Armenian Genocide recognition by Turkey, it may be the best solution for a community faced with over a century of denial.