

Will the U.S. Supreme Court Take Up a Case Involving the Interpretation of Foreign Law?

What deference should a U.S. court give to a foreign sovereign's interpretation of its domestic law? That question is asked, and a whole host of interesting others, in a recently filed petition for certiorari in the case of Islamic Republic of Iran v. McKesson Corp. To make a long story short (the original complaint was filed in 1982 and the case was just subject to a final judgment of \$43.1 million dollars!), McKesson Corporation alleges that the Islamic Republic of Iran expropriated its interest in a dairy operated by McKesson from the 1960s to the 1980s. McKesson brought an action before the United States District Court for the District of Columbia, and, after much back and forth (the court of appeals has heard the case five times!), the district court held that as a matter of Iranian law that McKesson had a cause of action under a Treaty of Amity between the U.S. and Iran.

While the cert. petition is largely devoted to the question of interpreting that treaty, there is also a question presented regarding what deference is due to a foreign sovereign's interpretation of its law. According to the cert. petition, this is a question that has split the circuits. Some courts give "substantial deference," others give "some degree of deference," others give some unstated deference.

It will be interesting to see if the Supreme Court takes up this choice of law related case.