

A Victory for Germany at the U.S. Supreme Court, and Further Clarity on the Expropriation Exception to the FSIA

The U.S. Supreme Court issued its decision yesterday in *Federal Republic of Germany v. Philipp*. This is the case we previewed here concerning the Guelph treasure, allegedly taken by Nazis from its Jewish owners via a coerced sale for a fraction of its value prior to World War II. The heirs of the rightful owners and the government had agreed to conciliate the claim before a German Commission, which found that the taking had not been coerced. Dissatisfied with the decision, the heirs sued in Washington under the expropriation exception to the Foreign Sovereign Immunities Act, which provides that a foreign state is not immune from jurisdiction of the U.S. courts in cases “in which rights in property taken in violation of international law are in issue.” The District Court and the DC Circuit held that Germany was not immune, and the Supreme Court granted Germany’s petition for review. There were a number of issues at play in this case, but Germany’s primary argument was that a state does not violate international law by expropriating the property of its own nationals.

The Court, in a unanimous decision by Chief Justice Roberts, sided with Germany. When the FSIA was enacted in 1976, Roberts said, it was “clear” that a taking of property violated international law only when a state took an alien’s property. The text of the statute also “places repeated emphasis on property and property-related rights, while injuries and acts we might associate with genocide are notably lacking.” Put simply, the Court viewed the statute as linked to direct expropriation of alien property, and not as a way for U.S. courts to hear any claims arising under international law. Repeating a theme against asserting U.S. jurisdiction to acts occurring abroad, Justice Roberts stressed that “United States law . . . does not rule the world,” and noted that the Court will interpret our laws to “to avoid, where possible, “producing friction in our relations with [other] nations.”

Due to its decision on the expropriation exception, the Court did not need to

decide whether comity provided an independent basis for dismissal. The court also issued a one-sentence opinion vacating a lower-court ruling in *Republic of Hungary v. Simon*, a similar lawsuit brought by Holocaust survivors seeking compensation for Hungary's confiscation of Jewish property.