

Supreme Court Hears Holocaust Survivors' Cases Against Hungary and Germany

The justices struggled to decide whether a 1976 law that bars most suits against other nations allows Jewish victims to sue over the theft of their property.

By Adam Liptak

WASHINGTON — The Supreme Court, wary in the past of cases concerning conduct by and against foreigners that took place abroad, heard arguments on Monday over whether American courts have a role in **deciding whether Hungary and Germany must pay for property said to have been stolen from Jews before and during World War II.**

But the gravity of the human rights violations described in the two lawsuits persuaded a federal appeals court in Washington to let the two cases move forward. The Trump administration took issue with the rulings, filing briefs and presenting arguments supporting efforts to limit review in American courts.

The **Hungarian case, Republic of Hungary v. Simon, No. 18-1447**, was brought by 14 Holocaust survivors, four of them United States citizens, who said their property was stolen by Hungary and its state-owned railway, which deported hundreds of thousands of Jews to Nazi death camps in the summer of 1944.

Sarah E. Harrington, a lawyer for the plaintiffs, urged the justices to consider that historical context.

“Hungary took everything the plaintiffs owned, including possessions necessary to survive, such as shelter, clothing and medicine, and the undisputed purpose of Hungary’s takings was to bring about the physical destruction of Jews in Hungary,” she said. “That is genocide.”

The German case, Federal Republic of Germany v. Philipp, No. 19-351, concerns the **Guelph Treasure**, a trove of medieval religious art that was once owned by a consortium of Jewish art dealers in Frankfurt and that is now estimated to be worth \$250 million. In 1935, the families of the dealers say, the consortium was forced by the German authorities to sell the collection for far less than it was worth.

The 42 pieces in the collection are now in the Museum of Decorative Arts in Berlin. In 2014, a German commission determined that the museum had acquired the collection legitimately and did not need to return it.

The commission said the 1935 sale was voluntary and came after a yearlong negotiation that resulted in a price about halfway between the two sides' opening positions. The families said the consortium was coerced to sell in the face of sustained persecution.

Three-judge panels of the United States Court of Appeals for the District of Columbia Circuit ruled against both Hungary and Germany, saying the cases could proceed.

The basic legal question for the justices in both cases is whether the disputes should be resolved by American courts. A federal law, the Foreign Sovereign Immunities Act of 1976, generally bars suits against foreign states. The law has some exceptions, including one for the expropriation of property, and American courts have sometimes declined to hear cases against other nations for fear that doing so would interfere with international comity.

Gregory Silbert, a lawyer for Hungary, said its courts should be allowed to address the matter.

“When a complaint alleges that foreign parties harmed other foreign parties in a foreign country, a federal court can decline jurisdiction in favor of a foreign tribunal,” he said. “Hungary should have the first opportunity to address these claims.”

The same would be true, he said, were the shoe on the other foot.

“We can all agree,” he said, “that the remedies for the worst injustices committed by the United States in the United States should not be decided by a Hungarian judge applying Hungarian law from a courtroom in Budapest.”

Benjamin W. Snyder, a lawyer for the federal government who argued in support of Hungary, took a position that frustrated several justices. He said the Supreme Court should leave open the possibility that courts should defer to foreign tribunals in the interest of international comity and return the case to lower courts to decide whether Hungary was entitled to such deference. But he would not say what they should do.

Chief Justice John G. Roberts Jr. said that was a curious position given the executive branch's expertise in foreign affairs.

“This is the perfect time for you to fill that void,” the chief justice told Mr. Snyder, who declined.

“The State Department simply doesn't feel that it has sufficient information to provide the court with a recommendation,” Mr. Snyder said.

Justice Samuel A. Alito Jr. said he was puzzled as to why judges rather than diplomats should assess the international relations implications of allowing suits against other nations to proceed in American courts.

“There are almost 700 district judges,” he told Mr. Snyder. “You want every one of them to assess whether a particular lawsuit raises foreign relations concerns?”

Justice Elena Kagan also expressed misgivings. “Some might say that what’s going on here,” she said, “is that the State Department is expecting the courts to do the difficult and sensitive and some might say dirty work for you.”

She asked Ms. Harrington, the lawyer for the plaintiffs, about a similar case against Hungary in which an [appeals court estimated](#) that the potential damages could amount to 40 percent of its gross domestic product.

“So this is a suit that could essentially bankrupt a foreign nation,” Justice Kagan said. “Now that seems as though it’s screaming severe international friction.”

Ms. Harrington responded that her case, a potential class action, was at an early stage and that “it’s pure speculation at this point” to try to calculate her clients’ damages.

A [supporting brief](#) from Hungarian Holocaust victims argued that trying to sue in that country was pointless. It described a case brought there by a 92-year-old plaintiff whose suit was dismissed for lack of evidence beyond her sworn testimony and who was ordered to pay the government’s legal fees.

“The Hungarian court asked the impossible of the survivors, whom the concentration camps deprived of the means to prove with written documentation the property that was stolen from them,” the brief said.

In the German case, the justices focused on a different question: Does the exception allowing suits under the 1976 law for expropriation of property apply when a foreign government was accused of taking its own citizens’ property?

Edwin S. Kneedler, a lawyer for the federal government, said the exception for expropriation applied only to “the taking of a foreign national’s property.”

More generally, he urged the justices to consider the consequences of a broad ruling.

“This would put courts of the United States,” Mr. Kneedler said, “in the business of making sensitive judgments about the conduct of foreign governments, including perhaps some of our closest allies, and invite other countries to open their courts to claims based on situations in this country’s unfortunate past, where it has committed acts that everyone would now regard as violations of the law of nations.”