

Supreme Court Rules for Germany in Case on Nazi-Era Art

In a unanimous ruling, the court said a federal law bars suits against foreign governments accused of expropriating their own citizens' property.

By Adam Liptak

WASHINGTON — The Supreme Court on Wednesday unanimously ruled against the heirs of Jewish art dealers in Nazi-era Frankfurt who sought to sue Germany in American courts over artifacts they say the dealers were forced to sell for a third of their value.

The case, Federal Republic of Germany v. Philipp, No. 19-351, concerned the Guelph Treasure, a trove of medieval religious art that is now estimated to be worth \$250 million. A consortium of three firms owned by Jews bought the collection in the waning days of the Weimar Republic and went on to sell about half of it to individual buyers and museums, including the Cleveland Museum of Art.

As the Nazi government took power, the collection caught the interest of Hermann Goering, Hitler's second in command and the prime minister of Prussia. According to the heirs, he threatened the dealers with political persecution and physical harm to coerce them to sell the remaining artifacts in 1935 for much less than they were worth.

The pieces are now in the Museum of Decorative Arts in Berlin. In 2014, a German commission determined that the museum had acquired the collection legitimately. The commission said the 1935 sale to Prussia was voluntary and came after a yearlong negotiation that resulted in a price about halfway between the two sides' opening positions.

The heirs sued in federal court, and a three-judge panel of the United States Court of Appeals for the District of Columbia Circuit ruled against Germany, saying the case could proceed.

The question for the justices was whether the suit was barred by the Foreign Sovereign Immunities Act, which generally forbids suits against foreign states. The law has some exceptions, including one for the expropriation of property.

Chief Justice John G. Roberts Jr., writing for the court, said that exception did not apply when a foreign government was accused of taking its own citizens' property.

The appeals court had ruled that the heirs could invoke the exception because the artifacts had been taken as part of an act of genocide, relying on a provision of the law saying that sovereign immunity does not apply in cases “in which rights in property taken in violation of international law are in issue.”

Chief Justice Roberts said the appeals court had read that phrase too broadly.

“We need not decide whether the sale of the consortium’s property was an act of genocide, because the expropriation exception is best read as referencing the international law of expropriation rather than of human rights,” he wrote. “We do not look to the law of genocide to determine if we have jurisdiction over the heirs’ common law property claims. We look to the law of property.”

The Supreme Court seldom cites the decisions of international tribunals in its decisions, but the chief justice made an exception on Wednesday, noting that the International Court of Justice had ruled in a case concerning Germany that “a state is not deprived of immunity by reason of the fact that it is accused of serious violations of international human rights law.”

Chief Justice Roberts added that a broad ruling could invite suits against the United States in foreign courts.

“As a nation, we would be surprised — and might even initiate reciprocal action — if a court in Germany adjudicated claims by Americans that they were entitled to hundreds of millions of dollars because of human rights violations committed by the United States government years ago,” he wrote. “There is no reason to anticipate that Germany’s reaction would be any different were American courts to exercise the jurisdiction claimed in this case.”

The Supreme Court returned the case to the lower courts to examine “an alternative argument noted by the heirs” — that their relatives were not German nationals at the time of the 1935 sale and so were free to sue.

In their Supreme Court brief, lawyers for the heirs said that German Jews had been stripped of the legal and economic rights normally associated with citizenship well before 1935. In response, lawyers for Germany wrote that “laws depriving German Jews of citizenship were not enacted until after the 1935 purchase” and that, in any event, the heirs “do not and cannot contend they were nationals of *another* state.”

The court also issued a brief, unsigned decision in a similar case, Republic of Hungary v. Simon, No. 18-1447. It 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.

The court’s opinion instructed the appeals court, which had allowed the case to proceed, to reconsider its ruling in light of the decision in the German case.