

03-13 AUSTRIA v. ALTMANN

Ruling below: CA 9, 317 F.3d 954, amended 327 F.3d 1246

QUESTIONS PRESENTED

The Ninth Circuit affirmed the district court's jurisdiction over the Republic of Austria, a sovereign state, and its national museum, the Austrian Gallery, for a disputed expropriation claim that arose in 1948, twenty-eight years before enactment of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1602 et seq. ("FSIA "). The claim challenges the Republic's ownership of artwork that is and always has been located in Austria. Jurisdiction and venue in the Central District of California were asserted notwithstanding that (a) the claims in this case arose before the United States adopted the restrictive theory of sovereign immunity in 1952, at a time when Austria had an expectation of absolute immunity from private civil suit in United States courts; (b) the United States opposes a finding of jurisdiction in this case; (c) respondent did not exhaust her legal remedies in Austria; and (d) no part of the alleged events or omissions giving rise to the claim occurred in any judicial district in the United States, or concern any commercial activity here. In holding that the FSIA may be retrospectively applied to pre-1952 events, the Ninth Circuit's decision directly conflicts with the holdings of the Second, Eleventh and District of Columbia Circuits.

Three questions are presented:

1. Does the expropriation exception of the Foreign Sovereign Immunities Act of 1976 ("FSIA"), 28 U.S.C. § 1605(a)(3), afford jurisdiction over claims against foreign states based on conduct that occurred before the United States adopted the restrictive theory of sovereign immunity in 1952?
- ~~2. Can jurisdiction over a foreign state or its agency or instrumentality be asserted under the FSIA's expropriation exception when due process minimum contacts requirements have not been met, there has been no violation of international law because the claimant failed to exhaust her legal remedies in the foreign state, and the activity that is the basis for jurisdiction is the limited, non-commercial promotion of a not-for-profit national museum?~~
- ~~3. Can foreign states be sued in any district where a claimant resides, notwithstanding the provisions of 28 U.S.C. § 1391(f)(4) laying exclusive venue in the District of Columbia, when no substantial part of the events or omissions giving rise to the claim occurred in, and the property claimed is not situated in, the United States?~~

CERT. GRANTED: 9/30/03

Limited to Question 1 presented by the petition.