
***Federal Republic of Germany v. Philipp*, No. 19-351; *Republic of Hungary v. Simon*, No. 18-1447**

Introduction: Today, the Supreme Court held in a unanimous decision that the “domestic takings” rule bars suits against foreign governments for the unlawful taking of property from people who were nationals of the confiscating country at the time of the confiscation.

Background: Historically, foreign nations have sometimes confiscated the property of their nationals, in times of political upheaval or as part of the persecution of religious or ethnic minorities. These cases concern Nazi officials’ seizure of the property of Jews during the Holocaust. The original owners of the seized property brought suit in U.S. courts against Germany and Hungary under the Foreign Sovereign Immunities Act (FSIA). Although the FSIA generally bars suits against foreign governments, the owners argued that the FSIA is inapplicable because it authorizes suits regarding property “taken in violation of international law,” and the genocide committed during the Holocaust violated international law. The foreign governments responded that the FSIA incorporates another principle of international law, the so-called “domestic takings” rule. Under that rule, a nation’s taking of property from its own nationals is a matter of purely domestic concern and is not actionable under international law. The D.C. Circuit agreed with the plaintiffs, holding that a taking of property in connection with genocide or similar violations of international law is actionable under FSIA.

Issue: Whether the domestic takings rule precludes suit in U.S. courts challenging the seizure of property by foreign nations from their own nationals.

Court’s Holding: In an opinion written by Chief Justice Roberts, joined by all other members of the Court, the Court held that the FSIA incorporates the domestic takings rule. Although the Court recognized that genocide and similar abuses violate international law, it read the text and history of the FSIA to incorporate the long-standing domestic takings rule. The Court reasoned that this doctrine prevents countries from interfering in each other’s internal affairs, and that reading the FSIA to exclude the domestic takings exception could lead other nations to retaliate against the United States. The decision could have far-reaching consequences, cutting off access to U.S. courts to challenge many human rights abuses involving the seizure of property.

Read the *Federal Republic of Germany v. Philipp* opinion [here](#); the opinion for *Republic of Hungary v. Simon* vacates and remands consistent with *Federal Republic of Germany*.