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International Law

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MINISTRY OF DEFENSE AND SUPPORT FOR THE ARMED FORCES OF THE ISLAMIC
REPUBLIC OF IRAN v. ELAHI

United States Supreme Court; No. 07-615 (2009)

Facts

- a. The case was heard by the United States' Supreme Court on April 21st, 2009 on appeal from the ninth circuit. It was heard on behalf of a request for certiorari from Iran on a ninth court's judgment. Justice Breyer delivered the Court's opinion.
- b. The respondent, Dariush Elahi, received a default judgment of three-hundred and twelve million dollars from the failure of Iran to respond to his claim that their government took part in the assassination of his brother. In order to secure at least a partiality of the remedial money from Iran, Elahi issued a notice of lien requesting that the court attach money from the Cubic Judgment to his default judgment. In the Cubic judgment, the Federal District Court of Southern California decided that Cubic, a military equipment company, must pay Iran a two point eight million dollar arbitration award for lost assets between 1979 and 1981. Iran rejected the notice under the principle of sovereign immunity, which was denied by both the California District Court and the Ninth Circuit court.
- c. Iran asked that the Supreme Court grant certiorari. They argue that the Cubic Judgment cannot be attached because they are state assets and therefore fall under sovereign immunity. They also argue that Elahi waived his right of attachment by receiving United States government compensatory awards under the terms of the Victims of trafficking and Violence Protection Act (VPA) of 2000.
- d. Elahi claims that the Cubic Judgment is not immune from attachment due to the Terrorism Risk Insurance Act of 2002 (TIRA), which allows victims of terrorist related acts to attach blocked Iranian assets.

Questions

- a. Whether the attachment, the Cubic Judgment, is a blocked asset which would strip it of sovereign immunity under TIRA.
- b. Whether the Iranian Ministry of Defense is an “agency or instrumentality” of a foreign sovereign, or the foreign sovereign itself.
- c. Whether Elahi waived his right to attach assets by accepting money from the VPA if the case is in question in an International Court.
- d. Whether subsequent Executive Orders blocking all assets held by weapons of mass destruction proliferators prevents the attachment.

Decisions

- a. The court decided that the Cubic Judgment was not a blocked asset. Although the 1981 Executive Order demanded that all non military assets be returned to the Iranian government, the Court found that the asset Elahi wishes to have attached is not the original Cubic military system itself, but arbitration awards money.
- b. The court found that the ninth court did not accurately assess their decision that the Iranian ministry of defense was indeed an agent of a foreign sovereign, which would not give them sovereign immunity. They said that the court based this decision off of a concession which never occurred and that the ninth court must re-examine this issue as crucial to determining whether or not the Ministry of Defense has sovereign immunity.
- c. The court decided that Elahi waived the right to attach assets of claims currently at issue in an international court by receiving two point three million dollars from the VPA. In response to the necessary follow up question of whether the asset was in question in an international court, the court found two cases dealing with the Cubic Judgment which sufficed.
- d. The Court failed to answer this question and felt in unnecessary given that Elahi waived his rights in the first place. Although at the time that Elahi first requested the

Cubic Judgment assets they were not blocked, a 2005 Executive Order blocked assets held by proliferators of WMDs. A 2007 State Department designation held that certain parts of the Iranian Ministry of Defense belong to this category. The debate between the Iranian government and the court is whether the assets belong to this designation, a debate which the court does not believe it can decide at this time.

Principles

- a. A state's sovereign Immunity can be restricted in another state's domestic laws, especially those states which have connections with terrorist-related activities.
- b. The importance of Executive Orders as a trump to congressional actions, a priority-maker for foreign policy which leaves them immune to many court decisions.
- c. Decisions in International Courts and the status of a case in the international courts have an effect on domestic decisions.
- d. The Supreme Court does not have standing to decide certain international issues, such as whether or not the Iranian Assets are part of their ministry defense program, and that domestic courts can only go so far in International law.

Conclusion

This case is important because of the historical importance of the Iranian Revolution and the subsequent Executive Orders which blocked Iranian assets and then unblocked them. The domestic laws which the court discussed show how United States uses restrictions on Sovereign Immunity as a foreign policy tool to achieve certain ends and to designate enemies. The purpose of blocking and unblocking Iranian assets was a matter of foreign policy with specific strategic purposes. It is important that the Court clearly objectively examined these Orders as well as United States domestic laws regarding nations with terrorist associations as Iran remains an important focus of our nation's foreign policy. It is also an important case because, even though the court sided with Iran, it shows that a nation can place restrictions on the principle of Sovereign immunity, especially in regards to States at odds with the domestic state.

Submitted: McElroy

Cases Cited

MINISTRY OF DEFENSE AND SUPPORT FOR ARMEDFORCES OF ISLAMIC REPUBLIC
OF IRAN v.ELAHI (No. 07-615) 495 F. 3d 1024

“I pledge to adhere by the Loyola University Honor Code.”

Mary Anne McElroy _____