

## Foreign States May Be Liable For Tortious Acts Committed By Their Employees

The "tortious act exception" of the Foreign Sovereign Immunities Act of 1976 ("FSIA," 28 U.S.C. § 1605(a)(5)) provides that a foreign state, or its official or employee, is not immune from money damages sought against it for personal injury or death, or damage to or loss of property, for tortious acts or omissions occurring in the United States while acting within the scope of one's office or employment, with limited exceptions. In an employment situation, state law governs whether the tortious act is within the course and scope of employment. (*Randolph v. Budget Rent-A-Car*, 97 F.3d 319, 325 (9th Cir. 1996) ("where state law provides a rule of liability governing private individuals, the FSIA requires the application of that rule to foreign states in like circumstances"), quoting *First National City Bank v. Banco Para El Comercio Exterior de Cuba* ("*Bancec*"), 462 U.S. 611, 622, n.11 (1983).)

In *John Doe v. Holy See*, 557 F.3d 1066 (9th Cir. 2009), cert. denied, 2010 WL 2555213 (U.S.) (June 28, 2010), the 9th Circuit affirmed that the FSIA tortious act exception applied where a Catholic priest sexually abused a parishioner while employed by the Holy See, aka the State of the Vatican City and the smallest sovereign state in the world. Liability against the Holy See was under the doctrine of *respondeat superior*, which holds an employer liable for the torts committed by the employee in the course and scope of the employee's employment. Applying applicable state law, the 9th Circuit found that the priest accused of molestation was an employee of the Holy See based on plaintiff's allegations that the Holy See placed priests in their respective churches in the United States, furnished the priests with facilities to perform their duties, and disciplined priests, even though some of the Holy See's actions regarding the priest's employment took place outside the United States and in the Vatican. (See also *Joseph v. Office of the Consulate General of Nigeria*, 830 F.2d 1018, 1025 (9th Cir. 1987).) Although sexual abuse might ordinarily be thought to fall outside the scope of employment, the 9<sup>th</sup> Circuit held that the "performance of...pastoral duties...were a necessary precursor to the sexual abuse and that the assaults thus were a direct outgrowth of and were engendered by conduct that was within the scope of...employment." (*Holy See*, *supra*, 557 F.3d at 1082, citing *Fearing v. Bucher*, 328 Or. 367, 977 P.2d 1163, 1166 (Or. 1999).)

The *Holy See* decision highlights the potential liability that foreign states may face for tortious conduct committed by their employees, despite the immunities provided under the FSIA.

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