



# Woman in Gold - legal analyse

publié le **25/02/2016**, vu **4153 fois**, Auteur : [Charniak Krystina](#)

**Discussion of Legal issues raised in the film Woman in Gold which is based on a true story**

## Database information

Year: released on April 3, 2015, a very recent film

Type: drama film

Directed by: Simon Curtis

Written by: Alexi Kaye Campbell

Producers : David M.Thompson and Kris Thykier

Production : BBC Films and Origin Pictures

Language : English

Country : United Kingdom

Actors :

Helen Mirren (Old Mrs. Altmann) , Ryan Reynolds (Mr. Schoenberg) , Daniel Brühl, Katie Holmes, Tatiana Maslany(young Mrs. Altmann) , Max Irons, Charles Dance, Elizabeth McGovern, Jonathan Pryce, Moritz Bleibtreu, Antje Traue

Interesting facts: was shown during the Berlin International Film Festival.

Nominations : Screen Actors Guild Awards 2016 – Helen Mirren for outstanding Performance by a female actor in a leading role.

Jupiter Award 2016 – Helen Mirren for best international actress and Ryan Reynolds for best international actor.

## Summary/ending :

The film begins from showing a young lawyer who tried to work individually but then decided to join one of the biggest law firms in Los Angeles. He starts working there. Then he meets a friend of his grandparents, Mrs. Altmann, who asks him to help her. Mrs. Altmann left Austria in the beginning of the World War II; she left her father and mother there. Her family was rich; they had a very big house, with expensive furniture, jewelry, paintings etc. German Nazis took it all pretending her uncle made a fiscal fraud and so on. So once all the family left, once she left, once her father died, they took all the wealth of her family. There were also some paintings there, painted by Gustav Klimt, and especially a portrait of her aunt, Adele.

After the war all those paintings were in the Museum of Vienna and the portrait of her aunt, the "Woman in Gold" painting became the Mona Lisa of Austria.

Mr. Schoenberg took the case; his boss gave him one week to go to Austria and try to convince the owners of the Gallery to restitute the paintings to their legitimate owner, Mrs. Altmann. Mrs. Altmann participated in the Art Restitution conference and press was following this case. It helped to accelerate the process of decision but their challenge before the art restitution board in Austria was denied.

They couldn't challenge this ruling before the Austrian Court because the fees were too big so they came back to USA with nothing even though they had the proves that Mrs. Altmann was the owner of these paintings.

Some months passed and once Mr. Schoenberg saw a book in a shop with "Woman in Gold" on its cover. So he bought it, went to Mrs. Altmann but she was already demotivated to do anything. Finally he convinced her, they went to the US judges, to file a claim against the Austrian Government. The claim went to the Supreme Court; the Supreme Court says yes their claim based on a Restitution Act is valid and Austria was not immune to this lawsuit. Then they knew that Austrian government will use all the possible procedural means and pressure to prevent Mrs. Altmann to pursue her action and Mrs. Altmann said no, I will not continue with this case anymore, as she wasn't sure she will live till the end of all these proceedings and she was tired of all this history. They tried to make mediation but the Gallery refused the proposal of Mrs. Altmann so it was over. She abandoned.

But Mr. Schoenberg was very concerned with this matter; he decided to go back to Austria and to go for arbitrage there. Mrs. Altmann said no she will not come with him but he can go alone, and he acted by his own but finally she decided to come and he saw her during his speech before the arbitrators. The reporters began taking photos of her etc.

They won the case, the paintings were given back to her, and then the representatives of the Austrian government tried to negotiate with her but she said "I tried to negotiate with you before, you didn't want to, and now I don't want to." And then she took the paintings with her to USA and put them in a gallery in New York.

## 1. Legal context (concepts, problématiques, institutions, rules)

This case is interesting from the procedural point of view.

There was an impossibility to bring a case before an Austrian Court because of the costs of such an action. And this is very interesting as the procedure is very special: you have to pay a certain percentage of the value of the paintings to be able to file an action.

Then there was the issue of competence of the judge and of the national sovereignty of Austria. Lawyer found a way to sue the Austrian state in USA as they were selling in USA.

Then there was a problem of the delays of the process and procedures. Question was if Mrs. will survive till its end. So she was about to abandon it, without having received what was almost confirmed she had the right to. And so they tried to pass through mediation and finally came to arbitrage.

I will discuss some of the legal/procedural issues raised in the film only.

#### 1. Motion to dismiss:

The Supreme Court ruled that "Defendant's motion to dismiss is denied". So what is a motion to dismiss?

In order to have his/her case accepted the plaintiff makes a complaint. Then the defendant can file an answer. This answer can be "yes, I admit it happened" or "no, I deny" or "I confirm thing A happened, but I deny that thing B happened".

After the plaintiff made a complaint, the defendant can file a motion to dismiss. It's a proposal to the judge to dismiss the complaint. There can be three main reasons for this. The first one is when it's a wrong jurisdiction (so that means that the current jurisdiction with which the complaint was filed, is not competent for this case). We should remember that in US law there must be a link to the jurisdiction (the doctrine of minimum contacts – there should be a contact with the place/town/city/village/state). So that means the jurisdiction which is competent is the one of the place where the defendant lives or where the plaintiff lives, or where the facts of the case happens or any other place which can be linked to the case/complaint. So here we are talking about the territorial competence of the jurisdiction. But there can also be a problem in the material competence of the court. The applicant could have filed the case before the State Court instead of Federal Court for a matter of Federal Law so the State Court is not competent. There are some procedural rules about the competences of the different state courts and the federal courts but it's not the subject of the question here.

The other reason for a motion to dismiss is the time prescription. It means that it is too late to make a complaint. So even if yes, the defendant did something wrong it was so long time ago that legally he/she can not be punished.

The other reason can be the lawfulness of the acts of the defendant. Sometimes it can happen that a person does something which is not legally prohibited even though it is bad or not pleasant for another person, the plaintiff. We can use a very simple example to illustrate this case. For example there are two persons, A and B. A touches/caresses the cat of B, B is not happy because he/she doesn't want that someone touches his/her cat. B makes a complaint. There can be a motion to dismiss because there is no law prohibiting touching the animals of the other people. This example can sound funny but it helps to illustrate what can be a reason for this motion. Of course, if A hurt the cat of B, there would be a completely different situation.

After the defendant gave an answer, and if the motion to dismiss was not accepted by the judge, there comes the step of the discovery. It means that the parties investigate what were the facts of the case, what actually happened.

Here in our case the Austrian government who was the defendant in this case probably used the "wrong jurisdiction" as a possible reason for a motion to dismiss.

## 2. Prohibitive costs

The Supreme Court said that "the plaintiff has adequately proven that the FSIA can apply to pre-1976 events. Also, due to prohibitive costs, this court has decided that Austria provides an inadequate forum for resolution of plaintiff's claim."

Mrs. Altmann had to dismiss her case against the Art Gallery in the Austrian Court because it costed too much. The costs were proportional to the amount in controversy; that means as the estimated value of the paintings was high; she had to pay a huge amount to be able to sue the Art Gallery in Vienna.

N.B. The Supreme Court wasn't asked to rule on this point but added it in its ruling to strengthen even more the necessity to give Mrs. Altmann a possibility to sue the Austrian State in USA.

There are some discussions on the European level today about Commission blaming UK Courts for prohibitive costs for example. It can be contrary to the Art. 47 of the EU Charter of Fundamental Rights – right to an effective remedy and to a fair trial. For example, In the Case C-260/11 the CJEU ruled that "where a national court is called upon to make an order for costs against a member of the public who is an unsuccessful claimant in an environmental dispute or, more generally, where it is required to state its views, at an earlier stage of the proceedings, on a possible capping of the costs for which the unsuccessful party may be liable, it must satisfy itself that the requirement that the proceedings should not be prohibitively expensive has been complied with, taking into account both the interest of the person wishing to defend his rights and the public interest in the protection of the environment.

In the context of that assessment, the national court cannot act solely on the basis of that claimant's financial situation but must also carry out an objective analysis of the amount of the costs. Thus, the cost of proceedings must neither exceed the financial resources of the person concerned nor appear, in any event, to be objectively unreasonable. It may also take into account the situation of the parties concerned, whether the claimant has a reasonable prospect of success, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure, the potentially frivolous nature of the claim at its various stages, and the existence of a national legal aid scheme or a costs protection regime."

So this issue is also in European countries.

## 3. What is the legal basis which Mr. Schoenberg found to be able to sue the Austrian State not in Austria but in the USA?

### Foreign Sovereign Immunities Act (FSIA) of 1976.

It gives rules regarding the possibility to sue a foreign sovereign State (*in our case, Austria*) in a U.S. court (federal and/or state), the costs and the proceedings of such an action.

Normally a State has an immunity. it is a basic principle of international law coming from Article 2, paragraph 1, of the Charter of the United Nations : "The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

The Organization is based on the principle of the sovereign equality of all its Members."

But in some cases on some basis it is possible to sue a foreign State. So that are the exceptions to the immunity.

This Act was used as the paintings were a property of the Austrian government in the time when Mrs. Altmann filed the case. So it was very delicate as restituting the paintings to Mrs. Altmann meant taking them away from the property of a sovereign State.

- Why Mr. Schoenberg had an idea to sue Austria in USA after having seen the book with "Woman in Gold" on its cover? Because this is one of the most important exceptions to the sovereign immunity principle. It is the "commercial activity exception".

Here is what the current version of this Act says (Title 28, art. 1605(a) 2) with practical application to our case:

"a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state (*so here in our case, the book with the reproduction of the G.Klimt paintings is sold in the USA*); or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere (*using the painting as an exposition in the Art Gallery, and possibly in this book it was written that it is exposed in Vienna so it was an advertisement even, for Americans who would like to go to see it*) ; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;"

The other paragraph is applicable in this case too (the expropriation exception) "rights in property taken in violation of international law (*stolen by Nazis*) provided the property has a commercial connection to the United States or the agency or instrumentality that owns the property (*the Austrian National Gallery*) is engaged in commercial activities in the United States (*the publishment and the advertisement of the Klimt paintings*)".

Another issue was that the Act was supposed to be applicable for the facts which would happen after 1976 but in the "Republic of Austria v. Altmann" the Supreme Court ruled that this Act applies retroactively too.

#### 4. How arbitrage is organized in general and particularly in the US legal Austrian Legal System.

Arbitration is one of the forms of the alternative dispute resolution so the resolution of disputes outside the courts. The parties agree to be bound by an arbitrage decision (award) and this decision is enforceable in the courts.

In our case arbitration was used because it is faster and cheaper.

The law of arbitration in Austria is contained in the Austrian Code of Civil Procedure (Zivilprozessordnung) CCP from 1895.

There is also a new Act, Austrian Arbitration Act from 2006 which is a part of CCP.

The lawyer and especially Mrs. Altmann were afraid that people in Austria are still not open minded so it was an issue "between the past of Austria and its present".

There are several main principles in the arbitration law of Austria : equality and objectivity ( right to be treated fairly and to be heard), autonomy of the parties, due process.

Arbitration claims are mainly pecuniary.

There were three arbitrators. And Mr. Schoenberg knew in advance who it will be. So he knew that they were conservatives and he had to convince them not only by legal proves but also by invoking the history etc.

The law says that the parties can agree themselves on the number of the arbitrators or if they don't manage to find an agreement there will be three arbitrators. In this case we don't know if having three arbitrators was a common choice or it was by default. As there were no agreements reached by the parties on any matter, we can suppose it was by default. So as there were three arbitrators the law foresees that each party appoints one arbitrator and the party-appointed arbitrators shall choose a third arbitrator to act as chair and the parties are bound to their appointment as soon as the written communication has been received by the other party.

The arbitrator has to be neutral and independent from the parties, he/she should notify the parties if they are not sure to be fully independent or impartial, has to avoid delaying the proceedings, treat the parties equally and fairly.

Mrs. Altmann wasn't rich so the costs of arbitration were important for her too.

They comprise the fees and the expenses of the arbitrators plus administrative fees plus translation costs etc.

The arbitral proceedings were in English. The law says that the parties are free to choose the language of the proceedings and if there is no such agreement the language is determined by the arbitral tribunal.

The parties can choose whether the proceedings will be only in writing or there will also be an oral hearing. In this case there was an oral hearing which is comprehensive as Mr. Schoenberg tried to use some emotional words and sentences to convince the arbitrators. He explained what the word restitution means, he talked about injustice of the Nazis and asked to give justice to Mrs. Altmann now. Again possibly it was ordered by the Tribunal to have it.

The proceeding in the film was public, journalists were allowed. The Austrian Arbitration Act does not prohibit public proceedings but in principle the proceedings are private. So normally the public is excluded from the arbitral proceedings. But in our case the case was very important and already highly followed by the press so probably that is the reason why public and journalists were admitted.

5. Then once the law firm in which he was working didn't give him "green light" to take his time for this case, he resigned even though he had two children and a wife that time. But he was sure he will win and this case was very important for him as he was Austrian too and he had some sympathy for Mrs. Altmann as she was a little like his grandmother. This made me think about the reasons for which he decided to take this case in the beginning (and in the film he says to his wife that he was doing it just because of money) and of his decision to leave the law firm and to pursue the case even when Mrs. Altmann herself abandoned the case, while she felt she had no moral forces to continue.

The reason is the value of the paintings which was of thousands of millions of dollars. And he, as a lawyer of the plaintiff would have won a lot in case he wins, because of the legal system in the USA, where attorneys are paid a percentage of the money they won for their client.

However, here it is not the case as there was no question of punitive damages, it is an issue of international law and the case was in Austria and in Austria no punitive damages exist. However, if Mrs. Altmann decided to go to the US Court after the decision of the Supreme Court it would be different for Mr. Schoenberg compensation. So as he went to arbitration afterwards alone it shows he was doing it not only for money but more for receiving justice and help Mrs. Altmann.

#### 6. The validity of the "will" of her aunt/ succession rules

Altmann was told that her aunt Adele willed the paintings to the Vienna art gallery. But then they discover, with the help of a journalist, that this will was invalid because her aunt had no right to will it, as she wasn't the owner of these paintings, her uncle paid the painter so he was the real owner of them.

Was the will of Adele binding? It wasn't binding for Ferdinand Bloch-Bauer. He was the legal owner and not Adele so she had no right to will them. And even if it was the case the Gallery could not have acquired the ownership automatically, it would have had to make claim against the legacy. In the film it is not clear but it seems that it was done but no one showed to Mrs. Altmann this will. That is why she, Mr. Schoenberg and the journalist went to archives to find it. And as this will wasn't valid, this case falls under the 1998 Restitution Act.

#### 7. Austrian restitution Act 1998 and its retroactive application

Mr. Schoenberg found precedents in which this law was applied retroactively. And the Act itself is narrow so it gave a big appreciation power.

The purpose of this Act is to return cultural objects to their rightful owners if the objects had been unlawfully taken from their owners or had been sold by the owners by duress ( which is the case here) but also objects which owners were giving to Austria during the World War II in exchange for export permits for other works.

This Act was amended in 2009 and this is interesting while it changes also the applicability of the Act: from objects owned by the Austrian federal museums and collections to all objects owned by the Austrian Federal Government.

This Act is applicable only against the Federal State, not against a private person, which means it is impossible to make a claim against for example a child of one of the Nazis who took the Art objects by force in order to give it back to its legitimate owner now.

In the film the decision was taken by the Restitution Council ( the amendment deals with it too). It is an appointed body that ultimately decides on restitution after a claim has been subjected to a thorough provenance search. There are appointees from stakeholder ministries there and experts in history and also art history.

#### 2. Historical/social context and impact of the Film/of the Case

This film is based on a real case of Maria Altmann, Republic of Austria v. Altmann in 2004. It is a real history and the issue of the real case was the one showed in the film. She was a Jewish refugee who left Vienna during the Second World War. The lawyers name is real too – Randy Schoenberg.

This case was quite long, it lasted a decade.

The painting which was very important for Mrs. Altmann is Portrait of Adele Bloch-Bauer I.

The paintings were really in Vienna and in fact transferred to USA afterwards after Mrs. Altmann won the case.

- The Impact: The ruling of the Supreme Court saying that the FSIA Act can be applied retroactively was a reversal

Before, there was an "anti-retroactivity doctrine" meaning that a Statute could not be applied retroactively (so to the situations which happened before the enter into force of the Statute). The only possibility to apply it retroactively was if it was clearly mentioned in the Act that it can be applied retroactively. For sure this case created a precedent and the FSIA Act can now be applied in the cases where the facts happened before 1976.

- The ruling of the Supreme Court was a shock for the Austrians and its government as these paintings and especially the Portrait of Adele Bloch-Bauer I – The "Woman in Gold" was a national treasure.
- It is a very famous case as politicians (the opposition) used this case as an argument against the government on that time. They said that it should have negotiated with Mrs. Altmann and we see that in the film she proposed to let the paintings in Austria but only if they say that they own it unlawfully. They refused. They also refused to buy the paintings to have them back even though afterwards some Austrians tried to buy some of the paintings and repatriate them to Austria.
- There are a lot of claims against Austrian and German Art Galleries and Museums every year, and the number of claims raised significantly as people who never thought about doing it learn about Mrs. Altmann case and therefore decide to take their chance too. However, not always the end of their claims is as good as in this film. Very often such claims are not solved or take too much time and forces and people abandon it, like Mrs. Altmann wanted to do.

### 3. Cinematographic realization

The events from the past are shown through flashbacks, where Maria is with her family in Vienna, she talks in German and only subtitles are provided, no translation, the producer did it to give to the film more authenticity.

Some facts are not historically accurate but only those concerning the life of Mrs. Altmann, for example, the time when she left Vienna (in reality she left it after her father's death only) or the reasons why the Austrian journalist Czernin decided to help her with this case (in the film it is said he did it because his father was Nazi but in reality he didn't know in the time of the case he knew it only some years later). None of the historical inaccuracies affects the representation of the legal issues and rulings in this film.



Interesting point is that this film is inspired by two other films, documentary ones, on the same case: "Adele's wish" and "Stealing Klimt". This probably explains the high level of accuracy of the information in the "Woman in Gold".

The fact that she chooses an inexperienced lawyer who is not a specialist in the restitution law could have been added to embellish the story but that were the real facts of the story.

In general the writer and the producer decided to avoid putting too much melodramatic scenes in it. The film is concentrated on the real case itself without showing too much the thoughts of neither the personages nor their fears. There is only action and some flashbacks which lead us to the happy life of Mrs. Altmann prior to the beginning of war. The legal procedure and even legal arguments are shown quite in details.

This film is not only about showing the bad and the good (by the way, here Nazis are bad but also the Austrian government. It is not about paintings ownership neither. It is reminding the horrors of that war. Stealing these paintings was stealing the identity of Mrs. Altmann (as her aunt's name was removed from the painting and became just "Woman in Gold"). This film and this case were also aiming to force Austria to stop to deny the past and the atrocities happened there.

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