



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)

The Court finds that Italy has violated its obligation to respect the immunity enjoyed by Germany under international law

THE HAGUE, 3 February 2012. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, has today rendered its Judgment in the case concerning Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening).

In its Judgment, which is final, without appeal and binding on the Parties, the Court,

- (1) finds, by twelve votes to three, that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the German Reich between 1943 and 1945;
- (2) finds, by fourteen votes to one, that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by taking measures of constraint against Villa Vigoni;
- (3) finds, by fourteen votes to one, that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by declaring enforceable in Italy decisions of Greek courts based on violations of international humanitarian law committed in Greece by the German Reich;
- (4) finds, by fourteen votes to one, that the Italian Republic must, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions of its courts and those of other judicial authorities infringing the immunity which the Federal Republic of Germany enjoys under international law cease to have effect;
- (5) rejects, unanimously, all other submissions made by the Federal Republic of Germany.

1. Subject-matter of the dispute and jurisdiction of the Court

The Court recalls that, on 23 December 2008, Germany filed an Application instituting proceedings against Italy. In its Application, Germany requests the Court to find that Italy has failed to respect the jurisdictional immunity which Germany enjoys under international law by allowing civil claims to be brought against it in the Italian courts, seeking reparation for injuries

caused by violations international humanitarian law committed by the German Reich during the Second World War; that Italy has also violated Germany's immunity by taking measures of constraint against Villa Vigoni, German State property situated in Italian territory; and that it has further breached Germany's jurisdictional immunity by declaring enforceable in Italy decisions of Greek civil courts rendered against Germany on the basis of acts similar to those which gave rise to the claims brought before Italian courts.

The Court recalls that Germany's Application was filed on the basis of Article 1 of the European Convention for the Peaceful Settlement of Disputes, and that Italy has raised no objection of any kind to the Court's jurisdiction or the admissibility of the Application. The Court considers that the clause in Article 27 of the said Convention imposing a limitation ratione temporis, namely that the Convention shall not apply to "disputes relating to facts or situations prior to the entry into force of the Convention as between the parties to the dispute", is not applicable to Germany's claims. In effect, the "facts or situations" which have given rise to the present dispute are constituted by Italian judicial decisions that denied Germany the jurisdictional immunity which it claimed, and by measures of constraint applied to property belonging to Germany. The Court notes that those decisions and measures were adopted between 2004 and 2011, thus well after the European Convention entered into force as between the Parties. The Court accordingly has jurisdiction to deal with the dispute.

The Court considers that, while it is not called upon to rule on the question of whether Germany has a duty of reparation towards the Italian victims of the crimes committed by the German Reich, it must nonetheless determine whether the failure of a State to perform completely a duty of reparation which it allegedly bears is capable of having an effect, in law, on the existence and scope of that State's jurisdictional immunity before foreign courts.

2. The alleged violation of Germany's jurisdictional immunity in the proceedings brought by the Italian claimants

The Court begins by observing that the proceedings in the Italian courts have their origins in acts perpetrated by German armed forces and organs of the German Reich. The Court considers that the question which it is called upon to decide is not whether those acts were illegal — a point which is not contested — but whether, in proceedings regarding claims for compensation arising out of those acts, the Italian courts were obliged to accord Germany immunity. The Court notes that, as between the Parties, any entitlement to immunity can be derived only from customary international law. The Court considers that it must examine and apply the law on State immunity as it existed at the time when the Italian courts refused immunity and exercised their jurisdiction, and not as it was in 1943-1945.

A. Italy's first argument: the territorial tort principle

The Court observes that the essence of the first Italian argument is that customary international law has developed to the point where a State is no longer entitled to immunity in respect of acts occasioning death, personal injury or damage to property on the territory of the forum State, even if the acts in question were performed jure imperii. This is the "tort exception" to State immunity. After conducting an in-depth examination of the relevant national and international practice, the Court concludes that customary international law continues to require that a State be accorded immunity in proceedings for torts allegedly committed on the territory of another State by its armed forces and other organs in the course of conducting an armed conflict. The Court accordingly concludes that the decision of the Italian courts to deny immunity to Germany cannot be justified on the basis of the territorial tort principle.

B. Italy's second argument: the subject-matter and circumstances of the claims in the Italian courts

The Court notes that Italy's second argument is that the denial of immunity was justified on account of the particular nature of the acts forming the subject-matter of the claims before the Italian courts and the circumstances in which those claims were made.

The Court notes that the first strand of this argument is based upon the proposition that international law does not accord immunity to a State, or at least restricts its right to immunity, when that State has committed serious violations of the law of armed conflict. Since the actions of the German armed forces and other organs of the German Reich giving rise to the proceedings before the Italian courts were serious violations of the law of armed conflict, Germany should accordingly be deprived of its entitlement to immunity. After examining the relevant State and international practice, the Court concludes that, under customary international law as it presently stands, a State is not deprived of immunity by reason of the fact that it is accused of serious violations of international human rights law or the international law of armed conflict.

The Court then turns to the second strand in Italy's argument, namely that the rules violated by Germany during the period 1943-1945 are jus cogens rules. The Court observes that this strand of the argument rests on the premise that there is a conflict between jus cogens rules forming part of the law of armed conflict and according immunity to Germany. It notes Italy's argument that jus cogens rules always prevail over any inconsistent rule of international law and that, in consequence, since the rule which accords one State immunity before the courts of another does not have the status of jus cogens, the rule of immunity must give way. The Court concludes that, even assuming that the rules of the law of armed conflict which prohibit murder, deportation and forced labour are rules of jus cogens, there is no conflict between those rules and the rules on State immunity. It considers that the two sets of rules address different matters: the rules of State immunity are confined to determining whether or not the courts of one State may exercise jurisdiction in respect of another State; they do not bear upon the question whether or not the conduct in respect of which the proceedings are brought was lawful or unlawful. The Court further points out that the argument based on the primacy of jus cogens over the law of State immunity has been rejected by national courts, and that there is no national legislation which has limited immunity in cases where violations of jus cogens are alleged. The Court concludes that, even on the assumption that the proceedings in the Italian courts involved violations of jus cogens rules, the applicability of the customary international law on State immunity was not affected.

The Court observes that the third and final strand of the Italian argument is that the Italian courts were justified in denying Germany immunity because all other attempts to secure compensation for the various groups of victims involved in the Italian proceedings had failed. The Court can find no basis in the relevant national and international practice that international law makes the entitlement of a State to immunity dependent upon the existence of effective alternative means of securing redress. The Court accordingly rejects Italy's argument.

The Court observes that, in the course of the oral proceedings, counsel for Italy maintained that the three strands of Italy's second argument had to be viewed together; in other words, it was because of the cumulative effect of the gravity of the violations, the status of the rules violated and the absence of alternative means of redress that the Italian courts had been justified in refusing to accord immunity to Germany. The Court is not persuaded that the three strands would have this effect if taken together.

C. Conclusions

The Court holds that the action of the Italian courts in denying Germany the immunity to which the court has held that it was entitled under customary international law constitutes a breach of the obligations owed by the Italian State to Germany.

3. The measures of constraint taken against property belonging to Germany located on Italian territory

The Court now turns to the question of whether the legal charge registered against the Villa Vigoni following an Italian judicial decision declaring enforceable in Italy judgments rendered by Greek courts ordering Germany to pay compensation constitutes a measure of constraint in breach of Germany's immunity from enforcement. The Court finds that there is at least one condition that has to be satisfied before any measure of constraint may be taken against property belonging to a foreign State: that the property in question must be in use for an activity not pursuing government non-commercial purposes, or that the State which owns the property has expressly consented to the taking of a measure of constraint, or that that State has allocated the property in question for the satisfaction of a judicial claim. However, the Court finds that the Villa Vigoni is being used for governmental purposes that are entirely non-commercial; nor has Germany in any way expressly consented to the taking of a measure such as the legal charge in question, or allocated the property for the satisfaction of the judicial claims against it. In these circumstances, the Court finds that the registration of the legal charge constitutes a violation by Italy of its obligation to respect the immunity owed to Germany.

4. The decisions of the Italian courts declaring enforceable in Italy decisions of Greek courts upholding civil claims against Germany

The Court notes that, in its third submission, Germany complains that its jurisdictional immunity was also violated by decisions of Italian courts declaring enforceable in Italy civil judgments rendered by Greek courts against Germany in proceedings arising out of the Distomo massacre committed by the armed forces of the German Reich in 1944.

The Court considers that the relevant question is whether the Italian courts did themselves respect Germany's immunity from jurisdiction in allowing the application for exequatur, and not whether the Greek court having rendered the judgment of which exequatur is sought had respected Germany's jurisdictional immunity. The Court observes that a court seised of an application for exequatur of a foreign judgment rendered against a third State has to ask itself whether, in the event that it had itself been seised of the merits of a dispute identical to that which was the subject of the foreign judgment, it would have been obliged under international law to accord immunity to the respondent State. The Court finds that, in light of this reasoning, it follows that the Italian courts which declared enforceable in Italy the decisions of Greek courts rendered against Germany have violated the latter's immunity. It concludes that the decisions of the Italian courts declaring enforceable in Italy the civil judgments rendered against Germany by Greek courts in the Distomo massacre case constituted a violation by Italy of its obligation to respect the jurisdictional immunity of Germany.

Composition of the Court

The Court was composed as follows: President Owada; Vice-President Tomka; Judges Koroma, Simma, Abraham, Keith, Sepúlveda-Amor, Bennouna, Skotnikov, Cançado Trindade, Yusuf, Greenwood, Xue, Donoghue; Judge ad hoc Gaja; Registrar Couvreur.

Judges Koroma, Keith and Bennouna append a separate opinion to the Judgment of the Court; Judges Cançado Trindade and Yusuf append a dissenting opinion to the Judgment of the Court; Judge ad hoc Gaja appends a dissenting opinion to the Judgment of the Court.

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A summary of the Judgment appears in the document “Summary No. 2012/2”. This press release, the summary, and the full text of the Judgment can be found on the Court’s website (www.icj-cij.org), under the heading “Cases”.

Note: The Court’s press releases do not constitute official documents.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. It is assisted by a Registry, its international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an independent judicial body composed of Lebanese and international judges, which is not a United Nations tribunal and does not form part of the Lebanese judicial system), or the Permanent Court of Arbitration (PCA, an institution founded in 1899, which is independent of the United Nations).

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