

DECLARATION OF JUDGE *AD HOC* GAJA

1. In the present case, the Court is considering the question of the jurisdictional immunity of a foreign State with regard to claims by individuals who suffered from infringements of international humanitarian law during belligerent occupation. One can well understand the Greek Government's wish to be involved in the discussion. The question of immunity in these circumstances had been addressed by several Greek courts and also by the European Court of Human Rights when it examined an application made against Greece. However, the only opportunity provided by the Statute and the Rules for a State which is not a party to the proceedings to express its views on an issue of general international law is to intervene under Article 62 of the Statute and address the issue if it is relevant to the intervention.

2. When Article 62 requires the intervening State to have "an interest of a legal nature which may be affected by the decision in the case", it has to be assumed that the interest in question must exist according to international law. In my opinion, the presence of an interest of a legal nature for Greece cannot rest on the fact that one of the submissions in the Application of the Federal Republic of Germany states that

"by declaring Greek judgments based on occurrences similar to those defined above in request No. 1 [civil claims based on violations of international humanitarian law by the German Reich during World War II] enforceable in Italy, [the Italian Republic] committed a further breach of Germany's jurisdictional immunity".

In the absence, both under international law and under EU law (see judgment of the European Court of Justice in *Lechouritou*, Case C-292/05, *ECR* 2007, p. I-1519), of any obligation for Italy to enforce the Greek judgments in question, Italy is free in its relations with Greece to apply its domestic legislation on the recognition and enforcement of foreign judgments and to grant or refuse enforcement for reasons of its own choice. Greece cannot be said to have any interest of a legal nature in seeing the Greek judgments enforced in Italy. The question whether, by making the Greek judgments enforceable in Italy, Italy breached an obligation towards Germany is a matter which concerns only Germany and Italy. For that purpose, the issue at stake is not whether the Greek courts which delivered the judgments should have granted jurisdictional immunity to Germany, but whether Italy breached the jurisdictional immunity of Germany by giving effect in Italy to a foreign judgment relating to matters

for which jurisdictional immunity could *ex hypothesi* be invoked had the case been brought before an Italian court.

(Signed) Giorgio GAJA.

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