



INTERNATIONAL COURT OF JUSTICE

Peace Palace, Carnegieplein 2, 2517 KJ The Hague, Netherlands

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Website: www.icj-cij.org

Press Release

Unofficial

No. 2012/5

27 January 2012

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

The Court to deliver its Judgment on Friday 3 February 2012 at 10 a.m.

Reading of the Judgment to be broadcast live on the Court's website

THE HAGUE, 27 January 2012. On Friday 3 February 2012, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, will deliver its Judgment in the case concerning Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening).

A public sitting will take place at the Peace Palace in The Hague, during which the President of the Court, Judge Hisashi Owada, will read the Judgment.

History of the proceedings

On 23 December 2008, the Federal Republic of Germany instituted proceedings before the Court against the Italian Republic, alleging that “[t]hrough its judicial practice . . . Italy has infringed and continues to infringe its obligations towards Germany under international law” (see Press Release No. 2008/44).

In its Application, Germany stated inter alia that,

“[i]n recent years, Italian judicial bodies have repeatedly disregarded the jurisdictional immunity of Germany as a sovereign State. The critical stage of that development was reached by the judgment of the Corte di Cassazione of 11 March 2004 in the Ferrini case, where [that court] declared that Italy held jurisdiction with regard to a claim . . . brought by a person who during World War II had been deported to Germany to perform forced labour in the armaments industry. After this judgment had been rendered, numerous other proceedings were instituted against Germany before Italian courts by persons who had also suffered injury as a consequence of the armed conflict.”

The Ferrini judgment having been confirmed “in a series of decisions delivered on 29 May 2008 and in a further judgment of 21 October 2008”, Germany expressed its concern “that hundreds of additional cases may be brought against it”.

Germany further recalled in its Application that enforcement measures had already been taken against German assets in Italy: a “judicial mortgage” on Villa Vigoni, the German-Italian centre of cultural exchange, had been recorded in the land register. In addition to the claims brought against it by Italian nationals, Germany also cited “attempts by Greek nationals to enforce

in Italy a judgment obtained in Greece on account of a . . . massacre committed by German military units during their withdrawal in 1944”.

As the basis for the jurisdiction of the Court, Germany invoked Article 1 of the European Convention for the Peaceful Settlement of Disputes adopted by members of the Council of Europe on 29 April 1957, and ratified by Italy on 29 January 1960 and by Germany on 18 April 1961.

At the end of its Application, Germany requested the Court to adjudge and declare that Italy:

- “(1) by allowing civil claims based on violations of international humanitarian law by the German Reich during World War II from September 1943 to May 1945 to be brought against the Federal Republic of Germany, committed violations of obligations under international law in that it has failed to respect the jurisdictional immunity which the Federal Republic of Germany enjoys under international law;
- (2) by taking measures of constraint against ‘Villa Vigoni’, German State property used for government non-commercial purposes, also committed violations of Germany’s jurisdictional immunity;
- (3) by declaring Greek judgments based on occurrences similar to those defined above in request No. 1 enforceable in Italy, committed a further breach of Germany’s jurisdictional immunity.

Accordingly, the Federal Republic of Germany prays the Court to adjudge and declare that:

- (4) the Italian Republic’s international responsibility is engaged;
- (5) the Italian Republic must, by means of its own choosing, take any and all steps to ensure that all the decisions of its courts and other judicial authorities infringing Germany’s sovereign immunity become unenforceable;
- (6) the Italian Republic must take any and all steps to ensure that in the future Italian courts do not entertain legal actions against Germany founded on the occurrences described in request No. 1 above.” (See Press Release No. 2008/44.)

By an Order of 29 April 2009, the Court fixed 23 June 2009 as the time-limit for the filing of a Memorial by Germany and 23 December 2009 as the time-limit for the filing of a Counter-Memorial by Italy. Those pleadings were filed within the time-limits thus prescribed.

In Chapter VII of the Counter-Memorial filed by Italy, the Respondent, referring to Article 80 of the Rules of Court, made a counter-claim “with respect to the question of the reparation owed to Italian victims of grave violations of international humanitarian law committed by forces of the German Reich” (see Press Release No. 2010/22).

On 6 July 2010, the Court made an Order on the counter-claim submitted by Italy. In that Order, the Court, by thirteen votes to one, found that “the counter-claim presented by Italy . . . [wa]s inadmissible as such and [d]id not form part of the current proceedings”; it unanimously, authorized Germany to submit a Reply and Italy to submit a Rejoinder, and fixed 14 October 2010 and 14 January 2011, respectively, as the time-limits for the filing of those pleadings. Those pleadings were filed within the time-limits thus prescribed.

On 13 January 2011, Greece filed an Application for permission to intervene in the case. In its Application, Greece stated, inter alia, that it “[d]id not seek to become a party to the case”.

By an Order dated 4 July 2011, the Court granted Greece permission to intervene as a non-party “in so far as this intervention is limited to the decisions of Greek courts [in the Distomo case]” (see Press Release No. 2011/21).

Public hearings were held from Monday 12 to Friday 16 September 2011. During the hearings, the delegation of the Federal Republic of Germany was led by H.E. Ms Susanne Wasum-Rainer, Ambassador, Director-General for Legal Affairs and Legal Adviser at the Federal Foreign Office, H.E. Mr. Heinz-Peter Behr, Ambassador of the Federal Republic of Germany to the Kingdom of the Netherlands and Mr. Christian Tomuschat, former Member and Chairman of the International Law Commission, Professor emeritus of Public International Law at the Humboldt University of Berlin, as Agents. The delegation of the Italian Republic was led by H.E. Mr. Paolo Pucci di Benisichi, Ambassador and State Counsellor, as Agent; and the delegation of the Hellenic Republic was led by Mr. Stelios Perrakis, Professor of International and European Institutions, Panteion University of Athens, as Agent.

Final submissions of the Parties

At the end of the oral proceedings, the Parties presented the following final submissions to the Court:

For the Federal Republic of Germany:

“Germany respectfully requests the Court to adjudge and declare that the Italian Republic:

1. by allowing civil claims based on violations of international humanitarian law by the German Reich during World War II between September 1943 and May 1945 to be brought against the Federal Republic of Germany, committed violations of obligations under international law in that it has failed to respect the jurisdictional immunity which the Federal Republic of Germany enjoys under international law;
2. by taking measures of constraint against ‘Villa Vigoni’, German State property used for government non-commercial purposes, also committed violations of Germany’s jurisdictional immunity;
3. by declaring Greek judgments based on occurrences similar to those defined in request No. 1 enforceable in Italy, committed a further breach of Germany’s jurisdictional immunity.

Accordingly, the Federal Republic of Germany respectfully requests the Court to adjudge and declare that:

4. the Italian Republic’s international responsibility is engaged;
5. the Italian Republic must, by means of its own choosing, take any and all steps to ensure that all the decisions of its courts and other judicial authorities infringing Germany’s sovereign immunity become unenforceable;
6. the Italian Republic must take any and all steps to ensure that in the future Italian courts do not entertain legal actions against Germany founded on the occurrences described in request No. 1 above.”

For the Italian Republic:

“[F]or the reasons given in [its] written and oral pleadings, [Italy requests] that the Court adjudge and hold the claims of the Applicant to be unfounded. This request

is subject to the qualification that . . . Italy has no objection to any decision by the Court obliging Italy to ensure that the mortgage on Villa Vigoni inscribed at the land registry is cancelled”.

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Intervention of Greece

Greece presented its oral observations to the Court on Wednesday 14 September 2011.

NOTE TO THE PRESS AND PUBLIC

1. The public sitting will be held in the Great Hall of Justice of the Peace Palace. Mobile telephones are permitted in the courtroom provided they are switched off.

2. **Media representatives** are subject to an **online accreditation procedure**, details of which can be found in the Media Advisory (2012/b) attached to this Press Release. **The accreditation procedure will close at midnight on Wednesday 1 February 2012.**

3. **Individual visitors** (with the exception of members of the Diplomatic Corps) **and groups are subject to an online admission procedure.** They are kindly requested to fill out the relevant form on the Court’s website (click on “Attending a Hearing”). **The admission procedure will close at midnight on Wednesday 1 February 2012.**

4. At the end of the sitting, a Press Release, a summary of the Judgment and the full text of the Judgment will be distributed. All of these documents will be made available at the same time on the Court’s website.

5. The public sitting will be **broadcast live and in full on the Court’s website** (www.icj-cij.org), via the “multimedia” link, from 10 a.m. local time.

Those later wishing to access the recorded webcast of the reading are invited to click on the temporary “Video on Demand” (VOD) link featured on the Court’s website. This link will be deactivated three months after the reading, **at midnight on 3 May 2012.**

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 institution 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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Media advisory

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Accreditation procedure for the reading of the Court's Judgment to be held on Friday 3 February 2012

The reading of the Judgment will be broadcast live and in full

Media representatives are required to fill out the online accreditation form on the Court's website (www.icj-cij.org). **Applications for accreditation must reach the Court by midnight on Wednesday 1 February 2012.** Only online application forms will be accepted. Each application will be checked by the Information Department, and replies will be sent by e-mail. Applications received after the deadline will not be considered.

Entry to the Peace Palace

Media representatives must bring with them their personal ID and press card. They are asked to arrive at the Peace Palace gates **between 8.30 and 9.30 a.m.** **Only duly accredited individuals with valid identification will be permitted to enter the Peace Palace grounds.**

No parking is allowed in the Peace Palace grounds apart from satellite vehicles. Media wishing to park satellite vehicles are requested to fill in the appropriate fields in the online accreditation form.

Great Hall of Justice

Tables reserved for media representatives are located on the far left of the Great Hall of Justice. However, photographers and camera crews are only permitted to enter the room for a few minutes at the start of the sitting. Photographers and camera crews must keep to the right side of the Great Hall.

Press room

Proceedings will be transmitted live to the Press Room in English and French. The room is equipped with Wi-Fi and modem internet access. Live video and audio feeds are available via the breakout box (PAL video output). The Press room will be open between **8.30 a.m. and 4 p.m.** on the day of the sitting. **Please note that all media representatives must leave the Peace Palace grounds by 4 p.m.**

Live webcast

The public sitting will be broadcast live and in full on the Court's website (www.icj-cij.org), via the "multimedia" link, from 10 a.m. local time.

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