

**INTERNATIONAL COURT OF JUSTICE**

**YEAR 2022**

**2022**  
**10 May 2022**  
**General List**  
**No. 183**

**10 May 2022**

**QUESTIONS OF JURISDICTIONAL IMMUNITIES OF THE STATE AND MEASURES  
OF CONSTRAINT AGAINST STATE-OWNED PROPERTY**

**(GERMANY v. ITALY)**

**REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES**

**ORDER**

The President of the International Court of Justice,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73 and 74 of the Rules of Court,

Having regard to the Application filed by the Federal Republic of Germany (hereinafter “Germany”) on 29 April 2022 instituting proceedings against the Italian Republic (hereinafter “Italy”) concerning the alleged violation by Italy of its obligation to respect Germany’s sovereign immunity,

Having regard to the Request for the indication of provisional measures contained in the Application, whereby Germany, referring to Article 41 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court, asked the Court to indicate the following provisional measures:

- “1. Italy shall ensure — by making a ‘payment in conversion’ or by taking another effective measure of its own choosing — that the following German properties are not subjected to a public auction pending a judgment by the Court on the merits in the current proceedings:
  - a)* one of the two lots of the Deutsches Archäologisches Institut Rom (German Archaeological Institute Rome), Via Sardegna 79/81 (Foglio 472, Particella 255);
  - b)* one sub-lot of the Goethe Institut Rom (German Cultural Institute Rome), Via Savoia 15 (Foglio 578, Particella 3, Subalterno 502);
  - c)* one sub-lot of the Deutsches Historisches Institut Rom (German Historical Institute Rome), Via Aurelia Antica 391 (Foglio 438, Particella 200, Subalterno 508);
  - d)* three sub-lots of the Deutsche Schule Rom (German School Rome), Via Aurelia Antica 401 (Foglio 438, Particella 5, Subalterno 3, 5 and 6).
2. Italy shall ensure that no further measures of constraint are taken by its courts against German property used for government non-commercial purposes located on Italian territory or for the purpose of enforcing judgments that violate Germany’s sovereign immunity pending a judgment by the Court on the merits in the current proceedings.
3. Pending a judgment on the merits in the current proceedings, Italy shall, within two months after the issuance of the Court’s order on provisional measures and every six months thereafter, submit to the Court a report detailing:
  - a)* measures of constraint imposed by, or sought from, Italian domestic courts against German State-owned property located in Italy, with a view to enforcing judgments rendered against Germany in civil proceedings based on violations of international humanitarian law committed by the German Reich during World War II; as well as:
  - b)* steps taken by the Italian government to ensure that Germany’s right to sovereign immunity is respected in such proceedings”;

Whereas the Registrar immediately communicated to the Government of Italy the Application containing the Request for the indication of provisional measures, in accordance with Article 40, paragraph 2, of the Statute of the Court, and Article 73, paragraph 2, of the Rules of Court; whereas the Registrar also notified the Secretary-General of the United Nations of the filing by Germany of the Application and the Request for the indication of provisional measures; and whereas, pending the notification provided for by Article 40, paragraph 3, of the Statute, the Registrar informed all States entitled to appear before the Court of the filing of the Application and the Request for the indication of provisional measures by a letter dated 3 May 2022;

Whereas, by a letter dated 2 May 2022, the Agent of Germany informed the Court that, on 1 May 2022, the Government of Germany had become aware of the publication on 30 April 2022, in the Italian Official Gazette, of a decree (*Decreto-Legge 30 aprile, n. 36*), Article 43, paragraph 3, of which, according to the Agent, seemed to provide for the termination of enforcement measures taken in relation to proceedings regarding compensation of injuries suffered by Italian nationals as victims of war crimes and crimes against humanity committed by the German Reich on Italian territory during the Second World War; and whereas, by the same letter, the Agent also informed the Court that, in light of this development, Germany intended “to approach the Court of Rome with a view to seeking the termination of the on-going enforcement proceedings in the case of *Giorgio et al v. Germany*, which form[ed] the primary subject-matter of Germany’s Request for provisional measures”;

Whereas, by an email communication of 2 May 2022, the Italian Ambassador to the Kingdom of the Netherlands confirmed that *Decreto-Legge 30 aprile, n. 36* had been published in the Italian Gazette on 30 April and had entered into force on 1 May 2022; whereas the Italian Ambassador further confirmed that, under the terms of Article 43, paragraph 3, of the said decree, enforcement proceedings for the “settlement of the damages” suffered by victims of war crimes and crimes against humanity committed on Italian territory or otherwise to the detriment of Italian citizens by the German Reich during the Second World War “cannot be initiated or continued, and that any enforcement proceedings undertaken are extinguished”; whereas the Italian Ambassador indicated that the relevant provision of the decree could be brought to the attention of the Court of Rome, “with a view to extinguishing the ongoing enforcement proceedings in the case *Giorgio et al v. Germany*, which form[ed] the primary subject-matter of Germany’s Request for provisional measures”; and whereas, in light of the above, the Italian Government was of the view that the entry into force of *Decreto-Legge 30 aprile, n. 36* addressed the Request for the indication of provisional measures made by Germany and “essentially eliminate[d] the matter of the dispute”;

Whereas, by letters dated 3 May 2022, the Registrar officially informed the Parties that, pursuant to Article 74, paragraph 3, of the Rules, the Court had fixed 9 and 10 May 2022 as the dates for the oral proceedings on the Request for the indication of provisional measures;

Whereas, by a letter dated 4 May 2022 and received in the Registry on 5 May 2022, the Agent of Germany informed the Court that, following the statements contained in Italy’s communication of 2 May 2022, the Parties had held discussions between 2 and 4 May 2022 about the scope and effect of *Decreto-Legge 30 aprile, n. 36*; whereas, in his letter, the Agent of Germany indicated that, based on the above exchanges between the Parties, Germany understood that “Italian law preclude[d] the taking of measures of enforcement” against the properties listed in Germany’s Request for the indication of provisional measures; whereas he stated that, on 2 May 2022, Germany had brought the decree “to the attention of the Court of Rome”; whereas Germany further understood that “Italian law require[d] Italian courts to lift [the] measures of enforcement previously taken, and that no further measures of constraint [would] be taken by Italian courts against German property used for governmental non-commercial purposes located on Italian territory”, or for the purpose of enforcing judgments concerning damages suffered by victims of war crimes and crimes against humanity committed on Italian territory or otherwise to the detriment of Italian citizens by the German Reich in the period between 1 September 1939 and 8 May 1945; whereas Germany agreed with Italy that *Decreto-Legge 30 aprile, n. 36* addressed the central concern informing the Request for provisional measures made by Germany, and whereas, as a result, Germany had decided to “withdraw[] its Request for the indication of provisional measures”;

Whereas, in light of the above communication from the Agent of Germany dated 4 May 2022, the Registrar addressed letters to the Parties, dated 5 May 2022, informing them that the public hearings on the Request for the indication of provisional measures which were due to open on 9 May 2022 had been cancelled,

*Places on record* the withdrawal by the Federal Republic of Germany of its Request for the indication of provisional measures.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this tenth day of May, two thousand and twenty-two, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Federal Republic of Germany and the Government of the Italian Republic, respectively.

*(Signed)* Joan E. DONOGHUE,  
President.

*(Signed)* Philippe GAUTIER,  
Registrar.

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