



INTERNATIONAL COURT OF JUSTICE

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Jurisdictional Immunities of the State (Germany v. Italy)

Greece requests permission to intervene in the proceedings

THE HAGUE, 17 January 2011. The Hellenic Republic (hereinafter “Greece”) on Thursday 13 January 2011 filed in the Registry of the International Court of Justice an Application for permission to intervene in the case concerning Jurisdictional Immunities of the State (Germany v. Italy).

In its Application for permission to intervene, Greece first sets out the **legal interest** which it considers may be affected by the decision in the case: it indicates that “the interests — even if only indirect — of a legal nature of Greece that may be affected by a Judgement of the Court are the sovereign rights and jurisdiction enjoyed by Greece under general international law” and that “[i]t is [Greece’s] purpose to present and demonstrate its legal rights and interests to the Court, and, appropriately, state its views as to how the claims of Germany may or may not affect the legal rights and interests of Greece”.

Greece states further that its legal interest “derives from the fact that Germany has acquiesced to, if not recognised, its international responsibility vis-à-vis Greece for all acts and omissions perpetrated by the Third Reich between 6 April 1941, when Germany invaded Greece, and the unconditional surrender of Germany on 8 May 1945”.

In its Application Greece then sets out the **precise object of the intervention**. It states that its request has two objects:

“First, to protect and preserve the legal rights of Greece by all legal means available. These include, inter alia, the ones emanating from disputes created by particular acts and the general practice of Germany during World War II and the ones enjoyed under general international law, especially with respect to jurisdiction and the institution of state responsibility.”

“Secondly, to inform the Court of the nature of the legal rights and interests of Greece that could be affected by the Court’s decision in light of the claims advanced by Germany to the case before the Court.”

Greece refers to the fact that Germany, in the Application it filed on 23 December 2008, requested the Court to adjudge and declare, inter alia, that:

“(3) by declaring Greek judgments based on occurrences similar to those defined . . . in request No. 1 [in the Application] enforceable in Italy, [Italy] committed a further breach of Germany’s jurisdictional immunity.”

Greece makes clear that “its intention is to solely intervene in the aspects of the procedure relating to judgements rendered by its own (domestic . . .) Tribunals and Courts on occurrences during World War II and enforced (exequatur) by the Italian Courts”.

Lastly, Greece sets out the **basis of jurisdiction** which is claimed to exist as between itself and the Parties to the case. It states that it “does not seek to become a party to the case” and that its request to intervene “is based solely and exhaustively upon Article 62 of the Statute of the Court”.

History of the proceedings

On 23 December 2008, the Federal Republic of Germany instituted proceedings before the International Court of Justice 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”.

In its Application, Germany states inter alia:

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

The Applicant states in its Application that enforcement measures have already been taken against German assets in Italy: a “judicial mortgage” on Villa Vigoni, the German-Italian centre of cultural exchange, has been recorded in the land register. In addition to the claims brought against it by Italian nationals, Germany also cites “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”.

At the end of its Application the Applicant requests 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."

Germany at the same time reserves the right to request the Court to indicate provisional measures in accordance with Article 41 of the Statute of the Court, "should measures of constraint be taken by Italian authorities against German State assets, in particular diplomatic and other premises that enjoy protection against such measures pursuant to general rules of international law".

As the basis for the jurisdiction of the Court, Germany invokes 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. That Article states:

"The High Contracting Parties shall submit to the judgment of the International Court of Justice all international legal disputes which may arise between them including, in particular, those concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation."

Germany explains that, although the case submitted to the Court is between two Member States of the European Union, the Court of Justice of the European Communities in Luxembourg has no jurisdiction to entertain it, since the dispute is not governed by any of the jurisdictional clauses in the treaties on European integration. It adds that outside of that "specific framework" the Member States "continue to live with one another under the regime of general international law".

The Application of the Federal Republic of Germany was accompanied by a Joint Declaration adopted on the occasion of German-Italian Governmental Consultations in Trieste on 18 November 2008, whereby both Governments declared that they "share the ideals of reconciliation, solidarity and integration, which form the basis of the European construction". In this declaration Germany "fully acknowledges the untold suffering inflicted on Italian men and women" during World War II. Italy, for its part, "respects Germany's decision to apply to the International Court of Justice for a ruling on the principle of State immunity [and is] of the view that the ICJ's ruling on State immunity will help to clarify this complex issue".

By an Order of 29 April 2009, the Court fixed time-limits for the filing of the initial pleadings in the case: it set 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 fixed.

On 6 July 2010, the Court made an Order on a counter-claim submitted by Italy in its Counter-Memorial. In that Order, the Court, by thirteen votes to one, “[found] that the counter-claim presented by Italy . . . [was] inadmissible as such and [did] 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 laid down.

The subsequent procedure has been reserved for further decision.

The full text of Greece’s Application for permission to intervene will be available shortly on the Court’s website (www.icj-cij.org).

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