INTERNATIONAL COURT OF JUSTICE

APPLICATION

INSTITUTING PROCEEDINGS

containing a

REQUEST

FOR PROVISIONAL MEASURES

filed in the Registry of the Court
on 29 April 2022

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

(GERMANY *v.* ITALY)

COUR INTERNATIONALE DE JUSTICE

REQUÊTE

INTRODUCTIVE D'INSTANCE

assortie d'une

DEMANDE

EN INDICATION DE MESURES CONSERVATOIRES

enregistrée au Greffe de la Cour
le 29 avril 2022

QUESTIONS RELATIVES AUX IMMUNITÉS JURIDICTIONNELLES DE L'ÉTAT ET AUX MESURES DE CONTRAINTE CONTRE DES BIENS APPARTENANT À L'ÉTAT

(ALLEMAGNE c. ITALIE)

2022
General List
No. 183

APPLICATION INSTITUTING PROCEEDINGS AND REQUEST FOR PROVISIONAL MEASURES

To the Registrar of the International Court of Justice, the undersigned, being duly authorised by the Government of the Federal Republic of Germany, states as follows:

1. In accordance with Articles 36, paragraph 1, and 40 of the Statute of the Court and Article 38 of the Rules of Court, I have the honour to submit this Application instituting proceedings in the name of the Federal Republic of Germany ("Germany") against the Italian Republic ("Italy").

2. Pursuant to Article 41 of the Court's Statute, the Application includes a request that the Court indicates provisional measures to protect the rights invoked herein from imminent and irreparable harm.

3. Germany has appointed as its Agents:

— Ministerialdirektor Dr. Christophe Eick, Auswärtiges Amt, Werderscher Markt 1, 10117 Berlin, Germany.
— Dr. Cyrill Jean Nunn, Ambassador of Germany to the Kingdom of the Netherlands, Embassy of the Federal Republic of Germany in the Netherlands, Groot Hertoginnelaan 18-20, 2517 EG Den Haag, Netherlands.

The address for service to which all communications concerning the case should be sent is: Embassy of the Federal Republic of Germany in the Netherlands, Groot Hertoginnelaan 18-20, 2517 EG Den Haag.

Part I: Application

A. Subject of the Dispute

4. As the Court is aware, Italian domestic courts have in the past disregarded the jurisdictional immunity of Germany as a sovereign State by allowing civil claims to be brought against Germany based on violations of international humanitarian law committed by the German Reich during World War II. Prompted by three decisions of the Italian Corte di Cassazione rendered between 2004 and 2008, as well as measures of constraint taken against a particular German State-owned property located on Lake Como ("Villa Vigoni"), on 23 December 2008 Germany instituted proceedings against Italy before the Court.

5. In its judgment of 3 February 2012[1], the Court held:

(a) In respect of proceedings brought against Germany:

"that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by

[1] International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, pp. 99 *et seq*.

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].

(b) In respect of enforcement measures against Villa Vigoni:

"(. . .) 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].

(c) As a result, the Court held

"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"[4].

6. In the same judgment, the Court also noted that "as a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed"[5].

7. Notwithstanding these pronouncements, Italian domestic courts since 2012 have entertained a significant number of new claims against Germany in violation of Germany's sovereign immunity. In Judgment No. 238/2014, rendered on 22 October 2014, the Italian Constitutional Court acknowledged "[t]he duty of the Italian judge (. . .) to comply with the ruling of the ICJ of 3 February 2012". Nevertheless, the Constitutional Court subjected that same duty to "the fundamental principle of judicial protection of fundamental rights" under Italian constitutional law, which it read to permit individual claims by victims of war crimes and crimes against humanity to be brought against sovereign States[6].

8. The Italian Constitutional Court's Judgment No. 238/2014, adopted in conscious violation of international law and of Italy's duty to comply with a judgment of the principal judicial organ of the United Nations, had wide-ranging consequences. As is set out further below, since the judgment was rendered, at least 25 new cases have been brought against Germany. What is more, in at least 15 proceedings, Italian domestic courts, since Judgment No. 238/2014, have entertained and decided upon claims against Germany in relation to conduct of the German Reich during World War II, in many instances ordering Germany to pay compensation. In order to satisfy two such judgments Italian courts are currently taking, or threatening to take, measures of constraint against four German State-owned properties located in Rome.

9. Repeated representations by the German Government urging the Italian Government to bring to an end these new, systematic violations of German sovereign immunity subsequent to Judgment No. 238/2014 of the Italian Constitutional Court have been to no avail. The same is true for German arguments before Italian domestic courts, which routinely disregard Germany's right to sovereign immunity.

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[2] International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, pp. 154 *et seq.*, para. 139 (1).

[3] *Ibid*., p. 155, para. 139 (2).

[4] *Ibid*., para. 139 (4).

[5] *Ibid*., p. 154, para. 138.

[6] Italian Constitutional Court, Judgment No. 238/2014 (Annex 5).

10. These developments have given rise to a new dispute between Germany and Italy. The two States hold "clearly opposite views"[7], *inter alia*, on the following questions: Can Italian domestic courts, relying on their novel reading of Italian constitutional law, entertain civil claims against Germany based on violations of international humanitarian law committed by the German Reich between 1943 and 1945? Can Italian domestic courts take measures of constraint based on judicial decisions rendered in violation of Germany's sovereign immunity? Is there any justification, under international law, for the particular measures of constraint taken against four German State-owned properties located in Rome? On these and other issues, Germany's claim to immunity "is positively opposed"[8] by Italy. Under these circumstances, Germany is compelled to seise the Court of this new dispute in an effort to defend its rights and to bring to an end the systematic infringements of its sovereign immunity by Italian domestic courts.

B. Jurisdiction of the Court

11. The Application is brought under the terms of Article 36, paragraph 1, of the Court's Statute, read in conjunction with Article 1 of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957 (hereinafter: European Convention)[9]. Italy ratified the European Convention on 29 January 1960. The Convention entered into force between the two States when it was ratified by Germany on 18 April 1961. Neither State has since terminated it, nor have they made any relevant reservations.

12. Article 1 of the European Convention provides:

> "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:
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> *(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."

13. The present dispute is plainly covered by the terms of Article 1 of the European Convention. Notably, it concerns a "question of international law", namely the scope of sovereign immunity; it involves the systematic and continuing "breach", by Italy, "of an international obligation", and it requires a decision about "the nature or extent of the reparation to be made for the breach of an international obligation".

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[7] See International Court of Justice, *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 26, para. 50; International Court of Justice, *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 74.

[8] See International Court of Justice, *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016 (II)*, p. 849, para. 37; International Court of Justice, *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328.

[9] European Convention on the Peaceful Settlement of Disputes (Annex 1).

14. Germany notes that the dispute between itself and Italy is also covered by the temporal scope of the European Convention. Under the terms of Article 27, the European Convention does not apply to "disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute". The present dispute is however based on "facts or situations" *after* the European Convention's entry into force in 1961, namely decisions and measures of constraint taken by Italian domestic courts and other authorities since Judgment No. 238/2014 of the Italian Constitutional Court in defiance of Germany's right to sovereign immunity.

C. The Facts

15. Germany is faced with a large number of proceedings before Italian domestic courts. These proceedings have been brought by claimants who suffered injury between 1943 and 1945, when Italy was under German occupation after it had terminated its alliance with the German Reich in September 1943, and who, often represented by their descendants, seek compensation from Germany.

16. In its judgment of 3 February 2012, the Court described this general background in the following terms:

> "In June 1940, Italy entered the Second World War as an ally of the German Reich. In September 1943, following the removal of Mussolini from power, Italy surrendered to the Allies and, the following month, declared war on Germany. German forces, however, occupied much of Italian territory and, between October 1943 and the end of the War, perpetrated many atrocities against the population of that territory, including massacres of civilians and the deportation of large numbers of civilians for use as forced labour. In addition, German forces took prisoner, both inside Italy and elsewhere in Europe, several hundred thousand members of the Italian armed forces. Most of these prisoners (hereinafter 'Italian military internees') were denied the status of prisoner of war and deported to Germany and German-occupied territories for use as forced labour."[10]

17. The democratic Germany that emerged after the end of the Nazi dictatorship has consistently expressed its deepest regret over the egregious violations of international humanitarian law perpetrated by German forces during the period from September 1943 until the liberation of Italy. In a joint declaration issued with his Italian counterpart in 2008, the Foreign Minister of Germany fully acknowledged the "untold suffering inflicted on Italian men and women in particular during massacres, and on former Italian military internees"[11].

18. At the same time, Germany has consistently taken the legal position that while Germany and Italy are required to cooperate towards reconciliation, individual compensation of victims could not be forced upon Germany through unilateral recourse to domestic courts in violation of binding international rules of sovereign immunity.

19. The proceedings before the Court in *Jurisdictional Immunities of the State* vindicated that position. They prompted the Italian legislature to clarify — in Article 3 of Law 5/2013 — that in proceedings covered by the ICJ judgment, Italian domestic courts were required to declare themselves to be without jurisdiction to entertain

[10] International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 110, para. 21.

[11] Joint Declaration by the Governments of the Federal Republic of Germany and the Italian Republic, Trieste, 18 November 2008 (Annex 19).

claims[12]. However, as mentioned above, in Judgment No. 238/2014 the Italian Constitutional Court declared Article 3, passed to ensure compliance with the Court's *Jurisdictional Immunities* judgment, to be unconstitutional. It also declared unconstitutional Article 1 of Law No. 848 of 17 August 1957 (Execution of the United Nations Charter)[13], insofar as this provision required "Italian courts [to] deny their jurisdiction in case of acts of a foreign State constituting war crimes and crimes against humanity, in breach of inviolable human rights"[14].

20. As a result of the Italian Constitutional Court's Judgment No. 238/2014, a large number of proceedings brought against Germany, based on conduct of the German Reich between 1943 and 1945, were *not* dismissed as had been envisaged under the terms of Law 5/2013. In addition, a significant number of new proceedings have been instituted against Germany in the wake of Judgment No. 238/2014[15]. These proceedings have taken place in disregard of Germany's frequent, firm and consistent objections: on dozens of occasions, up until April 2022, German diplomats and elected political representatives, including those of highest rank, have protested against the unlawful exercise of jurisdiction by Italian domestic courts and emphasised that Judgment No. 238/2014 does not affect Italy's obligations under international law[16]. To provide but one example, in a Note Verbale dated 5 January 2015, the German Embassy in Rome reiterated Germany's position in the following, principled terms:

> "Like all United Nations member States, Germany and Italy have a common interest in protecting and safeguarding the integrity of the international legal system under the authority of the International Court of Justice. In this sense, Article 94, paragraph 1, of the Charter of the United Nations requires each member of the United Nations to comply with the decision of the International Court of Justice in any dispute to which it is a party.
>
> Under international law, the Italian Republic continues to have an obligation to comply with the pronouncement of the International Court of Justice of 3 February 2012 and to transpose it into its domestic legal system. ln particular, the judgment of the Constitutional Court of the Italian Republic cannot change anything established by the International Court of Justice regarding the content and extent of the jurisdictional immunity that the Federal Republic of Germany enjoys before Italian courts.
>
> The principle of the immunity of States cannot be limited by a State's domestic law, not even by the fundamental principles of the national constitutional law system [. . .].
>
> The resumption or prosecution of proceedings based on violations of international humanitarian law by the Third Reich during the Second World War would be a new violation of the jurisdictional immunity enjoyed by the Federal Republic of Germany."[17]

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[12] Article 3 of Law 5/2013 (Annex 2).

[13] Article 1 of Law No. 848 (Annex 3).

[14] Italian Constitutional Court, Judgment No. 238/2014 (Annex 5).

[15] See Overview of cases brought against Germany before Italian courts since Judgment No. 238/2014 (Annex 6).

[16] See Overview of German-Italian discussions concerning questions of sovereign immunity (Annex 20).

[17] Note Verbale from the German Embassy in Rome to the Italian Ministry of Foreign Affairs and International Cooperation, 5 January 2015 (Annex 21).

21. Germany does not, at present, have full knowledge of each and every one of these proceedings brought against it. However, the information available to it indicates that its right to sovereign immunity is violated in a widespread and systematic manner.

22. To illustrate, to the best of Germany's knowledge, at least 25 new proceedings have been initiated against Germany since the Italian Constitutional Court's Judgment No. 238/2014 of 22 October 2014. All of these proceedings concern claims for individual compensation brought against Germany by Italian nationals (or their descendants) that were victims of violations of international humanitarian law committed by the German Reich during World War II[18].

23. In at least 15 instances, Italian domestic courts have, since the Italian Constitutional Court's Judgment No. 238/2014, rendered decisions against Germany in relation to conduct of the German Reich during World War II[19].

24. In addition to these proceedings, which violate Germany's right to sovereign immunity from jurisdiction, the Court of Rome is currently taking measures of constraint against German properties situated in Italy, and is threatening to take further measures. These measures seek to enforce earlier judgments rendered in the cases of *Giorgio* v. *Germany* and *Cavallina* v. *Germany*[20]. In the former instance, the Court of Bologna in 2011 had ordered Germany to pay the claimant 518,232 euros in compensation for violations of international humanitarian law committed by the German Reich; this was upheld by the Appellate Court of Bologna in 2018[21]. In the case of *Cavallina* v. *Germany*, the Appellate Court of Rome of 4 November 2020 ordered Germany to pay the claimant 100,000 euros in compensation plus interest for his mistreatment at the hands of the German Reich[22].

25. To satisfy the judgment in the case of *Giorgio* v. *Germany*, four German State-owned properties located in Rome were seized and attached on 23 November 2020[23]. This writ of attachment of real property ("atto di pignoramento immobiliare") was registered in the land register in line with Article 555 of the Italian Code of Civil Procedure[24]. Following the above-mentioned judgment of the Appellate Court of Rome of 4 November 2020, the claimants in *Cavallina* v. *Germany* joined the enforcement process. Under Article 492 and 555 of the Italian Code of Civil

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[18] See Overview of cases brought against Germany before Italian courts since Judgment No. 238/2014 (Annex 6).

[19] Overview of judgments rendered by Italian courts against Germany since Judgment No. 238/2014 (Annex 7).

[20] Judgment of the Court of Bologna, *Giorgio* v. *Germany*, Judgment No. 2892/2011 (Annex 14); Judgment of the Appellate Court of Bologna, *Giorgio* v. *Germany*, Judgment No. 2120/2018 (Annex 15); Judgment of the Appellate Court of Rome, *Cavallina* v. *Germany*, Judgment No. 5446/2020 (Annex 16).

[21] Judgment of the Court of Bologna, *Giorgio* v. *Germany*, Judgment No. 2892/2011 (Annex 14); Judgment of the Appellate Court of Bologna, *Giorgio* v. *Germany*, Judgment No. 2120/2018 (Annex 15).

[22] Judgment of the Appellate Court of Rome, *Cavallina* v. *Germany*, Judgment No. 5446/2020 (Annex 16).

[23] See Judicial Officer Rome, Writ of attachment of real property, 23 November 2021, and Note Verbale of 7 December 2021 (Annex 17); see further extracts from the land register confirming that all four properties are owned by the Federal Republic of Germany (Annexes 9, 10, 11, 12).

[24] See List of German State-owned properties affected by measures of constraint and extracts from the land register (Annex 8): in the land register, the four German properties are listed in *Sezione B*, while the attachment is registered in *Sezione C*; for the text of Article 555 of the Italian Code of Civil Procedure, see Italian Code of Civil Procedure (extracts) (Annex 4).

Procedure[25], this registration deprives Germany of the right to effect any change in the legal status of its properties, such as by selling or otherwise disposing of them.

26. The attachment decision concerned the following four German properties:

(a) one of 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); as well as
(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)[26].

27. By way of a decision of 12 July 2021, the Court of Rome appointed, instead of Germany, a judicial custodian ("custode giudiziario") for the aforesaid properties. Since September 2021, this judicial custodian has engaged in regular site visits on all four German properties. On 12 July 2021, the Court of Rome also fixed 25 May 2022 as the date on which it would decide to authorise the German properties to be subjected to a forced sale by way of a subsequent public auction[27].

28. Since December 2020 Germany has sought to have these measures of constraint quashed or suspended, emphasising its right to sovereign immunity and noting that all four properties subject to attachment are in use for government non-commercial purposes. Significantly, the Italian Government itself, in an aide-mémoire of 6 October 2021, unequivocally affirmed the non-commercial status of the four German properties and noted that they were in use for a public purpose[28]. Notwithstanding these clear statements, the Court of Rome has proceeded with the enforcement process and on 25 May 2022, will irrevocably authorise to put the four German properties up for sale at a public auction. Under the circumstances, and as further detailed below, Germany is now compelled to seek provisional measures from the Court in order to safeguard its rights against irreparable harm.

D. The Law

29. Through its conduct as described in the preceding section, Italy has violated, and continues to violate, its duty to respect the sovereign immunity of a foreign State, a central tenet of peaceful inter-State relations governed by international law. The fundamental importance of respect for sovereign immunity is beyond doubt and has been affirmed in the jurisprudence of the Court. As the Court noted a decade ago:

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[25] For the text of the relevant provisions of the Italian Code of Civil Procedure, see Italian Code of Civil Procedure (extracts) (Annex 4).

[26] See List of German State-owned properties affected by measures of constraint and extracts from the land register (Annex 8), *Sezione B* for details; in Annex 8, the three sub-lots of the German School in Rome are listed separately, as *Immobile n. 4*, *5*, *6*, respectively. For reasons of convenience, they are referred to, in the present Application and Request for provisional measures as the fourth German property.

[27] Decision of the Court of Rome, *Giorgio et al.* v. *Germany*, RGE No. 1163/2020, 12 July 2021 (Annex 18).

[28] Aide-mémoire by the Italian Ministry of Foreign Affairs and International Cooperation, 6 October 2021 (Annex 22).

> "[T]he rule of State immunity occupies an important place in international law and international relations. It derives from the principle of sovereign equality of States, which, as Article 2, paragraph 1, of the Charter of the United Nations makes clear, is one of the fundamental principles of the international legal order."[29]

30. There can be no doubt either about the basic elements of the duty to respect sovereign immunity, which the Court clarified in its 2012 judgment. Six such basic elements are of relevance here.

31. *First*, respect for sovereign immunity is a matter of binding international law, not of mere comity. As noted by the Court: "States generally proceed on the basis that there is a right to immunity under international law, together with a corresponding obligation on the part of other States to respect and give effect to that immunity"[30].

32. *Second*, immunity is a procedural bar to the exercise of jurisdiction by foreign courts, and to the taking of measures of constraint. This makes it "entirely distinct from the substantive law which determines whether that conduct is lawful or unlawful"[31].

33. *Third*, States are obliged to respect the sovereign immunity of other States even in proceedings that concern allegations of grave breaches of international law. As noted by the Court in 2012:" 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"[32].

34. In particular, the fact that the alleged violations may concern peremptory rules of international law does not affect "the applicability of the customary international law on State immunity"[33]. Germany notes that the Court's central holding on this point has been considered as "authoritative as regards the content of customary international law" by the European Court of Human Rights[34].

35. *Fourth*, the duty to respect the sovereign immunity of States also applies in proceedings for torts allegedly committed on the territory of another State, where the claims are based on conduct of the other States' armed forces and other organs of State in the course of an armed conflict[35].

36. *Fifth*, States are under a distinct and separate duty to respect other States' immunity from measures of constraint taken against property situated on foreign territory. As the Court noted in 2012: "the immunity from enforcement enjoyed by States in regard to their property situated on foreign territory goes further than the jurisdictional immunity enjoyed by those same States before foreign courts"[36].

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[29] International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 123, para. 57.

[30] *Ibid.*, p. 123, para. 56.

[31] *Ibid.*, p. 124, para. 58.

[32] *Ibid.*, p. 139, para. 91.

[33] *Ibid.*, p. 142, para. 97.

[34] European Court of Human Rights, *Case of Jones and Others* v. *The United Kingdom*, Application Nos. 34356/06 and 40528/06, final judgment of 14 January 2014, para. 198.

[35] International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, pp. 127 *et seq*., paras. 64-78.

[36] *Ibid.*, p. 146, para. 113.

37. More specifically:

> "Even if a judgment has been lawfully rendered against a foreign State, in circumstances such that the latter could not claim immunity from jurisdiction, it does not follow *ipso facto* that the State against which judgment has been given can be the subject of measures of constraint on the territory of the forum State or on that of a third State, with a view to enforcing the judgment in question."[37]

38. *Sixth*, as immunity from measures of constraint "goes further"[38] than immunity from jurisdiction, States are precluded under international law from taking any measure of constraint against the property of a foreign State on the basis of a judgment that itself has been rendered in violation of the other State's sovereign immunity[39]. Conversely, even if a judgment has been lawfully rendered against a foreign State, absent cases of consent or designation, measures of constraint can only be taken against property that is "in use for an activity not pursuing government non-commercial purposes"[40].

39. In light of these considerations, there can be no doubt that Italian domestic courts violate Germany's right to sovereign immunity by *(a)* allowing civil claims based on violations of international humanitarian law committed by the German Reich and *(b)* by taking, or threatening to take, measures of constraint against German State-owned property situated in Rome.

40. These violations engage Italy's international responsibility. Italy is under a duty to cease its continuing unlawful conduct, including all proceedings against Germany based on violations of international humanitarian law committed by the German Reich between 1943 and 1945 in which Italian courts currently exercise, or will exercise in the future, jurisdiction in violation of international law.

41. Italy is moreover under a duty to make "full reparation for the injury caused" by its unlawful conduct[41]. Such reparation "must as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed"[42].

42. As Germany's right to sovereign immunity has been infringed in a systematic, repeated and blatant manner by Italian courts, it can no longer be assumed that Italy will not repeat such acts or conduct in the future, even if the International Court of Justice expressly declares Italy's conduct to be in breach of international law.

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[37] International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 146, para. 113.

[38] *Ibid.*

[39] *Ibid.*, pp. 146-147, paras. 113-114; as well as International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy), Application for Permission to Intervene, Order of 4 July 2011, I.C.J. Reports 2011 (II)*, pp. 501 *et seq.*, para. 25.

[40] International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 148, para. 118.

[41] See International Law Commission, Responsibility of States for Internationally Wrongful Acts (2001), Art. 31.

[42] Permanent Court of International Justice, *Factory at Chorzów, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47; and see further International Court of Justice, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, pp. 31 *et seq.*, para. 76; International Court of Justice, *Avena and Other Mexican Nationals (Mexico* v. *United States of America), Judgment, I.C.J. Reports 2004 (I)*, p. 59, para. 119; International Court of Justice, *Certain Activities Carried Out by Nicaragua*

Accordingly, in the case at hand special circumstances do exist that warrant the Court to order Italy to offer guarantees and assurances of non-repetition to Germany, and to back up these guarantees and assurances with concrete measures.

E. Submissions

43. On the basis of the preceding considerations, Germany asks the Court to adjudge and declare:

(1) Italy has violated, and continues to violate, its obligation to respect Germany's sovereign immunity by allowing civil claims to be brought against Germany based on violations of international humanitarian law committed by the German Reich between 1943 and 1945, including, but not limited to, in 25 proceedings, listed in Annex 6, instituted against Germany since the judgment of the Italian Constitutional Court of 22 October 2014.

(2) Italy has violated, and continues to violate, its obligation to respect Germany's sovereign immunity by taking, or threatening to take, measures of constraint against German State-owned properties situated in Italy, including against the Deutsches Archäologisches Institut Rom (German Archaeological Institute Rome), the Goethe Institut Rom (German Cultural Institute Rome), the Deutsches Historisches Institut Rom (German Historical Institute Rome), and the Deutsche Schule Rom (German School Rome).

(3) Italy is required to ensure that the existing decisions of its courts and those of other judicial authorities infringing Germany's right to sovereign immunity cease to have effect, including but not limited to, the 15 decisions listed in Annex 7.

(4) Italy is required immediately to take effective steps to ensure that Italian courts no longer entertain civil claims brought against Germany based on violations of international humanitarian law committed by the German Reich between 1943 and 1945.

(5) Italy is required to make full reparation for any injury caused through violations of Germany's right to sovereign immunity, including but not limited to, compensating Germany for any financially assessable injury resulting from proceedings conducted, and measures of constraint taken, in violation of Germany's sovereign immunity.

(6) Italy is required to offer Germany concrete and effective assurances and guarantees that violations of Germany's sovereign immunity will not be repeated.

44. Germany reserves the right to revise, supplement, or amend the terms of this Application, as well as the grounds invoked, as necessary.

45. In addition to the submissions set out in the foregoing, Germany requests the Court to indicate provisional measures in accordance with Article 41 of the Court's Statute as set out in the subsequent section.

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in the Border Area (Costa Rica v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, p. 25, para. 29; International Court of Justice, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment of 9 February 2022*, p. 36, para. 106.

Part II: Request for Provisional Measures

46. In accordance with Article 41 of the Statute of the Court, and Articles 73, 74 and 75 of the Rules of Court, Germany requests the Court to indicate provisional measures to safeguard its rights. Such provisional measures fall plainly within the prima facie jurisdiction of this Court. They are required primarily to protect German State-owned properties located in Rome against imminent measures of constraint. As is detailed below[43], the Court of Rome, in clear disregard of Germany's right to sovereign immunity, has fixed 25 May 2022 as the date on which it will authorise the forced sale of four German State-owned properties located in Rome in a public auction.

47. Germany does not at present have comprehensive information about further impending decisions by Italian domestic courts in parallel proceedings that would impose upon Germany further measures of constraint in violation of its sovereign immunity. However, given the large number of proceedings currently pending before Italian domestic courts, as well as of decisions already rendered by Italian domestic courts against Germany since 22 October 2014, such measures of constraint are likely to be imminent. In order to be able effectively to safeguard its right to sovereign immunity, for the reasons set out below[44], Germany, as a further measure of protection, requests the Court to order Italy to provide specific information about any such further measures of constraint.

48. In light of the nature of the rights at issue, as well as the irreparable harm which will be caused by these imminent measures of constraint, Germany requests that the Court addresses the present Request as a matter of priority and urgency in line with Article 74, paragraph 1, and Article 75 of the Rules of Court.

A. Prima Facie Jurisdiction

49. The Court: "may indicate provisional measures only if the provisions relied on by the Applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded"[45].

50. In order to determine whether the Court has such prima facie jurisdiction, the acts complained of must thus be prima facie: "capable of falling within the provisions of [the Convention]", such that: "the dispute is one which the Court could have jurisdiction *ratione materiae* to entertain"[46] but the Court: "need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case"[47].

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[43] See *infra* paras. 66 *et seq.*

[44] See *infra* paras. 81 *et seq.*

[45] See, *inter alia*, International Court of Justice, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018 (II)*, p. 630, para. 24; International Court of Justice, *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 236, para. 15; International Court of Justice, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 114, para. 17.

[46] International Court of Justice, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018 (II)*, p. 632, para. 30.

[47] International Court of Justice, *ibid.*, p. 630, para. 24; International Court of Justice, *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 236, para. 15; International Court of Justice, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination*

51. As set out above[48], the jurisdiction of the Court in the present case is based on Article 36, paragraph 1, of its Statute and Article 1 of the European Convention. The present, new, dispute between Germany and Italy is clearly covered by the terms of Article 1 of the European Convention. The Court's prima facie jurisdiction to order provisional measures cannot be in doubt.

B. The Rights Whose Protection Is Sought and Their Plausible Character

52. Under Article 41 of its Statute, the Court has "the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party".

53. The power of the Court to indicate provisional measures under Article 41 of the Statute thus aims to ensure:

> "the preservation of the respective rights claimed by the parties in a case, pending its decision on the merits thereof. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible."[49]

54. Moreover: "a link must exist between the rights whose protection is sought and the provisional measures being requested"[50].

55. While the Application concerns systematic violations of Germany's sovereign immunity by Italian courts, as set out above in more detail[51], the present Request for provisional measures primarily relates to specific measures of constraint about to be adopted by the Court of Rome on 25 May 2022. These measures of constraint will lead to the forced sale, in a public auction, of various items of German State-owned property situated in Rome, namely:

(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); as well as
(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).

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of All Forms of Racial Discrimination (Ukraine v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 114, para. 17.

[48] See *supra*, paras. 11 *et seq.*

[49] See, *inter alia*, International Court of Justice, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 126, para. 63.

[50] International Court of Justice, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018 (II)*, p. 639, para. 54; International Court of Justice, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 126, para. 64.

[51] See *supra*, paras. 29 *et seq.*

56. These measures of constraint against the aforementioned German State-owned properties, to be adopted by the Court of Rome on 25 May 2022, would directly violate Germany's right to sovereign immunity, which lies at the heart of the present proceedings. As noted above, the measures of constraint are meant to enforce judgments rendered by Italian domestic courts, namely by the Court and the Appellate Court of Bologna and the Appellate Court of Rome in the cases of *Giorgio* v. *Germany* and *Cavallina* v. *Germany*, which have ordered Germany to pay compensation to victims of violations of international humanitarian law committed by the German Reich during World War II[52].

57. The judgments in *Giorgio* v. *Germany* and *Cavallina* v. *Germany* violated Germany's sovereign immunity, as authoritatively restated by the Court's 2012 *Jurisdictional Immunities of the State* judgment. Any attempt to enforce such unlawfully rendered judgments would exacerbate this violation of international law. For this reason alone, the measures of constraint scheduled to take place on 25 May 2022 would violate Germany's right under international law to have its sovereign immunity respected by Italy.

58. Furthermore, these measures of constraint would also violate Germany's sovereign immunity for the additional reason that all four properties affected by the attachment are used for government non-commercial purposes:

(a) The Deutsches Archäologisches Institut Rom (German Archaeological Institute Rome) is a scientific agency administered and financed by the German Federal Foreign Office to undertake scientific research as part of Germany's cultural and educational foreign policy.

(b) The Goethe Institut Rom (German Cultural Institute Rome), also financed by the German Federal Foreign Office, is an essential pillar of Germany's foreign and cultural policy; it promotes German language and German culture in Italy, including by organising, overseeing and certifying officially recognised German language tests *inter alia* relevant for visa matters.

(c) The Deutsches Historisches Institut Rom (German Historical Institute Rome), which operates under the auspices of a foundation financed by the German Government, is tasked with promoting historical research throughout the world and furthers Germany's foreign cultural and educational policy.

(d) The Deutsche Schule Rom (German School Rome), a registered non-profit association under Italian law, which is recognised officially as a cultural institution under the bilateral Italo-German cultural agreement[53], is partly financed from the German federal budget; is regulated through the Federal Act on German Schools abroad (Auslandsschulgesetz), and provides teaching in line with official German curricula including by teachers seconded from Germany up to and including the official German high school diploma ("Abitur").

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[52] Judgment of the Court of Bologna, *Giorgio* v. *Germany*, Judgment No. 2892/2011 (Annex 14); Judgment of the Appellate Court of Bologna, *Giorgio* v. *Germany*, Judgment No. 2120/2018 (Annex 15); Judgment of the Appellate Court of Rome, *Cavallina* v. *Germany*, Judgment No. 5446/2020 (Annex 16).

[53] Federal Republic of Germany and Italy, Cultural Agreement (with Exchange of Letters) (1956) and Exchange of Letters Constituting an Agreement relating to the Aforementioned Agreement (1961) (Annex 13).

59. Significantly, the Italian Government has recognised the government non-commercial character of these German State-owned properties. In an aide-mémoire addressed to the German Embassy in Rome dated 6 October 2021, mentioned above[54], the Italian Ministry of Foreign Affairs unequivocally confirmed that:

> "the German Archaeological Institute, the Goethe Institut, the German Historical Institute and the German School pursue, within the foreign policy of the Federal Republic of Germany, purposes of public interest of a cultural-scientific nature and also contribute to the promotion of German-Italian cultural relations, specifically governed by the Cultural Agreement of 8 February 1956"[55].

60. In light of this assessment, which is shared by Germany, it is clear that the four German properties are not, in the words of the Court, "in use for an activity not pursuing government non-commercial purposes"[56]. Any measure of constraint taken against the four German properties would accordingly, for that reason too, violate Germany's right to sovereign immunity.

61. Germany's Request for provisional measures of protection is moreover directly linked to one of "the rights whose protection is sought"[57] in Germany's Application, namely Germany's right not to be subjected to measures of constraint adopted in violation of the international rules of sovereign immunity. Put differently, the provisional measures sought in this Request are meant to protect Germany against imminent violations, by Italian courts, of Germany's sovereign immunity as far as certain specific post-judgment measures of constraint against its State property are concerned. They are sought until a judgment on the merits has been rendered by the Court, and intended to safeguard Germany's rights during the duration of these proceedings.

62. Germany's claims in relation to these rights also reach well beyond the plausibility threshold necessary for the Court to adopt provisional measures. As confirmed by the Court in its 2012 *Jurisdictional Immunities of the State* judgment, measures of constraint are per se unlawful under international law if they are taken to enforce a judgment that itself violates a State's sovereign immunity[58]. This is the case for the measures of constraint taken, and those threatened, against Germany's aforementioned properties. These measures of constraint are intended to enforce the

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[54] See *supra*, para. 28.

[55] Aide-mémoire by the Italian Ministry of Foreign Affairs and International Cooperation, 6 October 2021 (Annex 22); for the text of the aforementioned German-Italian Cultural Agreement, see Federal Republic of Germany and Italy, Cultural Agreement (with Exchange of Letters) (1956) and Exchange of Letters Constituting an Agreement relating to the Aforementioned Agreement (1961) (Annex 13).

[56] See International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 148, para. 118.

[57] See International Court of Justice, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018 (II)*, p. 639, para. 54; International Court of Justice, *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 126, para. 64.

[58] See International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, pp. 146 *et seq*., paras. 113-114; International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy), Application for Permission to Intervene, Order of 4 July 2011, I.C.J. Reports 2011 (II)*, pp. 501 *et seq*., para. 25.

judgments in the cases of *Giorgio* v. *Germany* and *Cavallina* v. *Germany*[59], which themselves were rendered in violation of international law. Furthermore, such measures of constraint would also violate Germany's sovereign immunity for the additional reason that all of the German State-owned properties that are the object of these envisaged measures of constraint are in government non-commercial use, as shown above.

C. Urgency and Risk of Irreparable Prejudice to German Properties Located in Rome

1. Legal standard

63. The Court:

> "pursuant to Article 41 of its Statute, has the power to indicate provisional measures when there is a risk that irreparable prejudice could be caused to rights which are the subject of judicial proceedings or when the alleged disregard of such rights may entail irreparable consequences"[60].

64. This power of the Court to indicate provisional measures will be exercised once:

> "there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision. The condition of urgency is met when the acts susceptible of causing irreparable prejudice can 'occur at any moment' before the Court rules on the merits."[61]

2. Legal consequences of the imminent measures of constraint

65. In the present instance there is undoubtedly a real and imminent risk that irreparable prejudice will be caused to the rights claimed before the Court gives its final decision. Put simply, Germany faces the real and imminent risk of definitively losing its title to the four properties situated in Rome should the Court of Rome authorise a public auction on 25 May 2022.

66. As noted above, the attachment of real property of 23 November 2020, registered in the land register in line with Article 492 and 555 of the Italian Code of Civil Procedure, deprived Germany of certain rights as an owner of the four properties, such as the right to dispose of them. While Germany so far has retained legal title to the properties as such, the conduct of the Court of Rome has created a real and imminent risk that this will change.

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[59] Judgment of the Court of Bologna, *Giorgio* v. *Germany*, Judgment No. 2892/2011 (Annex 14); Judgment of the Appellate Court of Bologna, *Giorgio* v. *Germany*, Judgment No. 2120/2018 (Annex 15); Judgment of the Appellate Court of Rome, *Cavallina* v. *Germany*, Judgment No. 5446/2020 (Annex 16).

[60] International Court of Justice, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America), Provisional Measures, Order of 3 October 2018, I.C.J. Reports 2018 (II)*, p. 645, para. 77.

[61] International Court of Justice, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 428, para. 61, citing International Court of Justice, *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1169, para. 90.

67. As also noted above, the Court of Rome has appointed a judicial custodian of foreclosed properties ("custode giudiziario") for the four German properties and fixed 25 May 2022 as the date for authorising a forced sale of the four properties in the form of a public auction. Germany's efforts to quash the act of attachment as such, or at least to suspend the ongoing execution proceedings, have not so far met with any success; despite manifold attempts, the enforcement process continues. What is more, under Italian domestic law, after the decision of its authorisation, no further judicial appeal is possible that would preclude the public auction from taking place.

68. Under the present circumstances, the only secure option to avoid the auction is through a payment of the sum demanded by the creditors: in line with Article 495 of the Italian Code of Civil Procedure, such payment, if made before the public auction is authorised, would remove the attachment by way of conversion ("conversione del pignoramento"). In a Note Verbale dated 28 February 2022, Germany urgently requested the Italian Government to make such a payment[62]. The Italian Government has not responded to this request.

69. It is thus expected that on 25 May 2022 the Court of Rome will authorise to put up the four attached properties for sale in a public auction. In line with Articles 569-571 of the Italian Code of Civil Procedure, this authorisation will set in train a process that deprives Germany of any legal opportunity to retain its title to the properties. Following the authorisation, information about the attached properties and their estimated value will be uploaded onto Italian real estate websites, which will direct interested bidders to obtain further information from the judicial custodian of foreclosed properties. The Court of Rome will determine a timeframe within which interested third parties can submit bids. In line with Article 571 of the Italian Code of Civil Procedure Germany as the debtor will be barred from bidding. Once the highest bidder at the public auction has paid the stated price, the Court of Rome will transfer ownership of the auctioned properties. Under Article 586 of the Italian Code of Civil Procedure, the bidder will acquire title to the respective property. The prejudice caused by Germany's loss of title to its properties would thus be truly irreparable.

70. Further, once legal title has passed, Italian law does not preclude the new owner from taking steps to evict the institutions and associations currently using the properties. Under Article 586 of the Italian Code of Civil Procedure, the Court's decision of transfer of property serves equally as legal title for the buyer to enforce the eviction of the former owner.

71. The risk of irreparable prejudice is thus imminent and very real: Germany faces nothing less than the permanent loss of its legal title to the properties in question. In this regard it is worth recalling the Court's Order on provisional measures in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France)*. There the Court considered it particularly relevant with reference to the requirement of irreparable harm that:"[i]ndeed, any infringement of the inviolability of the premises may not be capable of remedy, since *it might not be possible to restore the situation to the status quo ante*"[63].

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[62] Note Verbale from the German Embassy in Rome to the Italian Ministry of Foreign Affairs and International Cooperation, 28 February 2022 (Annex 23).

[63] International Court of Justice, *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1169, para. 90; emphasis added.

3. Further factual consequences of the imminent measures of constraint demonstrate the irreparable harm that will be caused

72. Beyond the transfer of legal title, the public auction that will be scheduled to take place according to the Italian Court's decision on 25 May 2022 will also significantly impact the factual situation of the four German properties, including parts thereof that will not be subject to the measures of constraint, and their further use. These impacts equally pose "a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision"[64].

73. With regard to the Deutsches Archäologisches Institut Rom (German Archaeological Institute), it must first be noted that while only a part of the overall building is currently attached, a major renovation project involving the whole lot, and costing approximately 26 million euros, is currently ongoing[65]. Any forced sale, even of only part of the lot, would bring the project at large to an immediate end and would in effect create a *fait accompli*.

74. As far as the Goethe Institut Rom (German Cultural Institute Rome) is concerned, the envisaged measure of constraint relates to the apartment of the person responsible for the security and caretaking of the overall building, which is only accessible via the central staircase and elevator of the Institute. The presence of such caretaker on the premises on a 24/7 basis is required for the running of the institution. Once title to that apartment is transferred to a new owner, Germany would not only have to grant this new owner access to the apartment via the German Cultural Institute, but would also no longer be able to ensure the security of the premises, which would thereby endanger the proper functioning of the Goethe Institut as such.

75. As regards the Deutsche Schule Rom (German School Rome), the Court of Rome's decision scheduled for 25 May 2022 will likely cause irreparable harm to the operation of the school. As noted above, after 25 May 2022, information about a public auction will be posted on Italian real estate websites. The mere possibility of a transfer of title is prone to disrupt the school's activities. It will lead parents to no longer enroll their children, possibly bringing about the *de facto* closure of the school. Moreover, any disruption of the school's activities will affect the functioning of the German diplomatic missions in Rome since German diplomats with school-age children currently posted in Rome, and those who will be posted there in the future, depend on the option of their children attending the German school. The denial of this possibility confirms that an auction, or even its mere public announcement, of the Deutsche Schule would lead to irreparable harm.

76. Each of these facts alone, and even more so when taken together with the legal effects of the imminent further measures of constraint, confirms that the forthcoming decision of 25 May 2022 by the Court of Rome will cause irreparable prejudice to Germany's rights, which form the very subject-matter of the Application. Those measures of constraint will also entail irreparable consequences for Germany's legal title to its State property, which is in use for government non-commercial purposes.

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[64] See International Court of Justice, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018 (II)*, p. 428, para. 61.

[65] For details see: https://www.bbr.bund.de/BBR/DE/Bauprojekte/Ausland/KulturundBildungseinrichtungen/DAI%20Rom/dairom.html?templateQueryString=rom (visited 18 April 2022).

4. Urgency

77. As is clear from the account of the facts given above, the risk of irreparable harm to Germany's rights is imminent, and urgent action is required to safeguard Germany's rights.

78. The act likely to cause further and irreparable prejudice to the rights claimed by Germany under applicable customary rules of State immunity, namely the decision by the Court of Rome to authorise the sale of the properties at a public auction, is scheduled to take place on 25 May 2022. This is less than one month from the day this Request for provisional measure is submitted to the Court, and thereafter the change in ownership could "occur at any moment"[66].

79. While Italy claims that it has taken steps to issue a decree which would block measures of constraint with regard to German property in Italy, this decree has so far neither been officially published nor communicated to Germany.

80. Under those circumstances, and since all representations by Germany vis-à-vis the Italian Government to take appropriate steps of its own choosing to stop the imminent measures of constraint violating Germany's State immunity, have failed, there can be no doubt that the criterion of urgency is satisfied in the present case.

D. Germany's Right to Be Free from Further Unlawful Measures of Constraint

81. As detailed in Annex 6, Italian domestic courts have entertained a large number of further proceedings in violation of Germany's right to sovereign immunity since the issuance of Judgment No. 238/2014 of the Italian Constitutional Court. As detailed in Annex 7, since the issuance of Judgment No. 238/2014, Italian domestic courts have rendered judgments against Germany in no less than 15 such proceedings, requiring Germany to pay compensation for violations of international humanitarian law committed by the German Reich during World War II. For the reasons set out above, these proceedings systematically violate Germany's right to sovereign immunity. Measures of constraint taken to enforce such unlawfully rendered judgments would *ipso facto* violate Germany's right to be free from such measures of constraint, which "goes further"[67] than its right to immunity from jurisdiction.

82. Germany does not at present possess specific and complete information about such attempts, other than those directed against its four properties located in Rome, to enforce such judgments by Italian courts rendered in violation of Germany's sovereign immunity. However, given the large number of proceedings brought before, and of potentially enforceable decisions rendered by, Italian domestic courts, it seems only a matter of time until only further measures of constraint will be taken against German State-owned property located in Italy. Any such further measure of constraint would exacerbate the violation of Germany's right to sovereign immunity and mean that, "it might not be possible to restore the situation to the *status quo ante*"[68].

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[66] See *mutatis mutandis* International Court of Justice, *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1169, para. 90.

[67] International Court of Justice, *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 146, para. 113.

[68] See International Court of Justice, *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1169, para. 90.

83. In the present circumstances, Germany's immediate need is to be kept closely informed, through diplomatic channels, of any further measures of constraint taken, or contemplated, by Italian domestic courts while no further attempts of service of process via the German Embassy in Rome ought to take place, in order for Germany to be able in light of such information to then seek further, additional provisional measures of protection from this Court, should this become necessary.

84. In order to be able to safeguard its right to sovereign immunity pending a decision of the Court on the merits, Germany thus requests the Court to order Italy to provide detailed information about proceedings pending before Italian domestic courts, and about the steps it has taken to prevent the violation of Germany's right to sovereign immunity.

E. Provisional Measures Requested

85. On the basis of all of the facts and arguments set forth above, Germany thus requests the Court to indicate the following provisional measures in accordance with Article 41 of its Statute:

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.

86. In accordance with Article 75, paragraph 1, of its Rules, and given the imminent risk of irreparable harm, as well as the unequivocal fulfilment of the prerequisites for the ordering of provisional measures in the case at hand, Germany requests the Court

to indicate the above provisional measures as a matter of urgency and without any other proceedings, or otherwise schedule an oral hearing at the Court's earliest possible opportunity.

87. Germany reserves its right to request additional provisional measures to prevent irreparable harm to the rights at issue in this case or to prevent a further aggravation of the dispute by Italy, should those become necessary during the course of these proceedings, notably where measures of constraint are about to be taken by Italian courts against other German properties used for government non-commercial purposes located on Italian territory, or for the purpose of enforcing judgments that themselves violate Germany's sovereign immunity.

Berlin, 29 April 2022.

(Signed) Dr. Christophe Eick,
Agent of the Federal Republic of Germany.

CERTIFICATION

I hereby certify that the annexes filed with this Application and Request for provisional measures are true copies of the documents referred to and that the translations provided are accurate.

Berlin, 29 April 2022.

(Signed) Dr. Christophe Eick,
Agent of the Federal Republic of Germany.

LIST OF ANNEXES*

Annex 1. European Convention on the Peaceful Settlement of Disputes.

Annex 2. Article 3 of Law 5/2013 (Italian original and English translation).

Annex 3. Article 1 of Law No. 848 (Italian original and English translation).

Annex 4. Italian Code of Civil Procedure (extracts) (Italian original and English translation).

Annex 5. Italian Constitutional Court, Judgment No. 238/2014 (Italian original and English translation).

Annex 6. Overview of cases brought against Germany before Italian courts since Judgment No. 238/2014.

Annex 7. Overview of judgments rendered by Italian courts against Germany since Judgment No. 238/2014.

Annex 8. List of German State-owned properties affected by measures of constraint and extracts from the land register (Italian original and English translation).

Annex 9. Extracts from the land register: Deutsches Archäologisches Institut Rom (German Archeological Institute Rome) (Italian original).

Annex 10. Extracts from the land register: Goethe Institut Rom (German Cultural Institute Rome) (Italian original).

Annex 11. Extracts from the land register: Deutsches Historisches Institut Rom (German Historical Institute in Rome) (Italian original).

Annex 12. Extracts from the land register: Deutsche Schule Rom (German School Rome) (Italian original).

Annex 13. Federal Republic of Germany and Italy, Cultural Agreement (with Exchange of Letters) (1956) and Exchange of Letters Constituting an Agreement relating to the Aforementioned Agreement (1961) (German and Italian originals and English translation).

Annex 14. Judgment of the Court of Bologna, *Giorgio* v. *Germany*, Judgment No. 2892/2011 (Italian original and English translation).

Annex 15. Judgment of the Appellate Court of Bologna, *Giorgio* v. *Germany*, Judgment No. 2120/2018 (Italian original and English translation).

Annex 16. Judgment of the Appellate Court of Rome, *Cavallina* v. *Germany*, Judgment No. 5446/2020 (Italian original and English translation).

Annex 17. Judicial Officer Rome, Writ of attachment of real property, 23 November 2021, and Note Verbale of 7 December 2021 (Italian original and English translation).

Annex 18. Decision of the Court of Rome, *Giorgio et al.* v. *Germany*, RGE No. 1163/2020, 12 July 2021 (Italian original and English translation).

Annex 19. Joint Declaration by the Governments of the Federal Republic of Germany and the Italian Republic, Trieste, 18 November 2008 (Italian and German originals and English translation).

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