

IN THE INTERNATIONAL COURT OF JUSTICE

GERMANY,)
APPLICANT)
V.)
ITALY,)
RESPONDENT)

MEMORIAL OF THE FEDERAL REPUBLIC OF GERMANY

COMES NOW the Federal Republic of Germany and for their Memorial to the Court states the following:

STATEMENT OF LAW

1. International Law recognizes the principle of sovereign immunity which protects sovereign states from being sued before the civil courts of another state.
2. Germany and Italy signed the European Convention for the Peaceful Settlement of Disputes of 29 April 1957 (European Convention). Italy ratified that Convention on January 29, 1960. Germany ratified it on April 18, 1961. Neither of the two Parties has denounced it. Article 1 of the European Convention States that:
“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.”

STATEMENT OF FACT

Germany is currently faced with a number of disputes before Italian courts where claimants who suffered injury during World War II, when Italy was under German occupation after it had terminated its alliance with Germany on September 8-9, 1943 and joined the Allied Powers, have instituted proceedings seeking financial compensation for that harm. The critical stage of this development was reached by the judgment of the Italian Supreme Court, Corte di Cassazione, on March 11, 2004 in the Ferrini case, where the Corte di Cassazione declared that Italy held jurisdiction with regard to a claim (proceedings initiated in 1998) brought by a person who during World War II had been deported to Germany to perform forced labor in the armaments

industry.

In addition, Italy has deemed it has jurisdiction in the Distomo case, in which Greek nationals seek reparations for a massacre committed by German military units during their withdrawal in 1944. The judgment on this case was deemed unenforceable by the Greek Supreme Court on account of Germany's sovereign immunity. The claimants then brought their case before the European Court of Human Rights (ECHR), which likewise found the case to be not within the Court's jurisdiction, due to the principle of sovereign immunity. Italy, however, has found the judgment of this case is enforceable in Italy.

In one case, measures of constraint were already taken against German assets in Italy. A judicial mortgage was inscribed in the land register covering Villa Vigoni, the German-Italian center of cultural encounters in Italy, owned by Germany, and used for government non-commercial purposes.

STATEMENT OF JURISDICTION

The Application is brought under the terms of the European Convention, in which Article 1 provides: "The High Contracting Parties shall submit to the judgment of the Inter-national 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."

In the instant case, the dispute concerns in particular the existence, under customary international law, of the rule that protects sovereign States from being sued before the civil courts of another State. Thus, the claim, which is a question of international law, falls *ratione materiae* within the scope of application of the European Convention,

The applicability of the European Convention is not excluded by the provisions of Article 27, which enunciates certain time-limits. In fact, as stipulated there:

"The provisions of this Convention shall not apply to:

- (a) disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute;
- (b) disputes concerning questions which by international law are solely within the domestic jurisdiction of States."

Although the claims which have been introduced against Germany before Italian courts relate to occurrences of World War II, where German troops committed grave violations of international humanitarian law, the proceedings instituted against Italy

do not deal with the substance of those claims. Germany's only objective is to obtain a finding from the Court that, by declaring claims based on those occurrences as falling within the domestic jurisdiction of Italian courts, Italy has committed a breach of international law. The time when that objectionable judicial practice began can be accurately specified. It is the judgment of the Corte di Cassazione in the Ferrini case of March 11, 2004 which opened the gates for claims seeking reparation for injury sustained as a consequence of events situated within the framework of World War II. The date of March 11, 2004 and the years subsequent thereto are clearly within the scope *ratione temporis* of the European Convention.

ARGUMENTS

1. Italy has violated the principle of sovereign immunity enjoyed by Germany in three ways.

- (i) Italy deems that it holds jurisdiction with regard to claims against Germany by Italian individuals seeking reparations for damages caused by the 3rd Reich during WWII, beginning with the Ferrini case in 2004.
- (ii) Italy deems that it holds the jurisdiction to enforce, in Italy, claims against Germany filed in Greece by Greek citizens seeking reparations from a massacre committed by German troops in WWII.
- (iii) Italy has enacted measures of constraint against German property in Italy, over Villa Vigoni, the cultural exchange center used for governmental noncommercial purposes.

2. Through its judicial practice, as summarily described above, Italy has infringed and continues to infringe its obligations towards Germany under international law. Italy is bound to abide by the principle of sovereign immunity which debars private parties from bringing suits against another State before the courts of the forum State. Italy cannot rely on any justification for disregarding the jurisdictional immunity which Germany enjoys under that principle.

SUMMARY AND REQUESTS

Italy has repeatedly disregarded the jurisdictional immunity of Germany as a sovereign State. Finding that the Court has jurisdiction with regard to this case, Germany wishes to obtain a finding from the Court that declaring claims based on the occurrences of World War II as falling within the domestic jurisdiction of Italian Courts constitutes, as well as placing measures of constraint against German property, a breach of international law.

Germany prays the Court to adjudge and declare that the Italian Republic's international responsibility is engaged; that 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 ; that the Italian Republic must take any and all steps to ensure that in the future, Italian courts entertain no such legal actions against Germany.