



Oasis International School Model United Nations

The International Court of Justice

Justice Salama
Justice Sarofim

Guiding Package

Jurisdictional Immunities of the State (Germany vs. Italy: Greece
Interfering)

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Introduction to the Case:

In 1940, Fascist Italy entered World War II as an ally of Germany. But then, in 1943, Italy changed its position by surrendering to the Allies and declared war against the German Reich. At that time, German occupation forces occupied significant Italian territory and started committing many crimes against soldiers and civilians including deportations to concentration camps, massacres and forced labor.

As a result of all the war crimes committed during the Second World War, Germany was obliged to reimburse countries and even individuals for their losses. For years, Germany has succeeded in doing so. However, in 2004, the Italian Court of Cassation decided otherwise by declaring Germany responsible for Human Rights violations committed during the war on Italian territory. Likewise, Greece has taken it upon itself to judge Germany on similar cases and therefore applying its own laws upon the German nation.

Following the aforementioned decision, Germany decided to bring the case before the International Court of Justice implying that Italy violates its sovereignty and immunity.

From the legal perspective, the main issue in this case concerns the complex and extremely delicate balance between the principle of “State Immunity” and the norm of “jus cogens”.

Plaintiff:

Germany believes that the Italian court, as well as the Greek ones, cannot judge its nation because it is protected by its immunity. Germany believes that regardless of the crimes they committed and regardless of the time they were committed, the grounds of their immunity cannot be eliminated, thus asking the ICJ to protect it.

Defendant:

In opposition, Italy believes that it is the obligation of Germany to take care of all its reparations, even if they were committed a long time ago. Italy also claims that a country loses its Immunity when it commits international crimes, “...*jurisdictional immunity is not absolute*” “...*in cases of crimes under international law, the jurisdictional immunity of States should be set aside.*” (paras 27–29¹)

¹<https://ruwanthikagunaratne.wordpress.com/2013/01/03/jurisdictional-immunities-of-the-state-germany-vs-italy-summary/>

Key Terms:

- Jus Cogens: the principles that form the norms of international law that cannot be set aside.
- State immunity: The doctrines and rules of state immunity concern the protection which a state is given from being sued in the courts of other states. The rules relate to legal proceedings in the courts of another state, not in a state's own courts.
- Infringement: the action of breaking the terms of a law, agreement, etc.; violation:

History of the case:

German Soldiers committed severe violations of human rights against Italians civilians in the occupied territories of central and northern Italy between 1939 and 1945. Since the beginning of the Second World War, Mussolini declared Italy's neutrality. In June 1940, seeing the Nazis Germany's consecutive victorious battles Italy entered the war on their side thinking it will definitely and rapidly win. Germany's winning streak came to end quickly and Italian troops on all fronts became desperate, especially after the campaign in January 1943. After the landing of the Allies in Sicily in July 1943 and the subsequent conquest of Southern Italy, Mussolini's regime was overthrown and Italy accepted an armistice with the Allied forces on the 8th of September 1943.

A great part of Central and Northern Italy was occupied by the Fascists via the German Nazi: the occupied territory was named "Repubblica Sociale di Salò" (Social Republic of Salò) and a strong resistance against this regime proliferated. From that moment on, and until the definitive expulsion of the Nazi Fascists on the 25th April 1945, the Italian resistance was countered by the occupying Nazis. Several cases of massive massacres and slaughters of civilians are recorded as a punishment technique for every act contrary to the occupying forces or suspected to be helping the Allies that, in those same months, would go through the peninsula from South to North to free the populations.

For example, in the province of Arezzo, two little towns, Civitella and San Pancrazio, were totally burned down and destroyed, where 230 civilians were systematically killed. This incident was named "the Milde Case" after the name of the German soldier who was responsible for the crimes.

In addition, a group of Italians were transferred to concentration camps in Germany and were forced to work. Moreover, on the 4th of August 1944, Nazi forces in the territory of Arezzo captured an Italian citizen named Luigi Ferrini, among others and sent them to a lager². This is known as the “Ferrini case”.

The same kind of massacres and deportations were carried out by Nazis in occupied Greece, more specifically in the village of Distomo on June 10th, 1944, where more than 200 men, women and children were killed.

Major Parties Involved:

- Germany: the plaintiff
- Italy: the defendant
- Greece: The “Distomo Massacre” is the main cause of Greece’s interference in this case. Survivors and relatives of victims of the Distomo Massacre that occurred in Greece sued Germany in 1995 but Germany did not appear and the trial court entered a default judgment. The case was upheld on appeal by the Greek Court of Cassation (the supreme court of Greece) but the Greek Justice Minister refused to grant its permission to enforce the judgment in Greece. The plaintiffs attempted to enforce the judgement at the European Court of Human Rights and in German courts but were denied on grounds of state immunity. However, after the Ferrini decision, the Italian courts agreed to enforce the judgment.

Statement of Law:

1. The European Convention for the Peaceful Settlement of Disputes: Article 1 and Article 27
2. European Convention 1957
3. European Convention on State immunity 1972: Article 11
4. The United Nations Convention on the Jurisdictional Immunities of States and their Property: Article 12 and 31

Useful links:

<http://www.milmun.org/wp-content/uploads/2013/04/ICJ.pdf>
<http://www.icj-cij.org/docket/index.php?p1=3&p2=3&case=143&p3=4>
<http://www.milmun.org/the-association/past-editions/2245-2/>
<http://www.esil-sedi.eu/node/281>
http://www.istrianaet.org/istria/history/1800-present/ww2/1947_treaty-italy.htm

²A lager is an extremely cold room where beer is kept before being delivered to customers

<http://www.icj-cij.org/docket/files/143/14923.pdf>

<http://www.internationalcrimesdatabase.org/Case/1231/Germany-v-Italy/>