

Sovereign Immunity of Germany for WWII Actions: France

After the recent case of the Italian *Corte di Cassazione*, we thought that some of the readers might be interested by the decision of the French *Cour de cassation* of 2 June 2004.

In this case, proceedings had also been initiated against Germany for actions which had taken place during World War II. The plaintiff, M. Gimenez-Exposito, had been arrested in France during the war for actions of resistance against the Germans. He had then been sent to Dachau where he had been forced to work for BMW from June 1944 to May 1945.

In 2000, he (eventually) decided to sue the German state and BMW before a French labour court for payment of his wages and for damages.

The *Cour de cassation* dismissed the action in respect of Germany on the ground of state immunity. It applied the traditional French rule on the scope of sovereign jurisdictional immunity. Since 1969, the court has ruled that the immunity covers actions where foreign states acted in a public capacity (*de jure imperii*). In that case, the court held that when Germany forced prisoners to contribute to its war effort, it was acting in a public capacity.

The argument was made before the court that Nazi Germany ought not to benefit from any immunity, as it violated international conventions, and was not a democratic state. The court answered that the defendant was the Federal Republic of Germany, and not Nazi Germany.

In respect of BMW, the court held that it lacked jurisdiction under article 5 of the Brussels Convention. Applying the Brussels Convention in this context was quite surprising, as the court had just held that the activity of the plaintiff in Germany could not possibly fall within the realm of private law.