State Immunity: Germany Institutes Proceedings Against Italy Before the ICJ

The "legal saga" that involved in recent years the Federal Republic of Germany, brought before Italian courts in a number of judicial cases regarding civil claims for atrocities committed during WWII (see our previous post here, and the ones on similar issues in other countries by Marta Requejo Isidro and Gilles Cuniberti), has finally found its way to the International Court of Justice in The Hague.

As stated in a press release issued by the Information Department of the ICJ, on 23 December 2008 "**[t]he Federal Republic of Germany [...] instituted proceedings before the International Court of Justice (ICJ) 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'**".

Here's an excerpt of the press release (*external links added*):

> *In its Application, Germany contends: "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 "is concerned that hundreds of additional cases may be brought against it".*
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> *The Applicant recalls 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".

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' [the German-Italian centre for cultural exchange], 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 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, ratified by Italy on 29 January 1960 and ratified by Germany on 18 April 1961. […]

Germany asserts that, although the present case 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 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".

The full text of the Federal Republic of Germany's application ~~will be available shortly~~ is available on the Court's website. See also this post by Jacob Katz Cogan over at the International Law Reporter blog.