

INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING
JURISDICTIONAL IMMUNITIES OF THE STATE**

(GERMANY V. ITALY)

**APPLICATION BY GREECE
FOR PERMISSION TO INTERVENE**

GERMANY'S REJOINDER

26 MAY 2011

1. Germany has taken note of the Greek communication of 4/5 May 2011, which is meant to clarify the scope and the meaning of Greece's application for permission to intervene in the case *Immunities of the State* between Germany and Italy. Germany had the opportunity to state its views in its response of 23 March 2011. All the arguments already put forward remain valid in respect of the communication of 4/5 May 2011. Germany confines itself therefore to making a limited number of observations that may contribute to completing the legal position, without re-opening the discussion to a full extent.

2. Germany notes that Greece has particularized the "interest of a legal nature" (Article 62 of the Statute) which it believes to possess. Departing from the multi-pronged approach it relied upon in its application, it does not claim any longer that it has a general interest in the legal issues which the Court will have to address, nor does it submit that it wishes to place before the Court the occurrences of World War II when German military forces, on their withdrawal from Greece, committed horrendous crimes against the civilian population. In unambiguous terms, it states that

"son intention d'intervention ne vise, d'aucune manière, à l'élargissement du domaine du litige entre les Parties dans la présente affaire. » (para. 4).

Hence, there is no need to comment once again on the first and second approach as identified by the German response of 23 March 2011.

3. As beforehand, Germany nurtures serious doubts, however, as to the admissibility of the Greek application under the third approach. Greece submits that its interest of a legal nature derives from the fact that

"une de[s] composantes, qui articulent la cause, consiste à la mise en jeu de l'exécution d'une décision d'un organe juridictionnel grec (Protodikeio/ Tribunal de première instance de Livadeia). » (para. 6).

The question is whether this argument really supports the Greek stance.

4. In the first place, the question must be asked whether a State can be deemed to have a legal interest in the enforceability, in foreign countries, of the judgments rendered by its courts. Judgments in civil matters establish a legal relationship between the parties to the dispute that was settled. Public authorities themselves do not initiate enforcement proceedings. In the forum State itself, they are obligated to assist the winning party. The guarantee of access to a judge under Article 6 of the European Convention on Human Rights covers also the execution stage of a dispute on civil rights. By contrast, the execution of a judgment outside the national boundaries is entirely committed to the public authorities of the country where the planned measures of constraint are to be taken. Accordingly, such matters do not touch upon the legal interests of the forum State whose courts handed down the relevant judicial decision.

5. In the present case, the specific facts speak even more strongly against an interest of a legal nature which Greece could assert. In 2002, the Greek Special Supreme Court under Art. 100 of the Constitution, which discharges the functions of a constitutional court, confirmed with the *Margellos* judgment¹ the jurisdictional immunity of Germany by overruling the findings of the *Areopag* in the *Distomo* case² and thus rendering the decision of the regional court of Livadia³ unenforceable in Greece itself. Moreover, Greek legislation (Code of Civil Procedure, Art. 923) establishes that no judgment rendered against a foreign State may be enforced on Greek territory without an explicit authorization of the Greek Minister of Justice. Such authorization was denied by the Minister of Justice in respect of the judgment of the court of Livadia the execution of which was later sought in Italy. The plaintiffs brought an application against that refusal before the European Court of Human Rights. In *Kalogeropoulou*, the Strasbourg

¹ Of 17 September 2002, 129 ILR 526.

² Judgment of 4 May 2000, 129 ILR 513.

³ Judgment of 25 September /30 October 1997, Annexes to the German Memorial, Vol. 2, No. 17.

judges dismissed the application.⁴ Thus, the official position of Greece is that the Livadia judgment cannot, and should not, be executed in Greece. Accordingly, it must be considered as utterly contradictory that Greece should have an official interest in the enforcement of the same judgment in Italy.

6. Germany also doubts whether any interest of Greece could be negatively affected by the judgment on the merits of the present dispute between Germany and Italy. Just recently the Court reiterated that the alleged interest of a legal nature cannot be just any kind of interest:

“it must in addition be possible for it to be affected, in its content and scope, by the Court’s future decision in the main proceedings.”⁵

Since Greece took the decision that the Livadia judgment should be debarred from enforcement, it is precluded from claiming that any of its interests might become negatively affected when the Court will deliver judgment on the case of *Immunities of the State*.

7. Germany reiterates that it does not formally object to Greece’s application for permission to intervene. The present submission has no other purpose than to inform the Court, drawing its attention to certain issues of the application which deserve close consideration.

⁴ Case 59021/00, decision of 12 December 2002.

⁵ Territorial and Maritime Dispute (Nicaragua v. Colombia), Application by Costa Rica for Permission to Intervene, judgment of 4 May 2011, para. 26.

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