

AMNESTY INTERNATIONAL PUBLIC STATEMENT

24 November 2011
Index: IOR 53/007/2011

Germany v. Italy: The need to deny state immunity when victims have no other recourse

On 24 November 2011, Amnesty International issued a position paper concerning issues in the case now before the International Court of Justice (ICJ) between Germany and Italy, *Germany v. Italy: The need to deny state immunity when victims have no other recourse*, Index: IOR 53/006/2011, November 2011. Germany argued that it was immune from civil suit in a foreign court brought by victims of war crimes committed during the Second World War by German armed forces in Italy and in Greece. In the position paper, Amnesty International describes the right of victims of such crimes to reparation. It further explains why a state should not be able to bar a civil suit in a foreign court for such reparation when victims have no other means of seeking reparation.

The judgment by the ICJ will potentially have an enormous impact on the ability of victims of war crimes, crimes against humanity and other crimes under international law to recover reparation.

The victims in this case were unable to obtain reparation in administrative and judicial proceedings in Germany, in the European Court of Human Rights, in any claims commission or through diplomatic protection by either Italy or Greece. Having exhausted all possibilities and, therefore, with no alternative, they sought reparation in foreign courts.

In Italy, the Supreme Court in its judgment of 11 March 2004 in the case *Ferrini v. Germany* held that Italian courts have to consider compensation claims of persons deported during the Second World War to perform forced labour in Germany. After this judgment, numerous other proceedings were instituted against Germany before Italian courts by prisoners of war who were used as forced labourers and by victims of massacres perpetrated by German forces during the last months of the Second World War. In one case, the court ordered that certain German assets in Italy be frozen to satisfy the judgment.

In Greece, the request for reparation against Germany was submitted by the relatives of the victims of the massacre in the Greek village of Distomo, where on 10 June 1944 German armed forces killed hundreds of civilians, including women and children. In 2000, the Hellenic Supreme Court confirmed a judgment rendered in 1997 by the Greek court of first instance, in which the court rejected Germany's claim of jurisdictional immunity and awarded damages to relatives of the victims. The Greek Minister of Justice, however, refused to grant the authorization required in order to enforce the judgment.

The claimants in the Distomo then brought proceedings against Greece and Germany before the European Court of Human Rights, which held in 2002 that the application was inadmissible on the ground that Germany was immune. The Greek victims then successfully sought to enforce the judgments in an Italian court.

Germany refused to provide reparation that was awarded by the Italian courts and, instead, on 23 December 2008, it instituted proceedings against the Italy in the ICJ alleging that Italy had violated its immunity.

On 4 July 2011, the ICJ allowed Greece to intervene as a non-party in so far as its intervention was limited to the decision of Greek courts in the Distomo case.

On 12 September 2011 the ICJ held public hearings in the case and it is expected to issue its judgment before the end of the year.

Amnesty International's position paper documents the right of victims under international law and standards since 1907 to reparation. Furthermore, it explains that when victims have failed to obtain reparation from the responsible state and there is no effective alternative, the victims should be able to seek to enforce the right to reparation under international law from courts in other states.

The paper also shows that Germany's concerns that giving effect to victims' right to reparation by denying the state immunity of Germany would produce a series of supposed catastrophic consequences have no merit. For example, concerns that such a decision would seriously disturb the certainty in international law, destabilise international relations, lead to unlimited trials and forum-shopping, undermine peace agreements and increase diplomatic tensions, were all refuted as are unwarranted. Amnesty International noted that such dire predictions were made during the hearing in the United Kingdom House of Lords on Pinochet in which immunity for former heads of states was argued.

The position paper also points out that under international law, states have continued to retain for more than a century considerable discretion to determine in legislation and jurisprudence when other states may bar a civil claim on the basis of an assertion of state immunity.

Amnesty International has published this position paper rather than submitted a brief to the International Court of Justice because, in contrast to other international courts, such as the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, the Inter-American Court of Human Rights and the European Court of Human Rights, there is no formal procedure for NGOs to submit *amicus curiae* briefs in contentious cases in the ICJ.

Amnesty International is providing copies to the Judges, the Registrar, Germany, Italy and Greece for their information.