IN THE

INTERNATIONAL COURT OF JUSTICE

OF THE

AMERICAN MODEL UNITED NATIONS

Germany (Applicant) v. Italy (Respondent)

Argued: November 20, 2011
Decided: November 21, 2011

The MAJORITY OPINION was signed and agreed to by Justice Calkins, Justice Carmona, Justice Carraher, Justice Delgado, Justice Jackson, Justice Mercier, Justice Ruth, Justice Vining, amd Justice Westmaas

In determining the jurisdiction for this case, the Court determined the answers to two questions: 1) Does the Court have explicit jurisdiction in cases disputing the jurisdiction of other courts? and 2) Is the Court the last legal remedy for resolving the dispute?

1) Under Article 36, Section 1 of the Statute of the International Court of Justice, the Court has jurisdiction to hear "...all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force." When members of the United Nations bring cases to the Court, the jurisdiction of the Court may be used to dispute the jurisdiction of state courts.

2) Bilateral negotiations between Germany and Italy have been unsuccessful. Under Article 27, Section 1 of the United Nations Convention on Jurisdictional Immunities of the States and Their Property, "States Parties shall endeavor to settle disputes concerning the interpretation or application of the [Convention] through negotiation." The European Convention for the Peaceful Settlement of Disputes, of which Germany and Italy are contracting parties, states, in Article 1, that the "...Contracting Parties shall submit to the judgment of the International Court of Justice all international legal disputes which may arise between them including those as provided by Article 36, Section 2, Subsection (a) and (b) which afford the Court the function of interpreting treaties and answering questions of international law, of which this case clearly entails." The Court has thus found itself the last legal remedy for the dispute between Germany and Italy and within full jurisdiction to decide the case.

The opinion of the Court is as follows:

To assess the merits of the allegations made by Germany, the Court determined: 1) the jurisdiction of domestic courts, specifically Italian courts in this case, to assess the legality of state court decisions against the sovereign state of Germany; 2) whether or not the Italian judicial system has jurisdiction over Greek citizens and their grievances; 3) whether or not there was a violation of the Treaty of Paris*;* 4) whether or not the Italian government is within their rights to

violate the sovereign immunity of Germany.

1) Germany challenges Italian authority to hold civil trials between individuals and a sovereign state. International custom is established by a strict reading of The Princeton Principles on Universal Jurisdiction. Stated in Principle 1, Section 1, "... universal jurisdiction is criminal jurisdiction based solely on the nature of the crime, without regard to where the crime was committed, the nationality of the victim, or any other connection to the state exercising such jurisdiction." As such, Italy incorrectly utilized universal jurisdiction because these cases are inherently civil; in the *Ferrini v. Federal Republic of Germany (Ferrini)*, there was no determination of innocence or guilt, and there was no more than the distribution of property. Therefore the German government's sovereign immunity was violated by the Italian government. The Court understands that while jus cogens can be applied to civil cases, it is not applicable to the case before the Court. Because the Italy did not have the jurisdiction to proceed with the *Distomo Massacre Case* (*Distomo*) and *Ferrini* cases, the Italian government was unjustified in the seizure of German property.

2) In regards to the Greek nationals and their case, the Italian government has no grounds to entertain their complaints. The Court asserts that universal jurisdiction does not apply because these complaints are civil in nature. Therefore, the Italian courts have no ground to hear Greek cases.

3) Article 77, Section 4 of the Treaty of Paris states that "With prejudice to these and to any other dispositions in favor of Italy and Italian nationals by the Powers occupying Germany, Italy waives on its own behalf and on the behalf of Italian nationals all claims against Germany and German nationals outstanding on 8 May 1945, except those arising out of contacts and other obligations to entered into, and rights acquired, before 1 September 1939. This waiver shall be deemed to include debts, all inter-governmental claims in respect of arrangements entered into the course of the war, and all claims for the loss or damage arising during the war." By allowing Italian nationals to sue the Germany, Italy is in a breach of its signature to this treaty.

4) In the absence of a binding convention establishing or condemning sovereign immunity, the Court looks to international customary law. International law recognizes the principle of sovereign states from being sued before the civil courts of another state. Thus, Italy has acted outside the practices of international customary law.

The ruling of the Court is as follows:

The esteemed Court finds the case in favor of Germany. Italy has violated Germany's sovereign immunity and therefore this Court deems that all German property seized as a result of the Italian court's decision must be returned. In addition, Italy must cease all present and future legal actions against Germany in the cases of *Ferrini, Distomo* and all cases of similar origin and nature.

Justice Calkins

_____

Justice Mercier

_____

Justice Carmona

_____

Justice Ruth

_____

Justice Carraher

_____

Justice Vining

_____

Justice Delgado

_____

Justice Westmaas

_____

Justice Jackson

_____

A CONCURRING OPINION was written and signed by Justice Kroll

I am in concurrence with the finding of jurisdiction handed down by the Court in the majority opinion. However, I would like to include additional interpretations pertaining to the use of *jus cogens* and *erga homnes* in this case.

It is evident that the *Distomo Massacre Case* (*Distomo*) and *Ferrini v. Federal Republic of Germany* (*Ferrini*) are examples of cases in which a preemptory norm, or *jus cogens*, was violated. Under international law, most cases pertaining to the violation of *jus cogens* result in the determination that they may be tried under any court under the principle of *erga homnes*. However, as the Court has previously decided, civil cases are not instances in which *erga homnes* automatically applies. Despite this, even if *erga homnes* did automatically apply to civil cases, it remains to be seen whether the instances in the case before the Court can be reasonably considered violations of *jus cogens*.

For *jus cogens* to be violated three criteria must be realized. An aggressor party must have committed an action which violates *jus cogens* against a victim party. For a *jus cogens* violation to be tried in a court of law, either domestic or international, the aggressor party must still exist, the action must have unequivocally happened, and the victim party must also exist. This means that courts only have temporal jurisdiction over *jus cogens* violations cases. If an aggressor party no longer exists, it cannot be tried against. Similarly, if a victim party does not exist, it cannot possibly try a *jus cogens* violation.

Cases against individuals by individuals can closely follow this rule without any interpretation difficulties of the requirement for three criteria. An individual party, either aggressor or victim, does or does not exist. Cases involving states in any way come with some difficulty. Inherently, states can change dramatically over time. In most instances in the present world, the state is an agency relationship between citizens, the principals of the agency, and the state itself, the agent. Whenever a state is tried in a court of law and ordered to follow the directions of courts, the principals of the agency of the state are, through an extension of the agency relationship, ordered to follow the direction of the courts. Therefore, while the state is an individual party, it most closely resembles a social union of individuals, and as the individual principals of the agency of the state are exchanged over time through death, birth, or citizenship shifts, the agent of such principals, the state, also changes.

If a state changes to no longer represent at least a majority of the principals it had when it violated *jus cogens*, or was a victim of a *jus cogens* violation, it cannot be recognized as either the aggressor party or victim party to a *jus cogens* violation action, respectively. However, not all states change with equal frequency or intensity. Some states can maintain an agency based on a majority of principals at a certain point in time longer than other states can. Because of the above arguments, temporal jurisdiction cannot be determined using a time schedule. It must be up to the discretion of courts to determine how much a state's agency relationship has changed, with respect to its principals.

In the case before the Court today, Germany is a significantly different state than it was over sixty years ago. Thus, even though the state named by the word 'Germany' in World War II committed crimes against Italian and Greek nationals, that particular state embodying particular principals no longer exists. Therefore, a *jus cogens* violation against Germany cannot be tried in a court of law. Because of this, *erga homnes* cannot possibly used to be assert Italy's jurisdiction to decide the *Distomo* and *Ferrini* cases and others similar to them.

Justice Kroll

A CONCURRING AND DISSENTING OPINION was written and agreed to by Justice Berman and Justice Hathaway.

We concur with the majority decision regarding ICJ jurisdiction, as well as the opinion regarding the German property seized by the Italian Government. Our dissent stems from the jurisdiction of the Italian Courts to entertain the cases against the Federal Republic of Germany.

We emphasize the difference between trying a state and an individual. In this case, the Federal Republic of Germany is on trial, and as such the interpretation of Princeton Principle 1 (1) must be interpreted differently. As a state party the Federal Republic of Germany cannot be punished the same way as an individual in a criminal case, the criminal punishment of a state must be made through civil jurisdiction. As such we interpret the term "criminal jurisdiction" as stated in the Princeton Principle 1 (1) as including civil cases brought against states.

Because of these *jus cogens*, or preemptory norms, are applicable in this case, thus giving the Republic of Italy universal jurisdiction to try these cases. We assert that customary international law determines that universal jurisdiction supersedes sovereign immunity.

The Princeton Principles establish that universal jurisdiction is "based solely on the nature of the crime, without regard to where the crime was committed…the nationality of the victim, or any other connection to the state exercising such jurisdiction." Thus we believe the Italian Courts have jurisdiction over the claims brought forth by both the Greek and Italian claimants.

Thus, we believe the Court should have found in favor of the Republic of Italy, and the act of bringing these cases to domestic Italian Courts does not violate the jurisdictional immunities of the state of Germany.

Justice Berman

_____

Justice Hathaway

_____