

Letterhead of the Embassy in Rome

The Embassy [...] presents its compliments to [...] and has the honour, with reference to decision no. 238/2014 of the Constitutional Court of the Italian Republic dated 22 October 2014, to communicate the following:

1. In its judgment of 3 February 2012, the International Court of Justice found that the Italian Republic had violated its obligation to respect the immunity which the Federal Republic of Germany enjoys before Italian courts by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the German Reich between 1943 and 1945, by allowing measures of constraint against Villa Vigoni, and by declaring enforceable in Italy decisions of Greek courts based on violations of international humanitarian law committed in Greece by the German Reich. The International Court of Justice further found in its judgment that the Italian Republic must, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions of its courts infringing the immunity which the Federal Republic of Germany enjoys under international law cease to have effect.
2. Germany and Italy, like all member States of the United Nations, have a shared interest in preserving and protecting the integrity of the international legal order and the authority of the International Court of Justice at its head. Article 94 (1) of the Charter of the United Nations accordingly obliges each Member of the United Nations to comply with the decision of the International Court of Justice in any case before the Court to which it is a party.
3. The Italian Republic remains obliged under international law to comply with the International Court of Justice's judgment of 3 February 2012 and to implement it into national law. In particular, the decision of the Constitutional Court of the Italian Republic changes nothing of the findings of the International Court of Justice regarding the subject-matter and extent of state immunity which the Federal Republic of Germany enjoys before Italian courts.
4. The principle of state immunity cannot be restricted by national law, not even fundamental principles of national constitutional law. The principle that national law must be adapted to obligations deriving from international law and cannot provide any justification for violating the latter was recognised as far back as the Alabama judgment of 1872 and the Montijo judgment of 1875 and has been consistently confirmed in practice by international courts ever since. It also finds expression in Article 27 of the Vienna Convention on the Law of Treaties.
5. Any resumption or continuation of proceedings based on the violations of international humanitarian law committed by the German Reich during the Second World War would constitute a renewed violation of the Federal Republic of Germany's immunity, as would the admission of new claims of this nature or the introduction of measures of constraint pursuant to Italian or foreign judgments in such proceedings.
6. The Government of the Federal Republic of Germany further points out that German courts have considered the substance of claims for compensation brought against the Federal Republic of Germany by persons on the grounds of violations of the international law of armed conflict in the course of the Second World War. Thus there was full recourse to the German courts. The European Court of Human Rights has confirmed that the relevant decisions by the German courts were compatible with the European Convention on Human Rights (application no. 24120/06 – Sfontouris and Others v. Germany).

7. In consideration of the decision of the Constitutional Court of the Italian Republic dated 22 October 2014, and in order to avoid further disputes, the Government of the Federal Republic of Germany asks the Government of the Italian Republic to inform it in detail as quickly as possible of how it intends to fulfil its obligations under international law as bindingly found by the International Court of Justice.

8. The Government of the Federal Republic of Germany begs to point out, by way of precaution, that, under the principles of state responsibility, states whose organs cause injury to another state in violation of international law are obliged to indemnify that state against the consequences of this injury or to make compensation for such injury. In this context actions by all three powers of a state shall be attributed to the state in question.

[Schlussformel]