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Title: Immunitet jurysdykcyjny państwa Wyrok Międzynarodowego Trybunału Sprawiedliwości z dnia 3 lutego 2012 r. w sprawie Niemcy przeciwko Włochom – Omówienie Jurisdictional immunity of the state Judgment of the International Court of Justice of 3 February 2012 in the case between Germany and Italy – Overview

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Abstract:

On 3 February 2012, the International Court of Justice delivered a judgment in the case concerning immunities of the state between the Federal Republic of Germany and the Italian Republic. The Hellenic Republic was the state permitted to intervene in the case.

The judgment not only settles the dispute between two states but also, what is of greatest importance, determines the content of the customary international law governing immunities of the state. This question is closely connected with the sovereignty of the state. The International Court of Justice finally decided whether Germany is entitled to immunity before the courts of other states in proceedings designed to establish its liability for loss or damage caused by the German Reich during the World War II. The Court separately analysed jurisdictional immunity and immunity from enforcement.

The Court concluded that the decision of the Italian courts to deny immunity to Germany cannot be justified on the basis of the territorial tort principle. The Court has also rejected the second Italian argument that the subject-matter and circumstances of claims in Italian courts justified the denial of immunity. This argument was based on three strands: the gravity of the violations, the relationship between *jus cogens* and the rule of state immunity and the ‘last resort’ argument. They were discussed one by one and, in the end, taken together. The Court held that Germany was entitled to jurisdictional immunity under customary international law and thus Italy breached its obligations owed to Germany.

The Court also found that taking the measures of constraint against property belonging to Germany constituted a violation of immunity from enforcement to which Germany was entitled under international law.

Finally, the Court held that decisions of the Italian courts declaring enforceable in Italy judgments rendered by Greek courts against Germany in proceedings arising out of the Distomo massacre constituted a violation by Italy of its obligation to respect the jurisdictional immunity of Germany.

The judgment comprehensively discusses the current state of international law – both customary and conventional. The Court found that the distinction of *acta iure imperii* and *acta iure gestionis* is still to some extent relevant and took a rather conservative position. This may be criticized from the perspective of the protection of human rights.