Italian court to allow claims by Nazi victims

Elisabeth Zimmermann
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On June 4, Italy's highest civil court, the court of appeal in Rome, ruled that survivors of the massacre carried out in 1944 by Nazi SS stormtroopers in the Greek village of Distomo could apply for damages from Germany in Italian courts. The decision would allow the Italian authorities to sell off German state institutions located in Italy, such as the Villa Vigoni on Lake Como or the Goethe cultural institutes, to compensate victims.

In further judgements, the Italian court ruled that Italians who had been deported by the Nazis to carry out hard labour in Germany during the Second World War could apply for compensation from Italian courts. The number of former Italian forced labourers still alive is estimated at around 100,000.

In the period from September 1943 to the collapse of the Nazi regime in May 1945, at least 600,000 Italian prisoners of war were deported to Germany and areas of eastern Europe occupied by Germany and forced to work under brutal and inhuman conditions in German factories—in particular, the armaments industry. An estimated 50,000 died in the course of their deportation and hard labour.

Spokesmen for the German government immediately reacted to the Rome judgement by declaring it would not accept the results of trials held by foreign courts relating to compensation payments and would consider lodging its own complaint against Italy at the International Court of Justice in The Hague (the Netherlands).

The German government had directly contacted the Italian court of appeal following claims for damages lodged by victims of the Nazi regime. The German government had assumed that that the highest Italian civil court would confirm the so-called immunity principle, according to which states cannot be sued by the courts of other states.

The Italian appeal court judges have justified their rulings by arguing that the immunity principle cannot apply to grievous violations of international law such as war crimes, even if they took place more than 60 years ago.

Fascist Italy under the leadership of Benito Mussolini was a close ally of National Socialist Germany. Together with Japan, Italy and Germany formed the so-called Axis Powers. The defeat of the Axis was already looming in the summer of 1943. In October 1942, allied troops commenced attacking German and Italian positions in North Africa. On November 2, 1942, they were able to break through the fascist lines at El Alamein, Egypt.

Shortly afterwards, British and American troops landed in French-occupied North Africa. After meeting some initial resistance, they were able to proceed against the troops of the Vichy government, which had also allied itself with Germany. At the end of January, allied troops had Morocco and Algeria under their control. On May 13, the last resistance of the Axis powers in North Africa was broken. General Hans-Jürgen von Arnim surrendered at Tunis, and 250,000 German and Italian soldiers were taken prisoner.

At about the same time, the Soviet Red Army began a counteroffensive to the south of Stalingrad on the eastern front. The German 6th Army was encircled, and on February 2, 1943, Field Marshal Friedrich Paulus declared his surrender together with the remains of his army in the ruined city.

In the summer of 1943, British and American troops landed in Sicily. The Italian elite tried to save its skin by deposing and arresting Mussolini on July 25, 1943, after more than 20 years of dictatorship. King Vittorio Emanuele III appointed Marshal Pietro Badoglio Italy's new prime minister, and on September 3, 1943 General Castellano signed Italy's surrender.

The German forces, however, were not prepared to retreat from the Italian front. They reacted furiously to the Italian surrender, which they regarded as betrayal. In the evening of September 8, 1943, on the orders of Hitler, General Alfred Jodl, head of the German armed forces, commenced operation "Axle." Italy, which had sought to withdraw from the war, became a centre of the fighting.

The German army command stipulated that as much war materiel as possible should be confiscated in the course of capturing and disarming Italian soldiers. At the same time, the German army was to create a swathe of destruction ("scorched earth") in the course of its withdrawal from northern Italy. On September 8, 1943, a leading German commander in Italy, General Albert Kesselring, encouraged his troops to be brutal in their treatment of former Italian comrades in arms.

Kesselring's order read: "The Italian government has committed the most deplorable betrayal by agreeing to an armistice with the enemy behind our backs.... We call upon the Italian troops on the basis of their honour to continue fighting on our side, otherwise they will be ruthlessly disarmed. In all other respects there should be no indulgence shown to the traitors!"

A large majority of the Italian soldiers refused to fight alongside the Nazis. The Italian population was fed up with the senselessness of the war and was ready to conduct its own active resistance. The brutality used by the German army and SS units against resistance fighters and completely innocent civilians, including the elderly, women and children, only served to strengthen the resolve to drive out the German occupiers.

The Italian population carried out a heroic resistance to the German soldiers in southern Italy, who for their part left behind a bloody trail of destruction.

A particularly brutal war crime was committed in the course of disarming Italian soldiers on the Greek island of Kephalonia. On the basis of the instructions given, which clearly violated international law, the supreme command of the Germany army issued an order on September 18, 1943, to take no more prisoners on Kephalonia.

As a result, at least 5,170 Italian soldiers were massacred, although most of them had already surrendered. Other prisoners were transferred to the mainland in overflowing transport ships. In the course of their transfer, a further 13,288 Italians died when their ships came under fire from allied bombardment and the Germans refused any rescue measures for the prisoners.

The Italians transported to Germany for hard labour were interned in camps under intolerable conditions and forced to work on hunger rations and in the absence of any medical provision. In Germany, they were regarded as "traitors" and subjected to continuous abuse and humiliation

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by their prison guards.

A particularly pernicious form of repression were the so-called "performance rations," whereby only those who carried out a "fully satisfactory performance" were to be given full daily rations. As a result, a large proportion of the 45,000 to 50,000 Italian labourers who died in the course of their hard labour in Germany did so due to malnutrition and complete exhaustion.

In July 1944, the Italian military internees were registered as civilian forced labourers. They were transferred from prisoner-of-war camps to labour camps and guarded by civilian forces. The move did little, however, to improve their plight. Up until the end of the war, they remained one of the most badly treated and undernourished groups of workers. "International historical research is united in this evaluation of the situation of the Italians" was the comment by the prominent historian Ulrich Herbert in a statement he published in connection with the denial of at least symbolic compensation for Italian forced labourers (*Süddeutsche Zeitung*, October 16, 2001).

Germany proceeds in its jurisdiction on the basis of certain international legal agreements, according to which compensation cannot be paid in the case of the exploitation of prisoners of war for hard labour. It ignores the fact that millions of former Soviet, Polish, Italian and other prisoners of war were transferred by the Nazi authorities into civilian forced-labour schemes and were used by German industry as a source of cheap labour. With the exception of some Polish prisoners, none of these forced labourers have ever received any compensation.

To avoid paying any compensation to Italian prisoners of war used as forced labourers, the German government and the German Constitutional Court have resorted to a contentious appraisal drawn up by an expert in international law, Christian Tomuschat.

Tomuschat argues as follows: The Italian military internees were indeed transferred to civilian forced-labour schemes. But since this act on the part of the Nazis contravened international law, the Italian forced labourers in fact remained prisoners of war and are therefore not liable for compensation.

This outlandish argument, which makes a mockery of the suffering endured by the victims of the National Socialist regime and bars them from any compensation, was greeted by both the German Finance Ministry and by the Constitutional Court—in particular by judges Bross, Di Fabio and Gerhardt. On June 28, 2004, they rejected a constitutional appeal lodged by 943 forced-labour victims from Italy.

The decision of the German Constitutional Court was declared to be indisputable, although in one paragraph of its judgement, the court sought to justify its dismissal of the fate suffered by Italian victims of National Socialism as the consequence of "ideologically motivated measures of persecution."

Even a superficial knowledge of the war crimes and massacres committed during the Second World War by the German armed forces and SS units makes clear that it is impossible to separate such crimes from the ideology of the National Socialists.

Survivors of the massacres in Distomo and Kephalonia were treated by the German courts in a similar manner to that given the Italian forced labourers. All their attempts at winning compensation were rejected by German courts, up to and including the Constitutional Court.

Four Greek citizens, who are all now over the age of 70, had also sought to lodge appeals to the German Constitutional Court after pursuing lengthy legal battles in lesser German and Greek courts. The four are the survivors of a brutal massacre of women, children and elderly persons carried out by an SS unit that proceeded to burn down the Greek village of Distomo on June 10, 1944. Their appeal was also rejected.

The victims of the SS massacre at Distomo now hope that the recent decision by the Italian appeal court will enable them to receive their long-awaited compensation.

The judgements by Italy's highest court in favour of the victims of the Nazi crimes, former forced labourers and the victims of the massacre of Distomo are to be welcomed. Nevertheless, on the basis of previous legal and political practice, one should have no illusions that the victims of these victims of National Socialist atrocities will finally receive recognition or any recompense for their suffering.

It can be expected that both the Greek and Italian governments will intervene to prevent the seizure of German property in their countries in order to avoid political, diplomatic and economic conflicts with Germany.

The dilemma confronting bourgeois jurisprudence with regard to this issue is highlighted in a commentary written by Stefan Ulrich in the *Süddeutsche Zeitung* from June 6. Ulrich writes:

"Lawyers are not inclined towards revolutions. This, however, is one. If it spreads it would disrupt the existing international order and the European post-war system. The recent history of the continent throws up many victims calling out for justice. If one thinks the Italian judgement through to the end then the German Republic could be subject to hundreds of millions of compensation claims from numerous countries that once felt the wrath of Nazi Germany.

"Other states would also feel the burden of history. Italy would have to compensate innumerable persons who suffered under the boot of the Duce, for example, in Albania or Greece. This is why the Italian government supported the German legal interpretation at its court of appeal—albeit unsuccessfully. The Algerians could present claims for restitution to France. Survivors of the bomb attacks on Dresden might feel encouraged to take legal proceedings against Great Britain."

Stefan Ulrich rejects the abolition of the immunity principle because the possibility of lawsuits lodged by numerous plaintiffs from a host of different states would lead to the revival of unceasing frictions between those states. This is, in fact, not an argument against compensation but against the nation-state system, which in the cases of Germany and Italy led to the emergence of fascist regimes in both countries.

A genuine settling of accounts with the crimes carried out in the name of National Socialism and reconciliation for its victims is only possible on the basis of a struggle to overcome the private property and nation-state relations that characterise capitalism.

At the end of the Second World War, the German and European working class were prevented from undertaking their own settling of accounts with National Socialism by the Stalinists and the victorious allied powers, who did everything they could to rescue discredited bourgeois rule in Germany.

A number of leading Nazis were put on trial in Nuremberg and prosecuted as war criminals, but any interest in a consequent exploration of Nazi crimes quickly dissipated with the commencement of the Cold War. In this context, NATO and the allied powers were keen to utilise the Federal Republic as a political bulwark against the Soviet Union.

In Germany, any effective prosecution of the leading figures in the Nazi regime was also sabotaged by the German judiciary, which showed no interest in dealing with the crimes of the Nazi period—in particular, because so many leading jurists had made their own careers in Nazi Germany.

With the exception of a handful of military tribunals in the period directly after the war the Italian government and judiciary also demonstrated little interest in prosecution of crimes committed by the German and Italian fascists. Both countries became allies in NATO after the war and developed close economic cooperation within the context of the European Economic Community, the forerunner of the European Union.

Of even more importance for the Italian ruling class was the necessity of securing its own class role in an extremely unstable political situation after the war. In particular, the Italian Communist Party played a leading role in preventing the Italian working class from coming to grips with fascism

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and its roots in the capitalist system. It was the leader of the Italian Communist Party, Palmiro Togliatti, who entered the first post-war government to take up the post of justice minister. In this function, Togliatti issued an extensive amnesty that protected those guilty of crimes during the fascist dictatorship from prosecution.

The irreconcilable attitude adopted by the German government and courts on this issue also has significance for contemporary political developments. The participation of the German army in a series of international military deployments and wars—such as Yugoslavia (1999) and Afghanistan since 2001—is inevitably bound up with the danger of new military conflicts and new war crimes against the civilian population.

German politicians and the judiciary are well aware that any acknowledgment of war crimes committed in the past involving compensation for victims could establish an undesirable precedent for the victims of current and future conflicts.

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