

Greek victims of Nazi rule win lawsuit against Berlin

By Andy Niklaus
8 August 2000

On September 20, the Goethe Institute in Athens will be subject to a compulsory auction to provide compensation for Greek victims of Nazi rule.

Recently, a court bailiff gained entrance to the building with the help of the police, to make a valuation in preparation for the sale. Three other official German properties could also come under the hammer: the German Schools in Athens and Thessalonica, as well as the German Archaeological Institute in Athens.

The reason for this state of affairs is a 1997 ruling by the district court in Livadia, which was upheld in Greece's supreme court, *Areopag*, in April this year. In the 1997 ruling, Germany was ordered to pay compensation for pain and suffering to a total value of 56 million marks (\$26m). The German government appealed, but lost and the compensation claims have now risen to 100 million marks.

Two hundred and ninety-five survivors from the village of Distomo near Delphi in central Greece had undertaken a class action against the Federal Republic of Germany, with the assistance of the European parliamentary deputy and lawyer Ianni Stamoulis, a member of the social democratic PASOK. On June 10, 1944, SS tank grenadiers of the 7th regiment stormed the village and randomly selected 218 people, mainly women and children, whom they brutally killed in revenge for an earlier attack carried out by Greek partisan fighters. The 1997 verdict and its confirmation in the Supreme Court means the surviving villagers can now hope that after 56 years they will receive some compensation from Germany.

The compulsory auction of official German property was ordered after Berlin refused to make any payment.

Chancellor Gerhard Schroeder telephoned his Greek opposite number Kostas Simitis to protest the sale.

Fearing a precedent may have been set, the German government reacted in an openly threatening manner. The Greek ambassador in Berlin was summoned to the Foreign Ministry. The protest note he was handed lacked the usual diplomatic language, stating baldly that the actions of the Greek authorities could “disrupt years of good Greco-German relations.”

The German government accuses Greece of contravening international law and Greek law, since the Greek Justice Ministry did not agree to the verdict. Furthermore, according to the German government, Greece had disregarded “universal laws of state immunity,” which declare that the courts of one country cannot institute proceedings against another state or its officials.

However, in upholding the ruling of the lower court, *Areopag* rested on a new interpretation of international law, under which the USA and its allies had claimed to be acting in the war against Iraq and in the Balkans. In these conflicts, the apparent defence of human rights was expressly given precedence over the fundamental tenet of state immunity. It was said that in matters of genocide and crimes against humanity, states and their office holders could not rely on immunity, since human rights stand higher than bilateral laws.

The Greek Supreme Court has followed this argumentation, evaluating the murders carried out by the SS in Distomo as crimes against humanity. In this light, Germany cannot fall back on the defence of state immunity.

The arguments that German Foreign Minister Joschka Fischer and Chancellor Schroeder employed to justify last year's bombing of Belgrade are now rebounding against them.

Who can forget the hoarse voice of Fischer as he spoke about Serbian “fascism” and “concentration

camps.” To justify the first combat mission by the German army since 1945, the Serbian Prime Minister Slobodan Milosevic was demonised as the veritable reincarnation of Adolf Hitler in the Balkans. A clear breach of the ruling elite's own international law - NATO's military mission was carried out without any UN mandate - was also accepted, since this involved “higher matters.”

In contrast, the far greater crimes carried out by Hitler's troops are dealt with according to quite different standards. In this matter, the Foreign Minister's legal advisor Professor Bruno Simma insists on remaining true to the letter of the old law, saying state immunity must be respected. The new signs that human rights have been ascribed greater weight are welcome, according to Simma, but one cannot assume that they have already become a “usual part” of international law. Moreover, Simma said that despite having sympathy for the victims' relatives, it is highly problematic to try and apply such an approach retrospectively.

Berlin is also insisting that the matter is already covered by the global compensation agreement of 1960, which Greece also signed. At the time, Germany promised Greece the laughable amount of 115 million marks for the victims of the Nazi occupation. The money was paid “for the benefit of Greek citizens who were affected by Nazi persecution by reason of their race, beliefs or world outlook.” As far as Berlin is concerned, this settled the matter and no more payments are forthcoming.

Distomo, like many other villages, saw nothing of this money, since the massacre there was not categorised as a Nazi injustice, but as a normal act of war.

During its occupation of Greece between 1941 and 1944, the *Wehrmacht* (German army) carried through bloody massacres and revenge killings running into tens of thousands among the Greek civilian population. All postwar West German governments justified their refusal to make any compensation payments arising from these crimes by classifying them as calls for reparations, and thus excluded under treaties agreed with the Western allies.

At the Paris conference of the victorious allies in 1946, the Greek claim for damages was put at \$7.1 billion. In addition, Greece claimed repayment of a

further ~~500~~ *Reichsmark*, which ~~million~~ *million* by the Greek central bank to the German occupying force in 1942 as an “enforced loan.” Neither payment of the claim for damages nor the refund of the credit has been made to this day.

For both governments the whole affair is very explosive.

After the conclusion of the international negotiations on compensation for Nazi slave labourers on July 17, the German government thought that the whole matter had been settled. They wanted to put this “old history” to rest. However, the *Areopag* ruling has created precedence in civil law.

In its verdict, the Athens' court said that the SS murders in Distomo went far beyond the “usual” injustices of war. Consequently, this did not involve reparations but compensation payments within the framework of Germany's *Wiedergutmachungsrechts* (Law of Restitution), which itself is dealt with internationally as a matter of civil law. For this reason, the German government was not immune from compensation claims.

All together, some 100,000 victims and relatives have been pursuing a legal case for years. If the compulsory auction is carried out, many victims in Eastern Europe will also feel encouraged. For this reason, the German Finance Minister also warned the Eastern European states against supporting further compensation claims.

The Simitis' government faces an intractable problem. On one hand, they do not want to appear as the culprits at home; on the other hand, they do not want to upset their NATO and European Union partners. On January 1 2001, Greece is set to enter the euro-zone; consequently the Greek Justice Ministry has initially distanced itself from the Athens courts.

Foreign Minister Fischer has now filed a countersuit in the Greek Supreme Court. According to press reports, the Foreign Ministry is considering taking out a case at the international court in The Hague. But this might rebound, since a defeat there could lend the Athens' verdict even more weight.

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