



THE DECISION 238 OF 2014 ADOPTED BY THE ITALIAN CONSTITUTIONAL COURT: A NEW RESTRICTION TO THE STATE IMMUNITY FROM THE JURISDICTION?

Firstly it has to be underlined that this article is written in French so that French scholars can have some reflexion on the decision of the Italian Constitutional Court with a view to the consequences tha it might have in other legal systems.

The case is about the Dispute between Italy and Germany on the principle of State immunity from foreign jurisdiction. As Known, on this case the ICJ had ruled on the 3rd of February 2012 that Italy had to recognize the immunity of Germany, rejecting the previous decision of the Italian Supreme Court, which conclude that this principle should not have been applied in case of war crimes and crimes against humanity.

The Constitutional Court affirms that State Immunity is a customary law which should be automatically implemented in our legal order through art. 10 of our Constitution. Nevertheless, the Court affirms that if a customary law is in conflict with the fundamental principles of our constitution, It is not implemented in our legal order. Thus, the Constitutional court does not need to pronounce for the unconstitutionality of the law on State Immunity, because It has never came in our legal order. Instead, in this case the Court should conclude for the unconstitutionality of the Law which gave execution to article 94 of the UN Statute and of the Law of 2013 that bans Italian judges from pronouncing on cases to which is applicable the principle of State immunity.

In its decision the Court follows the previous interpretation of the supreme Court and affirms that the principle of State immunity cannot be applicable in case of war crimes and crimes against humanity and even if It is a customary law it does not come in our legal order for the reasons above described. This judgement however determines a violation of the Italian international obligation to respect the sentences of the ICJ.