



COUR EUROPÉENNE DES DROITS DE L'HOMME  
EUROPEAN COURT OF HUMAN RIGHTS

COURT (CHAMBER)

**CASE OF BOZANO v. FRANCE**

*(Application no. 9990/82)*

JUDGMENT

STRASBOURG

18 December 1986

**In the Bozano case\*,**

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr. R. RYSSDAL, *President*,

Mr. J. CREMONA,

Mr. J. PINHEIRO FARINHA,

Mr. L.-E. PETTITI,

Sir Vincent EVANS,

Mr. C. RUSSO,

Mr. J. GERSING,

and also of Mr. M.-A. EISSEN, *Registrar*, and Mr. H. PETZOLD, *Deputy Registrar*,

Having deliberated in private on 28 June and 2 December 1986,

Delivers the following judgment, which was adopted on the last-mentioned date:

**PROCEDURE**

1. The present case was referred to the Court by the European Commission of Human Rights ("the Commission") on 14 March 1985 within the three-month period laid down in Article 32 § 1 and Article 47 (art. 32-1, art. 47) of the Convention. The case originated in an application (no. 9990/82) against the Republic of France lodged with the Commission on 30 March 1982 by Mr. Lorenzo Bozano, an Italian national.

2. The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby France recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision from the Court as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 5 § 1 (art. 5-1).

3. In response to the enquiry made in accordance with Rule 33 § 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings pending before the Court and designated the lawyer who would represent him (Rule 30). The Italian Government, having been informed by

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\* Note by the Registrar: The case is numbered 5/1985/91/138. The second figure indicates the year in which the case was referred to the Court and the first figure its place on the list of cases referred in that year; the last two figures indicate, respectively, the case's order on the list of cases and originating applications (to the Commission) referred to the Court since its creation.

the Registrar of its right to intervene in the proceedings (Article 48, subparagraph (b), of the Convention and Rule 33 § 3 (b)) (art. 48-b), did not indicate any intention of so doing.

4. The Chamber of seven judges to be constituted included ex officio Mr. L.-E. Pettiti, the elected judge of French nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 § 3 (b)). On 27 March 1985, in the presence of the Registrar, the President drew by lot the names of the other five members, namely Mr. W. Ganshof van der Meersch, Mr. J. Pinheiro Farinha, Sir Vincent Evans, Mr. C. Russo and Mr. J. Gersing (Article 43 in fine of the Convention and Rule 21 § 4) (art. 43).

5. In a letter of 31 May 1985, a copy of which was sent to the Registrar, the Agent of the French Government ("the Government") suggested to the applicant's lawyer that they should attempt to reach a friendly settlement. At the beginning of November 1985, the said representative and subsequently the French Ministry for Foreign Relations informed the Registrar that their negotiations to this end had failed.

6. Mr. Wiarda assumed the office of President of the Chamber (Rule 21 § 5) but afterwards ceded it to Mr. R. Ryssdal - who had in the meantime been elected President of the Court - as his term of office as a judge was to expire on 20 January 1986. Mr. Ganshof van der Meersch was likewise replaced for the same reason - with effect from the date on which his successor took up his duties (21 February 1986) - by Mr. J. Cremona, substitute judge (Rules 2 § 3 and 22 § 1).

7. Mr. Ryssdal consulted, through the Registrar, the Agent of the Government, the applicant's lawyer and the Commission's Delegate on the need for a written procedure (Rule 37 § 1). On 10 January 1986, he decided that the said Agent and lawyer should each have until 10 February to submit memorials and that the Delegate should be entitled to submit a memorial in reply within two months.

The Government's memorial was filed on 13 February. Mr. Bozano's lawyer waived his right to file a memorial, but with the leave of the President he lodged with the registry on 24 March his client's claims under Article 50 (art. 50) of the Convention. The written observations of the Commission's Delegate were received at the registry on 4 April 1986.

8. On the same day, after consulting, through the Registrar, the Agent of the Government, the Commission's Delegate and the applicant's lawyer, the President directed that the oral proceedings should open on 21 April (Rule 38).

9. The hearing was held in public in the Human Rights Building, Strasbourg, on the appointed day. The Court had held a preparatory meeting immediately beforehand.

There appeared before the Court:

- for the Government

Mr. G. GUILLAUME, Director of Legal Affairs,  
 Ministry of Foreign Affairs, *Agent and Counsel,*  
 Miss C. CHANET and  
 Mr. R. ABRAHAM, Directorate of Legal Affairs,  
 Ministry of Foreign Affairs, *Advisers,*  
 Mr. B. GENEVOIS, Director of Civil Liberties and Legal Affairs,  
 Ministry of the Interior, *Counsel,*  
 Mr. F. LOLOUM, Directorate  
 of Civil Liberties and Legal Affairs, Ministry of the  
 Interior, *Adviser;*  
 - for the Commission  
 Mr. G. TENEKIDES, *Delegate;*  
 - for the applicant  
 Mr. D. COHEN, avocat,  
 Miss J. VANSCHOOMBEEK, avocat,  
 Mr. T. LÉVY, avocat, *Counsel.*

The Court heard addresses by Mr. Guillaume for the Government, by Mr. Tenekides for the Commission and by Mr. Cohen and Mr. Lévy for the applicant, as well as their replies to its questions.

10. On 10 and 21 April 1986, the Government, the Commission and the applicant variously filed a number of documents, either at the President's request or of their own accord.

## AS TO THE FACTS

11. The applicant, an Italian national born in 1945, is at present in custody in Porto Azzurro Prison on the island of Elba (Italy).

### I. THE CRIMINAL PROCEEDINGS IN ITALY

12. He was arrested by the Italian police on 9 May 1971, released on 12 May and arrested again on 20 May on a charge of having abducted and murdered a 13-year-old Swiss girl, Milena Sutter, in Genoa on 6 May. It was alleged that he had hidden the body and tried to extort a ransom of 50 million Italian lire from the victim's father, an industrialist. He was also charged with indecency and indecent assault with violence on four women.

13. On 15 June 1973, after several months of hearings largely taken up by the evidence of 180 witnesses, the Genoa Assize Court sentenced him to two years and 15 days' imprisonment for offences relating to one of the four women (the time spent in detention being reckoned as part of the sentence). He was acquitted of the other crimes with which he was charged, in

particular the abduction of Milena Sutter and its sequel, for lack of evidence; and he was accordingly released.

14. The prosecution appealed to the Genoa Assize Court of Appeal against the judgment (which ran to 166 pages). The hearing was set down for on 20 November 1974 but had to be adjourned, because the defence challenged the presiding judge, alleging that he had publicly stated his conviction that Mr. Bozano was guilty. The appeal proceedings commenced on 18 April 1975 after this challenge had been rejected by the Court of Cassation, but the accused applied for an adjournment. On the evidence of a medical certificate, he claimed that he was in hospital being treated for renal colic and was thus unable to appear. The court found that he was deliberately refusing to appear (contumace) and proceeded with the hearing. Thereupon the defence entered a fresh challenge in respect of the presiding judge and lodged an objection impugning the Assize Court of Appeal on grounds of bias; the challenge and the objection were dismissed by the Court of Cassation on 28 April. In the absence of the applicant, the proceedings then resumed before the Assize Court of Appeal, which refused to hear some of the defence witnesses. Considering that they could no longer perform their duties in these circumstances, the applicant's principal counsel withdrew from the case, and the defence was from then on conducted by a single lawyer who had been instructed not long before.

On 22 May 1975, the Assize Court of Appeal, giving judgment in absentia, sentenced Mr. Bozano to life imprisonment (*ergastolo*) for the crimes relating to Milena Sutter and to four years' imprisonment for the other crimes; the court held that there were no extenuating circumstances.

15. On 25 March 1976, the Court of Cassation dismissed the applicant's appeal on points of law against this judgment, whereupon the public prosecutor's office in Genoa issued a committal order, on 30 March, and the Italian police circulated an international arrest warrant, two days later.

## II. THE EXTRADITION PROCEEDINGS IN FRANCE

16. Mr. Bozano had in fact taken refuge in France, at first living on the Côte d'Azur and then in central France. He assumed the (false) identity of Bruno Bellegati Visconti - at any rate after a certain time.

17. On 26 January 1979, the French gendarmerie arrested him in the course of a routine check in the département of Creuse and on the same day he was taken into custody at Limoges Prison (Haute-Vienne) pending extradition proceedings. He was served with the document authorising his arrest and the documents produced in support of the extradition request, and the public prosecutor attached to at the Court of Appeal examined him under section 13(2) of the Extradition of Aliens Act of 10 March 1927 ("the 1927 Act"). On 31 January, Italy officially applied to France for his extradition under a bilateral treaty of 12 May 1870.

18. On 15 May 1979, the Indictment Division of the Limoges Court of Appeal, to which the case had been submitted in accordance with section 14 of the 1927 Act, ruled against extradition after hearing the public prosecutor, the applicant's counsel and the applicant himself. It found that the request was in order as far as the 1870 treaty and the 1927 Act were concerned but held that the Italian procedure for trial in absentia, which had been followed in this case by the Genoa Assize Court of Appeal, was incompatible with French public policy (*ordre public*), because even in respect of indictable offences (and not just of lesser ones) it was possible under that procedure to pass an enforceable sentence on an accused who had not appeared in person before the court, without the adversarial proceedings which formed the basis of French criminal procedure and without any provision for making a retrial obligatory.

By virtue of section 17 of the 1927 Act, this negative ruling was final and binding on the French Government, which accordingly declined to extradite the applicant.

### III. THE CRIMINAL PROCEEDINGS IN FRANCE

19. Mr. Bozano nonetheless remained in prison at Limoges, because he had been charged in France with fraud and with forgery and falsification of administrative documents and use thereof.

On 24 August 1979, the investigating judge found that Bozano seemed to have acted merely as an executing agent and not to have planned and directed the frauds with which he was charged; the details which he had "preferred not to reveal" related to the circumstances at the beginning of his residence and not to the matters in issue; there were a considerable number of extenuating circumstances in connection with the making of the false identity documents; it was no longer necessary to keep him in prison in order to ascertain the truth, but on account of his "special administrative position" he had to be placed under judicial supervision. The investigating judge therefore ordered his release on bail of 15,000 francs and subject to certain conditions.

The public prosecutor's office appealed against this order, but the Indictment Division of the Limoges Court of Appeal upheld it on 19 September 1979. Six days earlier, despite the prosecution's opposition, the investigating judge had decided that there were no grounds for keeping Mr. Bozano in custody.

20. The applicant was immediately released. He has claimed that on the next day, 20 September, he applied for a residence permit at Haute-Vienne Prefecture but was refused an acknowledgment of receipt of this application. The Government have stated that there is no trace of this application in the official archives, but they have not denied that it was

made. At all events, Mr. Bozano's lawyer in Limoges wrote to the Prefect on 27 September in support of his client's course of action.

For its part, the Italian consulate-general in Paris had stated on 13 July 1979 - without giving any reasons - that it was unable for the time being to provide the applicant with an identity document; this was in reply to a letter sent to it the previous day by another lawyer acting for the applicant, who was a member of the Paris Bar.

21. On 26 October 1979, the investigating judge issued a discharge order in respect of the fraud charge, an order terminating judicial supervision, and an order committing the applicant for trial at Limoges Criminal Court on charges of forging and falsifying administrative documents and using false identity documents (contrary to Articles 153 and 261 of the Criminal Code).

#### IV. THE DISPUTED DEPORTATION AND ITS SEQUEL

22. The account given hereafter in paragraphs 23, 25 and 26 is based mainly on information and documents supplied to the Commission and, subsequently, to the Court by Mr. Bozano's lawyers. The Government have not formally challenged its accuracy, but they have expressed reservations in respect of one or two matters; they acknowledge, however, that they cannot be certain or adduce any evidence to the contrary.

23. On the evening of 26 October 1979, at about 8.30 p.m., three plain-clothes policemen, at least one of whom was armed, stopped Mr. Bozano as he was returning home after an interview with his Limoges lawyer and ordered him to follow them. When he protested, they seized him and forced him to get into an unmarked car. He was handcuffed and driven to Limoges police headquarters. There four other men arrived shortly afterwards who said they had come specially from Paris; they served him with a deportation order (without giving him a copy).

24. This order, which had been made more than a month earlier - on 17 September 1979 - by the Minister of the Interior at the instance of the Prefect of Haute-Vienne and was signed by the Director of Regulations, read as follows:

"THE MINISTER OF THE INTERIOR

Having regard to article 23 of the Aliens (Conditions of Entry and Residence) Ordinance of 2 November 1945,

Having regard to the Decree of 18 March 1946,

Having regard to information obtained concerning Lorenzo BOZANO, born on 3 October 1945 in GENOA (Italy);

Deeming that the presence of the above-mentioned alien on French territory is likely to jeopardise public order (ordre public),

BY THIS ORDER REQUIRES:

1. the above-named to leave French territory;
2. the Prefects to execute this order.

Paris, 17 SEPTEMBER 1979."

25. The applicant refused to sign a police report stating that he complied with this decision of his own free will. On the contrary, he emphatically opposed deportation and demanded to be brought before the Appeals Board provided for in article 25 of the Aliens (Conditions of Entry and Residence) Ordinance of 2 November 1945.

He was told that this was out of the question and that he was going to be taken at once to Switzerland (and not to the Spanish border, which was the nearest frontier). Accordingly, without first being ordered to leave France for a country of his choice or being allowed to inform his wife or his lawyer, he was forced to get into an unmarked BMW and sit, still handcuffed, between two police officers. At about 10 p.m. the car left for Clermont-Ferrand, preceded by a police car which led the way. It reached the frontier near Annemasse on Saturday 27 October 1979 in the early hours of the morning. At first it was unable to cross; after a long telephone conversation between the officer in charge of the French policemen and the Swiss authorities, it proceeded to the French customs post at Moillesulaz.

26. After a further telephone conversation, there appeared an unmarked Opel with a Swiss number plate, and a Swiss policeman got out. He put other handcuffs on Mr. Bozano, who was made to sit on the back seat between this policeman and a French one. The Opel entered Switzerland at about 8.00 a.m., escorted by the BMW with the other three French policemen aboard. The two vehicles drove to the police station in the Boulevard Carl-Vogt in Geneva.

The applicant, who had no identity papers, was informed at about 11.45 a.m. that Italy was requesting his extradition. He was then provisionally taken into custody at Champ-Dollon Prison, as had been requested that same day by the Federal Police Office when it informed the Geneva police that the diplomatic request would be arriving shortly.

As early as 14 September and 24 October 1979, Interpol Rome had telexed several States, including Switzerland, to inform them that Mr. Bozano would shortly be deported from France. The documents later supplied by Italy in support of its request were dated 28 October 1979, a Sunday.

27. In 1976, Italy, to which Switzerland is bound by the European Convention on Extradition of 13 December 1957, had requested



Switzerland to extradite the applicant, and the latter's name had accordingly been recorded in the Swiss Police Gazette (*Moniteur suisse de police*) of 5 April 1976 as being the subject of a "warrant for arrest pending extradition proceedings".

Mr. Bozano was extradited to Italy on 18 June 1980 after the Swiss Federal Court had rejected his objection on 13 June. He is currently serving his sentence in Porto Azzurro Prison on the island of Elba, as Italian law - unlike the French system - makes no provision for obligatory retrial after proceedings in absentia (cf. Article 639 of the French Code of Criminal Procedure). It appears that he has never ceased to claim that he is innocent of the appalling crime of which he was convicted, but unless he is given a retrial (*revisione*) or a pardon, he will not be eligible for release (on parole) until May 2008.

## V. THE PROCEEDINGS IN FRANCE AFTER THE APPLICANT'S DEPORTATION

### A. The remedies to which the applicant had recourse

28. On 11 and 26 December 1979, Mr. Bozano's lawyer had had recourse to two remedies in France.

#### *1. The urgent application to the court (recours en référé)*

29. In the first place, they summoned the Minister of the Interior to appear in urgent proceedings before the presiding judge of the Paris tribunal de grande instance on 17 December.

According to them, the "operation" carried out on the night of 26-27 October 1979 had three major defects, any one of which was sufficient to classify it as arbitrary and thus constituting a flagrantly unlawful act (*voie de fait*). Mr. Bozano's "brutal arrest" was obviously a vital stage in the execution of the deportation order but could not be justified by the order because it had preceded notification of the order. The authorities could not prove that the execution of the administrative act had met with definite resistance or at least obvious unwillingness to comply: they had quite simply not left the applicant "any time to do anything at all", and in any case it would have been in his interests to comply voluntarily so as to be able to choose the country in which he would take refuge. Finally and most importantly, the executive had no automatic right of enforcement in this matter.

Furthermore, there was the flagrant unlawfulness of the order itself. It was contrary to the decisions to release the applicant and to discharge the judicial supervision order that had been taken by the investigating judicial

authorities on 19 September and 26 October 1979, and to the negative ruling of 15 May 1979 by the Indictment Division of the Limoges Court of Appeal (see paragraph 18 above); and in choosing Switzerland out of five neighbouring countries, against the applicant's will, the authorities knew that they were handing him over to the European State most likely to extradite him to Italy, owing to the existence of an extradition agreement between Italy and Switzerland and the nationality of the murdered girl.

Mr. Bozano's lawyers further pointed out that the matter was urgent because the Swiss Federal Court was about to take a decision on the Italian extradition request (see paragraph 27 above), and that their client had been improperly removed from the jurisdiction of the French courts, seeing that the investigating judge had committed him for trial at Limoges Criminal Court on a charge of using false identity documents (see paragraph 21 above).

They therefore sought an injunction from the presiding judge of the Paris tribunal de grande instance requiring the Minister of the Interior to apply to the appropriate Swiss authority, within eight days of the interim order's being made, for the return of their client.

30. In his submissions of 17 December 1979, the Minister pointed out that section 13 of the Act of 16/24 August 1790 forbade any interference by the ordinary courts with administrative acts. He drew the inference that the application must be dismissed and the applicant left to take proceedings in the proper courts if he so desired.

The Paris Commissioner of Police likewise entered a plea in bar alleging want of jurisdiction, which the procureur de la République (public prosecutor) argued at the hearing, submitting that the parties should be referred to the administrative court. He too based his argument on the 1790 Act and, in addition, the Act of 16 fructidor of Year III, which forbids the courts to deal with administrative acts of any kind whatsoever. There was nothing to prove that the deportation order complained of and its enforcement had amounted to a flagrantly unlawful act, that is to say, that they were manifestly incapable of being related to the application of a statute or regulations. In particular, the investigating judicial authorities' order for the applicant's release and their decision to discharge the judicial supervision order did not establish that Mr. Bozano's presence on the national territory did not constitute a threat to public order. Furthermore, it was in the nature of deportation to be effected by coercion if need be (Court of Cassation, Criminal Division, 20 February 1979, *Batchono* - *Juris-Classeur périodique* 1979-19207). As to the negative ruling by the Indictment Division of the Limoges Court of Appeal on 15 May 1979, it did not forbid taking Mr. Bozano to the Swiss frontier, as the Swiss Confederation had agreed to accept him.

31. On 14 January 1980, the presiding judge of the Paris tribunal de grande instance made an order stating that there were no grounds for

hearing the case on an urgent application because the application, "as it [put] relations between States in issue, [was] not within the jurisdiction of the judge competent to hear urgent applications in the ordinary courts". This decision was preceded by reasons which read as follows (translation from French):

"The various events between Bozano's being apprehended and his being handed over to the Swiss police disclose manifest and very serious irregularities both from the point of view of French public policy (*ordre public*) and with regard to the rules resulting from application of Article 48 of the Treaty of Rome. Moreover, it is surprising that precisely the Swiss border was chosen as the place of deportation although the Spanish border is nearer Limoges. Lastly, it may be noted that the courts have not been given an opportunity of making a finding as to the possible infringements of the deportation order issued against him, because as soon as the order was served on him, Bozano was handed over to the Swiss police, despite his protests. The executive thus itself implemented its own decision.

It therefore appears that this operation consisted, not in a straightforward expulsion on the basis of the deportation order, but in a prearranged handing over to the Swiss police ..."

32. The applicant's lawyers considered that there was no point in appealing. It should be noted in this connection that the Jurisdiction Disputes Court (*Tribunal des conflits*) has held that even an unlawful decision to deport does not amount to a flagrantly unlawful act and that consequently only the administrative courts have jurisdiction in the matter (*Préfet du Rhône c. Tribunal de grande instance de Lyon and Fentrouci c. Ministre de l'Intérieur*, 3 December 1979, *Recueil Lebon*, 1979, p. 579).

### *2. The application to have the deportation order set aside*

33. On 26 December 1979, the applicant's legal advisers had applied, secondly, to the Limoges Administrative Court, to have the deportation order of 17 September set aside.

They argued in substance that this had been made by an unauthorised entity as it did not bear the Minister of the Interior's personal signature. It was "bad for error of law" to the extent that it was based on Mr. Bozano's previous conviction, because the Indictment Division of the Limoges Court of Appeal had rejected as being contrary to French public policy the conviction *in absentia* by the Genoa Assize Court of Appeal (see paragraph 18 above). There had also been an abuse of powers, since the matter had been one, not of requiring Mr. Bozano to leave French territory, but of handing him over to the country which was more likely than any other to extradite him to Italy; and a manifest error of judgment, inasmuch as the order complained of was based on the applicant's behaviour in France - the use of a false document had seemed to him to be the only way of escaping prosecution for a crime of which he held he was innocent, and the investigating judge had found that there were a considerable number of

extenuating circumstances in relation to the offence (see paragraph 19 above). The authorities should have looked at the whole case to determine whether Mr. Bozano's presence amounted to a threat to public order. The order complained of had not complied with the provisions of Community law (Article 48 of the Treaty of Rome and EEC Directive 64/221). Furthermore, the authorities had disregarded all the formal requirements of Directive 64/221 and the Decree of 5 January 1970: Mr. Bozano had not been served with a refusal to issue a residence permit, had not been able to submit his observations to the Deportation Board, had not been informed of the reasons of public policy on which the administrative decision was based, and had not been given a reasonable period to leave French territory. Only urgency could have absolved the executive from its duty to comply with these mandatory rules, but there had been no such urgency in the instant case nor had it been relied on at any time.

34. Initially (27 May 1980), the Minister of the Interior opposed this argument, contending, *inter alia*, that the circumstances in which an administrative decision was executed did not affect the lawfulness of the decision; but in further pleadings, sent by telegram on 8 December 1981, the Minister of the Interior and for Decentralisation stated that he desired to leave the matter to the discretion of the court.

35. The court gave judgment on 22 December 1981. Without ruling on the other grounds, it held that the Minister of the Interior had committed "a manifest error of judgment" and the administrative authorities an "abuse of powers".

On the first point the judgment read as follows (translation from French):

"The Minister ... refers to the applicant's use of false administrative documents and to his behaviour in Italy;

The fact of having used false identity documents to enter France and reside there cannot of itself, in the absence of any aggravating circumstances, be considered as amounting to a threat to public order;

It appears from the documents on the file ... that the only factor to which regard was had in respect of the applicant's behaviour in Italy was a criminal conviction and sentence in absentia ...; in the absence of any truly adversarial proceedings, the very serious offence of which Mr. Bozano was accused, and which he has always denied, cannot be regarded as having been adequately proved ... "

The finding that there had been an abuse of powers was based on the following circumstances (translation from French):

"Whereas the haste with which the impugned decision was enforced, when the individual concerned had not even indicated his refusal to comply, and the choice of the Swiss border which was imposed on the individual clearly show the real reason behind the decision: in reality the executive sought, not to expel the applicant from French territory, but to hand him over to the Italian authorities via the Swiss authorities, with whom Italy had an extradition agreement; the executive was therefore seeking to circumvent the competent judicial authority's negative ruling which was

binding on the French Government; ... the impugned decision was [therefore] an abuse of powers ..."

The court accordingly quashed the deportation order.

The Minister of the Interior and for Decentralisation did not appeal.

36. The applicant's legal advisers had considered it unnecessary to couple their application for the order to be set aside with an application for a stay of its execution. Had they done so, such an application would have had to be made - at that time - to the Conseil d'Etat and not to Limoges Administrative Court.

### **B. The subsequent course of the criminal proceedings**

37. According to the information provided by the Government, Mr. Bozano was not summoned to appear at Limoges Criminal Court on the charges of forging and falsifying administrative documents and uttering false identity documents (see paragraph 21 above). The prosecuting authorities considered that the nature of the offences charged did not justify continuing the proceedings in view of the fact that the accused had been deported.

## **PROCEEDINGS BEFORE THE COMMISSION**

38. In his application against France of 30 March 1982 (no. 9990/82), Mr. Bozano argued that his "abduction" and his "forcible removal" to Switzerland had deprived him of his personal liberty and his freedom of movement, contrary to Article 5 § 1 (art. 5-1) of the Convention and Article 2 § 1 of Protocol No. 4 (P4-2). He also claimed that he had not been able to avail himself either of a remedy satisfying the requirements of Article 5 § 4 (art. 5-4) of the Convention or of a number of the guarantees in Article 6 § 1 (art. 6-1) or of an effective remedy within the meaning of Article 13 (art. 13), and that he had been the victim of an abuse of powers, contrary to Article 18 (art. 18); additionally, he relied on Article 5 § 5 (art. 5-5).

On 15 May 1984, the Commission declared part of the application inadmissible - for being out of time (Article 26 in fine) (art. 26) in respect of Article 5 § 4 (art. 5-4) and, consequently, also Article 13 (art. 13); for failure to exhaust domestic remedies in respect of Article 5 § 5 (art. 5-5); *ratione materiae* with respect to Article 6 (art. 6); and, finally, as manifestly ill-founded with respect to Article 18 (art. 18) to the extent that the applicant was accusing the French authorities of having acted in concert with the Swiss and Italian authorities.

On the other hand, it declared admissible the allegations relating to Article 5 § 1 (art. 5-1) of the Convention (either considered in isolation or

taken together with Article 18 (art. 18) on the question whether the enforcement of the deportation order was intended to circumvent the negative ruling on extradition of 15 May 1979) and to Article 2 of Protocol No. 4 (P4-2).

In its report of 7 December 1984 (Article 31) (art. 31), the Commission concluded by 11 votes to 2 that there had been a violation of Article 5 § 1 (art. 5-1) of the Convention, made no express finding in respect of Article 18 (art. 18) and considered it unnecessary to examine the case under Article 2 of Protocol No. 4 (P4-2). The full text of the Commission's report and of the separate opinions contained in the report is reproduced as an annex to the present judgment.

39. At an earlier stage, on 13 June 1980, Mr. Bozano had lodged an application against Switzerland (no. 9009/80). He complained both of his arrest by the Swiss police on French territory and of the Federal Court's procedure in considering his applications for release. On 12 July 1984, the Commission dismissed the first complaint (Articles 5 § 1 and 18) (art. 5-1, art. 18) as manifestly ill-founded; it declared the second complaint (Article 5 § 4) (art. 5-4) admissible on 13 December 1984, after it had adopted its report in the Sanchez-Reisse case (application no. 9862/82).

The applicant also lodged an application against Italy (no. 9991/82) on 9 December 1980. In it he complained of the proceedings in absentia which ended in his being sentenced to life imprisonment (Article 6 of the Convention) (art. 6), but the Commission found on 12 July 1984 that on this point he had failed to comply with the six-month period laid down in Article 26 (art. 26) in fine. He also complained that the Italian authorities had collaborated with the French and Swiss authorities to secure first his deportation and then his extradition (Article 18) (art. 18). In the same decision of 12 July 1984, the Commission dismissed this complaint as manifestly ill-founded.

## FINAL SUBMISSIONS TO THE COURT

40. At the hearing on 21 April 1986, the Government requested that the application should be dismissed for failure to exhaust domestic remedies or, in the alternative, as being manifestly ill-founded.

The Commission in substance asked the Court to find the application admissible and to uphold the conclusions in the Commission's report on the merits of the case.

## AS TO THE LAW

### I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

41. The Government considered the application "inadmissible" on two grounds: "incompatibility *ratione materiae* with the Convention" and non-exhaustion of domestic remedies.

#### A. Incompatibility with the provisions of the Convention

42. As to the first point, the memorial of 13 February 1986 (in its paragraphs 33 and 10) seems to be based on the idea that the Convention and its Protocols do not guarantee as such an alien's right to reside within the territory of a Contracting State.

In reality Mr. Bozano was essentially complaining, in respect of Article 5 (art. 5) of the Convention, of his "abduction" and "forcible removal" from France to Switzerland. His complaints are not "clearly outside the provisions of the Convention"; they relate to the interpretation and application of those provisions (Article 45), (art. 45) these being issues going to the merits that have to be determined by the Court (see, most recently, the *Glazenapp and Kosiek* judgments of 28 August 1986, Series A no. 104, p. 23, § 41, and no. 105, p. 19, § 32). The Court accordingly cannot accept this plea, which, moreover, was only mentioned briefly during the written procedure and not pursued at the hearing.

#### B. Exhaustion of domestic remedies

43. Secondly, the Government contended that the applicant had not exhausted domestic remedies (memorial, paragraphs 12-18, and note of the hearing of 21 April 1986), because he had not:

- (i) appealed against the interim order of 14 January 1980 (see paragraphs 31 and 32 above);
- (ii) brought an ordinary action in the Paris tribunal de grande instance for a flagrantly unlawful act (*voie de fait*);
- (iii) applied to the Conseil d'Etat for a stay of execution of the deportation order of 17 September 1979 (see paragraphs 24, 33 and 36 above);
- (iv) asked the Limoges Administrative Court to determine the lawfulness of the actual process whereby the deportation order was enforced;
- (v) brought an action for damages in the administrative courts in respect of liability of public authorities;
- (vi) brought an action for damages in the ordinary courts, under Article 136 of the Code of Criminal Procedure, against the officials or authorities whom he accused of having interfered with his personal liberty.

#### 1. Estoppel

44. The Court will take cognisance of preliminary objections of this kind if and in so far as the respondent State has already raised them before the Commission to the extent that their nature and the circumstances permitted;

this should normally be done at the stage of the initial examination of admissibility (see, as the most recent authority, the Campbell and Fell judgment of 28 June 1984, Series A no. 80, p. 31, § 57).

45. That condition is not satisfied in respect of the second ground of the objection. Admittedly, the Government contended the opposite, referring to their written observations of March 1983 (paragraphs 13 and 23) and their oral observations of May 1984 (pages 6-7), but they did no more than state therein that Mr. Bozano had not appealed against the interim order of 14 January 1980 (first ground of the objection).

46. The same applies to the sixth and last ground, concerning the failure to bring an action for damages in the ordinary courts. The argument in paragraph 15 of the Government's memorial of March 1983 was indeed based on the fact that the applicant had not either expressly or in substance pleaded "his right to compensation" in the "French courts" or "domestic courts". But the Government appeared to mean by this only "the administrative courts", that is to say "the appropriate administrative court and then the Conseil d'Etat (fifth ground of the objection); at any rate, they did not make any mention of the ordinary courts or of Article 136 of the Code of Criminal Procedure. It was incumbent on them, however, to indicate sufficiently clearly the remedies to which they were alluding and to prove that they existed; it is not for the Convention bodies to cure of their own motion any want of precision or shortcomings in respondent States' arguments (Deweert judgment of 27 February 1980, Series A no. 35, p. 15, § 26 in fine; Guzzardi judgment of 6 November 1980, Series A no. 39, p. 28, § 73 in fine; Foti and Others judgment of 10 December 1982, Series A no. 56, p. 17, § 48, second paragraph; De Jong, Baljet and van den Brink judgment of 22 May 1984, Series A no. 77, pp. 18-19, § 36).

47. The Court therefore endorses the view of the Commission's Delegate that there is an estoppel in respect of the two points under consideration.

On the other hand, the Government did plead the other four grounds of their objection at the proper time, and the Court must accordingly consider the merits of these.

## 2. The merits of the remainder of the objection

48. An appeal against the order of 14 January 1980 would not have availed the applicant in any way. Not only had the Minister of the Interior, the Commissioner of Police and the public prosecutor's office challenged the jurisdiction of the judge competent to hear urgent applications, on the basis of the Acts of 16/24 August 1790 and 16 fructidor of Year III, but the presiding judge of the Paris tribunal de grande instance held that she had to find a want of jurisdiction on the ground that the application put "relations between States in issue" (see paragraph 31 above). The Court of Appeal would have been bound to come to the same conclusion in line with established precedents in the Court of Cassation, the Conseil d'Etat and the Jurisdiction Disputes Court (cf. the Van Oosterwijck judgment of 6



November 1980, Series A no. 40, p. 19, § 40). In any case, in his address on 21 April 1986, the Agent of the Government made no mention of the first ground of the objection, although it appeared - briefly - in paragraph 12 of his memorial to the Court of 13 February 1986; before the Commission he had acknowledged that proceeding by way of urgent application "was probably not the right course".

Nor, in the particular circumstances, would an application for a stay of execution of the deportation order of 17 September 1979 (third ground of the objection) have been any more effective. It would not have had a suspensive effect and, at all events, would not have prevented the implementation of a measure that had already been executed - the forcible removal of Mr. Bozano to the Swiss border. The Government cited the case of a Mali national deported from France who was able to return there after obtaining a stay of this kind by applying to the Conseil d'Etat (judgment of 18 June 1976, Moussa Konaté, Recueil Lebon, 1976, pp. 321-322). In that case, however, the applicant was at liberty; he was not, like the present applicant, in custody abroad pending extradition proceedings (in Switzerland) and subsequently serving a sentence of life imprisonment (in Italy). A decision by the Conseil d'Etat in Mr. Bozano's favour would not have imposed any obligation on Switzerland or Italy.

As for an application to the Limoges Administrative Court to have the disputed police action quashed (fourth ground of the objection), it is somewhat difficult to see how this could have been made, given that it would have been directed against physical acts based on an implicit or even non-existent decision; the Government have not mentioned any supporting case-law in this connection. Furthermore, such an application would at most have resulted merely in a finding of unlawfulness, which would not have altered an irreversible situation.

In these matters, the Court agrees with the Commission's Delegate and counsel for the applicant.

49. Indeed the Government expressed the view at the hearing on 21 April 1986 that a distinction had to be made according to whether the alleged breach was continuing or, as in the instant case, had ceased. In the first eventuality the only material domestic remedy would be one that could put an end to the breach, whereas in the second eventuality an action for damages would be the sole means of redress. According to the Government, the applicant could have applied to the administrative courts for "compensation for damage which could be ascribed to the deportation order itself", which was quashed on 22 December 1981 (see paragraph 35 above), subject "of course" to demonstrating "the existence of damage and the causal link" between it and the order which had been declared to be unlawful by the Limoges Administrative Court - factors about which, they said, there were "few doubts". The Government went on to contend that Mr. Bozano could also have made a claim in the ordinary courts for

compensation in respect of "the deprivation of liberty resulting from the forcible execution of the deportation order against him".

An action for damages in the administrative courts in respect of liability of public authorities (fifth ground of the objection) is undoubtedly a remedy which, in some cases, would probably be effective and sufficient for the purposes of Article 26 (art. 26) of the Convention. The applicant, however, complained to the Court of the way the deportation decision was executed - the physical process - and, in particular the "deprivation of liberty" he suffered during the night of 26 to 27 October 1979. The information the Government have provided about the limits of the administrative courts' jurisdiction suggests that it would have been the ordinary courts which had jurisdiction to entertain a claim for compensation relating to this. In the circumstances of the case, therefore, this remedy is illusory for the purposes of the Convention.

As to the possibility of applying to the ordinary courts (sixth ground of the objection), the Court has already held that the Government are estopped from arguing on this basis (paragraph 46 above).

50. The applicant could even have argued that he did not need to have recourse to any domestic remedy before applying to the Commission. The remedies of which he availed himself did not afford him an effective means of preventing the alleged breach or of expunging its consequences. He utilised them only because his lawyers hoped at the time that the order made by the presiding judge of the Paris tribunal de grande instance and the judgment of the Limoges Administrative Court would provide material that could be prayed in aid in Switzerland in order to oppose Italy's extradition request; they indicated this to the Commission and to the Court.

If this line of argument were pursued, it would be found that the "final decision" within the meaning of Article 26 (art. 26) in fine of the Convention dates back to 26 and 27 October 1979, when Mr. Bozano was forcibly conveyed to the Swiss border. The Government have not, however, disputed that the six-month time-limit has been complied with, and it is not within the province of the Court to go into an issue of this kind of its own motion; the Court confines itself to noting that the application was lodged on 30 March 1982, that is less than six months after the date - 2 October 1981 - on which France's declaration under Article 25 (art. 25) made it possible for Mr. Bozano to apply to the Commission (see, *inter alia*, the decision of 9 June 1958 on the admissibility of application no. 214/56, *De Becker against Belgium*, Yearbook of the Convention, vol. 2, p. 242, and the decision of 18 September 1961 on the admissibility of application no. 846/60, *X against the Netherlands*, Collection of Decisions, no. 6, pp. 64-65).

### 3. Recapitulation

51. In short, the objection that domestic remedies have not been exhausted is, as to part, out of time and, as to the rest, without foundation.

## II. THE MERITS

A. The alleged breach of Article 5 § 1 (art. 5-1), taken alone

52. Article 5 § 1 (art. 5-1) of the Convention provides:

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) ...;

(c) ...;

(d) ...;

(e) ...;

(f) the lawful arrest or detention of a person ... against whom action is being taken with a view to deportation or extradition."

53. The applicant, the Government and the majority of the Commission were of the view that only sub-paragraph (f) applies in the instant case in addition to the first sentence of paragraph 1 and the beginning of the second sentence.

The Court shares this view. The issue before it is not the sentence of life imprisonment Mr. Bozano is serving in Italy after his "conviction by [the] competent court" within the meaning of sub-paragraph (a), but the deprivation of liberty he suffered in France during the night of 26 to 27 October 1979. The impugned forcible removal was effected "after" the aforementioned conviction only in a chronological sense. In the context of Article 5 § 1 (a) (art. 5-1-a), however, the preposition "after" denotes a causal link in addition to a succession of events in time; it serves to designate detention "consequent upon" and not merely "subsequent to" the criminal court's decision (see, as the most recent authority, the Van Droogenbroeck judgment of 24 June 1982, Series A no. 50, p. 19, § 35). This was not so in the instant case, since it was not incumbent on the French authorities themselves to execute the judgment delivered by the Genoa Assize Court of Appeal on 22 May 1975 (see paragraph 14 above).

Nor was it for the French authorities to ensure that that judgment was executed, since the Indictment Division of the Limoges Court of Appeal had, by its negative ruling of 15 May 1979 (see paragraph 18 above), caused the Italian extradition request to be refused. The disputed deprivation of liberty was, consequently, not undergone as part of "action ... with a view to extradition"; rather, it was the means chosen for giving effect to the ministerial order of 17 September 1979, the final stage of "action ... with a view to deportation...". Sub-paragraph (f) therefore applies only in respect of the latter words.

54. The main issue to be determined is whether the disputed detention was "lawful", including whether it was in accordance with "a procedure prescribed by law". The Convention here refers essentially to national law and establishes the need to apply its rules, but it also requires that any

measure depriving the individual of his liberty must be compatible with the purpose of Article 5 (art. 5), namely to protect the individual from arbitrariness (see, as the most recent authority, the Ashingdane judgment of 28 May 1985, Series A no. 93, p. 21, § 44). What is at stake here is not only the "right to liberty" but also the "right to security of person".

55. The applicant contended that the police action of 26 to 27 October 1979 was automatically deprived of any legal basis when the deportation order was retroactively quashed by the Limoges Administrative Court.

The Commission's Delegate disagreed with this contention. The Government argued that it was inconsistent with the Commission's case-law (report of 17 July 1980 on application no. 6871/75, *Caprino v. United Kingdom*, p. 23, § 65), but they did not state this as their firm opinion; in their view it was a complex point and one which the applicant had not given the French courts an opportunity to consider.

The argument adduced on Mr. Bozano's behalf does not entirely convince the Court either, despite its undeniable logic. It may happen that a Contracting State's agents conduct themselves unlawfully in good faith. In such cases, a subsequent finding by the courts that there has been a failure to comply with domestic law may not necessarily retrospectively affect the validity, under domestic law, of any implementing measures taken in the meantime.

On the other hand, it is conceivable that matters would be different if the authorities at the outset knowingly contravened the legislation in force and, in particular, if their original decision was an abuse powers. The Court notes that the Limoges Administrative Court, in its judgment of 22 December 1981 (final ground), found that there had indeed been an abuse of powers. The Limoges court based its finding on circumstances obtaining after the disputed deportation order had been made but which appeared to it to reveal the ministerial authority's real motives at the time; the Minister of the Interior and for Decentralisation, who had stated in written pleadings of 8 December 1981 that he desired to leave the matter to the discretion of the court, did not appeal (see paragraphs 34 and 35 in fine above).

56. The applicant complained of a second failure to comply with French law. He claimed that the executive was not empowered to implement its own decisions by force except where a statute expressly gave it such a power or made no provision for a criminal sanction or else in cases of urgency. None of these three exceptions to the general rule applied in this instance, he argued. Until an Act of 29 October 1981, the Ordinance of 2 November 1945 (article 27) only permitted aliens to be conducted to the frontier if they had been convicted by the criminal courts of non-compliance with a deportation order; provision was made for a criminal sanction; and in the instant case, the lack of urgency was apparent, *inter alia*, from the length of time - more than a month (17 September - 26 October 1979) - which

elapsed between the signing of the deportation order (which did not contain so much as a mention of any urgency) and the serving of it on the applicant. The Government disputed this analysis. They maintained that the discharge of Mr. Bozano from the judicial supervision under which he was placed on 24 August 1979 gave rise on 26 October to the danger that he would abscond and go underground again (see paragraph 21 above); this made it imperative and urgent to enforce the order of 17 September. The Government also relied on two judgments, dated 5 December 1978 and 20 February 1979. In the first of these (Berrebouh), the Indictment Division of the Lyon Court of Appeal had held that "in order to ensure immediate enforcement of a deportation order where this is dictated by the same need to protect public order as prompted the decision to deport in the first place, the taking into custody of a deported alien" cannot be made conditional on "a prior finding that he has refused to comply voluntarily with the order and has thereby committed a criminal offence punishable under article 27(1) of the Ordinance of 2 November 1945" (translation) (*Juris-Classeur périodique*, 1979, jurisprudence, no. 19207). In the second case (Batchono), the Court of Cassation had held that "it is in the nature of deportation that it be effected if necessary by coercion", without restricting this statement to the case of "imperative urgency" envisaged in article 25 of the aforementioned Ordinance (*Bulletin des arrêts de la Chambre criminelle*, 1979, no. 76, pp. 208-211). The applicant asserted that these, however, were very isolated decisions which had been strongly criticised by legal writers.

57. Still in the context of domestic law, the Commission cited the interim order of 14 January 1980 and the judgment of 22 December 1981 as evidence of the unlawfulness of the "events" of 26 and 27 October 1979, considered this time in themselves. The presiding judge of the Paris tribunal de grande instance noted that these events disclosed "manifest and very serious irregularities" and that they had consisted, "not in a straightforward expulsion on the basis of the deportation order, but in a prearranged handing over to the Swiss police" (see paragraph 31 above). For its part, the Limoges Administrative Court pointed out the "haste" with which the executive had proceeded - when the applicant had not even indicated his refusal to comply - and "the choice of the Swiss border" rather than any other; it too came to the conclusion that the intention had been, "not to expel" Mr. Bozano, "but to hand him over to the Italian authorities via the Swiss authorities, with whom Italy had an extradition agreement" and therefore "to circumvent the ... negative ruling" of the Indictment Division of the Limoges Court of Appeal, "which was binding on the French Government" (see paragraph 35 above).

The Government replied that in the order made on 14 January 1980 by the presiding judge of the Paris tribunal de grande instance, in which it was held that there was no jurisdiction, the reasons relating to the circumstances of the case were not part of the *ratio decidendi* of the decision, and that they

accordingly had no binding force in domestic law. As to the Limoges Administrative Court, it did not rule on the lawfulness of the police action of 26-27 October 1979, since the applicant had not made any submissions on the point; the court took them into account in its judgment of 22 December 1981 only as revealing the ministerial authority's motives at the time the order of 17 September 1979 was made. In the Government's view, the Commission had consequently misunderstood the effect of the court decisions it cited.

58. Where the Convention refers directly back to domestic law, as in Article 5 (art. 5), compliance with such law is an integral part of Contracting States' "engagements" and the Court is accordingly competent to satisfy itself of such compliance where relevant (Article 19) (art. 19); the scope of its task in this connection, however, is subject to limits inherent in the logic of the European system of protection, since it is in the first place for the national authorities, notably the courts, to interpret and apply domestic law (see, *inter alia* and *mutatis mutandis*, the Winterwerp judgment of 24 October 1979, Series A no. 33, p. 20, § 46).

Several points of French law have been disputed in the instant case. Even if the arguments of those appearing before the Court and the other information in the file are not absolutely conclusive in the Court's view, they provide sufficient material for the Court to have the gravest doubts whether the contested deprivation of liberty satisfied the legal requirements in the respondent State.

59. "Lawfulness", in any event, also implies absence of any arbitrariness (see paragraph 54 above). In this respect, the Court attaches great weight to the circumstances in which the applicant was forcibly conveyed to the Swiss border.

Firstly, the relevant authorities waited for more than a month before serving the deportation order of 17 September 1979 on Mr. Bozano, although there was no difficulty about finding him in Limoges, where he was in pre-trial detention until 19 September and subsequently under judicial supervision (see paragraphs 19 and 23-24 above). The authorities thus prevented him from making any effective use of the remedies theoretically available to him.

What is more serious is that the authorities gave every appearance of having wanted to ensure that Mr. Bozano did not find out about the action they were preparing to take against him, so that they could the more effectively face him with a *fait accompli* thereafter. As early as 14 September, and again on 24 October, Switzerland had been informed by telexes from Interpol in Rome that Mr. Bozano was about to be deported from France (see paragraph 26 *in fine* above). Moreover, Mr. Bozano stated that on 20 September he had applied for a residence permit at Haute-Vienne Préfecture, which had refused to issue him an acknowledgement of receipt of his application (see paragraph 20 above). That such an application was

indeed made seems to be confirmed by the letter Mr. Yves Henry, the applicant's lawyer, sent to the Prefect on 27 September (ibid.). The Government did not dispute that the application was made, but stated that there was no trace of it in the official archives and that in any case the deportation order of 17 September was a bar to issuing the permit sought. They did not, however, explain why nothing was said about the Minister of the Interior's decision.

To this must be added the suddenness with which the applicant was apprehended by the police on the evening of 26 October and, more striking still, the way in which the Minister of the Interior's decision was carried out. From what their own Agent himself indicated, the Government had contacted only Switzerland, a State which had an extradition treaty with Italy and where since April 1976 there had been a warrant out for the applicant's arrest with a view to extradition, as was recorded in the Swiss Police Gazette (*Moniteur suisse de police*) (see paragraph 27 above). Mr. Bozano was not even able to speak to his wife or his lawyer and at no time was any offer made to him that he should be expelled - if necessary under supervision - across the frontier of his choice or even across the nearest frontier, the Spanish border. On the contrary, he was forced to travel from Limoges to the customs post at Moillesulaz - some twelve hours and several hundred kilometres away -, handcuffed and flanked by policemen who in due course handed him over to Swiss colleagues (see paragraphs 25-26 above). Mr. Bozano's precise, detailed description of the events strongly suggests that this is what happened. His account seems plausible in the absence of any evidence or explanation to the contrary (see paragraph 22 above).

60. Viewing the circumstances of the case as a whole and having regard to the volume of material pointing in the same direction, the Court consequently concludes that the applicant's deprivation of liberty in the night of 26 to 27 October 1975 was neither "lawful", within the meaning of Article 5 § 1 (f) (art. 5-1-f), nor compatible with the "right to security of person". Depriving Mr. Bozano of his liberty in this way amounted in fact to a disguised form of extradition designed to circumvent the negative ruling of 15 May 1979 by the Indictment Division of the Limoges Court of Appeal, and not to "detention" necessary in the ordinary course of "action ... taken with a view to deportation". The findings of the presiding judge of the Paris tribunal de grande instance - even if obiter - and of the Limoges Administrative Court, even if that court had only to determine the lawfulness of the order of 17 September 1979, are of the utmost importance in the Court's view; they illustrate the vigilance displayed by the French courts.

There has accordingly been a breach of Article 5 § 1 (art. 5-1) of the Convention.

B. The alleged breach of Article 18 of the Convention, taken together with Article 5 § 1 (art. 18+5-1)

61. Mr. Bozano also relied on Article 18, taken together with Article 5 § 1 (art. 18+5-1). Article 18 (art. 18) provides:

"The restrictions permitted under this Convention to the ... rights and freedoms [secured in it] shall not be applied for any purpose other than those for which they have been prescribed."

The Court has already noted, in connection with Article 5 § 1 (art. 5-1) taken alone, that the deportation procedure was abused in the instant case for objects and purposes other than its normal ones. The Court does not deem it necessary to examine the same issue under Article 18 (art. 18).

C. The alleged breach of Article 5 § 4 (art. 5-4) of the Convention

62. At the hearing on 21 April 1986, counsel for the applicant repeated to the Court an allegation declared inadmissible by the Commission on 15 May 1984, namely that their client had never had available to him any proceedings which satisfied the requirements of Article 5 § 4 (art. 5-4).

This contention relates to facts separate from those complained of by Mr. Bozano under Article 5 § 1 (art. 5-1), and it consequently does not merely raise a question of legal classification or amount to an additional ground or argument. It is a separate complaint, and one which has been rejected in the decision setting out the limits of the dispute referred to the Court. That being so, the Court has no jurisdiction to entertain it (see, *inter alia*, the Barthold judgment of 25 March 1985, Series A no. 90, p. 27, § 61).

D. The alleged breach of Article 2 of Protocol No. 4 (P4-2)

63. Before the Commission, the applicant relied also on Article 2 § 1 of Protocol No. 4 (P4-2), which secures to "everyone lawfully within the territory of a State" the right to "liberty of movement and freedom to choose his residence". Counsel for the applicant did not revert to this point either in their memorial or in their addresses to the Court.

The Court's conclusions in relation to Article 5 § 1 (art. 5-1) of the Convention make it unnecessary for it to determine whether Article 2 § 1 of Protocol No. 4 (P4-2), applied in the instant case and, if so, whether it was complied with.

E. The application of Article 50 (art. 50) of the Convention

64. Article 50 (art. 50) of the Convention provides:

"If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

65. The applicant considered that only his release would amount to proper *restitutio in integrum*. He accordingly asked the Court, in his main submission, to recommend the Government to "approach the Italian



authorities through diplomatic channels, with a view to securing either a presidential pardon" - leading to his "rapid release" - or a reopening of the criminal proceedings taken against him in Italy from 1971 to 1976 (see paragraphs 12-15 above). The words "just satisfaction" appeared to him "vague" enough to cover "any type of reparation".

In the Government's view, the Court had no power to take such a course of action. Furthermore, they maintained that it would in any case be unconnected with the subject-matter of the dispute, since it would amount to recommending France to intervene in the enforcement of final decisions of the Italian courts.

The Court would merely point out that Mr. Bozano's complaints against Italy are not in issue before it, the Commission having declared them inadmissible on 12 July 1984 (see paragraph 39 above); it therefore upholds the Government's second ground of objection and rejects the applicant's main claim.

66. Mr. Bozano also sought, for his wife and for himself:

- compensation for material and non-material prejudice, assessed at more than 3,300,000 French francs (FF), allegedly sustained by them as a result of the detention already undergone;
- if the Court disallowed their main claim (see paragraph 65 above), compensation - in excess of 17,000,000 FF - for future material and non-material damage in respect of the years still to be spent in prison by him; and
- 140,000 FF in respect of the costs of the proceedings, less the sums paid in legal aid by the Commission and the Court.

Subject to noting that Mrs. Bozano had never had the standing of an applicant, the Commission's Delegate did not regard these claims as excessive.

As for the Government, they considered the claims inadmissible for failure to exhaust domestic remedies; in the alternative, they submitted that only "Mr. Bozano's arrest and detention on French territory" could be taken into consideration for the purposes of applying Article 50 (art. 50) in the instant case.

The Court acknowledges the correctness of the observation made by the Commission's Delegate regarding the applicant's wife, and consequently holds that the latter cannot claim any just satisfaction on her own account. The Court also points out, independently of paragraphs 46 and 49 of this judgment, that the rule of exhaustion of domestic remedies does not apply in connection with Article 50 (art. 50) (see, *inter alia*, the De Wilde, Ooms and Versyp judgment of 10 March 1972, Series A no. 14, pp. 7-9, §§ 14-16). As to the rest, the question must be reserved and the further procedure must be fixed, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 53 §§ 1 and 4 of the Rules of Court).

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Rejects the objection pleading the application's incompatibility with the provisions of the Convention;
2. Declares that the Government are estopped from relying on the rule of exhaustion of domestic remedies as regards the possibility of:
  - bringing an ordinary action for a flagrantly unlawful act in the Paris tribunal de grande instance; and
  - bringing an action for damages in the ordinary courts under Article 136 of the Code of Criminal Procedure;
3. Rejects as unfounded the remainder of the objection pleading non-exhaustion of domestic remedies;
4. Holds that there has been a breach of Article 5 § 1 (art. 5-1) of the Convention;
5. Holds that it is not necessary also to examine the case either under Article 18 taken together with Article 5 § 1 (art. 18+5-1) or under Article 2 of Protocol No. 4 (P4-2);
6. Holds that it has no jurisdiction to entertain the complaint relating to Article 5 § 4 (art. 5-4) of the Convention;
7. Rejects the claims for just satisfaction in so far as they sought to:
  - have the French Government make an approach to the Italian authorities through diplomatic channels;
  - secure financial compensation for the damage suffered by the applicant's wife;
8. Holds, as to the remainder of those claims, that the question of the application of Article 50 (art. 50) is not ready for decision; accordingly,
  - (a) reserves the said question in that respect;
  - (b) invites the Government to submit, within the forthcoming two months, their observations on the matter and, in particular, to notify the Court of any agreement they may reach with the applicant;
  - (c) reserves the further procedure and delegates to the President of the Chamber power to fix the same if need be.

Done in English and in French, and delivered at a public hearing at the Human Rights Building, Strasbourg, on 18 December 1986.

Signed: Rolv RYSSDAL President

Signed: Marc-André EISSEN Registrar