



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

COURT (CHAMBER)

CASE OF BOZANO v. FRANCE (ARTICLE 50)

(Application no. 9990/82)

JUDGMENT

STRASBOURG

2 December 1987

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*,
Mrs. D. BINDSCHIEDLER-ROBERT,
Mr. F. GÖLCÜKLÜ,
Mr. J. PINHEIRO FARINHA,
Mr. L.-E. PETTITI,
Sir Vincent EVANS,
Mr. C. RUSSO,

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

Having deliberated on 26 June and 27 November 1987,

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

PROCEDURE AND FACTS

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 14 March 1985. It 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. In its judgment of 18 December 1986, the Court held that there had been a violation of Article 5 § 1 (art. 5-1) of the Convention. The applicant's deprivation of liberty in the night of 26-27 October 1979, while the police were forcibly conveying him by car from Limoges to the Swiss border, had been neither "lawful" nor compatible with the "right to security of person"; it "amounted in fact to a disguised form of extradition designed to circumvent the negative ruling of 15 May 1979" by the appropriate court "and not to 'detention' necessary in the ordinary course of 'action ... taken with a view to deportation'" (Series A no. 111, pp. 22-27 and 29, §§ 53-60 of the reasons and point 4 of the operative provisions).

There remains only to be settled, in part, the question of the application of Article 50 (art. 50) in the present case. As regards the facts, reference

* 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 of originating applications (to the Commission) referred to the Court since its creation.

should be made to the judgment previously cited (pp. 8-16, §§ 11-37), and the Court will confine itself here to giving a few essential particulars.

3. The applicant was extradited to Italy from Switzerland on 18 June 1980 and is now on the island of Elba serving a sentence of life imprisonment passed on him in absentia by the Genoa Assize Court of Appeal on 22 May 1975 (*ibid.*, pp. 9 and 12, §§ 14 and 27).

Through his counsel, Mr. Bozano asked the Court, in his main submission, to recommend the French Government ("the Government") to approach the Italian authorities through diplomatic channels, with a view to securing either a presidential pardon or a reopening of the criminal proceedings taken against him; he also sought, for his wife and himself, compensation for material and non-material damage - assessed at more than 3,300,000 French francs (FF) - allegedly sustained by them as a result of the detention already undergone and, "if the Court disallowed their main claim ..., 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 "144,000 FF in respect of the costs of the proceedings, less the sums paid in legal aid by the Commission and the Court" (*ibid.*, p. 28, §§ 65-66).

In the judgment of 18 December the Court rejected, firstly, the applicant's main claim, as being unconnected with the subject-matter of the dispute, and, secondly, the claims made on Mrs. Bozano's behalf, as she did not have the standing of an applicant (*ibid.*, pp. 28-30, §§ 65-66 of the reasons and point 7 of the operative provisions). The Court reserved the remainder of the question of awarding just satisfaction, ruling that it was not ready for decision, and it invited the Government to submit their observations in writing within two months and, in particular, to notify the Court of any agreement they might reach with the applicant (*ibid.*, pp. 29-30, § 66 in fine of the reasons and point 8 of the operative provisions).

4. All attempts at reaching such an agreement having failed, the Registrar received pleadings from the Government, the lawyers for the applicant and the Delegate of the Commission on 23 February, 23 March and 11 May 1987 respectively.

5. At the final deliberations on 27 November 1987, Mrs. D. Bindschedler-Robert and Mr. F. Gölcüklü, substitute judges, replaced Mr. Cremona and Mr. Gersing, who were unable to attend (Rules 22 § 1 and 24 § 1 of the Rules of Court). The Court decided that in the circumstances there was no need to hold a hearing.

AS TO THE LAW

6. By Article 50 (art. 50) of the Convention,

"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."

The applicant sought financial compensation for damage and payment of lawyers' fees.

I. DAMAGE

7. In the first place, he sought compensation amounting to 18,729,000 FF - at the rate of 2,000 FF a day - in respect of his detention in France during the night of 26-27 October 1979, in Switzerland from 27 October 1979 to 18 June 1980 and in Italy since then, including the sentence he had still to serve until 18 June 2005, when "at best" he might be able to leave prison.

8. The Government did not dispute that he had to be awarded compensation for damage flowing from his forcible conveyance from Limoges to the Swiss border "for a period of less than twelve hours". In the light of the Court's case-law and of decisions of domestic courts, they considered that "nominal compensation" of not more than 1,000 FF was adequate.

In the Court's view, such a sum is far from being commensurate with the seriousness of the breach of Article 5 § 1 (art. 5-1) which, in its judgment of 18 December 1986, it held had been committed. This was a violation of the right to liberty and to security of person, a disguised form of extradition designed to circumvent a negative ruling by the appropriate French court, and an abuse of deportation procedure for objects and purposes other than its normal ones (see judgment previously cited, Series A no. 111, pp. 26-27, §§ 60-61). The attendant circumstances (*ibid.*, pp. 11-12, §§ 22-26, and pp. 25-26, § 59) inevitably caused the applicant substantial non-pecuniary damage.

9. In the Government's submission, France could not be held responsible for the other two deprivations of liberty undergone by Mr. Bozano, in Geneva and then on the island of Elba, as they did not flow from any action by the French authorities but from the applicant's conviction by the Genoa Assize Court of Appeal on 22 May 1975, upheld by the Italian Court of Cassation on 25 March 1976, and from Italy's extradition request to Switzerland shortly afterwards (*ibid.*, p. 9, §§ 14-15, and p. 12, § 27).

The applicant, on the other hand, contended that there was a direct and sufficient causal link between his "abduction" from Limoges and the aforementioned deprivations of liberty, the more so as the prejudicial consequences of the former were "foreseeable" and "intended".

The Court does not - and will not hereafter - have to consider whether the two detentions subsequent to the night of 26-27 October 1979 were compatible with the Convention. On 12 July 1984, the Commission declared the application against Italy lodged with it by Mr. Bozano to be inadmissible; on the same day, it also declared his application against Switzerland to be inadmissible except for one point, which it declared admissible on 13 December 1984 (Article 5 § 4) (art. 5-4), and on 9 May 1987 it struck what remained of the application out of its list of cases after Mr. Bozano had withdrawn his complaint (*ibid.*, p. 17, § 39, p. 22, § 53, and p. 28, § 65 in fine; Rules 44 § 1 (a), 49 and 54 of the Commission's Rules of Procedure). Accordingly, the award of just satisfaction cannot in any way provide a basis for calling into question or - even partly - compensating for either Mr. Bozano's conviction or the decision of 13 June 1980 in which the Swiss Federal Court rejected the applicant's objection to extradition. In this respect, the Court accepts the Government's argument.

With respect to Article 50 (art. 50), reference nonetheless needs to be made, as the Delegate of the Commission suggests, "to the applicant's situation as it was prior to the enforcement of the deportation order".

On 15 May 1979, the Indictments Division of the Limoges Court of Appeal ruled against the extradition sought by Italy, on the ground that it would be contrary to French public policy (*ordre public*). For all that this decision was binding on the Government (*ibid.*, p. 10, § 18), it did not preclude a deportation order being made. In the ordinary course of events, however, the applicant should have been able to challenge such an order in the administrative court and apply to the Conseil d'État for a stay of execution. By waiting more than a month before serving the deportation order of 17 September 1979 on the applicant, the French authorities prevented him from making any effective use of the remedies theoretically available to him; they 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 (*ibid.*, p. 20, § 48, p. 21, § 50, and pp. 25-26, § 59).

After the judicial supervision order to which Mr. Bozano had been subject since 19 September 1979 had been discharged on 26 October 1979, he could reasonably hope to remain at liberty in France for at least a while. If any appeals of his to the administrative court and the Conseil d'État had failed - by no means a foregone conclusion in view of the first reason given for the judgment quashing the deportation order (*ibid.*, p. 16, § 35) -, he should normally have been able to go (under supervision, if necessary) to a country other than Switzerland (*ibid.*, p. 26, § 59 in fine). Admittedly, there is nothing to say that another country would not likewise have handed him over to Italy under an extradition treaty applicable to their mutual relations, or even in the absence of such a treaty; but there would at least have been some delay in delivering him into the custody of the Italian authorities. The

forcible removal of Mr. Bozano from Limoges to the Swiss border therefore caused him real damage, although this cannot be precisely assessed. This was a consequence not of the deportation itself, as the Government stated, but of the "process" whereby it was carried out and of the unlawful and arbitrary deprivation of liberty suffered by the applicant in France during the night of 26-27 October 1979.

In case an idea of this kind found favour with the Court, the Government argued in the alternative that the additional amount awarded under this head should not exceed 2,000 FF; but in the circumstances of the case such an assessment is not commensurate with the scale of the relevant damage.

10. Taking its decision on an equitable basis, as required by Article 50 (art. 50), the Court awards the applicant 100,000 FF in respect of the total amount of damage he sustained.

II. LAWYERS' FEES

11. Before the hearing in April 1986, Mr. Bozano's lawyers said they had worked on the file for 360 hours since the application to the Commission (30 March 1982); at the rate of 400 FF an hour, they sought 144,000 FF in legal costs, from which the sums received in legal aid for the proceedings before the Commission and the Court would fall to be deducted. They did not subsequently amend their claim.

The Government left this matter to the discretion of the Court.

12. The amount indicated above does not seem excessive. The sum of 5,650 FF in fees paid by the Council of Europe for the period in question must be deducted from it.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that respondent State is to pay the applicant 100,000 FF as damages and 138,350 FF in respect of legal costs;
2. Rejects the remainder of the claim for just satisfaction.

Done in English and in French and notified in writing on 2 December 1987 pursuant to Rule 54 § 2, second sub-paragraph, of the Rules of Court.

Rolv RYSSDAL
President

Marc-André EISSEN
Registrar