



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

COURT (CHAMBER)

CASE OF COLOZZA v. ITALY

(Application no. 9024/80)

JUDGMENT

STRASBOURG

12 February 1985

In the Colozza 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. G. WIARDA, *President*,
Mr. J. CREMONA,
Mr. Thór VILHJÁLMSSON,
Mr. E. GARCÍA DE ENTERRÍA,
Mr. L.-E. PETTITI,
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 September 1984 and on 22 January 1985,

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 18 July 1983, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. The case originated in an application (no. 9024/80) against the Italian Republic lodged with the Commission on 5 May 1980 under Article 25 (art. 25) by Mr. Giacinto Colozza, an Italian national. The Commission had ordered the joinder of this application with another (no. 9317/81), lodged against the same State on 21 July 1978 by Mr. Pedro Rubinat, a Spanish national.

2. The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Italy recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the request was to obtain a decision as to whether or not the facts of the case disclosed a breach by the respondent State of its obligations under Article 6 para. 1 (art. 6-1).

* Note by the Registrar: The case is numbered 7A/1983/63/97. 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.

3. In response to the inquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, Mr. Colozza stated that he wished to take part in the proceedings pending before the Court and designated the lawyer who would represent him (Rule 30).

4. The Chamber of seven judges to be constituted included, as ex officio members, Mr. C. Russo, the elected judge of Italian nationality (Article 43 of the Convention) (art. 43), and Mr. G. Wiarda, the President of the Court (Rule 21 para. 3 (b)). On 21 September 1983, the President drew by lot, in the presence of the Registrar, the names of the five other members, namely Mr. J. Cremona, Mr. Thór Vilhjálmsson, Mr. L. Liesch, Mr. L.-E. Pettiti and Mr. J. Gersing (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43). Subsequently, Mr. E. García de Enterría, substitute judge, replaced Mr. Liesch, who was prevented from taking part in the consideration of the case (Rules 22 para. 1 and 24 para. 1).

5. Mr. Wiarda, who had assumed the office of President of the Chamber (Rule 21 para. 5), ascertained, through the Registrar, the views of the Agent of the Italian Government ("the Government"), the Delegate of the Commission and the representative of the applicant regarding the procedure to be followed. On 6 October 1983, the President directed that the Agent and the representative should each have until 15 November to file a memorial and that the Delegate should be entitled to reply in writing within two months from the date of the transmission to him by the Registrar of whichever of the aforesaid documents should last be filed (Rule 37 para. 1).

On 7 November 1983, the President extended the first time-limit to 28 December. The memorial of Mr. Colozza - to whom the President had granted leave, on 22 August 1983, to use the Italian language during the proceedings (Rule 27 para. 3) - was received at the registry on 3 January 1984. The Agent of the Government, to whom the President had granted a further extension of the time-limit until 29 February, filed the original Italian text of his memorial at the registry on 2 March and the French translation, the official text for the Court, on 5 April.

The Delegate stated, in a letter of 14 May, that he did not intend to avail himself of his right to reply in writing.

6. On various dates between 15 February and 17 May 1984, the registry was informed first of Mr. Colozza's death, on 2 December 1983, and then of his widow's wish to have the proceedings continued, to take part therein and to be represented by the same legal adviser as her husband. For the sake of convenience, the present judgment will continue to refer to Mr. Colozza as "the applicant", although Mrs. Colozza is today to be regarded as having this status (see the X v. the United Kingdom judgment of 5 November 1981, Series A no. 46, p. 15, para. 32).

7. After consulting, through the Registrar, the Agent of the Government, the Commission's Delegate and the applicant's representative, the President directed on 28 June 1984 that the oral hearings should open on

26 September 1984 (Rule 38). He also decided that the hearings would relate only to Mr. Colozza's case and not to that of Mr. Rubinat.

On 12 July, the President granted to the Agent of the Government leave to use the Italian language at the hearings (Rule 27 para. 2).

On 14 August, the Registrar received Mrs. Colozza's claims under Article 50 (art. 50) of the Convention and, on 18 September, the Government's observations thereon.

On 31 August and 26 September, the Commission and the Government filed a certain number of documents which the Registrar, acting on the President's instructions, had requested them to supply. Further documents were lodged by the applicant's representative on 10 and 12 December.

8. The hearings were held in public at the Human Rights Building, Strasbourg, on the appointed day. Immediately before they opened, the Court had held a preparatory meeting at which it had decided, inter alia, to sever the case of Mr. Rubinat from that of Mr. Colozza.

There appeared before the Court:

- for the Government

Mr. G. BOSCO, Minister Plenipotentiary,

Diplomatic Legal Service of the Ministry of Foreign
Affairs,

Co-Agent,

Mr. A. GIARDA, avvocato

and professor at Milan University,

Counsel;

- for the Commission

Mr. J. SAMPAIO,

Delegate;

- for the applicant

Mr. A. MIELE, avvocato,

Counsel.

The Court heard their addresses and their replies to its questions.

AS TO THE FACTS

I. THE PARTICULAR FACTS OF THE CASE

9. Mr. Giacinto Colozza was born in 1924 and died in 1983. He was an Italian citizen and lived in Rome.

10. On 20 June 1972, the carabinieri reported the applicant to the Rome public prosecutor's office for various alleged offences, including fraud, committed before November 1971. They said that they had not questioned the suspect because they had failed to contact him at his last-known address. In fact, his flat, in via Longanesi, had been closed and his furniture seized by the judicial authorities; the manager of the building, who was also the

administrator appointed by the court in the attachment proceedings, was unaware of Mr. Colozza's new address.

On 4 October 1973, the investigating judge issued a "judicial notification" (comunicazione giudiziaria) intended to inform the applicant of the opening of criminal proceedings against him. A bailiff attempted to serve it on Mr. Colozza at the address - via Fonteiana - shown in the Registrar-General's records, but without success: he had moved - about ten years earlier according to the carabinieri and five years earlier according to the police - and had omitted to inform the City Hall of his change of residence as required by law.

11. Meanwhile Mr. Colozza, when renewing his driving licence in September 1973, had given, as his current address, that shown in the Registrar-General's records (via Fonteiana).

12. On 14 November 1973, after unsuccessful searches at the latter address, the investigating judge declared the accused untraceable (irreperibile), appointed an official defence lawyer for him and continued the investigations. Thereafter, in pursuance of Article 170 of the Code of Criminal Procedure (see paragraph 19 below), all the documents which had to be served on the applicant were lodged in the registry of the investigating judge, the defence counsel being informed in each case.

On 12 November 1974 and 30 May and 3 June 1975, the investigating judge issued three arrest warrants which were not executed because the competent authorities still did not know where Mr. Colozza was living. It should, however, be noted that the address indicated on the warrants was via Longanesi. On each occasion, the carabinieri drew up a report of fruitless searches (vane ricerche). Mr. Colozza was thenceforth regarded as "latitante", that is as a person wilfully evading the execution of a warrant issued by a court (see paragraph 20 below).

13. By a decision of 9 August 1975, the applicant was committed for trial.

A first hearing was held by the Rome Regional Court on 6 May 1976. Although he had been informed of the lodging of the summons to appear (see paragraph 12 above), the accused's officially-appointed defence counsel did not appear, with the result that the court had to appoint a replacement and postponed the hearings until 26 November. On that date, a new lawyer was officially assigned, because the one appointed on 6 May did not appear either. The court adjourned the trial and concluded it on 17 December 1976, after appointing, during the sitting and again for the same reason, another official defence lawyer. It sentenced Mr. Colozza to six years' imprisonment (reclusione) and a fine (multa) of 600,000 Lire. The public prosecutor had called for sentences of five years' imprisonment and a fine of 2,000,000 Lire and the officially-appointed defence counsel had agreed with his submissions.

The judgment was lodged in the registry on 29 December 1976 and a copy was served on the lawyer. It became final on 16 January 1977, as he had not entered an appeal.

14. On 20 May 1977, the public prosecutor's office issued an arrest warrant. The applicant was arrested at his home in Rome, 31 via Pian Due Torri, on the following 24 September. On the next day, he raised a "procedural objection" (*incidente d'esecuzione*) as regards this warrant and at the same time filed a "late appeal" (*appello apparentemente tardivo*; see paragraph 23 below). He appointed a lawyer and instructed him to draft the grounds of appeal. However, he submitted them himself on 24 December 1977 and lodged a supplementary memorial on 25 July 1978. On 15 November and 28 December 1977, he appointed new lawyers.

15. On 29 April 1978, the Rome Regional Court dismissed the "procedural objection" and ordered that the papers be sent to the Rome Court of Appeal for a ruling on the "late appeal".

Mr. Colozza maintained that he had been wrongly declared "latitante" and that the notifications of the summons to appear and of the extract from the judgment rendered by default were therefore null and void.

He explained that, as he had received notice to quit from his landlord at the end of 1971, he had left his flat in via Fonteiana and, before finding a new one, had lived in a hotel. He pointed out that his new address (via Pian Due Torri) was known to the police since, on 12 March 1977, they had summoned him to the local police station for questioning; the same applied both to the Rome public prosecutor's office, which, on 7 October 1976 (that is to say, almost two months before adoption of the judgment), had sent him a "judicial notification" concerning other criminal proceedings, and to various public authorities, which had served documents on him, using the notification service of the Rome City Hall.

16. Mr. Colozza's appeal was examined together with an appeal that had been entered by his co-accused. The Court of Appeal heard Mr. Colozza both on the merits of the case and on the fact that he had been treated as "latitante".

The public prosecutor attached to the Court of Appeal also submitted that the judgment of 17 December 1976 should be set aside; in his view, Mr. Colozza should not have been regarded as "latitante".

On 10 November 1978, the Court of Appeal confirmed the conviction of the co-accused. As to Mr. Colozza, it held that his appeal was inadmissible for failure to observe time-limits. It ruled that the time-limit for filing the grounds of appeal - twenty days, under Article 201 of the Code of Criminal Procedure - had begun to run on 13 October 1977, the date on which the arrest warrant had been served, whereas the memorial had not been submitted until 24 December 1977.

17. Mr. Colozza lodged an appeal on points of law but it was dismissed by the Court of Cassation on 5 November 1979. It accepted that the Court of

Appeal had wrongly declared the "late appeal" inadmissible for failure to file the grounds in time: it should first have determined whether, as the appellant alleged, the first-instance proceedings were void. However, the Court of Cassation concluded that this was not so: it considered that Mr. Colozza had rightly been declared first to be "irreperibile" and then to be "latitante". It added that the Court of Appeal should have declared the appeal inadmissible as out of time, since it had been lodged at a time when the judgment under appeal had already become final.

Mr. Colozza, who had been in custody since 23 September 1977 to serve his sentence, as well as other suspended sentences previously passed on him, died in prison on 2 December 1983 (see paragraph 6 above).

II. RELEVANT DOMESTIC LAW

A. Notification

1. General principles concerning notification to an accused person who is not in custody

18. The Code of Criminal Procedure lays down the methods for notifying an accused person who is not in custody of the various documents pertaining to the investigations and the trial.

When the first procedural step involving the presence of such an accused is taken, the court, the public prosecutor's office or the official of the criminal investigation department must ask the accused to indicate the place where notifications should be made or to elect an address for service (Article 171, first paragraph). If he does not do so, Article 169 applies; this provides, *inter alia*, that if the first notification cannot be made to the party concerned in person, it is to be delivered, at his place of residence or of work, to a person living with him or to the caretaker. If those two places are not known, notification is to be left where the party concerned is living temporarily or has an address, by delivery to one of the above-mentioned persons.

2. Notification to an accused who is "irreperibile" or "latitante"

19. The Code of Criminal Procedure does not define the concept of "irreperibile". Nevertheless, according to the relevant rules, it may apply to any person on whom a document concerning criminal proceedings opened against him has to be served and whom it has not been possible to trace because his address was unknown. The mere establishment of this fact - the question whether there has been a wilful evasion of the investigations being irrelevant in this context - is enough for this purpose. According to Article

170, the bailiff has to inform the judge who ordered the notification. The latter, after directing that further searches be conducted at the place of birth or last residence, will then issue a decree (decreto) to the effect that notifications shall be effected by being lodged in the registry of the court before which proceedings are in progress. The defence lawyer must be informed immediately whenever a document is so lodged; if the accused has no lawyer, the court has to assign one to him officially.

20. This system of notification is also used if the accused is "latitante" (Article 173).

According to the first paragraph of Article 268, any person wilfully evading execution of, *inter alia*, an arrest warrant shall be regarded as being "latitante". The third paragraph states that whenever classification as "latitante" entails legal consequences, these are to extend to the other proceedings instituted against the person in question. If he does not have a lawyer of his own choosing, an official appointment will be made.

The Court of Cassation has consistently held that an intention to evade arrest is to be presumed where adequate searches by the criminal investigation police have been unsuccessful. This presumption exists even if the person in question, after moving and failing to make the statutory declaration of change of residence, has not resorted to any special subterfuges to avoid arrest (3rd Criminal Chamber, 12 March 1973, no. 559, Repertorio 1974, no. 3440; 6th Criminal Chamber, 20 October 1971, no. 3195, Repertorio 1973, no. 4897; Massimario delle decisioni penali, 1972, no. 1959). In its judgment no. 98 of 2 June 1977, the Constitutional Court specified, however, that the presumption can be rebutted and is thus not irrefutable.

The term "adequate searches" leaves the criminal investigation police with a measure of discretion as to the steps to be taken; this discretion is however limited, in that the person concerned must be sought at the residence indicated in the arrest warrant (2nd Criminal Chamber, 19 October 1978, no. 12698, *massima* no. 140224).

B. Trial by default (contumacia)

21. Although trial by "contumacia" (by default; Articles 497 to 501 of the Code of Criminal Procedure) is classified as a special form of proceedings, the ordinary procedure is followed (Article 499, first paragraph). Such a trial is held when the accused, after being duly summoned, does not appear at the hearing and neither requests nor agrees that it take place in his absence.

22. Under Italian law, an accused who fails to appear (contumace) has the same rights as an accused who is present. He is, for example, entitled to be defended by a lawyer - who will be officially assigned to him by the court if he has not chosen one himself - and to lodge an ordinary appeal or

an appeal on points of law against the judgment concerning him. The time-limit for entering such an appeal begins to run only from the day on which he was notified of the decision by means of service of an extract from the judgment. However, in the case of a person who has also been declared to be "irreperibile" or "latitante", time begins to run from the date of the lodging of the judgment in the registry of the court that rendered it.

C. "Late appeal"

23. According to Italian case-law, individuals who have not entered an appeal and who consider that the notification of the judgment was irregular can lodge a "late appeal". The time-limits to be observed are the same as for the ordinary appeal (three days for giving notice of appeal and twenty days for submitting the grounds), but both start to run from the date when the person in question had knowledge of the judgment. Nevertheless, in the case of a person regarded as "latitante" the court hearing the appeal can determine the merits of the criminal charge only if it finds that there has been a failure to comply with the rules governing declarations that an accused is "latitante" or governing service on him of the documents in the proceedings; in addition, it is for the person concerned to prove that he was not seeking to evade justice.

D. Defence of the accused; related rules as to nullity

24. Article 185 of the Code of Criminal Procedure provides, *inter alia*, that proceedings shall be null and void if the rules on the participation, assistance and representation of the accused have not been observed. Failure to serve a summons to appear at the hearing and the absence, at that stage, of the accused's defence counsel constitute grounds of incurable nullity, of which the court must take notice of its own motion at any point in the proceedings.

PROCEEDINGS BEFORE THE COMMISSION

25. Mr. Colozza applied to the Commission on 5 May 1980. He alleged that there had been several violations of Article 6 (art. 6) of the Convention. In particular, he complained that he was at no time aware of the proceedings instituted against him and that he had therefore not been able to defend himself in a practical and effective manner. He also relied on Article 13 (art. 13), maintaining that he had had no "effective remedy" against the judgment of the Rome Regional Court.

On 9 July 1982, the Commission, after ordering the joinder of the application (no. 9024/80) with that of Mr. Rubinat (no. 9317/81) (see paragraphs 1 and 8 above), declared it admissible as regards Article 6 (art. 6) and inadmissible as regards the remainder. In its report of 5 May 1983 (Article 31) (art. 31), the Commission expressed the unanimous opinion that Article 6 para. 1 (art. 6-1) had been violated. The full text of the Commission's opinion and of the separate opinion contained in the report is reproduced as an annex to the present judgment.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 PARA. 1 (art. 6-1)

26. At the hearings before the Court, the applicant's lawyer contended that there had been a violation of paragraph 3 (a) of Article 6 (art. 6-3-a). The Commission, for its part, considered the case under paragraph 1 (art. 6-1); the Government denied that there had been any breach at all.

The Court recalls that the guarantees contained in paragraph 3 of Article 6 (art. 6-3) are constituent elements, amongst others, of the general notion of a fair trial (see the Goddi judgment of 9 April 1984, Series A no. 76, p. 11, para. 28). In the circumstances of the case, the Court, whilst also having regard to those guarantees, considers that it should examine the complaint under paragraph 1, which provides

"In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal"

The basic question is whether the combined recourse to the procedure for notifying persons who are untraceable (irreperibile) and to the procedure for holding a trial by default - in the form applicable to "latitanti" (see paragraph 20 above) - deprived Mr. Colozza of the right thus guaranteed.

27. Although this is not expressly mentioned in paragraph 1 of Article 6 (art. 6-1), the object and purpose of the Article taken as a whole show that a person "charged with a criminal offence" is entitled to take part in the hearing. Moreover, sub-paragraphs (c), (d) and (e) of paragraph 3 (art. 6-3-c, art. 6-3-d, art. 6-3-e) guarantee to "everyone charged with a criminal offence" the right "to defend himself in person", "to examine or have examined witnesses" and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court", and it is difficult to see how he could exercise these rights without being present.

28. In the instant case, the Court does not have to determine whether and under what conditions an accused can waive exercise of his right to appear at the hearing since in any event, according to the Court's

established case-law, waiver of the exercise of a right guaranteed by the Convention must be established in an unequivocal manner (see the Neumeister judgment of 7 May 1974, Series A no. 17, p. 16, para. 36; the Le Compte, Van Leuven and De Meyere judgment of 23 June 1981, Series A no. 43, pp. 25-26, para. 59; the Albert and Le Compte judgment of 10 February 1983, Series A no. 58, p. 19, para. 35).

In fact, the Court is not here concerned with an accused who had been notified in person and who, having thus been made aware of the reasons for the charge, had expressly waived exercise of his right to appear and to defend himself. The Italian authorities, relying on no more than a presumption (see paragraphs 12 and 20 above), inferred from the status of "latitante" which they attributed to Mr. Colozza that there had been such a waiver.

In the Court's view, this presumption did not provide a sufficient basis. Examination of the facts does not disclose that the applicant had any inkling of the opening of criminal proceedings against him; he was merely deemed to be aware of them by reason of the notifications lodged initially in the registry of the investigating judge and subsequently in the registry of the court. In addition, the attempts made to trace him were inadequate: they were confined to the flat where he had been sought in vain in 1972 (via Longanesi) and to the address shown in the Registrar-General's records (via Fonteiana), yet it was known that he was no longer living there (see paragraphs 10 and 12 above). The Court here attaches particular importance to the fact that certain services of the Rome public prosecutor's office and of the Rome police had succeeded, in the context of other criminal proceedings, in obtaining Mr. Colozza's new address (see paragraph 15 above); it was thus possible to locate him even though - as the Government mentioned by way of justification - no data-bank was available. It is difficult to reconcile the situation found by the Court with the diligence which the Contracting States must exercise in order to ensure that the rights guaranteed by Article 6 (art. 6) are enjoyed in an effective manner (see, *mutatis mutandis*, the Artico judgment of 13 May 1980, Series A no. 37, p. 18, para. 37).

In conclusion, the material before the Court does not disclose that Mr. Colozza waived exercise of his right to appear and to defend himself or that he was seeking to evade justice. It is therefore not necessary to decide whether a person accused of a criminal offence who does actually abscond thereby forfeits the benefit of the rights in question.

29. According to the Government, the right to take part in person in the hearing does not have the absolute character which is apparently attributed to it by the Commission in its report; it has to be reconciled, through the striking of a "reasonable balance", with the public interest and notably the interests of justice.

It is not the Court's function to elaborate a general theory in this area (see, *mutatis mutandis*, the Deweer judgment of 27 February 1980, Series A no. 35, p. 25, para. 49). As was pointed out by the Government, the impossibility of holding a trial by default may paralyse the conduct of criminal proceedings, in that it may lead, for example, to dispersal of the evidence, expiry of the time-limit for prosecution or a miscarriage of justice. However, in the circumstances of the case, this fact does not appear to the Court to be of such a nature as to justify a complete and irreparable loss of the entitlement to take part in the hearing. When domestic law permits a trial to be held notwithstanding the absence of a person "charged with a criminal offence" who is in Mr. Colozza's position, that person should, once he becomes aware of the proceedings, be able to obtain, from a court which has heard him, a fresh determination of the merits of the charge.

30. The Contracting States enjoy a wide discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of Article 6 para. 1 (art. 6-1) in this field. The Court's task is not to indicate those means to the States, but to determine whether the result called for by the Convention has been achieved (see, *mutatis mutandis*, the De Cubber judgment of 26 October 1984, Series A no. 86, p. 20, para. 35). For this to be so, the resources available under domestic law must be shown to be effective and a person "charged with a criminal offence" who is in a situation like that of Mr. Colozza must not be left with the burden of proving that he was not seeking to evade justice or that his absence was due to force majeure.

31. According to Italian case-law, the applicant was entitled to lodge a "late appeal" and, in fact, he did so (see paragraphs 14 and 23 above). This remedy does not satisfy the criteria mentioned above. The court hearing the appeal can determine the merits (in French: "bien-fondé") of the criminal charge, as regards the factual and legal issues, only if it finds that the competent authorities have failed to comply with the rules governing declarations that an accused is "latitante" or governing service on him of the documents in the proceedings; in addition, it is for the person concerned to prove that he was not seeking to evade justice (see paragraph 23 above). In the present case, neither the Court of Appeal nor the Court of Cassation redressed the alleged violation: the former confined itself to holding the appeal inadmissible and the latter concluded that the declaration of "latitanza" was legitimate (see paragraphs 16 and 17 above).

32. Thus, Mr. Colozza's case was at the end of the day never heard, in his presence, by a "tribunal" which was competent to determine all the aspects of the matter.

According to the Government, however, the applicant himself was responsible for this state of affairs since he neither informed the City Hall of his change of address nor, once he was treated as "latitante", took the

initiative of supplying an address for the service of documents or of giving himself up.

The Court does not see how Mr. Colozza could have taken the second or the third course; it is not established that he was in any way aware of the proceedings instituted against him.

The first alleged shortcoming concerns nothing more than a regulatory offence (*illecito amministrativo*); the consequences which the Italian judicial authorities attributed to it are manifestly disproportionate, having regard to the prominent place which the right to a fair trial holds in a democratic society within the meaning of the Convention (see, *mutatis mutandis*, the above-mentioned De Cubber judgment, Series A no. 86, p. 16, para. 30 in fine).

33. There was therefore a breach of the requirements of Article 6 para. 1 (art. 6-1).

II. APPLICATION OF ARTICLE 50 (art. 50)

34. Article 50 (art. 50) of the Convention reads as follows:

"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."

35. The applicant's widow claimed just satisfaction, but left the amount thereof to the Court's discretion. The Commission indicated its agreement. The Government, whilst contesting the existence of a violation, took the same position; however, they raised the question whether Mrs. Colozza could validly replace her husband in the proceedings.

The question is thus ready for decision (Rule 53 para. 1 of the Rules of Court).

36. Mrs. Colozza based her claim on the fact that her husband served a large part - about six years - of the sentence imposed on him. She maintained that this had occasioned, both for him and for her, physical and mental suffering and also financial loss.

37. The Government pointed out that the period which Mr. Colozza spent in prison was the result not only of the sentence passed on 17 December 1976, but also of other sentences which were unconnected with the present proceedings. They also considered that his conduct should not be overlooked.

38. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6 (art. 6). Whilst the Court cannot speculate as to the outcome of the trial had the position been otherwise, it does not find it

unreasonable to regard Mr. Colozza as having suffered a loss of real opportunities (see, *mutatis mutandis*, the Goddi judgment of 9 April 1984, Series A no. 76, pp. 13-14, para. 35). To this has to be added the non-pecuniary damage undoubtedly suffered by him and by his widow.

These elements of damage do not lend themselves to a process of calculation. Taking them on an equitable basis, as is required by Article 50 (art. 50), the Court awards Mrs. Colozza, who must be recognised as having the status of "injured party" (see, *mutatis mutandis*, the above-mentioned Deweer judgment, Series A no. 35, pp. 19-20, para. 37, and p. 32, para. 60, and, *a contrario*, the X v. the United Kingdom judgment of 18 October 1982, Series A no. 55, p. 16, para. 19), an indemnity of 6,000,000 Lire.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 6 para. 1 (art. 6-1);
2. Holds that the respondent State is to pay to Mrs. Colozza six million (6,000,000) Lire by way of just satisfaction.

Done in English and in French, and delivered at a public hearing at the Human Rights Building, Strasbourg, on 12 February 1985.

Gérard WIARDA
President

Marc-André EISSEN
Registrar