In the Guzzardi **case,**

The European Court of Human Rights, taking its decision in plenary session in application of Rule 48 of the Rules of Court and composed of the following judges:

Mr. G. WIARDA, President,
Mr. G. BALLADORE PALLIERI,
Mr. M. ZEKIA,
Mr. J. CREMONA,
Mr. Thór VILHJÁLMSSON,
Mr. R. RYSSDAL,
Mr. W. GANSHOF VAN DER MEERSCH,
Sir Gerald FITZMAURICE,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. D. EVRIGENIS,
Mr. P.-H. TEITGEN,
Mr. G. LAGERGREN,
Mr. L. LIESCH,
Mr. F. GÖLCÜKLÜ,
Mr. F. MATSCHER,
Mr. J. PINHEIRO FARINHA,
Mr. E. GARCIA DE ENTERRIA,
Mr. B. WALSH,

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

Having deliberated in private on 28 and 29 April and on 1 and 2 October 1980,

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

AS TO THE FACTS

I. PARTICULAR FACTS OF THE CASE

A. The criminal proceedings taken against Mr. Guzzardi

9. Mr. **Guzzardi**, an Italian citizen born in 1942, had left Palermo (Sicily) in 1966 to take up residence in Vigevano (in the province of Pavia). He was arrested on 8 February 1973, placed in detention on remand in Milan and then charged with conspiracy and being an accomplice to the abduction on 18 December 1972 of a businessman; the latter had been freed by his kidnappers on 7 February 1973 after payment of a substantial ransom.

The applicant was acquitted on 13 November 1976 by the Milan Regional Court (Tribunale di Milano) for lack of sufficient evidence, but convicted on 19 December 1979 by the Milan Court of Appeal which sentenced him to eighteen years' imprisonment and a fine.

The criminal proceedings in question are not in issue, at least not in direct issue, in the present case.

10. Under Article 272 (first paragraph, item 2) of the Italian Code of Criminal Procedure, the applicant's detention on remand – during which he married his fiancée by whom he shortly afterwards had a son - could not continue for more than two years; it thus had to terminate on 8 February 1975 at the latest.

11. On that date, Mr. **Guzzardi** was removed from Milan gaol and taken under police escort to the island of Asinara, which lies off Sardinia.

B. The measure of "special supervision" applied to the applicant

12. On 23 December 1974, the Milan Chief of Police (questore) had in fact sent to the Milan State prosecutor (procuratore della Repubblica) a report recommending that Mr. **Guzzardi** be subjected to the measure of "special supervision" provided for in section 3 of Act no. 1423 of 27 December 1956 ("the 1956 Act" - see paragraphs 45-51 below) and section 2 of Act no. 575 of 31 May 1965 ("the 1965 Act" - see paragraph 52 below). The report referred to indications that although the applicant claimed to be working in the building trade, he was actually engaged in illegal activities and belonged to a band (cosca) of mafiosi; it listed four convictions pronounced against him in 1965, 1967, 1969 and 1972 and described him as "one of the most dangerous" of individuals.

Following an application made in accordance with this recommendation by the State prosecutor on 14 January 1975, the Milan Regional Court (2nd Criminal Chamber) directed on 30 January that Mr. **Guzzardi** be placed under special supervision for three years, the measure to be combined with the obligation to reside "in the district (comune) of the island of Asinara", a locality that had been designated by the Ministry of the Interior. In its decision the Court further directed that the applicant should:

- start looking for work within a month, establish his residence in the prescribed locality, inform the supervisory authorities immediately of his address and not leave the place fixed without first notifying them;
- report to the supervisory authorities twice a day and whenever called upon to do so;
- lead an honest and law-abiding life and not give cause for suspicion;
- not associate with persons convicted of criminal offences and subjected to preventive or security measures;
- not return to his residence later than 10 p.m. and not go out before 7 a.m., except in case of necessity and after having given notice in due time to supervisory authorities;
- not keep or carry any arms;
- not frequent bars or night-clubs and not take part in public meetings;
- inform the supervisory authorities in advance of the telephone number and name of the person telephoned or telephoning each time he wished to make or receive a long-distance call.

13. Mr. **Guzzardi** appealed to the Milan Court of Appeal; his appeal had no suspensive effect (section 4, sixth paragraph, of the 1956 Act) and so did not prevent the contested decision from being put into effect.

In a memorial of 10 February 1975, his lawyer, Mr. Catalano, challenged the decision on a number of grounds, alleging that it was invalid and unjustified. He submitted, in particular, that on Asinara his client could neither find employment nor live together with his wife and child; there was thus an inconsistency between the reasoning and the operative provisions of the decision of 30 January. In addition, the decision referred to a non-existent district since in point of fact the island was no more than a sub-division of the district of Porto Torres (Sardinia). Mr. Catalano requested the Court of Appeal, in the first place, to quash the decision in its entirety; in the alternative, to limit it to special supervision without an order for compulsory residence; in the further alternative, to designate a district in Northern Italy where the applicant might find work, live with his family, meet with his lawyer in order to prepare his defence in the criminal proceedings and attend, as and when necessary, an urological clinic to receive the treatment required by his state of health.

14. On 12 February, the Court of Appeal (1st Criminal Chamber), by way of a preliminary ruling on submissions to the same effect by the public prosecutor, ordered that Mr. **Guzzardi** be transferred to the urological clinic of Sassari hospital (Sardinia); it also instructed its registry to seek information from the carabinieri in Sassari on the possibility of finding accommodation for three people and work on the island of Asinara.

However, on 14 February the prosecuting authorities requested the Court of Appeal to revoke or suspend the aforesaid order. They pointed out that during his detention on remand Mr. **Guzzardi** had refused to submit to analyses in the University of Milan urological clinic; that experts considered that he was probably not suffering from any serious illness; that his covert intention was to use hospitalisation as a means of escape; that section 3 of the 1956 Act did not prohibit an order for compulsory residence in a given locality within a district; that the Court of Cassation had so held in two judgments, one of which concerned precisely the island of Asinara, which was, besides, "potentially" one of the best places in Italy for tourism.

The Court of Appeal consequently suspended its order on the same day and directed that further hearings on the matter be held on 12 March 1975.

15. The officer commanding the criminal investigation department of the Milan carabinieri wrote, also on 14 February 1975, to the Court of appeal with the following information which had been supplied by the Sassari carabinieri:

- for those subjected to compulsory residence on Asinara, there were only two flats suitable for accommodating a family; they were occupied by the families in turn for periods of between thirty and sixty days;
- the island offered no possibility of permanent employment; there was just one firm which employed two residents in turn for short spaces of time;
- the police stationed on Asinara were in a position to effect the requisite supervision.

16. On 17 and 21 February 1975, Mr. Catalano filed memorials with the Court of Appeal challenging the "fanciful" statements of the prosecuting authorities and requesting that further enquiries be undertaken in the shape of an investigation on the spot (sopral-luogo). In his view, his client was physically and mentally a prisoner (carcerato) on Asinara; he was vegetating there in conditions worse than those of his detention on remand. The applicant himself, in a letter of 20 February, described the island as a "veritable concentration camp".

17. On 12 March 1975, the Milan Court of Appeal (1st Chamber) dismissed the appeal and confirmed the decision of 30 January. As regards Mr. **Guzzardi**'s health and the absence of violation of section 3 of the 1956 Act, the Court of Appeal relied in substance on the arguments that had already been invoked by the prosecuting authorities on 14 February (see paragraph 14 above, second sub-paragraph). It found no good reason for regarding Asinara as an unsuitable locality for compulsory residence. It emphasised that the contested measure was designed to separate the individual from his milieu and render his contacts with it more difficult. This requirement took precedence over other problems, such as the absence of regular employment and of adequate accommodation for a family; moreover, at the time of his marriage the applicant could not have hoped to live with his wife and son since he was then in detention on remand and under a serious charge. His criminal record, the most disquieting criminal activities in which he engaged under the cloak of honesty, his violent character and his exceptional cunning showed that he presented a marked danger to society (spiccata pericolosità sociale). Supervision of such an individual was sufficiently important to justify the curtailment of other individual legal interests taken into account by the law (l'affievolimento di alter situazioni giuridiche soggettive che la legge prende in considerazione).

18. Mr. **Guzzardi** appealed to the Court of Cassation. In a supplementary memorial of 3 April 1975, his lawyer put forward three grounds of appeal pursuant to Articles 475 par. 3 and 524 par. 1 and 3 of the Code of Criminal Procedure:

(i) It was not permissible under section 3 of the 1956 Act to make an order for a person's compulsory residence - which amounted to subjecting him to a "judicial sanction" limiting his private and family liberty (libertà privata e famigliare) - on any scrap of land (qualunque pezzo di terra), such as Asinara, regardless of its area (quali che siano i metri quadrati entro cui si deve osservare il soggiorno), rather than on the whole of the territory of a district. The

contrary interpretation adopted by the Court of Appeal was "restrictive and aberrant" and disregarded a man's right to private and family life (alla vita privata e famigliare) which was guaranteed by the European Convention and the Italian Constitution. If the Court of Cassation were nevertheless inclined to follow that interpretation, it should refer the matter to the Constitutional Court.

(ii) The Court of Appeal's statement that Mr. **Guzzardi** did not need any particular medical treatment was a misrepresentation of the facts (travisamento dei fatti).

The law did not permit any curtailment of legal interests which it protected, conferred and made mandatory (non consent[iva] veruno affievolimento di situazioni giuridiche tutelate, volute e pretese proprio dalla legge). It followed that the Court of Appeal had applied the law incorrectly (errata applicazione della legge) when it held that the necessity for special supervision justified such curtailment.

(iii) Finally, the reasoning was contradictory (contraddittorietà) in various respects. Thus, the Court of Appeal had - without an investigation on the spot - deemed Asinara to be suitable for the execution of the measure complained of although the applicant would not there be able to comply with the directives contained in the Milan Regional Court's decision.

Mr. Catalano therefore requested the Court of Cassation to quash the judgment of 12 March 1975 after transmitting the file to the Constitutional Court for the purpose of obtaining a ruling that section 3 of the 1956 Act, as interpreted by the Court of Appeal, was incompatible with Article 13, fourth paragraph, and Article 27, second and third paragraphs, of the Constitution.

Article 13 concerns "personal liberty": the fourth paragraph provides that "the infliction of any physical or mental violence on persons subjected to any form of restriction on their liberty shall be a punishable offence". The second paragraph of Article 27 enshrines the presumption of innocence; the third paragraph stipulates that "punishment may not take the form of treatment repugnant to feelings of humanity and must be aimed at re-education of the convicted person".

19. The Court of Cassation gave judgment on 6 October 1975. It accepted the submissions of the public prosecutor attached to the Court of Cassation and dismissed the appeal as being devoid of foundation.

As regards the first ground of appeal, the Court of Cassation pointed out that its settled case-law established that under certain conditions, which were satisfied in the present case, an order for compulsory residence could refer to a given locality within a district. Likewise, the "curtailment" of, and the "undoubted limitations" on, "various rights of the individual concerned" stemmed directly from the application of measures which had on numerous occasions been recognised to be in conformity with the Constitution, for example in a judgment delivered by the Constitutional Court on 15 June 1972.

As regards the second ground, the Court of Cassation held that in the particular circumstances the Court of Appeal had been right in turning down the argument concerning Mr. **Guzzardi**'s state of health.

As regards the third ground, the Court of Cassation perceived no contradiction since the intended object was to remove the applicant from Milan and to separate him from the members of the mafia who carried on their activities there without hindrance.

The Court also declared the question of constitutionality raised by the applicant to be manifestly ill-founded. There again, the public prosecutor had cited the above-mentioned judgment of 15 June 1972; he had in addition referred to the administrative nature of the decision designating the locality (natura amministrativa della determinazione del luogo).

20. On 14 November 1975, Mr. Catalano made two applications to the Milan Regional Court.

The first application was addressed to the President of the 2nd Criminal Chamber in his capacity of judge supervising the execution of sentences (giudice di sorveglianza). It requested him to cancel (abolire) the compulsory residence order, maintaining that if the President, or someone designated by him for the purpose, were to visit Asinara, he would be left in no doubt that the obligation to live there was contrary to the law, the legislation, justice and individual human rights.

The second application invited the 2nd Chamber to substitute for Asinara a district where Mr. **Guzzardi** could work, not come into contact with suspects (indiziati) and live with his wife and son who had been obliged to leave the island since their permit to reside there had expired.

The lawyer referred to an Order of 27 October 1975 concerning an appeal by one Ignazio Pullarà; the Milan Court of Appeal had stated therein that it was for the judge supervising the execution of sentence to make an appraisal of living conditions on Asinara.

The 2nd Criminal Chamber gave its decision on 20 January 1976. First of all, it affirmed that the implementation of preventive measures was a matter within the competence of the police authorities (pubblica sicurezza) and not of the judge supervising the execution of sentences. It added that exigencies of the protection of society justified the special form of isolation undergone by those sent to Asinara, namely individuals who were extremely dangerous. However, those exigencies necessitated neither separating those concerned from their families nor depriving them of regular employment. Accordingly, the Regional Court, whilst rejecting both applications, directed that the text of its decision be communicated to the Minister of the Interior and to the Sassari questore.

21. On 21 July 1976, the Milan questore requested the Milan Regional Court to order Mr. **Guzzardi**'s transfer to the district of Force, in the province of Ascoli Piceno, on the Italian mainland. The reason advanced was that the simultaneous presence on Asinara of the applicant and of his co-accused (coimputato), Ignazio Pullarà, who was also in the process of "serving" (scontare) a compulsory residence measure, might have unfortunate repercussions on the ensuing stages of the criminal proceedings and, above all, on security on the island.

The Regional Court (vacation Chamber) gave a decision to that effect, and for the same reasons, on the following day; it specified that the remainder of its decision of 30 January 1975 (see paragraph 12 above) was to continue in force.

22. Mr. **Guzzardi** had to remain at Force until 8 February 1978, on which date the three-year period fixed by the last-mentioned decision expired.

C. The applicant's stay on the island of Asinara

1. Description of the locality

23. Asinara lies off the north-west tip of Sardinia. The island, which is long and narrow with a rugged terrain, measures about 20 km. at its greatest length. Whilst the island as a whole covers 50 sq. km., the area reserved for persons in compulsory residence represented a fraction of not more than 2.5 sq. km. This area was bordered by the sea, roads and a cemetery; there was no fence to mark out the perimeter. About nine-tenths of the island was occupied by a prison.

24. Administratively, the island forms an integral part of the district of Porto Torres, a small Sardinian coastal town one hour away by boat. The southernmost point of the island can also be reached in fifteen minutes if one embarks at Stintino, to the north of Porto Torres. Sea communications are interrupted during very bad weather.

25. The principal settlement on the island, Cala d'Oliva, houses nearly all of the island's permanent population - approximately two hundred people; this population comprises the

prison staff and their families, schoolteachers, a priest, the post office employees and a few tradesmen.

The persons in compulsory residence were lodged in the hamlet of Cala Reale which consists mainly of a former medical establishment and certain other buildings including a school, a chapel and a carabinieri station where the applicant had to report twice a day (see paragraph 12 above).

2. Possibilities of movement

26. The Government maintained before the Commission that one could circulate at will within Cala Reale. According to Mr. **Guzzardi** on the other hand, an instruction issued by the officer in charge of the carabinieri restricted movement for persons in compulsory residence to a radius of about 800 metres.

27. Persons in compulsory residence had no access to the prison zone or to Cala d'Oliva. The inhabitants of the latter village could, in contrast, visit Cala Reale whenever they pleased, whereas outsiders - such as tourists - were in principle not allowed to go there.

28. Persons in compulsory residence could apply for authorisation to visit Sardinia or the Italian mainland if they had good reasons, such as medical treatment, family grounds or compliance with an order of the judicial authorities.

The Government stated that authorisation was "normally" given on production of the appropriate documents of following a brief police enquiry, but according to the applicant it was very difficult to obtain. Even in the case of urgent medical treatment, so he contended, there was a long delay, sometimes as much as a whole month. In any event, such trips were made under the strict supervision of the carabinieri.

29. There existed the additional possibility of going in turn to Porto Torres to buy provisions, likewise after authorisation and under supervision. The frequency of the crossings as well as the number of participants were the subject of dispute. The Government spoke of four persons per week, whereas for Mr. **Guzzardi** it was just one; he claimed that he had had to wait six months before receiving the necessary permission.

3. Accommodation

30. Most of the persons in compulsory residence were housed in two buildings belonging to the former medical establishment; these buildings were fairly large and consisted principally, so it seems, of bedrooms with one or two beds.

A third building, a small construction known as the "Pagodina", was allocated to "residents" (soggiornanti) who were accompanied by their families. The "Pagodina" contained two flats each comprising a bedroom and a kitchen.

The applicant lived in one of the main buildings or in the "Pagodina", depending upon whether he was alone or with his family. He could not go out between 10 p.m. and 7 a.m., except in case of necessity and after having notified the authorities in due time (see paragraph 12 above).

31. These various buildings were somewhat dilapidated. According to Mr. **Guzzardi**, their state of disrepair was such as to render them almost uninhabitable. For the Government, on the contrary, the condition of the buildings was "acceptable" up to the time when some of their occupants committed acts of vandalism, an occurrence not denied by the applicant.

4. Medical assistance, health and sanitary conditions

32. The medical service at Cala Reale was provided by the prison doctor. He lived at Cala d'Oliva but could be reached by telephone and be on hand within the space of about thirty minutes.

Before the Commission, the Government submitted that there was a dispensary at Cala Reale, with a male nurse in attendance; the applicant disputed the presence of any nurse.

When persons in compulsory residence needed to be hospitalised or to consult a specialist, they were sent to the State hospital and university clinics in Sassari. Such journeys required authorisation from the competent court - the Milan Regional Court in the applicant's case (see also paragraph 28 above).

33. The Government medical officer for Sassari province was responsible for supervising health and sanitary conditions at Cala Reale. While the Government considered the level of the conditions to be good, in Mr. **Guzzardi**'s view they left much to be desired. In particular, he complained of the lack of any arrangements for removing rubbish (see also paragraph 42 below).

5. Presence of the family

34. Persons in compulsory residence could apply to the administrative authority for permission to have their nearest relations join them on the island and stay with them either in the "Pagodina" (see paragraph 30 above) or, failing that, in the rather confined bedroom - 4 metres by 4 metres - allocated to each of them.

The Government stressed before the Commission that the shortage of water on Asinara, which had neither a spring nor an aqueduct and was supplied periodically by navy tankers, made is necessary to limit the number of persons authorised to stay there.

35. Initially, the applicant's wife and son and also, from time to time, his parents-in-law and nephew lived together with him.

On 9 October 1975, the members of his family were ordered to leave the island; their residence permits had expired on 28 August and he had not applied for their renewal. They were, however, able to return at the beginning of December and stayed with him until his departure for Force (see paragraph 21 above).

6. Possibilities of attending worship

36. There is a chapel at Cala Real. According to Mr. **Guzzardi**, it remained closed except for religious services at Christmas and Easter. The Government submitted in reply that the religious authorities - there was a priest living at Cala d'Oliva – would willingly have opened the chapel for services at any time had they been asked to do so, but that no one had ever made such a request.

37. The applicant also claimed that a mass was celebrated every Sunday by the prison chaplain, but on premises situated outside the area in which persons in compulsory residence could move freely (see paragraph 26 above).

7. Possibilities of obtaining work

38. For persons in compulsory residence, the prospects of employment were limited to the openings offered by a firm at Cala Reale, Massidda-Costruzioni edili, which were somewhat modest – four persons in 1975 and eleven in 1976. The Government submitted that Mr. **Guzzardi** had shown no interest at all in this possible source of work. Mr **Guzzardi** did, however, produce a certificate from Massidda showing that he had worked for the company from October 1975 to May 1976 and had subsequently made repeated and pressing requests for employment, but without success.

8. Possibilities for cultural and recreational activities

39. Persons in compulsory residence could obtain books and newspapers at Porto Torres, either themselves or through other people who went there. They had the use of one television

set according to the applicant, several sets according to the Government. The existence of communal canteen and recreation facilities was also the subject of dispute before the Commission.

9. Communications with the outside

40. Mr. **Guzzardi** had to give to the authorities prior notice of the name and number of the person telephoned or telephoning whenever he wished to make or receive a call (see paragraph 12 above). On the other hand, his correspondence in the form of letters and telegrams was not monitored.

10. Representations made by the applicant with regard to living conditions on the island

41. On 11 August 1975, the applicant sent a letter to the Porto Torres pretore in which he confessed that he had not discharged certain of the obligations imposed on him by the Milan Regional Court on 30 January (see paragraph 12 above), namely seeking employment, looking for a fixed residence and not associating with other "residents" and criminal elements. He stated that he had tried in vain to comply with these directives and that the officer in charge of the carabinieri on Asinara had never raised any objection despite section 12 of Act no. 1423 of 27 December 1956 (see paragraph 51 below). No action was taken on his letter.

42. In addition, on 9 January 1976 all the persons in compulsory residence addressed a collective protest to the Sassari questore. They claimed (a) the allocation of a suitable house to each of them; (b) permanent access to Cala Reale by members of their families; (c) work opportunities capable of providing maintenance for them and their families, the subsidy of 45,000 or 46,500 Lire paid by the Ministry not being sufficient for the purpose; (d) the mooring at Cala Reale, instead of Porto Torres, of the boat used for transporting them; (e) the right to go individually and at least once a week to Porto Torres to purchase food supplies; (f) the reopening of the post office at Cala Reale; (g) the improvement of the health and sanitary conditions in the inhabited zones and adjoining areas; (h) on-the-spot medical assistance and the possibility of consulting specialists without delay; (i) more humane treatment from the bodies coming under the authority of the police headquarters; (j) proper upkeep of the premises; (k) installation of a second telephone.

The Government asserted that they thereupon took certain steps to satisfy some of these requests, in particular as regards items (a), (b), (d) and (f).

D. Discontinuance of the use of Asinara as a place of compulsory residence

43. The situation of the "residents" at Cala Reale was also criticised in the press. The administrative authorities investigated possible remedial measures but, in the face of the expense involved and time needed, did not pursue the matter. In consequence, the Ministry of the Interior decided in August 1977 to strike (depennare) the island out of the list of places for compulsory residence. By that date Mr. **Guzzardi** had been living at Force for more than a year (see paragraph 21 above); however, two of the documents filed show that his application to the Commission was not unconnected with the Ministry's decision. The last individuals in compulsory residence left Asinara on 17 November 1977.

II. THE MERITS

A. Preliminary observation

87. The Government stressed that public order in Italy was currently menaced by serious threats, coming essentially from political terrorism and the mafia.

88. Without losing sight of the general context of the case, the Court recalls that, in proceedings originating in an individual application, it has to confine its attention, as far as possible, to the issues raised by the concrete case before it. Accordingly, the Court's task is to review under the Convention not the 1956 and 1965 Acts as such - the principle underlying them was anyway not challenged by the applicant - but the manner in which those Acts were actually applied to Mr. **Guzzardi**, namely the conditions surrounding his enforced stay on Asinara from 8 February 1975 until 22 July 1976 (see the above-mentioned Deweer judgment, p. 21, par. 40, the Schiesser judgment of 4 December 1979, Series A no. 34, p. 14, par. 32, etc.; cf. the above-mentioned Ireland v. the United Kingdom judgment, p. 60, par. 149).

B. The alleged breach of Article 5 par. 1 (art. 5-1)

89. Article 5 par. 1 (art. 5-1) of the Convention reads:

> "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) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

1. The existence of a deprivation of liberty in the present case

90. The Commission was of the view that on Asinara the applicant suffered a deprivation of liberty within the meaning of the Article (art. 5); it attached particular significance to the extremely small size of the area where he was confined, the almost permanent supervision to which he was subject, the all but complete impossibility for him to make social contacts and the length of his enforced stay at Cala Reale (see paragraphs 94-99 of the report).

91. The Government disputed the correctness of this analysis. They reasoned as follows. The factors listed above were not sufficient to render the situation of persons in compulsory residence on the island comparable to the situation of prisoners as laid down by Italian law; there existed a whole series of fundamental differences that the Commission had wrongly overlooked. The distinguishing characteristic of freedom was less the amount of space available than the manner in which it could be utilised; a good many districts in Italy and elsewhere were less than 2.5 sq. km. in area. The applicant was able to leave and return to his dwelling as he wished between the hours of 7 a.m. and 10 p.m. His wife and son lived with him for fourteen of the some sixteen months he spent on Asinara; the inviolability of his home and of the intimacy of his family life, two rights that the Convention guaranteed solely to free people, were respected. Even as regards his social relations, he was treated much more favourably than someone in penal detention: he was at liberty to meet, within the boundaries of Cala Reale, the members of the small community of free people - about two hundred individuals - living on the island, notably at Cala d'Oliva; to go to Sardinia or the mainland if so authorised; to correspond by letter or telegram without any control; to use the telephone,

subject to notifying the carabiniere of the name and number of his correspondent. The supervision of which he complained constituted the raison d'être of the measure ordered in his respect. Finally, the fact that more than sixteen months elapsed before his transfer to Force was of itself of no relevance (see paragraph 7 of the memorial of December 1979 and the oral pleadings of 29 January 1980).

92. The Court recalls that in proclaiming the "right to liberty", paragraph 1 of Article 5 (art. 5-1) is contemplating the physical liberty of the person; its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. As was pointed out by those appearing before the Court, the paragraph is not concerned with mere restrictions on liberty of movement; such restrictions are governed by Article 2 of Protocol No. 4 (P4-2) which has not been ratified by Italy. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5 (art. 5), the starting point must be his concrete situation and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question (see the Engel and others judgment of 8 June 1976, Series A no. 22, p. 24, par. 58-59).

93. The difference between deprivation of and restriction upon liberty is nonetheless merely one of degree or intensity, and not one of nature or substance. Although the process of classification into one or other of these categories sometimes proves to be no easy task in that some borderline cases are a matter of pure opinion, the Court cannot avoid making the selection upon which the applicability or inapplicability of Article 5 (art. 5) depends.

94. As provided for under the 1956 Act (see paragraphs 48-49 above), special supervision accompanied by an order for compulsory residence in a specified district does not of itself come within the scope of Article 5 (art. 5). The Commission acknowledged this: it focused its attention on Mr. **Guzzardi**'s "actual position" at Cala Reale (see paragraphs 5, 94, 99, etc. of the report) and pointed out that on 5 October 1977 it had declared inadmissible application no. 7960/77 lodged by the same individual with regard to his living conditions at Force (see paragraph 93 of the report and paragraph 56 above).

It does not follow that "deprivation of liberty" may never result from the manner of implementation of such a measure, and in the present case the manner of implementation is the sole issue that falls to be considered (see paragraph 88 above).

95. The Government's reasoning (see paragraph 91 above) is not without weight. It demonstrates very clearly the extent of the difference between the applicant's treatment on Asinara and classic detention in prison or strict arrest imposed on a serviceman (see the above-mentioned Engel and others judgment, p. 26, par. 63). Deprivation of liberty may, however, take numerous other forms. Their variety is being increased by developments in legal standards and in attitudes; and the Convention is to be interpreted in the light of the notions currently prevailing in democratic States (see notably the Tyrer judgment of 25 April 1978, Series A no. 26, pp. 15-16, par. 31).

Whilst the area around which the applicant could move far exceeded the dimensions of a cell and was not bounded by any physical barrier, it covered no more than a tiny fraction of an island to which access was difficult and about nine-tenths of which was occupied by a prison. Mr. **Guzzardi** was housed in part of the hamlet of Cala Reale which consisted mainly of the buildings of a former medical establishment which were in a state of disrepair or even dilapidation, a carabinieri station, a school and a chapel. He lived there principally in the company of other persons subjected to the same measure and of policemen. The permanent population of Asinara resided almost entirely at Cala d'Oliva, which Mr. **Guzzardi** could not visit, and would appear to have made hardly any use of its right to go to Cala Reale. Consequently, there were few opportunities for social contacts available to the applicant other than with his near family, his fellow "residents" and the supervisory staff. Supervision was carried out strictly and on an almost constant basis. Thus, Mr. **Guzzardi** was not able to leave

his dwelling between 10 p.m. and 7 a.m. without giving prior notification to the authorities in due time. He had to report to the authorities twice a day and inform them of the name and number of his correspondent whenever he wished to use the telephone. He needed the consent of the authorities for each of his trips to Sardinia or the mainland, trips which were rare and, understandably, made under the strict supervision of the carabinieri. He was liable to punishment by "arrest" if he failed to comply with any of his obligations. Finally, more than sixteen months elapsed between his arrival at Cala Reale and his departure for Force (see paragraphs 11, 12, 21, 23-42 and 51 above).

It is admittedly not possible to speak of "deprivation of liberty" on the strength of any one of these factors taken individually, but cumulatively and in combination they certainly raise an issue of categorisation from the viewpoint of Article 5 (art. 5). In certain respects the treatment complained of resembles detention in an "open prison" or committal to a disciplinary unit (see the above-mentioned Engel and others judgment, p. 26, par. 64). On 20 January 1976, the Milan Regional Court had let it be understood that it did not regard that treatment as satisfactory. The administrative authorities also had some misgivings for they investigated the possibility of taking remedial measures; since they did not pursue the matter in the face of the expense involved and the time needed, the Ministry of the Interior decided in August 1977 to strike Asinara out of the list of places for compulsory residence (see paragraphs 20 and 43 above). Two telegrams from the Ministry to the Milan Chief of Police, dated 19 and 23 August 1977 and concerning one Alberti Gerlando, establish that this decision was not unconnected with application no 7367/76 even though Mr. **Guzzardi** had already left Cala Reale; the Government appended these telegrams to their memorial of May 1980. Several items of the documentary evidence filed thus show that the island was not suitable for a normal application of the 1956 and 1965 Acts. This was eventually recognised by the Italian State.

The Court considers on balance that the present case is to be regarded as one involving deprivation of liberty.

2. The compatibility of the deprivation of liberty found in the present case with paragraph 1 of Article 5 (art. 5-1)

96. It remains to be determined whether the situation was one of those, exhaustively listed in Article 5 par. 1 (art. 5-1) of the Convention (see the Winterwerp judgment of 24 October 1979, Series A no. 33, p. 16, par. 37), in which the Contracting States reserve the right to arrest or detain individuals.

(a) Sub-paragraph (e) of Article 5 par. 1 (art. 5-1-e) (pleaded by the Government)

97. The Government relied, in the alternative, on sub-paragraph (e) of Article 5 par. 1 (art. 5-1-e), maintaining that mafiosi like the applicant were "vagrants" and "something else besides" (see paragraph 8 of the memorial of December 1979 and the oral pleadings of 29 January 1980). In paragraph 1 of section 1, the 1956 Act refers to "idlers and habitual vagrants who are fit for work", a phrase clarified by the Constitutional Court in its judgment no. 23 of 23 March 1964. In the Government's opinion, the imposition on a "vagrant" of preventive measures restricting, or even depriving him of, his liberty was justified, under the Convention and Italian law, not so much by his lack of a fixed abode as by the absence of any apparent occupational activity ("attività lavorativa palese") and, hence, the impossibility of identifying the source of his means of subsistence. The existence of this danger factor, the Government continued, was recognised by the Milan Regional Court in its decision of 30 January 1975 (see paragraph 12 above); in addition and above all, that Court took notice of the far more serious risk stemming from the applicant's links with mafia associations which engaged in kidnapping with a view to extracting ransoms. According to the Government,

provision could not be made in an international instrument for the typically Italian phenomenon of the mafia, yet it would be an absurd conclusion to regard Article 5 par. 1 (e) (art. 5-1-e) as allowing vagrants but not presumed mafiosi to be deprived of their liberty.

98. The Court concurs with the Commission's contrary view (see paragraph 104 of the report and the oral pleadings of 29 January 1980).

There was no reference to paragraph 1 of section 1 of the 1956 Act in either the report of 23 November 1974 of the Milan Chief of Police or the State prosecutor's application of 14 January 1975 or the Regional Court's decision of 30 January 1975 (see paragraph 12 above) or the Court of Appeal's judgment of 12 March 1975. These authorities relied on the 1956 Act solely in combination with the 1965 Act which concerns individuals whom there are strong reasons to suspect of belonging to mafia-type associations (see paragraph 52 above). What is more, they in no way described or depicted Mr. **Guzzardi** as a vagrant. Admittedly, they noted, in passing, that there were serious doubts as to whether he really worked as a mason as he claimed, but they laid much greater stress on his record, his illegal activities, his contacts with habitual criminals and still more his links with the mafia. The Chief of Police even said that no state of poverty, idleness or vagrancy furnished an explanation for this criminal conduct ("manifestazioni criminose che non hanno una causa giustificativa in uno stato di indigenza ovvero di ozio o di vagabondaggio").

Besides, the applicant's way of life at the time, as disclosed by the documentary evidence filed, is in no way consonant with the ordinary meaning of the word "vagrant", this being the meaning that has to be utilised for Convention purposes (see the above mentioned De Wilde, Ooms and Versyp judgment, p. 37, par. 68; cf., for the phrase "persons of unsound mind", the above-mentioned Winterwerp judgment, p. 17, par. 38). Although they denied it, the Government were in essence reasoning a fortiori; at the hearing of 9 February 1978 before the Commission, their Agent described Mr. **Guzzardi** as "a vagrant in the wide sense of the term", "a monied vagrant" (see p. 61 of the verbatim record: "vagabondo nel senso largo dell'espressione"; "vagabondo ricco"). However, the exceptions permitted by Article 5 par. 1 (art. 5-1) call for a narrow interpretation (see the above-mentioned Winterwerp judgment, p. 16, par. 37).

The Government's argument is open to a further objection. In addition to vagrants, sub-paragraph (e) (art. 5-1-e) refers to persons of unsound mind, alcoholics and drug addicts. The reason why the Convention allows the latter individuals, all of whom are socially maladjusted, to be deprived of their liberty is not only that they have to be considered as occasionally dangerous for public safety but also that their own interests may necessitate their detention. One cannot therefore deduce from the fact that Article 5 (art. 5) authorises the detention of vagrants that the same or even stronger reasons apply to anyone who may be regarded as still more dangerous.

(b) Other sub-paragraphs of Article 5 par. 1 (art. 5-1) (not pleaded by the Government)

99. The Court has also examined the matter under the other sub- paragraphs of Article 5 par. 1 (art. 5-1), which were not pleaded by the Government.

100. On a true analysis, the order for Mr. **Guzzardi**'s compulsory residence was not a punishment for a specific offence but a preventive measure taken on the strength of indications of a propensity to crime (see paragraphs 9 and 12 above). According to the Commission, it must follow from this that, for the purpose of sub-paragraph (a) (art. 5-1-a), the measure did not constitute detention "after conviction by a competent court" (see paragraph 102 of the report).

In the Court's opinion, comparison of Article 5 par. 1 (a) (art. 5-1-a) with Articles 6 par. 2 and 7 par. 1 (art. 6-2, art. 7-1) shows that for Convention purposes there cannot be a "condamnation" (in the English text: "conviction") unless it has been established in

accordance with the law that there has been an offence - either criminal or, if appropriate, disciplinary (see the above-mentioned Engel and others judgment, p. 27, par. 68). Moreover, to use "conviction" for a preventive or security measure would be consonant neither with the principle of narrow interpretation to be observed in this area (see paragraph 98 above) nor with the fact that that word implies a finding of guilt.

The Court thus reaches the same conclusion as the Commission.

101. The deprivation of liberty complained of was not covered by sub-paragraph (b) (art. 5-1-b) either.

Admittedly, under the procedure laid down by the 1956 Act judicial decisions are a kind of sanction for failure to heed a prior warning (diffida), but the warning is not indispensable if, as in the present case, recourse is had to the 1965 Act; moreover, the warning is issued by the Chief of Police and so does not constitute an "order of a court" (see paragraphs 46 and 52 above).

As regards the words "to secure the fulfilment of any obligation prescribed by law", they concern only those cases where the law permits the detention of a person to compel him to fulfil a "specific and concrete" obligation which he has failed to satisfy (see the above-mentioned Engel and others judgment, p. 28, par. 69). However, as the Commission rightly emphasised, the 1956 and 1965 Acts impose general obligations (see paragraph 103 of the report).

102. Neither was the applicant in one of the situations dealt with by sub-paragraph (c) (art. 5-1-c).

It is true that there was "reasonable suspicion of [his] having committed an offence" and that he remained subject to charges throughout the time he spent on Asinara, but the decisions of the Regional Court (30 January 1975), the Court of Appeal (12 March 1975) and the Court of Cassation (6 October 1975) had no connection in law with the investigation being pursued in his respect: they were based on the 1956 and 1965 Acts which are applicable irrespective of whether or not there has been a charge and do not prescribe any subsequent appearance "before the competent legal authority" (see paragraphs 9, 11, 12, 17, 19, 21 and 45-52 above). Mr. **Guzzardi**'s detention on remand had terminated on 8 February 1975, on the expiry of the two years' time-limit laid down by Article 272 (first paragraph, item 2) of the Code of Criminal Procedure (see paragraph 10 above). If - as the applicant insinuated but did not prove (see paragraph 73 in fine of the report) - the said Acts had been utilised in order to prolong the detention, it would not in that case have been "lawful"; whilst the French text of sub-paragraph (c), (art. 5-1-c) unlike that of sub-paragraphs (a), (b), (d), (e) and (f) (art. 5-1-a, art. 5-1-b, art. 5-1-d, art. 5-1-e, art. 5-1-f), does not contain the equivalent word "régulière", the English version does speak of "lawful" detention and the principle expressed by this adjective dominates the whole of Article 5 par. 1 (art. 5-1) (see the above-mentioned Winterwerp judgment, pp. 17-18, par. 39-40). In addition, problems might have arisen in connection with paragraph 3 of Article 5 (art. 5-3), which has to be read together with paragraph 1 (c) (art. 5-1-c) (see the above-mentioned Ireland v. the United Kingdom judgment, p. 75, par. 199), and even with Article 18 (art. 18).

At first sight, a more likely hypothesis is that the measure complained of was taken because it was "reasonably considered necessary to prevent [Mr. **Guzzardi**'s] committing an offence" or, at the outside, "fleeing after having done so". However, in that case as well a question would arise as to the measure's "lawfulness" since, solely on the basis of the 1956 and 1965 Acts, an order for compulsory residence as such, leaving aside the manner of its implementation, does not constitute deprivation of liberty (see paragraph 94 above). It would also be necessary to consider whether the requirements of paragraph 3 of Article 5 (art. 5-3) had been observed (see the Lawless judgment of 1 July 1961, Series A no. 3, pp. 51-53, par. 13-14). In any event, the phrase under examination is not adapted to a policy of general

prevention directed against an individual or a category of individuals who, like mafiosi, present a danger on account of their continuing propensity to crime; it does no more than afford the Contracting States a means of preventing a concrete and specific offence. This can be seen both from the use of the singular ("an offence", "celle-ci" in the French text; see the Matznetter judgment of 10 November 1969, Series A no. 10, pp. 40 and 43, separate opinions of Mr. Balladore Pallieri and Mr. Zekia) and from the object of Article 5 (art. 5), namely to ensure that no one should be dispossessed of his liberty in an arbitrary fashion (see the above-mentioned Winterwerp judgment, p. 16, par. 37).

103. Finally, sub-paragraphs (d) and (f) of Article 5 par. 1 (art. 5-1-d, art. 5-1-f) are obviously not relevant.

(c) Conclusion

104. To sum up, from 8 February 1975 to 22 July 1976 the applicant was the victim of a breach of Article 5 par. 1 (art. 5-1).

FOR THESE REASONS, THE COURT

1. Rejects by sixteen votes to two the plea based by the Government on the ex officio examination of the case under Articles 5 and 6 (art. 5, art. 6);

2. Rejects by ten votes to eight the Government's objection that domestic remedies have not been exhausted;

3. Rejects by fifteen votes to three the Government's plea as to the disappearance of the object of the proceedings;

4. Holds by eleven votes to seven that there was in the instant case deprivation of liberty within the meaning of Article 5 (art. 5) of the Convention;

5. Holds unanimously that the said deprivation of liberty was not justified under sub-paragraph (e) of Article 5 par. 1 (art. 5-1-e) or under sub-paragraph (b) (art. 5-1-b);

6. Holds by sixteen votes to two that the said deprivation of liberty was also not justified under sub-paragraph (a) (art. 5-1-a);

7. Holds by twelve votes to six that the said deprivation of liberty was not justified under sub-paragraph (c) (art. 5-1-c) either;

8. Holds, to sum up, by ten votes to eight, that from 8 February 1975 to 22 July 1976 the applicant was the victim of a breach of Article 5 par. 1 (art. 5-1);

9. Holds unanimously that in the instant case there was no breach of Articles 3, 6 or 9 (art. 3, art. 6, art. 9);

10. Holds by seventeen votes to one that there was also no breach of Article 8 (art. 8);

11. Holds by twelve votes to six that the Italian Republic is to pay to the applicant under Article 50 (art. 50) a sum of one million (1,000,000) Lire.

Done in English and in French, the French text being authentic, at the Human Rights Building, Strasbourg, this sixth day of November, one thousand nine hundred and eighty.

Gérard WIARDA
President

Marc-André EISSEN
Registrar

The following separate opinions are annexed to the present judgment in accordance with Article 51 par. 2 (art. 51-2) of the Convention and Rule 50 par. 2 of the Rules of Court:

- dissenting opinion of Mr. BALLADORE PALLIERI;

- dissenting opinion of Mr. ZEKIA;

- dissenting opinion of Mr. CREMONA;

- dissenting opinion of Sir Gerald FITZMAURICE;

- dissenting opinion of Mrs. BINDSCHEDLER-ROBERT;

- joint dissenting opinion of Mr. TEITGEN and Mr. GARCIA DE ENTERRIA;

- partly dissenting opinion of Mr. MATSCHER;

- dissenting opinion of Mr. PINHEIRO FARINHA.