



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

FIRST SECTION

**CASE OF FOLLI CARÈ v. ITALY**

*(Application no. 32577/96)*

JUDGMENT

STRASBOURG

15 November 2002

**FINAL**

*15/02/2003*

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Folli Carè v. Italy,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,

Mr G. BONELLO,

Mr P. LORENZEN,

Mrs N. VAJIĆ,

Mrs S. BOTOUCHAROVA,

Mrs E. STEINER, *judges*,

Mr G. RAIMONDI, *ad hoc judge*,

and Mr E. FRIBERGH, *Section Registrar*,

Having deliberated in private on 24 October 2002,

Delivers the following judgment, which was adopted on that date:

**PROCEDURE**

1. The case originated in an application (no. 32577/96) against the Italian Republic lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Italian national, Mrs Ada Folli Carè (“the applicant”), on 17 May 1996.

2. The applicant was represented by Mr G. Brambilla, a lawyer practising in Cassano D’Adda (Milano). The Italian Government (“the Government”) were represented by their Agent, Mr U. Leanza, and by their co-Agent, Mr V. Esposito.

3. The applicant complained under Article 1 of Protocol No. 1 that she had been unable to recover possession of her flat within a reasonable time. Invoking Article 6 § 1 of the Convention, she further complained about the length of the eviction proceedings.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court. Mr V. Zagrebelsky, the judge elected in respect of Italy, withdrew from sitting in the case (Rule 28). The Government appointed Mr. G. Raimondi as *ad hoc* judge to sit in his place (Article 27 § 2 of the Convention and Rule 29 § 2).

6. On 25 May 2000 the Court declared the application admissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1914 and lives in Inzago (Milano).

9. The applicant is usufructuary of a flat owned by her husband A.C., which had been let to G.P.

10. In a registered letter of 28 February 1985, the applicant's husband informed the tenant that he intended to terminate the lease on expiry of the term on 30 April 1986 and asked him to vacate the premises by that date.

11. In a writ served on the tenant on 15 April 1986, the applicant's husband reiterated his intention to terminate the lease and summoned the tenant to appear before the Milan Magistrate.

12. By a decision of 26 April 1986, which was made enforceable on 14 May 1986, the Milan Magistrate upheld the validity of the notice to quit and ordered that the premises be vacated by 30 April 1987.

13. On 20 May 1987, the applicant's husband served notice on the tenant requiring him to vacate the premises.

14. On 9 June 1987, he served notice on the tenant informing him that the order for possession would be enforced by a bailiff on 10 July 1987.

15. Between 10 July 1987 and 17 February 1988, the bailiff made four attempts to recover possession.

16. Each attempt proved unsuccessful, as, under the statutory provisions providing for the suspension, the applicant's husband was not entitled to police assistance in enforcing the order for possession.

17. On 4 August 1988, the applicant's husband died and the applicant inherited the usufruct of the flat.

18. Between 30 June 1989 and 10 December 1998, the bailiff made 30 attempts to recover possession.

19. Each attempt proved unsuccessful, as, under the statutory provisions providing for the suspension, the applicant was not entitled to police assistance in enforcing the order for possession.

20. On 12 May 2000, the applicant recovered possession of her flat.

## II. RELEVANT DOMESTIC LAW

21. The relevant domestic law is described in the Court's judgment in the case of *Immobiliare Saffi v. Italy* [GC], no. 22774/93, §§ 18-35, ECHR 1999-V.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

22. The applicant complained that she had been unable to recover possession of her flat within a reasonable time owing to the lack of police assistance. She alleged a violation of Article 1 of Protocol No. 1 to the Convention, which provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

#### A. The applicable rule

23. In accordance with its case-law, the Court considers that the interference with the applicant's right to peaceful enjoyment of her possessions amounted to control of the use of property and falls to be examined under the second paragraph of Article 1 (see *Immobiliare Saffi* cited above, § 46).

#### B. Compliance with the conditions in the second paragraph

##### 1. Aim of the interference

24. The Court has previously expressed the view that the impugned legislation had a legitimate aim in the general interest, as required by the second paragraph of Article 1 (see *Immobiliare Saffi* cited above, § 48).

## 2. *Proportionality of the interference*

25. The Court reiterates that for the purposes of the second paragraph of Article 1 of Protocol No. 1 an interference must strike a “fair balance” between the demands of the general interest and the requirements of the protection of the individual’s fundamental rights. There must be a reasonable relationship of proportionality between the means employed and the aim pursued. In determining whether this requirement is met, the Court recognises that the State enjoys a wide margin of appreciation with regard both to choosing the means of enforcement and to ascertaining whether the consequences of enforcement are justified in the general interest for the purpose of achieving the object of the law in question. In spheres such as housing, which plays a central role in the welfare and economic policies of modern societies, the Court will respect the legislature’s judgement as to what is in the general interest unless that judgement is manifestly without reasonable foundation (see *Immobiliare Saffi*, cited above, § 49).

26. The applicant contended that the interference was disproportionate in view of its length and of the financial burden that resulted from not being able to increase the rent.

27. The Government pointed out that the only ground for eviction in the present case was that the lease had expired, a factor that did not warrant the applicant’s being given any priority in the provision of police assistance. The present case was indistinguishable from the case of *Spadea and Scalabrino v. Italy* (see the judgment of 28 September 1995, Series A no. 315-B), in which the Court held that there had been no violation of Article 1 of Protocol No. 1. The interference with the applicant’s right to the peaceful enjoyment of her property was therefore consistent with the relevant legislation. The Government concluded that the burden imposed on the applicant had not been excessive. The Government pointed out that the statutory measures had been taken in the general interest to protect tenants, regard being had to the inner-city housing crisis and the difficulty in providing adequate housing for low-income tenants who have been evicted. The Government added that a large number of leases had expired in 1982 and 1983 and that the simultaneous execution of repossession orders in respect of all the premises concerned would have resulted in severe social unrest. The purpose of the measures in issue had therefore been to maintain order. It had been necessary to stagger the provision of police assistance because it was impossible to guarantee everyone assistance at the same time.

28. The Court considers that, in principle, the Italian system of staggering the enforcement of court orders is not in itself open to criticism, having regard in particular to the margin of appreciation permitted under the second paragraph of Article 1. However, such a system carries with it the risk of imposing on landlords an excessive burden in terms of their ability to dispose of their property and must accordingly provide certain procedural

safeguards so as to ensure that the operation of the system and its impact on a landlord's property rights are neither arbitrary nor unforeseeable (see, *mutatis mutandis*, the *Immobiliare Saffi* judgment cited above, § 54). The Court must thus ascertain whether, in the instant case, the applicant was afforded sufficient guarantees as to be safeguarded against uncertainty and arbitrariness.

29. The Court observes that the applicant's husband obtained an order for possession on 26 April 1986 indicating that the tenant should quit the flat on 30 April 1987. The first attempt by a bailiff to enforce the order of possession took place on 10 July 1987. Between 10 July 1987 and 10 December 1998 the bailiff's attempts to recover possession proved unsuccessful, on account initially of the legislation that suspended enforcement of non-urgent possession orders and subsequently of the legislation providing for evictions to be staggered.

30. For twelve years and ten months starting from the first attempt of the bailiff to enforce the order of possession, the applicant was thus left in a state of uncertainty as to when she would be able to repossess her flat.

31. In the light of the foregoing, the Court considers that, in the particular circumstances of this case, an excessive burden was imposed on the applicant; accordingly the balance that must be struck between the protection of the right of property and the requirements of the general interest was upset to the applicant's detriment.

Consequently, there has been a violation of Article 1 of Protocol No. 1.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

32. The applicant also alleged a breach of Article 6 § 1 of the Convention, the relevant part of which provides:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

33. The applicant complained that she had had to wait more than twelve years to recover possession of her flat after the magistrate's order was issued.

34. The Government contested this point. As to the length of the enforcement proceedings, the Government maintain that the delay in providing the assistance of the police is justified by the protection of the public interest.

35. The Court observes that the applicant had originally relied on Article 6 in connection with the complaint regarding the length of the proceedings for possession. The Court nonetheless considers that the instant case must be examined in connection with the more general right to a court.

36. The Court reiterates that the right to a court as guaranteed by Article 6 also protects the implementation of final, binding judicial

decisions, which, in States that accept the rule of law, cannot remain inoperative to the detriment of one party (see *Immobiliare Saffi* cited above, § 66). Accordingly, the execution of a judicial decision cannot be unduly delayed.

37. In the instant case, the applicant's husband obtained an order for possession on 26 April 1986 which became enforceable on 14 May 1986. The applicant recovered the flat only twelve years and ten months after the first attempt of the bailiff.

38. The Court considers that a delay of that length in the execution of a final court decision deprives Article 6 § 1 of the Convention of any practical effect.

39. In these circumstances, the Court holds that there has been a violation of the right to a court, as guaranteed by Article 6 § 1 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

#### A. Pecuniary damage

41. The applicant sought reparation for the pecuniary damage she had sustained, which she put at 66,950,000 Italian lire (ITL) [34,576.79 euros (EUR)], being the loss of rent for the period from 8 August 1992 (the date the legislation relaxing restrictions on rent levels entered into force) to 12 May 2000, and ITL 2,872,000 [EUR 1,483.26] for the costs of executing the possession order.

42. The Government conceded that the applicant should be awarded the damage which she had incurred for loss of rent due to the excessive length of the proceedings but contested the period calculated by the applicant. As regards the costs incurred in the domestic proceedings, the Government argued that the costs incurred during the enforcement stage were due only for the period that was regarded as being a disproportionate interference with the applicant's right of property.

43. The Court considers that the applicant must be awarded compensation for the pecuniary damage resulting from the loss of rent (see *Immobiliare Saffi* cited above, § 79) on the basis of the reimbursement of the difference between the global amount of the rent she could have endorsed and the rents she effectively collected. Having regard to the means

of calculation proposed by the applicant, the Court, in the light of the evidence before it and the period concerned, decides to grant the requested amount of EUR 34,576.79. As regards the costs of the enforcement proceedings, the Court considers that they must be reimbursed in part (see the *Scollo v. Italy* judgment of 28 September 1995, Series A no. 315-C, p. 56, § 50). It considers the means of calculation proposed by the applicant to be reasonable. Therefore the Court decides to grant the requested amount of EUR 1,483.26.

The Court awards a total sum of EUR 36,060.05 for pecuniary damage.

### **B. Non-pecuniary damage**

44. The applicant claimed ITL 30,000,000 [EUR 15,493.71] for the non-pecuniary damage.

45. The Government stressed that the applicant had failed to adduce evidence of non-pecuniary damage sustained as a result of the alleged violation.

46. The Court considers that the applicant must have sustained some non-pecuniary damage which the mere finding of a violation cannot adequately compensate. Therefore, the Court decides, on an equitable basis, to award EUR 3,000 under this head.

### **C. Costs and expenses**

47. The applicant sought reimbursement of her legal costs, which she put at ITL 7,314,000 [EUR 3,777.37] for her costs and expenses before the Commission and the Court.

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

49. According to the Court's case-law, an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum. In the present case, on the basis of the information in its possession and the above-mentioned criteria, the Court considers that EUR 2,500 is a reasonable sum and awards the applicant that amount.

### **D. Default interest**

50. The Court considers that the default interest should be fixed at an annual rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
    - (i) EUR 36,060.05 (thirty-six thousand sixty euros five cents) for pecuniary damage;
    - (ii) EUR 3,000 (three thousand euros) for non-pecuniary damage;
    - (iii) EUR 2,500 (two thousand five hundred euros) for legal costs and expenses;
  - (b) that simple interest at an annual rate equal to the marginal lending rate the European Central Bank plus three percentage points shall be payable from the expiry of the above-mentioned three months until settlement;
4. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English and notified in writing on 15 November 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Erik FRIBERGH  
Registrar

Christos ROZAKIS  
President