



## The authorities' complete and prolonged failure to act following the occupation of a building by housing activists, without any legal title, breached the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Casa di Cura Valle Fiorita S.r.l. v. Italy](#) (application no. 67944/13) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights, and a violation of Article 1 of Protocol No. 1 (protection of property) to the Convention.**

The case concerned the applicant company being unable to recover possession of a building in Rome that had been occupied since 2012, without any legal title, by a group of housing activists (*movimento lotta per la casa*).

A final and enforceable judicial decision was given on 9 August 2013 ordering the eviction of the occupants. It remains unenforced to this day owing to social considerations (a failure to find alternative accommodation for the occupants because of a lack of resources) and fears of public-order disturbances.

The Court acknowledged that social considerations and fears of public-order disturbances could justify difficulties with enforcement and a delay in evacuating the premises. Nevertheless, it saw no justification for the Italian authorities' complete and prolonged failure to take action, reiterating that a lack of resources could not in itself constitute an acceptable reason for failing to enforce a judicial decision. It therefore found that the national authorities, in failing to take any steps to comply with the decision of 9 August 2013, had deprived the provisions of Article 6 § 1 of the Convention of all useful effect and had breached the principle of a law-based State, founded on the rule of law and the principle of legal certainty.

The Court also found that the authorities, given the individual interests of the applicant company and after a reasonable period of time had been spent in attempting to find a satisfactory solution, should have taken the necessary measures to comply with the judge's decision of 9 August 2013.

### Principal facts

The applicant, Casa di Cura Valle Fiorita S.r.l., is an Italian limited liability company with its registered office in Rome.

On 6 December 2012 a group of around 100 persons forced their way into a building of about 8,000 sq. m in Rome owned by the applicant company, and occupied the premises. The applicant company lodged a criminal complaint with the public prosecutor, alleging a breach of its property rights and requesting the evacuation of the premises. It reiterated its complaint on 11 occasions between 2012 and 2013.

On 9 August 2013 the Rome investigating judge ordered the seizure and evacuation of the building, noting that it was occupied by around 150 people who had started to make alterations to the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

premises, in particular by putting up fencing to restrict access. In March 2015 the applicant company applied unsuccessfully to the administrative authorities for enforcement of the decision of 9 August 2013. It then applied to the Administrative Court, complaining about the authorities' lack of response. During the proceedings the Prefect of Rome replied that it was necessary to obtain prior guarantees from the municipality of Rome that the persons concerned would be rehoused; in the absence of such guarantees he could not order their eviction. On 30 March 2016 the Prefect requested the municipality to find alternative housing for the occupants so that the building could be evacuated.

In the meantime, the Rome District Court served an order on the applicant company for the payment of approximately 30,000 euros in electricity bills for 2013 and 2014. The applicant company also continues to be liable for property tax. In addition, its request for access to the data of the persons involved in occupying the building, with a view to bringing a court action against them, was refused by the public prosecutor's office.

## Complaints, procedure and composition of the Court

Relying in particular on Article 6 § 1 (right of access to a court) and Article 1 of Protocol No. 1 (protection of property) to the Convention, the applicant company complained of the failure to enforce the judicial decision of 9 August 2013, alleging that it had not been afforded effective judicial protection, and of its inability to recover possession of its building, which had been occupied by third parties without any legal title.

The application was lodged with the European Court of Human Rights on 21 October 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Linos-Alexandre **Sicilianos** (Greece), *President*,  
Ksenija **Turković** (Croatia),  
Guido **Raimondi** (Italy),  
Krzysztof **Wojtyczek** (Poland),  
Armen **Harutyunyan** (Armenia),  
Pauliine **Koskelo** (Finland),  
Jovan **Ilievski** ("the former Yugoslav Republic of Macedonia"),

and also Abel **Campos**, *Section Registrar*.

## Decision of the Court

### [Article 6 § 1 \(right of access to a court\)](#)

The Court noted that the decision of the Rome investigating judge of 9 August 2013, which had been final and enforceable, concerned a civil right on the part of the applicant company (namely the protection of its property rights) and that it had been urgent, since it was designed to prevent the continuation of an offence (punishable under Article 633 of the Criminal Code) in order to preserve the integrity of the property. However, that decision had remained unenforced to date, in spite of the numerous steps taken on a regular basis by the applicant company.

The reasons advanced by the authorities to justify this non-enforcement related primarily to the lack of alternative accommodation for the occupants, stemming in particular from the municipality's financial difficulties, and to the risk of public-order disturbances. However, the Government did not provide any details of the action allegedly taken to find alternative accommodation since the occupation had begun or, at least, since the official memorandum sent by the Prefect to the Rome municipality on 30 March 2016.

The Court acknowledged that social considerations and fears of public-order disturbances could justify difficulties with enforcement and a delay in evacuating the premises. Nevertheless, it saw no justification for the Italian authorities' complete and prolonged failure to take action. It reiterated that a lack of resources could not in itself amount to an acceptable reason for failing to enforce a judicial decision. Consequently, it found that the national authorities, in failing for over five years to take any steps to comply with a final and enforceable judicial decision, had deprived the provisions of Article 6 § 1 of the Convention of all useful effect and had breached the principle of a law-based State, founded on the rule of law and the principle of legal certainty. **There had therefore been a violation of Article 6 § 1.**

#### Article 1 of Protocol No. 1 (protection of property)

The authorities had failed for over five years to act on the decision of the investigating judge ordering the evacuation of the building. While social considerations and the requirements of public order might have justified a delay in enforcement, the Court regarded as unacceptable the period of non-enforcement, which persisted to this day, coupled with the complete lack of information concerning the steps taken or under consideration by the authorities to put an end to the situation.

The Court was also mindful of the fact that the applicant company was still liable for the energy costs incurred by the building's occupants. In view of the individual interests of the applicant company, the Court considered that the authorities, after a reasonable period of time had been spent in attempting to find a satisfactory solution, should have taken the necessary measures to comply with the judicial decision. **There had therefore been a violation of Article 1 of Protocol No. 1 to the Convention.**

#### Article 41 (just satisfaction)

The Court held that Italy was to pay the applicant company 20,000 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.