FIRST SECTION

DECISION

Application no. 75505/12
TRAINA BERTO and Others
against Italy

The European Court of Human Rights (First Section), sitting on 8 March 2022 as a Chamber composed of:

 Krzysztof Wojtyczek, *President,* Péter Paczolay, Alena Poláčková, Erik Wennerström, Raffaele Sabato, Lorraine Schembri Orland, Ioannis Ktistakis, *judges,*
and Renata Degener, *Section Registrar,*

Having regard to the above application lodged on 16 November 2012,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

1. THE FACTS

1.  A list of the applicants is set out in the appended table.

2.  The Italian Government (“the Government”) were represented by their former Agent, Ms E. Spatafora, and their former co-Agent, Ms P. Accardo.

* + 1. The circumstances of the case

3.  The facts of the case, as submitted by the parties, may be summarised as follows.

* + - 1. Background to the case

4. Mr Giuseppe Traina Berto (hereinafter “the first applicant”) owned a business engaged in the retail sale of motor vehicles, car parts and car bodywork maintenance. The other applicants are his wife and their two sons. The business was located in the municipality of Villa San Giovanni (in Reggio di Calabria province).

5.  In October 1996 severe weather conditions caused several floods in certain areas of Italy, including the Calabria region. The first applicant’s business premises were flooded and destroyed. As a result, his business activities were discontinued and in May 1997 the first applicant ceased trading.

6.  Following the floods of October 1996, by a decision of 11 October 1996 the then Prime Minister declared a state of emergency (*stato di emergenza*) in the Calabria region.

7.  Decree-Law no. 576 of 12 November 1996, which, as amended, became Law no. 677 of 31 December 1996, provided for urgent measures for the benefit of the affected areas. It required government authorities to put in place emergency measures to restore normal living conditions in the affected areas, and allocated financial resources accordingly.

8.  By Order no. 2478 of 19 November 1996 of the Civil Protection Authority (*Protezione civile*), the President of the Calabria region was appointed deputy commissioner for urgent and non-deferrable measures aimed at assisting the population and safeguarding public and private safety. An emergency fund of 600,000,000 Italian lire (ITL) was established to foster the immediate recovery of the productive activities which had been severely affected by the floods.

9.  By an order of 3 February 1997 the deputy commissioner entrusted the collection of requests for access to the emergency fund to the provinces of Catanzaro, Cosenza, Crotone, Reggio di Calabria and Vibo Valentia. The order established that the actual amount and the structure of each grant (“*l’entità e l’articolazione del contributo*”) would be determined in a future order, having regard to documented and verified damage and to the limits of the resources made available by the emergency fund and by any further ministerial allocation in the future.

10.  At the request of the first applicant, the province of Reggio di Calabria put his business on the list of businesses which complied with the requirements for accessing the emergency fund. He was placed in 115th position on the list, for an amount of ITL 60,000,000.

11.  On 7 October 1997 the province of Reggio di Calabria sent the list of eligible businesses to the deputy commissioner.

12.  As nothing further happened with regard to the administrative procedures, the first applicant made several requests for the distribution of the sums allocated to the emergency fund to be expedited.

13.  By a letter of 5 September 2000, the deputy commissioner reported that eligible businesses had made requests for a total amount of ITL 19,873,726,000, and that the sums allocated to the emergency fund had not been distributed because they would be insufficient by far to cover the requests. The deputy commissioner also stated that he had asked the Civil Protection Authority to allocate additional financial resources. Once the additional sums had been allocated, he would inform the first applicant of the criteria for the distribution of those sums.

14.  By a letter of 14 November 2000, the Civil Protection Authority reported that the deputy commissioner had not sent it any programme of measures to support the victims of the floods of October 1996.

15.  By a letter of 28 April 2004, the deputy commissioner informed the first applicant that since the emergency fund was insufficient by far to cover all the requests and no additional financial resources had been allocated, the emergency fund aimed at supporting productive activities had been used to finance infrastructure measures.

16.  At the first applicant’s insistence, and following media coverage of the case, by an order of 4 October 2004 the deputy commissioner accepted the first applicant’s request in part and granted him 20,500 euros (EUR) for the damage his business had sustained as a result of the floods in October 1996.

* + - 1. Proceedings before the domestic courts

17.  In 2006 the applicants sued the Civil Protection Authority, the Ministry of the Interior and the deputy commissioner for the damage caused by the prolonged delay in granting the emergency aid. In a judgment of 19 March 2010, the Civil Court of first instance of Reggio Calabria found that the legal framework of the subject matter “clearly show[ed] that the distribution of the grants was not to be made following criteria directly set out by the law, but was rather to be based on an assessment by the administration”, which “had discretion not only as to the quantity of the allocation (“*quantum*”), but also as to whether or not (“*an*”) to allocate funds”. Since the applicants were “complaining as to the way public powers of an evidently discretionary nature had been exercised”, the Civil Court declared that jurisdiction on the claim “belong[ed] to the Administrative Court, which ha[d] also competence to award damages pursuant to Article 7 § 3 of Law no. 1034 of 1971 as amended by Law no. 205 of 2000”.

* + - * 1. The judgment of the Regional Administrative Court

18.  Further to the remittal of the case by the Civil Court, in a judgment of 25 February 2011 the Regional Administrative Court ordered the deputy commissioner and the Ministry of the Interior to pay the first applicant the sum of EUR 100,000 in compensation. It observed that the administrative authorities had been grossly negligent in failing to promptly start and adequately direct, coordinate and monitor the preliminary activities which were aimed at distributing the sums allocated to the emergency fund, especially taking into account the urgent nature of the measures intended to foster the immediate recovery of productive activities which had been severely affected by the floods of October 1996.

19.  The Regional Administrative Court found that the floods of October 1996 had left the applicants in a very difficult situation, as they had been subjected to proceedings for the foreclosure of their house. Moreover, the third and fourth applicants had developed symptoms of depression, which had led to the former being hospitalised and the latter attempting suicide.

20.  According to the Regional Administrative Court, although the serious damage suffered by the first applicant’s business had been immediately and directly caused by the floods of October 1996, prompt and effective State intervention could have prevented the downward spiral triggered by the natural disaster and avoided a prolonged and irreversible closure of the business.

21.  It further considered that there was no doubt that the first applicant had complied with the requirements set out by the law to have access to the emergency fund. As to the amount of the grant, the national court considered that, taking into account the limits of the emergency fund, it could not be established that the first applicant would have obtained the total amount of the sum originally requested. However, the Regional Administrative Court considered that, if the administrative authorities had acted diligently, it was plausible that the first applicant would have been granted a sufficient amount to carry out the initial maintenance works and to avoid the permanent closure of the business.

22.  There was therefore a causal link between the conduct of the administrative authorities and the damage alleged, and compensation should be calculated on the basis of the legitimate expectation of being promptly allocated a grant by the administrative authorities and of the chances that that grant would have allowed the first applicant to remain in business.

* + - * 1. Appeal to the Consiglio di Stato

23.  The administrative authorities appealed to the *Consiglio di Stato*. In judgment no. 1745 of 26 March 2012, the *Consiglio di Stato* reversed the first-instance judgment and dismissed the applicants’ claim.

24.  It confirmed that the behaviour of the administrative authorities was unlawful (“*illegittimità della condotta*”) on two grounds. Firstly, the sums allocated to the emergency fund to support the recovery of business activities had been diverted to finance infrastructure measures, in breach of Order no. 2478 of 19 November 1996 of the Civil Protection Authority, which allowed such use only with respect to potential residual amounts in the fund. Secondly, the authorities had unlawfully delayed the administrative procedures, and had failed to inform the applicants of their conclusion, despite the applicants’ repeated requests.

25.  The *Consiglio di Stato* found that in the years which followed the first applicant’s request, his economic difficulties had increased and he had been forced to discontinue his business activities, thus being affected by a crisis which had involved his whole family.

26.  Notwithstanding the above, the *Consiglio di Stato* considered that there was no evidence that the conduct of the administrative authorities had contributed to the damage directly caused by the natural disaster. To reach that conclusion, it focused on the limits of the emergency fund and on the total number of requests made by affected businesses. Since during the administrative procedures the national authorities had not established objective criteria to prioritise certain businesses over others, the applicants would only have received a grant of a few hundred euros, deriving from a proportional distribution of resources to all those who had applied. That being the case, the applicants had not produced sufficient evidence to prove that such a limited amount, if granted promptly, would have had an impact on the chances for the business to recover from the severe damage it had suffered as a consequence of the floods.

* + 1. Relevant legal framework

27.  Article 113 of the Italian Constitution reads as follows:

“Acts of the public administration are subject to judicial review related to either rights (“*diritti*”) or legitimate interests (“*interessi legittimi*”) before ordinary or administrative courts ...”

28.  In the judgment *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 174, ECHR 2012, the Court has referred to the difference, set out by the above Article 113 of the Italian Constitution, between a “personal right” (“*diritto soggettivo*”) and a “legitimate interest” (“*interesse legittimo*”), and has defined the latter as “an individual position indirectly protected as far as was consistent with the public interest”. Based on the same Article 113, a special category of courts (the administrative courts) has in principle jurisdiction for “legitimate interests”, whereas ordinary courts in principle adjudicate on “personal rights”.

29.  Further to the ruling by the Court of Cassation in joint chambers no. 500 of 22 July 1999, Law no. 205 of 2000, amending Article 7 § 3 of Law no. 1034 of 1971 establishing Regional Administrative Courts, recognised the possibility for a private individual to claim for compensation, before an administrative court, even in the case only “legitimate interests” – consistent with public interest - had been breached, subject to some requirements (a wrongful activity of the administration, a loss of chances by the individual). Article 7 § 3 of Law no. 1034 of 1971, as in force between 2000 and 2010, read as follows:

“The Regional Administrative Court, within its jurisdiction, also adjudicates all issues relating to any compensation for damage...”

30.  Decree-Law no. 576 of 12 November 1996, which, as amended, became Law no. 677 of 31 December 1996, provided for urgent measures for the benefit of the areas affected by the natural disasters of October 1996.

31.  Section 1 of the Decree-Law read as follows:

“(1) In the territories of the provinces affected by the natural disasters of October 1996, for which a state of emergency has been declared by the Council of Ministers, the Minister of the Interior and for the Coordination of Civil Protection shall identify, after having consulted the regions concerned, the territories or parts of the municipalities most affected.

(2) By means of decisions adopted in accordance with section 5 of Law no. 225 of 24 February 1992, emergency measures shall be determined, which shall include providing initial aid and assistance to the population and taking the necessary actions to safeguard public and private safety, in order to restore the condition of the affected areas, eliminating where possible existing dangerous situations and fostering the socio-economic and environmental conditions essential to start the process of restoring normal living conditions in the affected areas, including productive and agro-industrial activities.

(3) The regions in whose territory the affected areas fall shall implement the requisite procedures for the measures provided for by Law no. 185 of 14 February 1992, with subsequent amendments ...

(3 bis) In order to complete and complement the emergency measures set out in the reconstruction and recovery plans provided for by the orders referred to in paragraph 2, the regions and local authorities may commit their own resources by means of the shortened procedures and derogations to the ordinary rules established in the same decisions ...”

32.  Section 8 of the Decree-Law provided:

“(1) The sums which the Minister for the Coordination of Civil Protection has allocated to the relevant bodies may be withdrawn if they have not used them, wholly or in part, within eighteen months from the date of allocation of the funds ...

(2) The Minister of the Interior and for the Coordination of Civil Protection, with the assistance of the Department of Civil Protection, shall carry out a survey of the sums referred to in paragraph 1 and provide for the total or partial revocation of the allocation measures.

...”

33.   Order no. 2478 of 19 November 1996 of the Civil Protection Authority set out urgent measures to cope with the damage caused by the floods in the Calabria region. Article 1 included the municipality of Villa San Giovanni in the list of territories seriously affected by the natural disasters. Article 2 appointed the President of the Calabria region as deputy commissioner for the urgent and non-deferrable measures aimed at assisting the population and safeguarding public and private safety.

34.  Article 3 read as follows:

“(1) The deputy commissioner, on the basis of the survey of the damage carried out by the relevant offices and the prior economic assessment of the extent of the damage, shall adopt – within thirty days from the date of publication of this order in the Official Gazette of the Italian Republic – an emergency infrastructure intervention plan taking into account the purposes referred to in section 2(1) and (3) of Decree-Law no. 576 of 12 November 1996, using the funds allocated by this order and the financial resources made available by the regional and local authorities.

...”

35.  Article 4 provided:

“(1) [T]he measures referred to in Article 3 are declared urgent and non-deferrable, and a fund of 100,762,000,000 Italian lire is allocated to the deputy commissioner for their implementation ...

(2) For the purposes set out in Article 3 the deputy commissioner may also use any residual amounts resulting from the implementation of Articles 9 and 10.”

36.  Article 9 established:

“(1) The deputy commissioner, with the assistance of the mayors of the municipalities concerned, shall provide, within the limits of the financial resources referred to in paragraph 3 below, grants for the accommodation of families evacuated from houses which have been destroyed or declared unfit for habitation and for measures for the benefit of persons who have suffered serious damage to movable and immovable property.

(2) The grants referred to in paragraph 1 shall be distributed within fifteen days from the date on which the funds become available to the mayors.

(3) For the purposes of this Article the deputy commissioner is allocated a fund of 1,300,000,000 Italian lire ...”

37.  Article 10 set forth:

“(1) In order to foster the immediate recovery of productive activities in the areas referred to in Article 1 of this order, a fund of 600,000,000 Italian lire is allocated to the Calabria region ...”

1. COMPLAINT

38.  The applicants complained under Article 1 of Protocol No. 1 of the Convention that the prolonged delay on the part of the national authorities in distributing the sums allocated to the emergency fund amounted to a violation of their right to receive a financial aid for the immediate recovery of their business.

1. THE LAW

39.  In respect of the above complaint, the applicants relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

“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.”

40.  The Court notes from the outset that, while the Government did not contest the applicability of Article 1 of Protocol No. 1 as such, they pointed out that the Civil Protection Authority’s order of 19 November 1996 did not confer on the applicants title to a claim of a definite amount, but only “a legitimate expectation of receiving a grant”, the amount of which depended on the limits of the emergency fund and on the number and amount of the requests made by other businesses.

41.  In view of the Government’s submission, the Court considers that it should first examine the applicability of Article 1 of Protocol No. 1 to the present case.

* + 1. General principles

42.  The Court reiterates that Article 1 of Protocol No. 1 does not guarantee, as such, any right to a social benefit of a particular amount and places no restriction on the Contracting State’s freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme (*Nechayeva v. Russia*, no. 18921/15, § 34, 12 May 2020).

43.  However, although Article 1 of Protocol No. 1 applies only to a person’s existing possessions and does not create a right to acquire property, in certain circumstances a “legitimate expectation” of obtaining an asset may also enjoy the protection of Article 1 of Protocol No. 1 (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 74, 13 December 2016). A legitimate expectation must be of a nature more concrete than a mere hope and be based on a legal provision, a legal act such as a judicial decision or settled case-law of the domestic courts confirming its existence (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 45-52, ECHR 2004‑IX). Moreover, a proprietary interest in the nature of a claim may be regarded as an “asset” only where it has a sufficient basis in national law or where the applicants had a claim which was sufficiently established to be enforceable (ibid., §§ 49 and 52).

* + 1. Application of the above principles in the instant case

44.  In the present case the Court must determine whether the applicants’ claim to receive the financial aid was sufficiently established to attract the guarantees of Article 1 of Protocol No. 1 (see *Nechayeva*, cited above, § 36).

45.  The Court notes at the outset that the Civil Protection Authority’s order of 19 November 1996 allocated only limited resources to support the immediate recovery of business activities, namely ITL 600,000,000. The order of 3 February 1997 clarified that any grant would be determined within the limits of the resources made available by the emergency fund and by any further ministerial allocation in the future. Therefore, the relevant national law clearly made the “right” to obtain financial aid conditional on the availability of sufficient funds (see *a contrario* *Nechayeva*, cited above, § 47). Moreover, the order of 3 February 1997 did not contain rules to determine the amount of the grants nor did it set out any objective criteria for the distribution of the emergency fund’s limited financial resources. Indeed, it expressly stated that the applicable rules and criteria would be determined in a separate order to be enacted on an unspecified future date. Following the submission of requests by businesses, totalling ITL 19,873,726,000, the national authorities took no further action to identify among the numerous eligible businesses the actual beneficiaries of financial aid and to establish rules to determine the precise amount of each grant. Under these circumstances, the Court considers that the applicants’ claim to receive financial aid from the emergency fund cannot be said to have enjoyed a sufficient basis in national law to be regarded as an “asset” (see, *mutatis mutandis*, *Zamoyski-Brisson and Others v. Poland* (dec.), no. 19875/13, §§ 72-75, 12 September 2017).

46.  This conclusion is confirmed by the findings of the national courts. In particular, the Court observes that the applicants did not bring an action before the domestic courts to obtain the financial aid, but only to seek damages for the prolonged delay in granting and distributing that aid. Therefore, the domestic courts were not directly called upon to decide on the nature of the substantive interest the applicants had when they applied to be granted money from the emergency fund. However, when deciding on the existence of a causal link between the behaviour of the national authorities and the damage suffered by the applicants for the delay, the national courts recognised that the emergency fund had only limited resources and that the relevant national law did not confer on the applicants a right to obtain financial aid of a specific amount. The Court cannot discern any arbitrariness or manifest unreasonableness in the domestic courts’ finding. On the contrary, those decisions confirm that a claim to obtain financial aid by submitting a request for a grant from the emergency fund, as set out in the order of 19 November 1996, did not carry with it a guarantee to obtain such aid, having regard to the fund’s limited financial resources which had to be distributed among all entitled businesses and the fact that no objective criteria were established to determine the actual amount of each grant.

47.  The Court concludes that the applicants had neither a right nor a claim with sufficient basis in national law to constitute an “asset”. They therefore cannot argue that they had “possessions” within the meaning of Article 1 of Protocol No. 1.

48.  It follows that the applicants’ complaint under Article 1 of Protocol No. 1 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 31 March 2022.

 Renata Degener Krzysztof Wojtyczek
 Registrar President

Appendix

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| --- | --- | --- | --- | --- |
| No. | Applicant’s Name | Year of birth | Nationality | Place of residence |
| 1. | Giuseppe TRAINA BERTO | 1935 | Italian | Villa San Giovanni |
| 2. | Caterina ALFONSETTI | 1932 | Italian | Villa San Giovanni |
| 3. | Antonella TRAINA BERTO | 1966 | Italian | Villa San Giovanni |
| 4. | Jack TRAINA BERTO | 1964 | Australian, Italian | Villa San Giovanni |