

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

FOURTH SECTION

CASE OF HAMBERGER v. AUSTRIA

(Application no. 49664/12)

JUDGMENT

STRASBOURG

28 February 2017

This judgment is final but it may be subject to editorial revision.



In the case of Hamberger v. Austria,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

Vincent A. De Gaetano, *President,*
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 7 February 2017,

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

PROCEDURE

1. The case originated in an application (no. 49664/12) against the Republic of Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Austrian national, Mr Gerald Hamberger, on 6 August 2012.

2. The applicant was represented by Mr H. Blum, a lawyer practising in Linz. The Austrian Government ("the Government") were represented by their Agent, Ambassador H. Tichy, Head of the International Law Department at the Federal Ministry for Europe, Integration and Foreign Affairs.

3. On 27 August 2015 the complaint concerning the length of the proceedings was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

4. The applicant was born in 1965 and lives in Traun.

5. The applicant was employed as a civil servant of the Traun Municipality (*Stadtgemeinde Traun*).

6. On 5 August 2002 the applicant declared to resign from his civil service employment as of 31 August 2002. However, on 29 August 2002 he revoked his declaration.

7. On 12 September 2002 the mayor of Traun informed the applicant that the Traun City Council (*Stadtrat*) had not been able to accept his revocation and that his employment as a civil servant had therefore ended on 31 August 2002.

A. The first set of proceedings

8. On 26 September 2003 the applicant requested that his employment relationship be declared as still valid. On 11 December 2003 the City Council dismissed the request.

9. On 30 December 2003 the applicant appealed. On 15 January 2004 he requested that suspensive effect be granted in respect of his appeal. On 18 May 2004 he requested that the City Council declare him entitled to (retroactive) payment of his salary as from 1 September 2002.

10. On 18 June 2004 the Traun Municipal Council (*Gemeinderat*) dismissed the appeal, holding that the applicant was not entitled to his salary after 31 August 2002 and rejected his request for suspensive effect of 15 January 2004 as having been filed out of time.

11. On 8 July 2004 the applicant filed an objection (*Vorstellung*) against the Municipal Council's decision of 18 June 2004. On 24 June 2005 the Upper Austria Regional Government (hereinafter, "the Regional Government") quashed the Municipal Council's decision in the part rejecting the applicant's request for suspensive effect of 15 June 2004 (see paragraph 9 above) and referred it back to the lower instance for a new decision. The remainder of the applicant's objection was dismissed.

12. On 5 August 2005 the applicant complained to the Constitutional Court (*Verfassungsgerichtshof*) against the Regional Government's decision of 24 June 2005. On 25 September 2006 the Constitutional Court declined to examine the complaint and on 15 November 2006, at the applicant's request, transferred the complaint to the Administrative Court (*Verwaltungsgerichtshof*).

13. On 15 November 2007 the Administrative Court lifted the Regional Government's decision of 24 June 2005 (see paragraph 11 above) on the ground that it had not heard the applicant in order to assess his credibility.

14. On 4 March 2008 the Regional Government lifted the Municipal Council's decision of 18 June 2004 (see paragraph 10 above) and referred the case back to the lower instance for a new decision.

B. Further course of the proceedings concerning the applicant's request to grant suspensive effect in respect of his appeal

15. On 3 December 2006 the applicant complained to the Administrative Court about the Municipal Council's failure to decide (*Säumnisbeschwerde*) on his request for suspensive effect of 15 January 2004 (see paragraph 9 above). On 31 January 2007 the Administrative Court rejected the complaint because the Municipal Council had not been competent to decide on this issue.

16. On 25 June 2007 the applicant filed an application for transfer of jurisdiction (*Devolutionsantrag*) with the Municipal Council regarding his

request of 15 January 2004, claiming that the City Council had failed to render a decision in due time.

17. On 4 January 2008 the applicant complained to the Administrative Court about the Municipal Council's failure to decide on his request for suspensive effect.

C. The second set of proceedings

18. On 27 June 2008 the Municipal Council dismissed the applicant's appeal against the City Council's decision of 11 December 2003 (see paragraph 8 above) and his request for suspensive effect of 15 January 2004 (see paragraph 9 above). Consequently, on 5 September 2008 the Administrative Court closed the proceedings regarding the applicant's complaint of 4 January 2008 about the Municipal Council's failure to decide (see paragraph 17 above) and awarded costs to the applicant.

19. On 7 July 2008 the applicant filed an objection with the Regional Government against the Municipal Council's decision of 27 June 2008.

20. On 4 February 2009 the applicant complained to the Administrative Court about the Regional Government's failure to decide on his objection. On 9 February 2009 the Regional Government dismissed the objection. Therefore, on 13 March 2009 the Administrative Court closed the proceedings regarding the Regional Government's failure to decide and awarded costs to the applicant.

21. On 25 March 2009 the applicant complained to the Constitutional Court against the Regional Government's decision of 9 February 2009 (see paragraph 20 above). On 29 November 2010 the Constitutional Court declined to examine the complaint and on 27 January 2011, at the applicant's request, transferred the complaint to the Administrative Court.

22. On 25 January 2012 the Administrative Court dismissed the complaint against the Regional Government's decision of 9 February 2009. The decision was served on the applicant's counsel on 9 February 2012.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

23. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

24. The period to be taken into consideration began on 26 September 2003, when the applicant lodged his request that his employment relationship with the Traun Municipality be declared as still valid (see paragraph 8 above; see *Otto v. Austria*, no. 12702/08, § 18, 22 October 2009), and ended on 9 February 2012, when the Administrative Court's final decision was served on the applicant's counsel (see paragraph 22 above). It thus lasted more than eight years and four months, during which the case was dealt with by three administrative and two judicial bodies.

A. Admissibility

25. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

26. The applicant claimed that neither the facts of the case nor the legal questions involved had been particularly complex. He denied having contributed to the length of the proceedings and submitted that he had been unemployed for a period of approximately one and a half years before he had been able to find employment again.

27. The Government submitted that the proceedings had been comprehensive and that they had involved an unusually large number of investigative measures. The applicant himself would have contributed to the length of the proceedings by supplementing his applications and requests. With regard to the relevance of the proceedings for the applicant, the Government pointed out that the applicant had been in another employment relationship shortly after terminating his employment with the Traun Municipality. It thus concluded that the proceedings at issue were not of decisive relevance for the applicant's career and living circumstances but rather confined to the question of retroactive salary payments. Furthermore, the applicant had not initiated the administrative proceedings until one year after the employment relationship had ended. He had therefore been responsible himself for the majority of the duration of his unemployment.

2. The Court's assessment

28. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the

conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court further reiterates that special diligence is necessary in employment disputes (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D).

29. Having regard to the factual investigations conducted and the questions of law involved, the Court considers that the instant case was not particularly complex.

30. In view of the Government's submissions (see paragraph 27 above), the Court considers that the proceedings were, for the most part, conducted at reasonable speed and that some procedural delays can be attributed to the applicant's conduct. However, the Court observes that two notable periods of inactivity occurred when the case was pending before the Constitutional Court for more than one year and one month during the first set of proceedings (from 5 August 2005 to 25 September 2006; see paragraph 12 above) and for another one year and eight months during the second set of proceedings (from 25 March 2009 until 29 November 2010; see paragraph 21 above) before the Constitutional Court declined to examine the complaint. There are no indications that these delays, which significantly added to the overall length of the proceedings, can be attributed to the applicant's conduct.

31. As regards what was at stake for the applicant, the Court considers that, in general, the declaration of the applicant's employment relationship as still valid was of particular importance to him (see, *mutatis mutandis*, *Obermeier v. Austria*, 28 June 1990, § 72, Series A no. 179). However, the Court considers that the importance of the matter was somewhat reduced by the fact that the applicant only initiated the proceedings more than one year after the employment relationship had ended. In the light of the fact, accepted by both parties (see paragraphs 26 and 27 above), that the total period of the applicant's unemployment amounted to one and a half years, the Court finds that most of that period was not related to the length of the proceedings at issue.

32. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Hackel v. Austria*, no. 43463/09, §§ 18-21, 21 June 2016; *Kugler v. Austria*, no. 65631/01, §§ 39-42, 14 October 2010; *Otto v. Austria*, cited above, §§ 23-25; *Strobel v. Austria*, no. 25929/05, §§ 26-28, 4 June 2009; and *Riepl v. Austria*, no. 37040/02, §§ 37-42, 3 February 2005).

33. Having regard to the above considerations and its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

34. There has accordingly been a breach of Article 6 § 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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. Damage

36. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government contested that claim.

38. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the violation of Article 6 § 1 of the Convention. Ruling on an equitable basis, it awards award him EUR 1,500 under that head.

B. Costs and expenses

39. The applicant also claimed EUR 17,083.98 for the costs and expenses incurred before the domestic authorities and courts and EUR 3,152.88 for those incurred before the Court.

40. The Government contested these claims.

41. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. The Court observes that the documents at its disposal indicate that those costs claimed by the applicant which were aimed at preventing or putting right the violation of the "reasonable time" requirement have already been reimbursed by the domestic courts (see paragraph 20 above). The remainder of the costs incurred in the domestic proceedings were not related to the violation of Article 6 § 1 of the Convention. Therefore, the Court rejects the claim for costs and expenses concerning the domestic proceedings. In turn, it considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court.

C. Default interest

42. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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, the following amounts:
      (i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 February 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Vincent A. De Gaetano
Deputy Registrar	President