

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

FOURTH SECTION

CASE OF PADLEWSKI v. AUSTRIA

(Application no. 11553/11)

JUDGMENT

STRASBOURG

16 May 2017

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



In the case of Padlewski 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 25 April 2017,

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

PROCEDURE

1. The case originated in an application (no. 11553/11) 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 Reinald Padlewski, on 3 February 2011.

2. 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 10 April 2014 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1960 and lives in Vienna. He worked as a civil servant for the Ministry of Economics and Labour (*Bundesministerium für Wirtschaft und Arbeit*).

5. On 23 August 2004 the Disciplinary Prosecutor (*Disziplinaranwalt)* of the Ministry of Economics and Labour reported to the Disciplinary Council (*Disziplinarkommission*) of the Ministry of Economics and Labour that it suspected the applicant of having committed disciplinary offences. The report indicated that the applicant had been working on a project for the implementation of an electronic administration system for foreign trade since 2001. The Disciplinary Prosecutor accused the applicant of not having conducted an award procedure (*Vergabeverfahren*). Furthermore, the applicant had allegedly placed orders without consulting the Ministry and

asking for permission beforehand. He had thereby caused damage amounting to around 200,000 euros (EUR). Furthermore, he had disobeyed orders from the Ministry and subsequently tampered with the files. He had therefore breached his official duties (*Verletzung der Dienstpflicht*).

6. In his submissions of 7 September 2004, the applicant contested these accusations.

7. On 1 October 2004 the Disciplinary Council of the Ministry of Economics and Labour decided not to institute disciplinary proceedings against the applicant as it considered that prosecution of the reported offences had become time-barred.

8. On 30 December 2004 the Appeals Commission at the Federal Chancellery (*Berufungskommission beim Bundeskanzleramt*) allowed the appeal of the Disciplinary Prosecutor and quashed the decision by the Disciplinary Council. It held that the authority had only learned about the applicant's offences on 1 July 2004 and therefore prosecution had not become time-barred.

9. On 25 January 2005 the Disciplinary Council decided to institute disciplinary proceedings against the applicant.

10. On 7 April 2005 the Appeals Commission dismissed the applicant's appeal against this decision.

11. On 11 October 2005, the Vienna Public Prosecutor informed the applicant that criminal investigations against him on the grounds of suspected embezzlement had been discontinued.

12. On 15 March 2006 the Constitutional Court (*Verfassungsgerichtshof*) dismissed the applicant's complaint against the Appeals Commission's decision of 7 April 2005 (see paragraph 10 above).

13. Meanwhile, on 20 December 2005, the Disciplinary Council had decided to summon the applicant to an oral hearing and specified the offences of which he was accused, namely the breach of official duties.

14. On 28 February 2006 the Appeals Commission dismissed the applicant's appeal against this decision.

15. On 6 December 2006 the Constitutional Court dismissed the applicant's complaint against the decision of the Appeals Commission of 28 February 2006.

16. Meanwhile, on 1, 24 and 27 March 2006 the applicant had lodged three requests for the re-opening of the disciplinary proceedings on issues which had already been decided by the authorities at previous stages. He had further requested that the proceedings before the Disciplinary Council be stayed and that no oral hearings be held as long as the proceedings concerning his complaints before the Constitutional Court were pending (see paragraphs 12 and 15 above).

17. On 7 April 2006 the Ministry of Economics and Labour *ex officio* placed the applicant in retirement as from 1 May 2006. It held that the

applicant was suffering from a personality disorder, was not able to exercise his official duties and was therefore unfit for service.

18. In spite of the applicant's request to stay the disciplinary proceedings (see paragraph 16 above), the Disciplinary Council held oral hearings on 27, 28 and 31 March, 5 April, 2, 3, 22, 23 and 24 May and 28 June 2006.

19. On 28 June 2006 the Disciplinary Council convicted the applicant of breach of official duties and imposed the disciplinary penalty of loss of all his rights and entitlements from his public employment. The applicant appealed.

20. On 20 July 2006 the Appeals Commission rejected the applicant's request for re-opening of 24 March 2006 (see paragraph 16 above).

21. On 5 September 2006 the Disciplinary Council rejected the applicant's requests for re-opening of 1 and 27 March 2006 (see paragraph 16 above). On the same day, the applicant lodged an application for transfer of jurisdiction to the superior authority (*Devolutionsantrag*) with the Appeals Commission.

22. On 14 December 2006 the Appeals Commission quashed the Disciplinary Council's decision of 28 June 2006 (see paragraph 19 above) and remitted the case to the Disciplinary Council on the grounds that the Disciplinary Council had not sufficiently assessed the evidence before it. It found several procedural errors and ordered the Disciplinary Council to appoint a psychiatric expert to establish whether the applicant could be held accountable for his actions.

23. On 9 January 2007 the Appeals Commission rejected the application for transfer of jurisdiction to the superior authority and on 15 March 2007 it dismissed the applicant's appeal against the Disciplinary Council's decision of 5 September 2006 (see paragraph 21 above).

24. Between 21 September 2007 and 16 June 2008 the Disciplinary Council held several hearings, in the course of which it appointed a psychiatric expert to submit a report on whether the applicant could be held responsible for his actions. Since, despite several previous summonses, the applicant failed to appear before the expert, on 4 April 2008 the Disciplinary Council requested the expert to deliver his opinion on the basis of the medical certificates and expertises obtained so far in parallel proceedings.

25. Meanwhile, on 23 October 2007, the Administrative Court dismissed the applicant's appeal against the decision of the Ministry of Economics and Labour of 7 April 2006, and the applicant's compulsory retirement became final (see paragraph 17 above).

26. On 20 June 2008 the Disciplinary Council again convicted the applicant of breach of official duties and imposed as punishment the loss of all his rights.

27. On 2 December 2008 the Appeals Commission quashed the decision again and remitted the case to the Disciplinary Council on similar grounds

to those set out in its decision of 14 December 2006 (see paragraph 22 above).

28. Thereupon the Disciplinary Council held oral hearings on 27 April, 5 and 18 May, 3, 4 and 10 June and 1 July 2009.

29. On 1 July 2009 the Disciplinary Council decided that the applicant was not guilty of having committed a breach of his official duties. In its reasoning the Disciplinary Council noted that there were doubts as to whether the applicant could be held responsible for his actions at the relevant time. The Disciplinary Prosecutor appealed against this decision.

30. By decision of 28 October 2009, the Appeals Commission upheld in essence the reasoning of the Disciplinary Council and dismissed the Disciplinary Prosecutor's appeal. Subsequently, the Disciplinary Prosecutor filed a complaint with the Administrative Court (*Verwaltungsgerichtshof*).

31. On 2 July 2010, after the Disciplinary Prosecutor had withdrawn her complaint, the Administrative Court discontinued the proceedings and ordered the Disciplinary Prosecutor to reimburse the applicant's expenses in the amount of EUR 1,106.40. This decision was served on the applicant's counsel on 3 August 2010.

32. By judgment of the Vienna Court of Appeal of 25 May 2011 concerning the official liability proceedings instituted by the applicant, he was awarded EUR 4,608, corresponding to the costs of his appeals against the Disciplinary Council's decisions of 28 June 2006 and 20 June 2008 (see paragraphs 19 and 26 above), which were both quashed by the Appeals Commission due to procedural errors and lack of reasoning (see paragraphs 22 and 27 above).

THE LAW

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

33. The applicant complained that the length of the disciplinary 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..."

34. The Government contested that argument.

35. The Court considers that the period to be taken into consideration began at the latest on 7 September 2004, when the applicant contested the accusations made against him in the Disciplinary Prosecutor's report of 23 August 2004 (see paragraph 6 above). The proceedings ended on 3 August 2010, when the decision by the Administrative Court was served

on the applicant's counsel (see paragraph 31 above). They thus lasted five years, ten months and twenty-seven days for three levels of jurisdiction.

A. Admissibility

36. The Court notes that the application 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

37. The applicant argued that there were several periods of inactivity on the part of the authorities. Although on 7 April 2006 the Ministry of Economics and Labour had ordered his compulsory retirement as from 1 May 2006 on the grounds that he was suffering from a personality disorder, it took the domestic authorities more than three years to arrive, eventually, at the same conclusion. He pointed out that, despite the precise orders given by the Appeals Commission in its decisions of 14 December 2006 and 2 December 2008, the Disciplinary Council had committed the same procedural errors again and its decisions constantly failed to assess the evidence correctly. Furthermore, the right to prosecute him had already become time-barred in 2009, but the Disciplinary Prosecutor nonetheless insisted on continuing the disciplinary proceedings against him. Finally, given that his monthly pension was EUR 1,526.52, any reduction of this amount would have seriously affected his economic existence.

38. The Government contended that the length of proceedings could still be regarded as reasonable. They argued that the case was highly complex as many oral hearings had to be held, in which numerous witnesses were heard and voluminous files, including several expert reports, had to be examined. Moreover, the applicant had caused considerable delays by appealing against almost every decision, filing numerous requests and by failing to comply with the expert's summons. No major periods of inactivity before the domestic authorities could be observed. As to what was at stake for the applicant, the Government pointed out that even if the applicant had been convicted and had lost all his rights related to his position as a civil servant, he would still have received an amount corresponding to 75% of the usual pension.

39. 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).

40. The Court accepts that the case was of some complexity and that the conduct of the applicant caused some delays. The Court also considers that there were no significant periods of inactivity before the domestic authorities. In reply to the applicant's objection in this regard, the Court notes that the domestic authorities conducted different stages of the proceedings relating to the applicant's requests and appeals rather expeditiously and, to some extent, even simultaneously.

41. However, as regards the three sets of proceedings, the Court observes that the Appeals Commission repeatedly criticized several procedural errors by the Disciplinary Council and the lack of sufficient factual finding and assessment of evidence, in particular regarding the question of the applicant's responsibility for his actions, this already being an issue in the proceedings concerning his compulsory retirement. The Court has noted that in all three sets of proceedings, several procedural steps were taken without any significant delay in between. However, the overall duration of the proceedings appears mainly to be due to the fact that the Appeals Commission twice had to remit the case to the Disciplinary Council on account of similar procedural flaws.

42. Having regard to the circumstances of the case and the Court's case-law (see, for example and *mutatis mutandis*, *Malek v. Austria*, no. 60553/00, § 48-49, 12 June 2003; *Schmidt v. Austria*, no. 513/05, § 24-29, 17 July 2008; *Kincses v. Hungary*, no. 66232/10, § 44-50, 27 January 2015; and *Gollner v. Austria*, no. 49455/99, § 24-25, 17 January 2002), the Court finds that the overall duration of the proceedings exceeded a "reasonable time".

There has, thus, been a breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed EUR 30,800 in respect of non-pecuniary damage.

45. The Government contested this claim as being excessive and pointed out that the finding of a violation would constitute in itself sufficient just satisfaction.

46. The Court accepts that the applicant has suffered non-pecuniary damage, such as distress and frustration relating to the length of the

proceedings, which is not sufficiently compensated by the finding of a violation of the Convention. Making its assessment on an equitable basis, the Court awards EUR 1,500 under that head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

47. The applicant claimed the reimbursement of costs and expenses incurred in the domestic proceedings in the amount of EUR 63,525.52. He did not claim any compensation for the costs incurred before the Court.

48. The Government contested this claim, arguing that the costs and expenses incurred in the domestic proceedings did not serve to prevent the long duration of the proceedings. Moreover, the applicant had already been awarded the reimbursement of the costs of his two appeals against the decisions of the Disciplinary Council of 28 June 2006 and 20 June 2008 in the official liability proceedings.

49. 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 are reasonable as to quantum. In the present case, the applicant was awarded EUR 1,106.40 by the Administrative Court's decision of 3 July 2010 (see paragraph 31 above) and EUR 4,608 for the costs of his appeals against the decisions of the Disciplinary Council of 28 June 2006 and 20 June 2008 in the official liability proceedings (see paragraph 32 above). Thus, even assuming that these expenses were partially incurred as a consequence of the violation found in the present case, the applicant has already obtained adequate redress from the domestic authorities. The Court therefore rejects the claim for costs and expenses concerning the domestic proceedings.

C. Default interest

50. 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, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 16 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti
Deputy Registrar

Vincent A. De Gaetano
President