

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

FIFTH SECTION

CASE OF SCHWABEL v. AUSTRIA

(Application no. 34927/12)

JUDGMENT

STRASBOURG

9 November 2017

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



In the case of Schwabel v. Austria,

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

Nona Tsotsoria, *President,*
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges,*

and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having deliberated in private on 19 October 2017,

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

PROCEDURE

1. The case originated in an application against Austria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on the date indicated in the appended table.

2. The applicant was represented by Mr H. Schmid, a lawyer practising in Graz.

3. The application was communicated to the Austrian Government ("the Government").

THE FACTS

4. The applicant and the relevant details of the application are set out in the appended table.

5. The applicant complained of the excessive length of civil proceedings.

THE LAW

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

6. The applicant complained that the length of the civil proceedings in question had been incompatible with the "reasonable time" requirement. He relied on Article 6 § 1 of the Convention, which reads as follows:

Article 6 § 1

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

7. 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

8. In the leading cases of *Holzinger v. Austria (no. 2),* no. 28898/95, §§ 26-29, 30 January 2001, the Court already found a violation in respect of issues similar to the one in the present case.

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of this complaint. Having regard to 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.

10. The complaint is therefore admissible and discloses a breach of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. 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."

12. Regard being had to the documents in its possession and to its case-law (see, in particular, *Rambauske v. Austria,* no. 45369/07, §§ 16 and 32, 28 January 2010), the Court considers it reasonable to award the sums indicated in the appended table.

13. 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 it discloses a breach of Article 6 § 1 of the Convention concerning the excessive length of civil proceedings;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table, at the rate applicable at the date of settlement;

(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.

Done in English, and notified in writing on 19 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Nona Tsotsoria
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 6 § 1 of the Convention (excessive length of civil proceedings)

No.	Application no. Date of introduction	Applicant name Date of birth / Date of registration	Representative name and location	Start of proceedings	End of proceedings	Total length Levels of jurisdiction	Amount awarded for non-pecuniary damage per household (in euros)[1]	Amount awarded for costs and expenses per application (in euros)[2]
1.	34927/12 04/06/2012	**Rüdiger Schwabel** 24/12/1944	Schmid Helmut Graz	04/10/2001	09/12/2011	10 year(s) and 2 month(s) and 6 day(s) 3 level(s) of jurisdiction	5,600	2,000

[1] Plus any tax that may be chargeable to the applicants.
[2] Plus any tax that may be chargeable to the applicants.