

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

FIFTH SECTION

DECISION

Application no. 61086/14
Klaus FUCHSHUBER
against Austria

The European Court of Human Rights (Fifth Section), sitting on 19 October 2017 as a Committee composed of:

Nona Tsotsoria, *President,*
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges,*
and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on the date indicated in the appended table,

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

Having deliberated, decides as follows:

FACTS AND PROCEDURE

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

The applicant was represented by Mr Georg Lehner, a lawyer practising in Wels.

The applicant's complaint under Article 6 § 1 of the Convention concerning the excessive length of criminal proceedings was communicated to the Austrian Government ("the Government").

THE LAW

Complaint under Article 6 § 1 of the Convention (excessive length of criminal proceedings)

In the present application, having examined all the material before it, the Court considers that for the reasons stated below, the respondent Government cannot be held liable for the excessive length of the criminal proceedings.

The Government submitted that the applicant could no longer claim to be a victim of an alleged violation of the Convention as the imposed sentence was significantly reduced due to the excessive length of the proceedings.

This was disputed by the applicant, who maintained that the reduction of the originally imposed sentence would not change anything regarding his victim status.

The Court has to consider whether the applicant may still claim to be a victim. In this respect the Court reiterates that the mitigation of a sentence on the ground of excessive length of proceedings does not in principle deprive the individual concerned of his status as a victim within the meaning of Article 34 of the Convention. However, this general rule is subject to an exception when the national authorities have acknowledged sufficiently clearly a failure to observe the reasonable time requirement and have afforded redress by reducing the sentence in an express and measurable manner (see *Deuring v. Austria* (dec.), no. 15746/06, 11 December 2008; *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001; and *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51).

In its decision of 2 April 2012 the Independent Administrative Panel (hereinafter IAP) acknowledged that the reasonable time requirement had been breached and reduced the applicant's sentence and costs imposed by the first instance by 75% respectively.

Applying the above mentioned principles in the present case, the Court notes that the IAP expressly held that the proceedings had exceeded a reasonable time. Further, the Court is satisfied that the applicant was afforded adequate and sufficient redress for the alleged violation since the sentence and costs were considerably reduced to one quarter of the originally imposed ones.

The Court therefore finds that the applicant can no longer claim to be a victim of an alleged violation of the Convention. The application is accordingly inadmissible and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 9 November 2017.

Liv Tigerstedt Acting Deputy Registrar	Nona Tsotsoria President

APPENDIX

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 Level of jurisdiction
1.	61086/14 28/08/2014	**Klaus Fuchshuber** 15/06/1976	Lehner Georg Wels	21/06/2006	28/06/2014	8 year(s) and 8 day(s) 3 level(s) of jurisdiction