

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

FOURTH SECTION

DECISION

Application no. 70176/10
Erwin SCHÜTZ
against Austria

The European Court of Human Rights (Fourth Section), sitting on 14 June 2016 as a Committee composed of:

Paulo Pinto de Albuquerque, *President,*
Iulia Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*
and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 November 2010,

Having regard to the decision of 16 October 2013 by the President of the Section to declare parts of the application inadmissible and to communicate the remainder of the application to the Government,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Erwin Schütz, is an Austrian national who was born in 1958 and lives in Goldwörth. He was represented before the Court by Mr M. Harrer, a lawyer practising in Linz.

The Austrian Government ("the Government") were represented by their Agent, Mr H. Tichy, Head of the International Law Department at the Federal Ministry for Europe, Integration and Foreign Affairs.

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

The applicant is the sole owner of a construction company.

On 25 May 2005 one of his construction sites was inspected by the Linz Customs Authority (*Zollverwaltung Linz*) regarding the work permits of the construction workers on site.

On 14 March 2006 the Urfahr-Umgebung District Administrative Authority (*Bezirkshauptmannschaft*) issued three penal orders against the applicant for offences against the Employment of Foreigners Act (*Ausländerbeschäftigungsgesetz*); one for each foreigner illegally employed. He was sentenced to pay a fine of 7,500 euros (EUR) in total, plus EUR 750 in administrative fees.

On 29 March 2006 the applicant appealed against all three penal orders. He argued that the three Czech workers were not his employees, but were independent sub-contractors operating each on behalf of their own companies, in accordance with Austrian and European Union law.

On 11 May 2007, after having held a hearing, the Upper Austria Independent Administrative Panel (*Unabhängiger Verwaltungssenat Oberösterreich*) issued three decisions dismissing the applicant's appeals and ordering him to pay a further EUR 1,500 in court fees. It held that the legal construction of sub-contracting concealed the actual nature of the relationship, which was similar to employment and therefore contravened the Employment of Foreigners Act.

On 26 February 2008 the Constitutional Court refused to deal with the complaints lodged by the applicant and on 16 April 2008 referred the complaints to the Administrative Court.

On 21 April the Administrative Court requested the applicant to supplement his complaints within six weeks in order to comply with procedural requirements. He did so on 12 June 2008. On 14 July 2008 the Independent Administrative Panel was requested to submit the case file and to comment on the applicant's complaints. On 1 October 2008 it complied with these requests. On 24 December 2008 and on 27 November 2009 the applicant submitted additional statements.

On 25 March 2010 the Administrative Court dismissed the complaints as unfounded and imposed a further EUR 610.60 in court fees. Referring to its own jurisprudence as well as European Union law and the jurisprudence of the European Court of Justice, it confirmed the lower instances' classification of the Czech workers as the applicant's employees lacking appropriate work permits. The decision was served on the applicant's counsel on 12 May 2010.

THE LAW

The applicant complains that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which 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..."

The period to be taken into account began on 14 March 2006, when the District Administrative Authority issued the three penal orders against the applicant, and ended on 12 May 2010, when the final judgment of the Administrative Court was served on the applicant's counsel. It therefore lasted four years and almost two months, during which the case was dealt with by four levels of jurisdiction.

The Government reject the allegation that the length of the proceedings was unreasonable. They submit that the proceedings in question were complex both from a legal and a factual point of view. In the light of this complexity, the overall duration of the proceedings of just over four years for four levels of jurisdiction was not excessive. In order to accelerate the proceedings, the applicant could have lodged his complaints with the Constitutional Court and the Administrative Court at the same time, rather than successively. Furthermore, the Government note that the applicant's appeals were dismissed on all levels, and that he had not suffered any financial or other disadvantage as a result of the length of the proceedings.

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 (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

The Court notes that the proceedings at issue were of some complexity, as they concerned questions of national and European Union law. It is not for the Court to speculate whether the proceedings could have been accelerated if the applicant had lodged his complaints with the Constitutional Court and the Administrative Court at the same time. It appears that the applicant has not actively contributed to their length.

However, the Court considers that the authorities cannot be blamed for any major delays either. The District Administrative Authority dealt with the cases rather quickly, and it took the Independent Administrative Panel about one year and two months to decide. The Constitutional Court rejected the applicant's complaints within approximately nine months. The period during which the cases were pending before the Administrative Court, namely just over two years, appears long at first sight. However, after the cases were transferred to the Administrative Court, the applicant had to

remedy procedural defects in his complaints, the Independent Administrative Panel had to submit its observations and the applicant submitted two further statements. After the last statement by the applicant reached the Administrative Court, its decision was served on the applicant's counsel within less than six months.

Having regard to the overall length of the proceedings of just over four years, the fact that no major delays could be attributed to the authorities, and keeping in mind that the proceedings concerned not only one, but three separate penal orders, the Court is satisfied that in the particular circumstances of the case the length of the proceedings has been in compliance with the reasonable time requirement under Article 6 § 1 of the Convention (see *Ebmer v. Austria* (dec.), 4 February 2010, 28519/05).

It follows that this complaint is manifestly ill-founded 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 7 July 2016.

Andrea Tamietti Deputy Registrar	Paulo Pinto de Albuquerque President