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

FOURTH SECTION

DECISION

Application no. 24719/12
Andreas TUSNOVICS
against Austria

The European Court of Human Rights (Fourth Section), sitting on 7 March 2017 as a Committee composed of:

Vincent A. De Gaetano, *President,*
Egidijus Kūris,
Gabriele Kucsko-Stadlmayer, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 April 2012,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Andreas Tusnovics, is an Austrian national, who was born in 1962 and lives in Vienna. He was represented before the Court by Mr R. Kilches, a lawyer practising in Vienna.

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

4. The applicant is an architect who ran an architectural office until at least November 2004. From November 2004 to July 2008 he was employed as a lecturer and programme director (*Studiengangsleiter*) at the Salzburg University of Applied Sciences (*Fachhochschule*).

5. On 4 August 2008 the applicant applied for unemployment benefits.

6. On 17 September 2008 the Vienna Labour Market Service (*Arbeitsmarktservice*) dismissed the application on the ground that the

applicant did not qualify as unemployed under the Unemployment Insurance Act (*Arbeitslosenversicherungsgesetz*), as he generated sales exceeding the marginal earnings threshold (*Geringfügigkeitsgrenze*) from self-employed activities.

7. The applicant appealed, complaining that the Labour Market Service's decision did not contain the relevant sales figures on which it was based, nor the time periods they related to. He claimed that he could not have generated secondary income because of his full-time employment contract, which had included a secondary employment ban. He had thus discontinued running his former architectural office and passed ongoing projects on to subcontractors, without personally making any profits from them.

8. On 13 November 2008 the Vienna Regional Labour Market Service (*Arbeitsmarktservice Landesgeschäftsstelle*) transmitted to the applicant copies of his own income statements, relating to the period from January to August 2008. It informed him that these represented the preliminary basis of the decision regarding his unemployment benefits and invited him to submit comments.

9. On 28 November 2008 the applicant submitted a statement confirming in substance his previous submissions (see paragraph 7 above). He explained, *inter alia*, that the sales he had achieved in 2008 originated from old projects, and that he had, after entering into the employment contract in 2004, appointed subcontractors to finish those projects; hence, he had neither delivered services relating to those projects nor made profits from them. The applicant confirmed that the sales set out in his income statements were correct, but pointed out the latter also showed that he had incurred losses in relation to his projects.

10. On 4 December 2008 the Regional Labour Market Service dismissed the applicant's appeal. It confirmed that the applicant did not qualify as unemployed because, according to his own income statements, his sales in 2008 exceeded the statutory marginal earnings threshold.

11. The applicant complained to the Constitutional Court (*Verfassungsgerichtshof*) against that decision. On 16 June 2009 the Constitutional Court declined to deal with the complaint. Subsequently, at the applicant's request, it transferred the complaint to the Administrative Court (*Verwaltungsgerichtshof*).

12. On 5 October 2009 the applicant amended his complaint and explicitly requested an oral hearing before the Administrative Court. He maintained, in substance, his previous submissions concerning the origin of his sales in the relevant time period (see paragraphs 7 and 9 above). Moreover, he specified that, although he had not delivered services himself, he had remained formally responsible for the implementation of the projects from which his sales originated. He had continuously had to bear costs for those projects, due to the necessity to keep his architectural license and

liability insurance; therefore, the projects had resulted in constant losses for him. Furthermore, the applicant claimed that that Regional Labour Market Service, in its decision of 4 December 2008 (see paragraph 10 above), had failed to establish facts regarding his employment relationship (see paragraph 4 above), due to which he had been unable to provide self-employed services.

13. On 17 December 2009 the Regional Labour Market Service submitted its comments (*Gegenschrift*) on the applicant's complaint. It pointed out, *inter alia*, that the applicant himself had confirmed his self-employment in his income statements. It claimed that continuous self-employment had to be assumed, as the applicant had never taken, or alleged to have taken, any recognisable steps to end his self-employed activities. The applicant did not comment on this point.

14. On 16 November 2011 the Administrative Court dismissed the applicant's complaint. It found that the Regional Labour Market Service had correctly qualified the applicant as self-employed and thus refused to grant him unemployment benefits, on the basis of the applicant's undisputed income statements and submissions and of the absence of any allegation of recognisable attempts to end his self-employed activities. The Administrative Court held that self-employment did not require the applicant to deliver services himself. It was sufficient that these services were delivered, by third persons, on the applicant's behalf and under his responsibility. The Administrative Court thus concluded that no further examination or establishment of facts as to whether the applicant had maintained organisational activities in the relevant time period was required. As to the applicant's request for an oral hearing, it found that the relevant facts had already been established and confirmed by the applicant; that the legal questions at issue had already been sufficiently answered by the existing case-law; and that the applicant had not raised any legal or factual questions requiring an oral hearing. It thus concluded that an oral hearing was not required under Article 6 of the Convention.

15. The Administrative Court's judgment of 16 November 2011 was served on the applicant's counsel on 15 December 2011.

COMPLAINT

16. Relying on Article 6 § 1 of the Convention, the applicant complained about the rejection, by the Administrative Court, of his request to hold an oral hearing.

THE LAW

17. The applicant complained about the lack of an oral hearing before the Administrative Court. He relied on 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 fair and public hearing ... by [a] ... tribunal ..."

18. The applicant claimed that in the course of an oral hearing, he could have shown that he had not been the economic beneficiary of the sales at issue, and that, according to the Administrative Court's previous case-law, he could not be considered as self-employed, as he had never maintained an organisation nor provided services himself.

19. The Government did not submit observations.

20. The Court first observes that in the present case the Administrative Court was the first and only judicial body before which the applicant's case was brought (see, *mutatis mutandis*, *Fischer v. Austria*, 26 April 1995, § 44, Series A no. 312, and *Pauger v. Austria*, 28 May 1997, § 59, *Reports of Judgments and Decisions* 1997-III). It further reiterates that the holding of court hearings in public constitutes a fundamental principle enshrined in paragraph 1 of Article 6 (see *Diennet v. France*, 26 September 1995, § 33, Series A no. 325-A); the applicant was in principle entitled to a public hearing, as none of the exceptions laid down in the second sentence of this provision applied or was invoked in the domestic proceedings (see, *mutatis mutandis*, *Malhous v. the Czech Republic* [GC], no. 33071/96, § 56, 12 July 2001).

21. However, the right to an oral hearing before a court of first and only instance is not an absolute one, as exceptional circumstances might justify dispensing with such a hearing (see *Allan Jacobsson v. Sweden (No. 2)*, 19 February 1998, § 46, *Reports* 1998-I). In particular, the Court has already held that in the course of proceedings in which exclusively legal or highly technical questions are at stake, the requirements of Article 6 may be fulfilled even in the absence of an oral hearing (see *Schuler-Zgraggen v. Switzerland*, 24 June 1993, § 58, Series A no. 263; *Varela Assalino v. Portugal* (dec.), no. 64336/01, 25 April 2002; and *Schelling v. Austria*, no. 55193/00, § 30, 10 November 2005). This applies in particular where the facts are not disputed and a tribunal is only called upon to decide on questions of law of no particular complexity (see *Varela Assalino*, cited above, with further references, and *Speil v. Austria* (dec.), no. 42057/98, 5 September 2002).

22. In the present case, the Court notes that the applicant expressly requested an oral hearing with the Administrative Court (see paragraph 12 above). However, the Administrative Court dismissed that request on the grounds that the facts established by the Regional Labour Market Service

had not been disputed by the applicant, that there was well-established case-law on the matter and that the applicant had not raised any legal or factual questions requiring an oral hearing (see paragraph 14 above).

23. The Court does not consider the above grounds to be unreasonable or arbitrary. It observes that the relevant facts were already established in the Regional Labour Market Service's decision of 4 December 2008 (see paragraph 10 above), and that they were based on the applicant's own submissions and remained undisputed throughout the proceedings. As regards the Administrative Court's finding that the applicant had not alleged having taken recognisable steps to end his self-employed activities (see paragraph 14 above), the Court notes that the applicant never raised any factual questions in that respect during the domestic proceedings, but confined himself in challenging the legal conclusions drawn from the undisputed facts. The Court further considers that the questions of law which had to be decided by the Administrative Court did not raise complex issues.

24. Having regard to the above considerations, to its case-law on the subject (see *Varela Assalino* and *Speil*, decisions cited above, with further references) and to the demands of efficiency and economy which the national authorities might have taken into account (see *Schuler-Zgraggen*, cited above, § 58), the Court concludes that Article 6 § 1 of the Convention did not require an oral hearing before the Administrative Court in the circumstances of the present case.

25. It follows that the application 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 30 March 2017.

Andrea Tamietti	Vincent A. De Gaetano
Deputy Registrar	President