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Success for Eisenberger & Herzog at the ECtHR: Republic of Austria condemned for excessive duration of proceedings

The European Court of Human Rights (ECtHR) condemns the Republic of Austria for lengthy proceedings in an authorization matter. By judgment of 14/2/2017 (FRANZ MAIER GMBH v. AUSTRIA, Application no. 24143 / 11), the ECtHR expressed the view that duration of procedure of more than 7 years is not proportionate in average complex administrative procedures. The decision is now the third condemnation of Austria within the past few years because of excessive duration of proceedings. However, in contrast to the existing procedures, the issue in the present case is also the question of the inadequacy of the equipment of authorities with specialists as well as of unacceptably long renewal periods granted by the Supreme Court in the event of default by the lower courts.

On 29/11/2002, the Franz Maier GmbH submitted an application for the granting of a permit for wet dredging. After a period of almost 8 years, the approval was confirmed in second instance on 27/10/2010, and became legally binding. The reason for the excessive duration of the proceedings was, on the one hand, that due to budget cuts, the second-instance authority did not have able experts to assess the impact of the project. On the other hand, the Administrative Court had extended the decision-making time of the authority in an unreasonable way for years.

The fact that an authority has no experts to assess the facts is unacceptable for applicants. Furthermore, extensions of the decision-making period, which are a multiple of the maximum duration permitted by the procedural rules, are not acceptable. Therefore, on 18/04/2011, Eisenberger & Herzog filed a human rights complaint with the ECtHR in Strasbourg on the grounds of excessive duration of proceedings, which now was successfully concluded.

According to Univ.-Prof. Dr. Georg Eisenberger, whose team supervised the procedure on the part of the licensor, both issues carry importance beyond the case at hand:

"Legislators cannot continue to impose more and more complex procedures without providing the authorities with the adequate human resources. The personnel costs that the Republic saves will be charged on the other hand for public liability proceedings and damages. However, the judgment of the ECtHR is also of great importance in the light of the amended administrative court proceedings regulation 2012 with regard to the changes in administrative proceedings applicable since 1/1/2014, in cases where the authority or the administrative court is in default. According to this legal situation, the appeal by the court of administrative proceedings to make the omitted decision within a certain period of time is without consequences from the procedural point of view. This increases the likelihood of delays in completions, which also increases the risk of further convictions by the European Court of Human Rights with subsequent extensive compensation claims the republic will have to face."

About Eisenberger & Herzog Rechtsanwalts GmbH

Eisenberger & Herzog is a global law firm with more than 60 lawyers in Vienna, Graz and Klagenfurt. In 2015, the law firm won numerous prestigious awards such as "Austrian Law Firm of the Year" ("Chambers & Partners") and "Law Firm of the Year" (Juve).

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