CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37835/97
by Erika DIRTL
against Austria

The European Court of Human Rights, sitting on 4 September 2001 as a Chamber composed of

Mr J.-P. COSTA, *President*,
Mr W. FUHRMANN,
Mr L. LOUCAIDES,
Sir Nicolas BRATZA,
Mrs H.S. GREVE,
Mr K. TRAJA,
Mr M. UGREKHELIDZE, *judges*,
and Mrs S. DOLLÉ, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 21 August 1997 and registered on 8 December 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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, Erika Dirtl, is a Austrian national, born in 1935 and living in St. Pölten. She is represented before the Court by Mr J. Patzak, a lawyer practising in Vienna.

A. The circumstances of the case

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

On 28 February 1990, the applicant filed an action with the Vienna Regional Civil Court (*Landesgericht*) against the five other co-owners of a plot of land with a dwelling house on it. She requested that the co-ownership be terminated by means of a court-auction.

Hearings were held on 29 May, 19 September, 18 December 1990 and on 10 April 1991.

On 8 March 1991, one of the defendants was granted legal aid. On 26 March 1991, the applicant appealed against that decision. By a ruling of 6 June 1991, the Vienna Court of Appeal (*Oberlandesgericht)* overturned the first court's legal aid decision.

Further hearings were held on 16 October 1991 and 24 June 1992. On 11 September 1992, the court appointed an expert on real estate who gave his opinion on 1 February 1993. Further hearings were held on 4 May and 30 September 1993, and on 4 May 1994. On the latter date the court declared the taking of evidence to be terminated and announced that the judgment would be delivered in writing.

On 31 August 1994, the proceedings were reopened for the purpose of taking further evidence. On 14 November 1994, two defendants filed a motion for an adjournment until the delivery of the decision in the parallel proceedings relating to the determination of the property's utility value. On 2 December 1994, the court held a hearing thereon. On 8 March 1995, the case was adjourned as requested in the motion of 14 November 1994.

On 27 March 1995, the applicant appealed against this decision. The Vienna Court of Appeal allowed her appeal on 10 January 1996.

On 24 April, 26 June and 22 August 1996, the Vienna Regional Civil Court held further hearings. On the latter date, the court again declared the taking of evidence to be terminated and announced that the judgment would be delivered in writing.

On 6 January 1997, the proceedings were continued with a view to taking further evidence. On 31 January 1997, the applicant appealed against this decision, which was dismissed by the Vienna Court of Appeal. The

applicant's further appeal of 27 March 1997 to the Supreme Court was dismissed on 24 April 1997.

On 7 October 1998, the applicant's representative informed the court that negotiations on the sale of the property were in progress.

At the hearing of 29 January 1999, the applicant filed an application *in eventu* for her property rights to her apartment to be determined.

At the hearing of 29 June 1999, the parties came to an agreement and subsequently the applicant withdrew her action and her claim at a hearing on 30 September 1999.

B. Relevant domestic law

Section 91 of the Courts Act (*Gerichtsorganisationsgesetz*), which has been in force since 1 January 1990, provides as follows.

> "(1) If a court is dilatory in taking any procedural step, such as announcing or holding a hearing, obtaining an expert's report, or preparing a decision, any party may submit a request to this court for the superior court to impose an appropriate time-limit for the taking of the particular procedural step; unless sub-section (2) of this section applies, the court is required to submit the request to the superior court, together with its comments, forthwith.
>
> (2) If the court takes all the procedural steps specified in the request within four weeks after receipt, and so informs the party concerned, the request is deemed withdrawn unless the party declares within two weeks after service of the notification that it wishes to maintain its request.
>
> (3) The request referred to in sub-section (1) shall be determined with special expedition by a chamber of the superior court consisting of three professional judges, one of whom shall preside; if the court has not been dilatory, the request shall be dismissed. This decision is not subject to appeal."

COMPLAINT

The applicant complains under Article 6 § 1 of the Convention about the length of the proceedings.

THE LAW

The applicant's complaint relates to the length of the proceedings, which began on 28 February 1990 and ended on 30 September 1999 with the applicant's withdrawal of her action and her claim. They therefore lasted

nine years and seven months. Article 6 § 1 of the Convention, so far as relevant, provides 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 Government contend that the applicant failed to exhaust domestic remedies as she has not made use of section 91 of the Courts Act to expedite the proceedings.

The applicant contests the Government's view. An application under section 91 of the Courts Act would not have been an appropriate means to speed up the proceedings since the delays were not due to inertia but rather to unnecessary procedural steps undertaken by the court.

The Court recalls its recent case-law (*Holzinger v. Austria,* no. 23459/94, 30.01.01, §§ 24-25, to be published in ECHR 2001) in which it held that section 91 of the Courts Act is, in principle, an effective remedy which has to be used in respect of complaints about the length of court proceedings. The Court notes that there were periods of delay between the hearings of 16 October 1991 and 24 June 1992, and the next one on 4 May 1993. During that time the applicant could have lodged a request under section 91 of the Courts Act, which had entered into force on 1 January 1990 (cf. (*Holzinger (No.2) v. Austria,* no. 28898/95, 30.01.01, §§ 21-22) to expedite the proceedings. However, the applicant did not file such a request and, thus, failed to exhaust domestic remedies within the meaning of Article 35 § 1 of the Convention.

It follows that the application must be rejected as being inadmissible pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

S. DOLLÉ	J.-P. COSTA
Registrar	President

Case of Dirtl v. Austria

(no. 37835/97)

Summary of the applicant's observations in reply

The applicant contests the Government's view that an application under section 91 of the Courts Act would have expedited the proceedings. She submits that the length of the proceedings was not due to inertia but rather to unnecessary procedural steps undertaken by the court. On several occasions the court allowed the taking of evidence and the submissions by the defendants, despite the applicant's protests against acceptance of these requests, which in her view were mainly aimed at delaying the proceedings. The requests ought therefore to have been rejected by the court. An application under section 91 of the Courts Act would not have remedied these shortcomings.

In her first set of observations the applicant criticises the fact that between the filing of her action on 28 February 1990 and 24 June 1992, the court held five hearings without taking of any evidence. These delays are to be attributed to the court.

The applicant further argues that it is not for the court to facilitate friendly settlements between the parties to the proceedings, but to decide and give a judgment on the basis of the law. All such attempts, i.e. the resuming of the adjourned proceedings, and the resulting delays are therefore attributable to the court.