CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32096/96
by Gerhart TILL, Charlotte TILL, Manuela WALDBURGER
and Martina WALDBURGER
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 12 November 1995 and registered on 2 July 1996,

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 partial decision of 29 August 2000,

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 applicants are Austrian nationals, born in 1936, 1939, 1985 and 1991 respectively, and live in Villach. The first applicant is the owner of a house in Villach; the other applicants are his wife and grandchildren.

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

The applicants live beside a dry cleaning business operated by R.Z. In 1977 an industrial plant permit for a dry cleaning machine was issued. Perchloride is used for the treatment of the clothes. This is a toxic substance, the handling of which requires particular caution. It appears that in October 1991 an incident happened in which perchloride was released and contaminated the first applicant's land.

On 21 May 1992 the first applicant filed an action with the Villach District Court against R.Z., the owner of the dry cleaning business, and against E.S. and K.S., the owners of the land on which the business was situated. In his action the first applicant requested a declaratory judgment (*Feststellungsurteil*) recognising his claim for damages caused by the toxic contamination of his land.

On 17 June 1992 the defendants filed written pleadings and on 22 June 1992 a hearing was held. On 23 June 1992 the defendants filed further written pleadings. On 16 September 1992 another hearing was held. On the same day the District Court, in a partial judgment (*Teilurteil*), declared the action inadmissible in so far as it concerned E.S. and K.S.

On 21 October 1992 the first applicant appealed against this decision and on 13 November 1992 the defendants filed a counter-statement (*Berufungsbeantwortung*).

On 14 January 1993 the Klagenfurt Regional Court granted the appeal. Thereupon the defendants, on 26 February 1993, filed a further appeal (*Revisionsrekurs*) with the Supreme Court. On 17 March 1993 the first applicant commented on the defendants' appeal.

In July 1994 the Supreme Court dismissed the defendants' appeal.

On 2 September 1994 the District Court held a hearing. On 20 June and 16 August 1995 the defendants filed written pleadings.

Meanwhile, on 10 July 1995, the court had appointed an expert. On 4 January 1996 the District Court revoked the appointment of the expert as he had not delivered his opinion within the time-limit set by the court.

On 15 May and 26 June 1996 further hearings were held. Meanwhile, on 24 and 31 May 1996, the defendants filed further pleadings.

On 19 July 1996 another expert was appointed who delivered his opinion on 4 April 1997. On 28 April and 15 May 1997 the first applicant and the defendants respectively filed comments on the expert opinion.

Following the first applicant's request of 9 July 1997 and the defendants' request of 30 July 1997, the next hearing was held on 18 September 1997.

On 3 February 1998 the District Court granted the first applicant's motion.

On 17 and 26 February 1998 the defendants appealed against the judgment. On 16 March 1998 the first applicant filed a counter-statement. On 16 April 1998 the Regional Court dismissed the defendants' appeal.

On 24 August 1998 the Supreme Court dismissed the defendants' further appeal.

COMPLAINT

The applicants' remaining complaint under Article 6 § 1 of the Convention relates to the length of the civil proceedings.

THE LAW

The applicants complain about the length of the civil proceedings instituted by the first applicant. They rely 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 ... hearing within a reasonable time by [a] ... tribunal..."

However, the Court recalls that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

The Government submit that the applicant has failed to exhaust domestic remedies as he has not filed a request under Section 91 of the Austrian Courts Act.

This is disputed by the applicants who consider that a Section 91 request was not an effective remedy.

The Court recalls that in the case of Holzinger v. Austria it found that an application under Section 91 of the Courts Act - which was an interlocutory application to a court whereby a higher court was requested to fix an adequate time-limit for taking a procedural measure which the court below had failed to take - must be considered an effective and sufficient remedy which has to be used in respect of complaints about the length of court proceedings (*Holzinger v. Austria*, no. 23459/94, 30.01.01, §§ 24-25).

The Court observes that the first applicant has not made use of this remedy in the court proceedings complained of and that the remedy was available to the applicant at all stages of the proceedings (cf. *Holzinger (No.*

2) v. Austria, no. 28898/95, 30.01.01, §§ 21-22). Accordingly, the applicants have failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention. It follows that the remainder of the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the remainder of the application inadmissible.

S. DOLLÉ
Registrar

J.-P. COSTA
President