AS TO THE ADMISSIBILITY OF

Application No. 12624/87
by Wolf-Israel BERLER
against the Federal Republic of Germany

The European Commission of Human Rights sitting in private on 10 July 1989, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
J. CAMPINOS
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
Mr. L. LOUCAIDES

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 7 February 1986 by Wolf-Israel Berler against the Federal Republic of Germany and registered on 29 December 1986 under file No. 12624/87;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having regard to :

- the Commission's decision of 4 July 1988 to bring the application to the notice of the respondent Government and invite them to submit written observations on its admissibility and merits;

- the observations submitted by the respondent Government on 28 October 1988 and the observations in reply submitted by the applicant on 4 January 1989 and 12 January 1989;

Having deliberated;

Decides as follows:

THE FACTS

The applicant, an Israeli citizen, was born in 1909 in Putnan, Romania and has, since 1959, been living in Ramat Gan, Israel.

He is represented by Dr. h.c. O. Küster, a lawyer in Stuttgart, and Professor Dr. Drs. h.c. F.A. Mann, C.B.E., F.B.A., a

lawyer in London.

It follows from his submissions and the documents submitted that on 15 September 1960 the applicant applied to the competent German authorities for compensation under Section 150 of the Federal Act on Compensation for Victims of Nazi Persecution (Bundesgesetz zur Entschädigung für Opfer der nationalsozialistischen Verfolgung - BEG - hereinafter referred to as the Federal Compensation Act) alleging to have, as a Jew of German origin, suffered persecution during World War II until his emigration to Israel. He requested leave to bring his claim out of time, stating that he did not raise it within the time-limit fixed by the Federal Compensation Act (i.e. 1 April 1958) because the fact that Romanian Jews could likewise claim compensation under the Act had come to be known only recently, i.e. in August 1960. On 26 May 1961 the applicant repeated his request. In January 1966 he requested financial aid (Beihilfe) under the Final Compensation Act (Bundesentschädigungs - Schlussgesetz). He alleged that he had been persecuted in Romania and had to live in the Czernowitz ghetto in the autumn of 1941. Later he was allegedly deported to Transnistria where he was liberated in 1944. He received financial aid under the Final Compensation Act in the total amount of 13,880 DM.

The compensation claim under Section 150 of the Federal Compensation Act was however rejected by the competent German authorities in Cologne on 20 December 1977 on the ground that the applicant had not shown that his emigration from Romania was due to reasons connected with his adherence to German culture.

The applicant then pursued his compensation claim before the Cologne Regional Court (Landgericht) alleging that he had been obliged to leave Romania because of his origin. The Regional Court dismissed his action on 2 May 1979. The court found that the request for compensation had been made out of time and that there were no reasons to grant leave to raise the claim out of time. Reinstatement could only be granted if the claimant had shown that he was not responsible for the non-observance of the time-limit.

In this respect the Court considered that the applicant should have indicated which organisations or lawyers he contacted in Israel after his immigration in 1959, what information was given to him and when he learnt that this information was no longer valid, i.e. that contrary to former practice the German authorities also recognised compensation claims of Jews having lived in Romania. The applicant also should have stated when and how he received the new information and what steps he took thereafter. However, no such information had been submitted by him with his original request.

The applicant's appeal (Berufung) was rejected by the Cologne Court of Appeal (Oberlandesgericht) on 28 May 1980. This Court likewise found that the applicant had failed to substantiate his request for leave to apply for compensation out of time.

The Court of Appeal refused to grant leave to appeal on points of law (Revision) to the Federal Court (Bundesgerichtshof). The applicant's complaint (Beschwerde) against this refusal was rejected by the Federal Court on 5 November 1981.

The applicant then lodged a constitutional complaint (Verfassungsbeschwerde) which was rejected by a group of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) on 8 August 1985 as offering no prospect of success.

COMPLAINTS

The applicant complains that the German courts denied him a fair hearing on the merits of his alleged compensation claim. He alleges a violation of Article 6 of the Convention and requests the

Commission to revise its case-law according to which this provision does not apply to proceedings relating to compensation claims under the Federal Compensation Act (No. 10612/83, Dec. 10.12.84, D.R.40 p. 276 and No. 10865/84, Dec. 12.5.86).

Referring to the judgments given by the European Court of Human Rights in the cases of Golder (Series A no. 18), Ashingdane (Series A no. 93), Deumeland (Series A no. 100), Feldbrugge (Series A no. 99), Pudas and Bodén (both Series A no. 125), Baraona (Series A no. 122) the applicant is of the opinion that in the light of the principles developed in these judgments a claim for compensation under the Federal Compensation Act has to be considered as relating to a "civil right" within the meaning of Article 6 of the Convention.

PROCEEDINGS BEFORE THE COMMISSION

On 4 July 1988 the Commission decided to communicate the application to the respondent Government for observations on its admissibility and merits. The observations were submitted on 28 October 1988. On 4 January 1989 Professor Mann submitted the applicant's reply. Further supplementary observations were submitted on behalf of the applicant on 12 January 1989 by Dr. Küster.

THE LAW

The applicant has complained that the German courts dismissed his claim for compensation under the Federal Compensation Act in an unfair manner on the ground that the claim had been lodged out of time. He considers that the courts wrongly refused to consider the merits of his claim and that he was thereby denied a determination by the courts of his claim for compensation which in his opinion concerned his "civil rights and obligations" as referred to in Article 6 para. 1 (Art. 6-1) of the Convention. This provision reads as follows:

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

1. The Commission first notes that under the applicable German law the time-limit for submitting claims for compensation for persecution measures had elapsed and that reinstatement into the status quo could only be granted on certain conditions. The preliminary question to be decided by the German courts was therefore whether the conditions for such reinstatement were fulfilled in the applicant's case. Since these conditions were considered not to be fulfilled, it follows that the courts had no reason to consider the substance of the applicant's claims.

The Commission considers that since the proceedings before the German courts were in fact limited to a determination of whether the procedural conditions were fulfilled for a reinstatement into the status quo, they did not involve a determination of the applicant's "civil rights and obligations" in the meaning of Article 6 para. 1 (Art. 6-1) of the Convention (see No. 10865/84, Dec. 12.5.86, to be published in D.R., and earlier case-law referred to in that decision).

It follows that insofar as the applicant complains of unfairness in the proceedings before the German courts his complaint is incompatible ratione materiae with the Convention within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Insofar as the applicant complains that the German courts, by refusing reinstatement into status quo, have in fact made it impossible for him to obtain a court determination of his civil right to compensation, the Commission first recalls that in a number of previous cases it has held that proceedings relating to compensation

claims under the Federal Compensation Act do not involve a determination of civil rights and obligations (see No. 10612/83, Dec. 10.12.84, D.R. 40 p. 276; No. 10865/84, Dec. 12.5.86 with further references).

The applicant considers that, in view of the interpretation by the European Court of Human Rights of the notion "civil rights" in the sense of Article 6 para. 1 (Art. 6-1) of the Convention, this provision is applicable in his case. He argues that a claim to compensation is, by its nature, of "civil" character. In any event, so he points out, the wrong done to him was committed at the instigation of German Nazi officials. Therefore, he would have had a right to compensation under German tort law had the Federal Republic not enacted special legislation to compensate victims of Nazi persecution.

The respondent Government deny that the requirements for a claim under tort law are given. They argue in support of the Commission's jurisprudence on the subject matter.

The Commission has considered the applicant's criticism of its previous jurisprudence. Nevertheless, it finds no reason to depart from it in the present case.

In any event, the Commission notes that the Federal Republic of Germany had to decide on the nature and the details of the compensation scheme it wished to introduce for the benefit of victims of Nazi persecution. In this context, it was also entitled, when adopting the Federal Compensation Act, to determine the limits of the right to compensation under the Act. For example, it was fully entitled to lay down time-limits for the submission of claims and to give no rights to persons who, for whatever reason, did not observe those time-limits. In fact, the system created by the Act implied that a right to compensation only existed for those who presented their claims before a certain date, subject, however, to the possibility of obtaining in special circumstances a reinstatement of the time-limit.

The Commission notes that in the present case the applicant did not present his claim within the applicable time-limit and that he subsequently asked for reinstatement. He obtained a court determination of whether the conditions for reinstatement existed under German law, a question which the courts answered in the negative. The Commission finds no reason to believe that the courts, in refusing reinstatement, acted in an unfair manner, having regard to the applicable German law about reinstatement of time-limits.

It follows that this part of the application must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission — President of the Commission

(H.C. KRÜGER) — (C.A. NØRGAARD)