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

FOURTH SECTION

CASE OF WOŚ v. POLAND

(Application no. 22860/02)

JUDGMENT

STRASBOURG

8 June 2006

FINAL

08/09/2006

In the case of Woś v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,
Josep Casadevall,
Giovanni Bonello,
Kristaq Traja,
Stanislav Pavlovschi,
Lech Garlicki,
Ljiljana Mijović, *judges*,
and Michael O'Boyle, *Section Registrar*,

Having deliberated in private on 16 May 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 22860/02) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Bronisław Woś ("the applicant"), on 23 May 2002.

2. The Polish Government ("the Government") were represented by their Agents, Mr K. Drzewicki and subsequently Mr J. Wołąsiewicz, of the Ministry of Foreign Affairs.

3. The applicant alleged a breach of his right of access to a court as guaranteed by Article 6 § 1 of the Convention in respect of his claims before the Polish-German Reconciliation Foundation.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 1 March 2005, the Chamber declared the application partly admissible.

7. The applicant and the Government each filed further observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1928 and lives in Cielcza, Poland.

A. Historical background

9. The realities of the international situation following the end of the Second World War prevented the Republic of Poland from asserting any claims arising out of persecution of its citizens, including as forced labourers, by Nazi Germany.

10. In the period immediately following the Second World War, Poland did not conclude a specific agreement with Germany regarding the issue of reparations. It relied on the Potsdam Agreement of 1 August 1945, concluded by the governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics.

11. On 27 February 1953 the London Agreement on German External Debts (the London Debt Agreement) was concluded by the United States of America, Great Britain, France and the Soviet Union. Under this Agreement, consideration of claims arising out of the Second World War by countries that had been at war with, or were occupied by, Germany, and by nationals of such countries, against the Reich or agencies of the Reich was deferred until the final settlement of the issue of reparations.

12. On 23 August 1953, the day after a similar declaration by the government of the Soviet Union, the government of Poland declared that it renounced any claims against Germany in respect of war reparations as of 1 January 1954. In a declaration of 27 September 1969 made at the United Nations, the government of Poland clarified that the renouncement of 1953 did not affect individual claims arising out of unlawful acts.

13. It was only after the conclusion of the Treaty on the Final Settlement with respect to Germany of 12 September 1990 (the so-called Two-Plus-Four Treaty) and the conclusion of two treaties between the Federal Republic of Germany and the Republic of Poland in 1990[1] and 1991[2] that the issue of persons persecuted by the Nazi regime was addressed in the bilateral agreement of 16 October 1991 (see paragraph 28 below).

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1. Treaty of 14 November 1990 on confirmation of the existing border between the Federal Republic of Germany and the Republic of Poland.
2. Treaty of 17 June 1991 on good neighbourliness and friendly cooperation.

B. The circumstances of the case

14. The applicant was subjected to forced labour during the Second World War on the territory of occupied Poland. In February and March 1941 he worked on a German farm near Cielcza. Subsequently, from April 1941 to April/May 1944, the applicant worked as a forest labourer in Cielcza. Finally, he was relocated to an area situated 200 kilometres from his habitual place of residence, where he was required to reinforce German defences from May/June 1944 to 26 January 1945. In February 1944 the applicant reached the age of 16.

1. Proceedings concerning the first compensation scheme

15. On 20 October 1993 the applicant applied to the Polish-German Reconciliation Foundation (*Fundacja Polsko-Niemieckie Pojednanie* – "the Foundation") for compensation on account of his forced labour from the funds contributed by the government of the Federal Republic of Germany under the Agreement of 16 October 1991 (see paragraphs 28-29 below). On 2 February 1994 the Foundation's Verification Commission (*Komisja Weryfikacyjna*), having regard to a document issued by the social security authorities, established that the applicant had been subjected to forced labour from February 1941 to January 1945 and awarded him 1,050 Polish zlotys (PLN) in compensation. This payment was granted within the framework of the "primary payments scheme" (*wypłaty podstawowe*). The issue of deportation was apparently not addressed in the decision. The applicant's subsequent appeal against this decision was dismissed by the Appeal Verification Commission (*Odwoławcza Komisja Weryfikacyjna*) on an unspecified date. The Appeal Verification Commission found that the amount of payment granted to the applicant had been calculated correctly.

16. On an unspecified date in 1999 the Foundation's management board (*Zarząd Fundacji*) adopted Resolution no. 29/99, which introduced a deportation requirement for claimants who had been forced labourers. The resolution also provided that those claimants who had been subjected to forced labour as children under the age of 16 could be granted compensation regardless of whether the deportation condition was met (see paragraph 35 below).

17. On 2 March 2000, following the adoption of Resolution no. 29/99, the Foundation's Verification Commission granted the applicant a supplementary payment of PLN 365. The decision on supplementary payment related to the applicant's forced labour as a child under the age of 16 (from April 1941 to February 1944). Thus, the period of forced labour from March 1944 to January 1945 was not taken into account because the deportation condition as defined in Resolution no. 29/99 had not been met. The period of forced labour from February to March 1941 was not acknowledged in the absence of appropriate evidence.

18. On 12 March 2000 the applicant appealed against that decision to the Appeal Verification Commission, challenging the amount of compensation granted. It appears that the applicant complained that the period of his forced labour between May/June 1944 and 26 January 1945, carried out in particularly harsh conditions connected with his relocation, was not taken into account by the Verification Commission. Having received no reply to his appeal, the applicant made further enquiries with the Foundation on 31 October 2000 and 3 January 2001.

19. In the meantime, the applicant had lodged a complaint with the Ombudsman regarding the Foundation's inactivity. On 4 April 2001 the Ombudsman informed the applicant that, regrettably, he was not in a position to question the lawfulness of resolutions adopted by the Polish-German Reconciliation Foundation or any other foundation. The Polish-German Reconciliation Foundation was established in accordance with the Foundations Act of 6 April 1984. In this particular case, the Foundation operated under the supervision of the Minister of the State Treasury. However, the Ombudsman could not interfere with the Foundation's actions as long as they complied with its statute and other legal regulations. The Ombudsman also referred to the Supreme Court's decision of 31 March 1998, which refused to recognise the Polish-German Reconciliation Foundation as a public administration body (see paragraphs 41-42 below).

20. By a letter of 24 April 2001, the President of the Foundation's Appeal Verification Commission informed the applicant that, under the Foundation's internal regulations in force at the material time (Resolution no. 29/99), only forced labourers deported to the Third Reich or to an area occupied by the German Reich (with the exception of the territory of occupied Poland) were eligible for compensation. Finally, the applicant was informed that no further appeal lay against the decision of the Appeal Verification Commission.

21. Nevertheless, on an unspecified later date, the applicant lodged a complaint against the decision of the Appeal Verification Commission of 24 April 2001 with the Supreme Administrative Court (*Naczelny Sąd Administracyjny*). It appears that in his complaint the applicant also challenged Resolution no. 29/99.

22. On 14 December 2001 the Supreme Administrative Court dismissed the applicant's complaint, considering it inadmissible in law. It relied on Decision no. OPS 3/01, adopted by the Supreme Administrative Court on 3 December 2001 (see paragraph 45 below).

23. In a letter dated 23 September 2002, the Minister of the State Treasury informed the applicant that, in order for a forced labourer to be granted compensation, it was necessary for him to comply with the deportation requirement as specified in Resolution no. 29/99 of the Foundation's management board.

2. Proceedings concerning the second compensation scheme

24. On 21 November 2000 the applicant applied to the Foundation for compensation under the scheme for slave and forced labourers (the second compensation scheme), established under the Joint Statement of 17 July 2000, the German Law of 2 August 2000 on the creation of the Remembrance, Responsibility and Future Foundation ("the German Foundation Act") and the subsequent Agreement of 16 February 2001 between the Remembrance, Responsibility and Future Foundation and the Polish-German Reconciliation Foundation (see paragraph 37 below). On 17 April 2001 the Foundation's Verification Commission rejected his request on the ground that he did not satisfy the deportation requirement set out in section 11(1)2 of the German Foundation Act. It appears that the applicant did not appeal against the decision of the Verification Commission of 17 April 2001. The applicant's subsequent complaints to the Minister of the State Treasury were to no avail.

3. Facts submitted subsequent to the admissibility decision

25. In a letter dated 28 June 2005, the Foundation's management board, referring to the Court's admissibility decision in the present case, informed the applicant that its Resolution no. 29/99 of 18 August 1999 concerning interpretation of the term "deportation" had never restricted or violated his rights to receive a benefit, for the following reasons:

(a) the applicant did not comply with the deportation requirement specified in Resolution no. 27/92 of 17 August 1992, under which deportation was defined as "deportation outside one's place of permanent residence into the territory of the Third Reich combined with performing labour for the benefit of the Third Reich";

(b) the granting of compensation within the framework of the so-called primary payments for the period between February 1941 and January 1945 had been in breach of the Foundation's regulations, namely Resolution no. 27/92;

(c) thus, the applicant should have received compensation solely for the period up to February 1944, namely, for the period until his 16th birthday, since he had never complied with the deportation requirement as specified in Resolution no. 27/92;

(d) the Foundation's error committed in respect of the primary payment was rectified within the framework of the supplementary payments, and thus it could not be said that the applicant's rights were restricted or breached.

26. The applicant was further informed that, since he had resided and performed forced labour on the territory of Wielkopolska province which, known as Warthegau province at the time, was annexed by the Third Reich in October 1939, the obligation to perform forced labour in the area of the

applicant's residence (his first workplace was located 10 km from his place of residence and the second – Cielcza forest – was in his habitual place of residence) could not be considered as deportation with a view to performing forced labour. Similarly, the obligation to reinforce German defences on Polish territories annexed by the Third Reich was not considered "deportation" under Resolution no. 27/92. Lastly, the applicant was informed that in cases such as his, when the Foundation had made an error in favour of a claimant, the consequences of that error were borne by the Foundation, which had never claimed reimbursement of the overpaid amounts.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

A. Constitutional provisions

27. Article 9 of the Constitution, which was adopted by the National Assembly on 2 April 1997 and came into force on 17 October 1997, states:

> "The Republic of Poland shall respect international law binding upon it."

Article 45 § 1 of the Constitution reads:

> "Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court."

Chapter III of the Constitution, entitled "Sources of Law", refers to the relationship between domestic law and international treaties.

Article 87 § 1 provides:

> "The sources of the universally binding law of the Republic of Poland shall be: the Constitution, statutes, ratified international agreements, and regulations."

The relevant parts of Article 91 state:

> "1. After promulgation thereof in the Journal of Laws of the Republic of Poland [*Dziennik Ustaw*], a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute.
>
> 2. An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes."

Chapter VIII of the Constitution contains provisions related to the judiciary.

Article 175 § 1 of the Constitution provides:

> "The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the ordinary courts, administrative courts and military courts."

Article 177 of the Constitution states:

> "The ordinary courts shall implement the administration of justice concerning all matters save for those statutorily reserved for other courts."

The relevant part of Article 184 provides:

> "The Supreme Administrative Court and other administrative courts shall exercise, to the extent specified by statute, control over the performance of public administration."

B. The Agreement of 16 October 1991 and the establishment of the Polish-German Reconciliation Foundation (first compensation scheme)

28. On 16 October 1991 the governments of the Federal Republic of Germany and the Republic of Poland concluded an agreement on the basis of which the German government declared that, prompted by humanitarian considerations, it was prepared to contribute 500 million German marks (DEM) for the benefit of the Polish-German Reconciliation Foundation. The Foundation was to be established by the government of Poland with a view to providing financial assistance to victims of Nazi persecution who had suffered serious damage. The Foundation was to determine the necessary criteria for the granting of compensation, having regard to serious damage to the victims' health and to their current financial difficulties. The government of Poland declared that it would not pursue further individual claims by Polish citizens arising out of Nazi persecution. Both governments indicated that their agreement should not amount to limitation of the rights of citizens of either country.

29. Subsequently, on 27 November 1991, the Minister – Head of the Cabinet's Office (*Minister – Szef Urzędu Rady Ministrów*), acting as a founder[1], made a declaration before the State notary on the establishment of the Foundation. He declared that, acting on the initiative of the government of the Republic of Poland and on behalf of the State Treasury, he was establishing the Polish-German Reconciliation Foundation. The Foundation's aim was to provide assistance to the victims of Nazi persecution and to undertake other activities for the benefit of those persons. The Minister also declared that the Foundation's capital fund consisted of DEM 500 million, contributed by the German government to the Polish government.

30. The Polish-German Reconciliation Foundation was established in accordance with the Foundations Act of 6 April 1984, which regulates the activities of foundations in Poland. The Act stipulates that individuals and

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1. On an unspecified later date the function of founder was assumed by the Minister of the State Treasury.

legal persons may establish foundations in order to carry out socially and economically beneficial goals which comply with the basic interests of the Republic of Poland. In principle, supervision of a foundation's activities is exercised by the regional governor (*Wojewoda*) or the competent minister. These supervisory authorities may apply to a court to establish whether a foundation's actions have complied with its aim, its statute and the general legislation (section 12). The competent minister or the regional governor may also apply to the courts to quash a resolution adopted by a foundation if it is evidently incompatible with its aim, its statute or the general legislation (section 13).

31. The statute of the Polish-German Reconciliation Foundation was drafted and subsequently registered by the Warsaw District Court on 24 February 1992. On that date the Foundation began its activities. The founder could amend the statute and decide whether the Foundation was to go into liquidation. According to paragraph 6 of the statute, the Foundation's primary aim was to render direct financial assistance to those victims of Nazi persecution whose health had been seriously damaged and who were in financial difficulties as a result of that persecution. The function of supervisory authority was exercised in respect of the Foundation by the Minister of Labour and Social Policy (*Minister Pracy i Polityki Socjalnej*).

32. The Foundation's main bodies were the supervisory board (*Rada Nadzorcza*), composed of twenty-one members, and the management board (*Zarząd*), composed of nine members. The members of those bodies were appointed and dismissed by the founder, namely, the Minister – Head of the Cabinet's Office, who exercised full control in this respect. The two other bodies of the Foundation were the Verification Commission (*Komisja Weryfikacyjna*), whose members were appointed by the Foundation's management board, and the Appeal Verification Commission (*Odwoławcza Komisja Weryfikacyjna*), whose members were appointed by the Foundation's supervisory board.

33. The Foundation assessed the substantive and procedural aspects of requests for financial assistance on the basis of its statute and the regulations drawn up by the management board and adopted by the supervisory board. The Verification Commission was responsible for reaching decisions on whether to grant financial assistance to victims. Appeals against the Verification Commission's decisions could be lodged with the Appeal Verification Commission. The latter's decisions were to be final.

34. The financial assistance granted by the Foundation from the funds contributed by the government of the Federal Republic of Germany in 1992-93 was paid in two parts: a primary payment and a supplementary payment, the latter deriving from the interest accrued on the original contribution from the German government. On 7 June 2002 the disbursement of all those compensation payments was terminated on the

basis of Resolution no. 29/2002 of the Foundation's supervisory board as the relevant funds were depleted.

35. On an unspecified date in 1999 the Foundation's management board adopted Resolution no. 29/99 which introduced a deportation requirement. The Resolution specified that only those forced labourers who had been deported from their place of residence to the territory of the German Reich or to territories occupied by Germany were eligible for compensation. It stipulated that the deportation condition was not fulfilled by those persons who had been subjected to forced labour on the territory of Poland within that country's borders of August 1939. In addition, Resolution no. 29/99 laid down a separate eligibility criterion to the effect that those who had been subjected to forced labour as children under the age of 16 could be granted compensation regardless of whether the deportation condition was met.

36. On 10 December 2002 the Minister of the State Treasury (*Minister Skarbu Państwa*) assumed the function of founder and supervisory authority of the Foundation.

C. Compensation scheme for slave and forced labourers (the second compensation scheme) and its implementation by Poland

37. The facts relating to the second compensation scheme and the applicable legal provisions, which are not directly relevant for the merits stage of the present case, are set out in paragraphs 29-42 of the admissibility decision (see *Woś v. Poland* (dec.), no. 22860/02, ECHR 2005-IV).

D. Case-law of the Polish courts

38. In a decision of 12 January 1993 (no. I SA 1762/92), the Supreme Administrative Court stated that:

> "A foundation is not a civic organisation and therefore, in accordance with the Code of Administrative Procedure, it is not possible to delegate to a foundation power to determine individual cases by way of administrative decisions."

Consequently, a foundation's decisions cannot be appealed against to the Supreme Administrative Court.

39. In a decision of 12 March 1993 (no. I ACr 133/93), the Warsaw Court of Appeal (*Sąd Apelacyjny*) held that:

> "The Foundation's aims in respect of its capital fund, which are determined in the Foundation's statute, do not create rights for other persons *vis-à-vis* the capital fund. Lack of legal protection for the entitlements of particular persons to receive benefit from the Foundation implies that a claim raised in this respect is not a civil one, and accordingly the jurisdiction of the [civil] courts is excluded."

40. In 1997 the Ombudsman referred to the Supreme Court a question of law (*pytanie prawne*), as to whether decisions given by the bodies of the Foundation could be appealed against to the Supreme Administrative Court and, if not, whether they could be subjected to judicial review in civil proceedings. The Ombudsman relied, *inter alia*, on Article 45 of the Constitution and Article 6 § 1 of the Convention. In particular, the Ombudsman asked the Supreme Court to consider the following issues:

(a) whether there was any legal provision excluding judicial review if a dispute arose between an individual and the Foundation;

(b) whether the Foundation could be regarded as a body performing functions in the area of public administration, given that it served public aims with the use of public resources;

(c) whether Article 1 § 2 and Article 5 § 2 (3) of the Code of Administrative Procedure constituted sufficient grounds to conclude that it could not perform any functions in the area of public administration;

(d) whether the assessment of facts and law established by the Foundation also had a bearing on the claimant's relationship with the Director of the Veterans and Persecuted Persons Office;

(e) whether the decision to award or refuse to award compensation was not a purely technical act, since it was always preceded by a legal assessment of an individual case.

41. On 31 March 1998 the Supreme Court (*Sąd Najwyższy*) adopted Decision no. III ZP 44/97, holding that, since administrative functions could only be delegated by a statute, which was not the case with regard to the Polish-German Reconciliation Foundation, its decisions did not meet the requirements of an administrative decision and thus could not be challenged before the Supreme Administrative Court. However, the Supreme Court refused to give a definite answer to the question whether the Foundation's decisions were subject to judicial review in civil proceedings. It nevertheless observed that entitlement to receive a benefit from the Foundation did not fall within the scope of civil law, and thus could not be raised before a civil court. In exceptional cases, such as where the claimant's eligibility was established but the benefit had not been paid, a claim could arise under civil law.

42. The Supreme Court considered that the fact that the Foundation's aims were the same as the aims which were to be achieved by the public authorities would not justify the conclusion that the Polish-German Reconciliation Foundation performed functions in the area of public administration. Similarly, the manner in which the Foundation had been established and the nature of its tasks, common – in the Supreme Court's view – to all foundations, could not support the above conclusion.

43. In a decision of 19 February 1999 (no. V SAB 7/99), the Supreme Administrative Court ruled:

"The Polish-German Reconciliation Foundation does not perform any functions in the area of public administration, in that there is no legal provision giving it the competence to do so. It follows that, in view of the lack of statutory authority, decisions granting or refusing to grant compensation to a victim of the Nazi regime are not administrative decisions and cannot be challenged before the Supreme Administrative Court."

44. In a decision of 5 October 2001 (no. III CZP 46/01), the Supreme Court ruled that a plaintiff's claim seeking recognition of the fact that he had been subjected to forced labour during the Second World War could not be examined by a (civil) court. The Supreme Court considered that the awarding of compensation by the Foundation under the second compensation scheme did not create an individual right of a contractual nature. The Foundation decided whether the eligibility conditions for the granting of payment were established. Thus, according to the Supreme Court, the Foundation was not a debtor *vis-à-vis* the claimants, but acted as a decision-making body. The Foundation's decisions merely created a legal basis for the awarding of compensation. The above situation did not, therefore, resemble civil-law relations.

45. In a decision of 3 December 2001 (no. OPS 3/01), the Supreme Administrative Court confirmed the earlier case-law to the effect that it did not have jurisdiction to review the decisions of the Foundation and observed:

"The Polish-German Reconciliation Foundation, which awards benefits to the victims of Nazi persecution using the financial resources allocated to it by foreign entities, does not perform functions in the area of public administration. Thus, the source of the entitlement to receive an award from the Foundation does not stem from acts of the public administration."

It further observed:

"There is no doubt that the Agreement of 16 October 1991 concluded between the Polish and German governments, which was not ratified, as well as subsequent acts [starting with the Joint Statement and the German Foundation Act] concerning grants of financial assistance by the Foundation on account of Nazi persecution do not fulfil the criteria which would make it possible to classify them as sources of binding Polish law. No administrative-law relation arises between a claimant and the Foundation on the basis of the aforementioned acts, and consequently the Foundation is not an organ of public administration established by law to determine cases in the sphere of public administration."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. As to the responsibility of the Polish State

46. The Government submitted that the Foundation had been established in implementation of the 1991 Agreement at the request of the German party which, having adopted the concept of *ex gratia* payments, did not intend to provide DEM 500 million to the Polish State, but only to a non-governmental entity. They maintained that Poland's obligation arising out of the 1991 Agreement was to establish a foundation for the purpose of providing (from German funds) "assistance to the victims of National Socialist persecution".

47. Having regard to the foregoing considerations, the Government disagreed with the Court's findings in the admissibility decision as to the responsibility of the respondent State for the Foundation's actions, in particular with respect to the respondent State's decision "to delegate its obligations arising out of the international agreements to a body operating under private law" (see *Woś*, cited above, §§ 72-73). They argued that those findings of the Court were not borne out by the text of the 1991 Agreement and were based on a concept of delegation of powers or obligations which was not applicable in the present case. In addition, they submitted that the Foundation was not hierarchically subordinated to the Polish government which, in turn, could not issue binding instructions as to its operation. Moreover, the Government was not legally responsible for the Foundation's activities.

48. Furthermore, the Government contested the Court's finding that "the respondent State ... had established the Foundation and entrusted it with the administration of both compensation funds" (see *Woś*, § 70) and argued that it was erroneous because, although the establishment of the Foundation was an act performed under Polish law by the Polish government, this act was the result of the unanimous will of two parties, namely, Poland and Germany. In their view the German government simply provided DEM 500 million to the Foundation; and the Polish government in no way delegated its obligations under the 1991 Agreement to the Foundation, since its only obligation was in fact to establish a foundation. Thus, the Government contended that there could be no question of the Polish State's responsibility in connection with the delegation of certain of its powers (obligations) to the Foundation. In their submission, this view was based on non-existent premises, whether in law or in fact, and on an erroneous understanding of the concept of delegation of powers (obligations).

49. On the other hand, the Government admitted that it exercised some control over the Foundation, to the extent specified in the 1984 Foundations Act, which encompassed the court registration procedure and supervision by the competent minister. They submitted that, under the Foundations Act, the State's supervision was limited and did not involve any direct influence in respect of the Foundation's decisions. The Government also accepted that, since the Foundation had been established by the Polish government, the latter had additional means of influencing its activities through the appointment and dismissal of members of its governing bodies, that is, the management board and supervisory board, and the power to amend the Foundation's statute. In their opinion, this had been a form of political guarantee for the German party and for the Polish victims that the Foundation's activities were not only under the government's legal control but also its political control. Furthermore, the Government maintained that it had no power to order or to change particular decisions by the Foundation or the eligibility criteria, with the exception of its limited power to issue court proceedings with a view to repealing a resolution by the Foundation. Finally, they submitted that if the State were to acquire powers to influence foundations' activities at its discretion, it would have to amend the Foundations Act and abolish the autonomy of foundations.

50. The applicant did not reply to the Government's submissions.

51. In its decision of 1 March 2005 on the admissibility of the present case, the Court held that the specific circumstances of the case gave rise to the conclusion that the Foundation's actions in respect of both compensation schemes were capable of engaging the responsibility of the Polish State (§ 74). The Court considered that the Government had at its disposal substantial means of influencing the Foundation's operation, having regard to the manner in which the Foundation's governing bodies were created, the wide scope of regulatory powers exercised by those governing bodies in respect of the benefits paid under the first compensation scheme and those governing bodies' powers regarding the appointment and dismissal of the Foundation's adjudicating bodies. The Court also had regard to the supervisory powers which were exercised in respect of the Foundation by the competent minister. The Court further held that, while the Polish State did not have direct influence over the decisions taken by the Foundation in respect of individual claimants, the State's role was nonetheless crucial in establishing the overall framework in which the Foundation operated.

52. The Court notes that, in their observations on the admissibility of the application, the Government did not formally raise an objection to the admissibility on the grounds of incompatibility *ratione personae*. It further notes that in their observations on the merits the Government appeared to raise such an objection. Although it is open to the Court in these circumstances, in application of Rule 55 of the Rules of Court, to refuse to

entertain the respondent Government's plea of inadmissibility, it nevertheless considers it appropriate to examine it in the form of preliminary issues.

53. The Court observes that the Government strongly disagreed with the Court's findings concerning the State's decision to delegate its obligations arising out of the 1991 Agreement to the Foundation, a body which was formally operating under private law. However, even if the Court were to accept the Government's arguments on this point, it is not persuaded that this would affect its previous findings on the issue of State responsibility, having regard to the other considerations relied on in the admissibility decision.

54. Consequently, the Court rejects the Government's preliminary objection and finds, as has already been established in the decision on admissibility, that the specific circumstances of the present case give rise to the conclusion that the Foundation's actions in respect of both compensation schemes were capable of engaging the responsibility of the Polish State.

B. As to the non-exhaustion of domestic remedies

55. In their observations on the merits, the Government argued for the first time that the applicant had failed to exhaust domestic remedies, since he had not availed himself of the possibility to have his case examined in civil proceedings.

56. The applicant did not address this issue.

57. The Court points out that, under Rule 55 of the Rules of Court, "[a]ny plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application ...". It is clear from the case file that that condition has not been satisfied in the instant case. The Government are consequently estopped from raising this objection before the Chamber and it must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

58. The applicant complained under Article 6 § 1 of the Convention that he did not have access to a court in respect of his claims raised before the Polish-German Reconciliation Foundation under the first compensation scheme. The relevant part of that provision reads:

> "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. ..."

A. Applicability of Article 6 § 1

1. The parties' submissions

59. In their observations on the merits, the Government contended, in substance, that Article 6 § 1 of the Convention was not applicable to the proceedings concerning the first compensation scheme. The Government submitted that on 17 August 1992 the Foundation's management board adopted Resolution no. 27/92, which stated that the term "Nazi persecution in the form of forced labour" should be understood as "deportations carried out by the occupying forces outside one's place of residence in order to perform forced labour for the benefit and on the territory of the German Third Reich". They submitted that the adoption of deportation as a criterion for determining the category of persons subjected to the most severe forms of Nazi persecution followed from the practice of the International Military Tribunal at Nuremberg, which had recognised deportation for the purpose of forced labour as a crime against the population of the occupied countries. The Government maintained that, contrary to the Court's findings (see paragraph 27 of the admissibility decision), the Foundation had applied the deportation criterion since the beginning of its operation, and not only since the adoption of Resolution no. 29/99 of 18 August 1999.

60. In view of the above, the Government argued that the Foundation's decision of 2 February 1994 on compensation under the primary payments scheme had been issued in partial breach of the relevant regulations, since the deportation requirement had never been satisfied in the applicant's case. They argued that compensation should have been granted only in respect of the period up to February 1944, that is, when the applicant reached the age of 16. The Government further submitted that, despite that error, the Foundation had not sought reimbursement of the overpaid amount. Accordingly, the Government argued that it could not be considered that Resolution no. 29/99 introduced a new, previously unknown, eligibility criterion. They maintained that the latter Resolution was adopted with a view to consolidating the Foundation's regulations, set out in a number of previous documents.

61. Consequently, the Government stressed that the applicant could not claim supplementary compensation in respect of the overall period of his forced labour, as he had never been entitled to receive such payment. Thus, in the Government's view, the applicant's claim was lacking in foundation. They concluded that a dispute over a right to receive compensation for the overall period of the applicant's forced labour had never arisen.

62. Referring to paragraph 91 of the admissibility decision in the present case, the Government disagreed that there were similarities between an entitlement to welfare allowances and the entitlement to receive compensation from the Foundation. They underlined that, contrary to

welfare benefits, compensation granted by the Foundation was incidental in nature and had symbolic rather than real economic value.

63. The Government further stressed that German payments to Polish victims of National Socialist persecution, including those under the Agreement of 16 October 1991, had always been made on an *ex gratia* basis. The nature of benefits financed by the German party was reflected in the Foundation's statute, which stated that its aim was to "provide assistance to the victims of Nazi persecution". In this context and in reference to benefits paid by the Foundation, the Government maintained that terms such as "compensation claims" or "claim for compensation" employed by the Court (see, for example, paragraphs 66, 81 and 89 of the admissibility decision) were inaccurate because they presupposed a right to compensation which was non-existent under German law, while Polish public law was inapplicable thereto.

64. The Government emphasised that the applicant had no claim for benefit from the Foundation since there was no basis for such a claim under Polish or German law or under the 1991 Agreement. They argued that there was no legal relationship between the applicant and the Polish Foundation that could give rise to such a claim. The Government also submitted that the assistance offered by the Foundation had no legal basis in Polish legislation and that the present case did not concern social security benefits provided for in legislation. In their view, the Foundation did not grant compensation, but provided one-off humanitarian assistance to victims of Nazi persecution.

65. In respect of the applicant's complaint under Article 6 § 1, the Government argued that it raised two separate issues. The first concerned the substance of the Foundation's decisions and the second concerned access to a court. They maintained that, in reality, it was not so much the Foundation's decisions that the applicant regarded as unfair as the general eligibility criteria, and in particular Resolution no. 29/99. However, the eligibility criteria applied by the Foundation had to be regarded as fair, reasonable and adequate. In this connection, the Government referred to the fact that it was necessary to reach a reasonable compromise between limited funds and a large number of victims. They contended that it was indisputable that the German payments would not satisfy all claims resulting from National Socialist persecution.

66. In conclusion, the Government submitted that the subject of the dispute in the present case was not the applicant's right to receive benefits from the Foundation, but rather the criteria employed in Resolution no. 29/99. Thus, there was no dispute under Polish law concerning the legal relationship between the applicant and the Foundation. The Government maintained that the deportation criterion was neither discriminatory nor arbitrary and applied to a whole category of claimants.

67. The applicant disagreed with the Government's arguments. With reference to Resolution no. 29/99, he submitted that, following the

enactment of the German Foundation Law, the (Polish) Foundation recognised that the deportation requirement specified in the latter law was also satisfied by persons who were relocated outside their province of residence to a province with a different administrative status.

2. The Court's assessment

68. The Court must examine the Government's objection that a dispute over the applicant's civil rights had never arisen. It construes this objection as a request to reconsider its finding as to the applicability of Article 6 § 1 to the proceedings concerning the first compensation scheme and to apply the last sentence of Article 35 § 4 of the Convention, by which the Court may reject an application it considers inadmissible "at any stage of the proceedings".

69. Article 35 § 4 of the Convention allows the Court, even at the merits stage, and subject to Rule 55 of the Rules of Court, to reconsider a decision to declare an application admissible where it concludes that it should have been declared inadmissible for one of the reasons given in the first three paragraphs of Article 35, including that of incompatibility with the provisions of the Convention (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 34, 24 October 2002; *Guerrera and Fusco v. Italy*, no. 40601/98, § 52, 3 April 2003; and *Azinas v. Cyprus* [GC], no. 56679/00, § 32, ECHR 2004-III).

70. The Court notes that, in its decision on the admissibility of the present application, it rejected the Government's arguments as to the inapplicability of Article 6 § 1 to the proceedings before the Foundation under the first compensation scheme. In their observations, however, the Government submitted additional arguments as to the inapplicability of Article 6 § 1 based on newly discovered facts, referring in particular to the Foundation's Resolution no. 27/92 (see paragraphs 59-61 above). The Court is satisfied that the new information submitted by the Government and the importance of the present case justify taking the exceptional course of re-examining the applicability issue at the merits stage.

71. On 1 March 2005 the Court declared the present application partly admissible. It found that the proceedings before the Foundation concerned two distinct compensation schemes, and thus the issue of the applicability of Article 6 § 1 should be examined separately in respect of each of those schemes. The Court held that Article 6 § 1 of the Convention was applicable to the proceedings before the Foundation under the first compensation scheme, while the part of the application concerning the second compensation scheme was declared inadmissible on the grounds of non-exhaustion (see *Woś*, cited above).

72. As regards general principles, the Court observes that it has already found in the admissibility decision that there is no general obligation under the Convention for States to compensate wrongs inflicted in the past under

the general cover of State authority. However, if such a compensation scheme were to be established, the Court observed that substantive rules determining the eligibility criteria for any compensation would in principle fall outside the Court's jurisdiction, unless the relevant criteria were manifestly arbitrary or blatantly inconsistent with the fundamental principles of the Convention. On the other hand, the Court noted that it could not be excluded that some procedural issues – related to the application of those eligibility criteria to the facts of individual cases – could arise (see *Woś*, § 80). In other words, once a compensation scheme is put in place by a government or with a government's consent, and regardless of the nature of the respective benefits, issues of compliance with Article 6 § 1 or Article 1 of Protocol No. 1 may arise. On the other hand, it must be underlined that, in principle, no challenge to eligibility criteria as such is allowed.

73. The Court reaffirms the above considerations. It also observes that in respect of the first compensation scheme general eligibility criteria were predetermined by the 1991 Agreement. However, the said Agreement stipulated that the Foundation enjoyed a margin of discretion in respect of drawing up more specific conditions and the criteria to be satisfied for awarding compensation. The Foundation exercised the same margin of discretion each and every time it applied the eligibility criteria to the facts of individual cases. In this context, the Court emphasises that in the area falling within the Foundation's margin of discretion, its decisions in individual cases bear upon the claimants' rights. As a matter of principle, the Court considers that in cases such as the present one, where an issue related to assessment of the facts arises, the applicability of Article 6 § 1 would extend to all similar cases in which there appear to be reasonable grounds to believe that the Foundation's assessment of facts was questionable and thus had a direct bearing on the applicant's eligibility for compensation.

74. Regarding the issue of the existence of a dispute over a right, the Court noted in its admissibility decision that the applicant's original claim for compensation of 20 October 1993 was granted by way of the decision of 2 February 1994 in respect of the overall period of his forced labour (February 1941 to January 1945) and without any consideration being given to the deportation requirement. The Court further noted that, following amendments to the eligibility criteria introduced by the Foundation's Resolution no. 29/99, the applicant received a supplementary compensation payment on 2 March 2000, but only in respect of his forced labour between April 1941 and February 1944 and on the separate ground that he had performed forced labour as a child under the age of 16. Having regard to the foregoing, the Court considered that a dispute over the applicant's entitlement to compensation had arisen in respect of the right to receive compensation for the overall period of his forced labour, given that the

applicant considered that the deportation requirement was not a relevant factor in the assessment of his compensation claim. In the Court's view, that dispute was genuine and of a serious nature. The outcome of the relevant proceedings before the Foundation was decisive since it concerned the scope of the applicant's right to obtain compensation in respect of the overall period of his forced labour (see *Woś*, §§ 81-82).

75. With regard to the issue of whether the right to compensation from the Foundation on account of Nazi persecution was recognised under domestic law, at least on arguable grounds, the Court considered in the admissibility decision that the relevant Foundation's regulations defined the conditions and procedures with which a claimant had to comply before compensation could be awarded by the Foundation. The Court held that those regulations, regardless of their characterisation under domestic law, could be considered to create a right for a victim of Nazi persecution to claim compensation from the Foundation. Accordingly, the Court found that if a claimant complied with the eligibility conditions stipulated in those regulations he had a right to be awarded compensation by the Foundation (see, *mutatis mutandis*, *Rolf Gustafson v. Sweden*, 1 July 1997, § 40, *Reports of Judgments and Decisions* 1997-IV). Thus, in the Court's view, it could not be said that the relevant Foundation's regulations gave rise to an *ex gratia* compensation claim. Finally, the Court considered that the applicant could claim, at least on arguable grounds, the right to receive compensation from the Foundation in respect of the overall period of his forced labour. This was so especially since he had already received one instalment of compensation by virtue of the decision of 2 February 1994, so that he could have been led to believe that he did indeed have such a right (see *Woś*, §§ 83-84).

76. With regard to the civil character of the disputed right, the Court observed in its admissibility decision that it was not persuaded by the Government's arguments that the compensation claims in issue were not based on classic concepts of civil-law liability but that they were of a humanitarian nature. Having regard to the autonomous nature of the concept "civil rights and obligations", the Court did not find conclusive the findings of the domestic courts to the effect that compensation claims asserted against the Foundation did not come within the scope of civil law. Furthermore, the Court considered that there were similarities between the entitlement to welfare allowances which falls under the scope of "civil rights and obligations" (see *Salesi v. Italy*, 26 February 1993, § 19, Series A no. 257-E) and the entitlement to receive compensation from the Foundation, regard being had in particular to the eligibility criteria of a claimant's financial difficulties and severe damage to his health as a result of Nazi persecution. Finally, the Court observed that, in the present case, the applicant was not affected in his relations with the Foundation, acting in the exercise of its discretionary powers. Rather, the applicant suffered an

interference with his means of subsistence and was claiming an individual, economic right flowing from specific rules laid down in the Foundation's statute and its internal regulations (see, *mutatis mutandis*, *Salesi*, loc. cit., and *Mennitto v. Italy* [GC], no. 33804/96, § 28, ECHR 2000-X). Thus, the Court was of the view that the right to claim compensation on account of Nazi persecution from the Polish-German Reconciliation Foundation could be considered "civil" for the purposes of Article 6 § 1 of the Convention. In conclusion, the Court found that the right to compensation asserted by the applicant under the first compensation scheme was a "civil right" within the meaning of Article 6 § 1, which was thus held to be applicable (see *Woś*, §§ 89-93).

77. Having examined the Government's post-admissibility submissions, the Court finds nothing in their arguments to change the conclusion that Article 6 § 1 of the Convention is applicable to the proceedings concerning the first compensation scheme. In particular, the Court is not persuaded that its finding as to the applicability of Article 6 § 1 could be refuted by the retrospective admission, made for the first time in June 2005, that the Foundation had erred when granting the applicant a primary payment in respect of the overall period of his forced labour. It is noteworthy in this respect that, in reply to the applicant's various queries at the material time, the Foundation never claimed that its decision of 2 February 1994 on primary payment had been flawed. Moreover, in their replies the Foundation and the minister supervising the Foundation consistently referred to Resolution no. 29/99 as the legal basis for the Foundation's decision in respect of the supplementary payment (see paragraphs 20 and 23 above).

78. As regards the Government's assertion that the Foundation consistently applied the deportation criterion throughout the whole period of its operation, the Court notes that this did not appear to be the case with respect to the applicant's claims. Furthermore, the Court notes that, in their initial observations on admissibility and merits, the Government admitted that the additional payment by way of a decision of 2 March 2000 was granted following an amendment to the Foundation's relevant regulations.

79. The Court notes the Government's arguments that the right to claim a benefit from the Foundation was not recognised under German or Polish law or under the 1991 Agreement. However, it takes a different position on this issue and considers that the 1991 Agreement and the Foundation's rules concerning the award of such payments, drawn up in implementation of the said Agreement, could be regarded as a source of such claims (see paragraph 75 above).

80. In addition, the Court considers that the issue of the application of the deportation requirement to the present case is such that it may still be considered as tantamount to a genuine dispute in respect of the factual circumstances which justified the applicant's claim for compensation. In the present case, those difficulties were exacerbated by the fact that the

applicant's claim based on his status as a forced labourer overlapped with the claim based on his status as a child under the age of 16 having suffered persecution.

81. Having regard to the aforementioned considerations, the Court rejects the Government's objection as to incompatibility *ratione materiae* and finds, as has already been established in the decision on admissibility, that Article 6 § 1 is applicable to the proceedings before the Foundation concerning the first compensation scheme.

B. Compliance with Article 6 § 1

1. The parties' submissions

82. The Government submitted that the right of access to a court was not absolute, and referred to the principles established in the Court's case-law. They stressed that the compensation payments granted by the Foundation could not be compared with an award for damages and submitted that they were voluntary and constituted a form of humanitarian assistance to individuals persecuted by Nazi Germany. Taking into consideration the nature of the payments, the Government maintained that the possibility of ensuring judicial review of these acts had to be excluded. They argued that, nevertheless, the nature of the payments did not undermine the right of claimants to have their applications fairly examined by the Foundation. The Government further pointed out that the Verification Commission and the Appeal Verification Commission were entirely independent from the Foundation's governing bodies.

83. The Government also explained that the Foundation's "decisions" on financial assistance took the form of a letter, informing claimants about the award of a payment and enclosing a document similar to a bank cheque. They submitted that this meant that the term "decision" used in their earlier observations could have been misleading in some way, by suggesting that the Foundation's activities were regulated by administrative law. However, the choice of this term resulted from the lack of any other relevant word in English which could correspond to the Foundation's action, the so-called "Foundation's decision on financial assistance on the basis of Nazi persecution" (*rozstrzygnięcie Fundacji o pomocy finansowej z tytułu doznanych prześladowań nazistowskich*).

84. Having regard to the foregoing, the Government maintained that there were no grounds on which it could be concluded that the Foundation was operating under administrative law. They further contended that, according to the Supreme Administrative Court's case-law, the 1991 Agreement and the subsequent agreements could not constitute the basis of an administrative-law relation between the Foundation and a person claiming financial assistance. In conclusion, the Government submitted that

there were valid grounds for excluding the jurisdiction of the administrative courts in respect of reviewing individual decisions on compensation issued by the Foundation's bodies.

85. The Government argued that, in the area of individual damage inflicted by a foreign State (for example, resulting from a war) which was in issue in the present case, international practice was that any lawsuit was to be barred and claims rejected automatically until such time as any agreed compensation was paid through a separate and closed procedure. The Government also referred to the Court's case-law concerning State immunity (see *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, ECHR 2001-XI) and argued that judicial remedies in respect of certain claims, including those related to the Second World War, were considered ineffective (see *Kalogeropoulou and Others v. Greece and Germany* (dec.), no. 59021/00, ECHR 2002-X). They further maintained that judicial recourse in the case of claims by citizens of one State against another was sometimes barred by the establishment of a specific forum and of exclusive competence.

86. With regard to Nazi persecution, the Government submitted that judicial remedies in Germany with respect to such claims were unavailable. Earlier lawsuits filed in German courts by foreigners who were victims of Nazi persecution had been rejected on account of the absence of a peace settlement with Germany, lack of legal grounds, or expiry of the limitation period. Moreover, following the enactment of the 2000 German Foundation Act, any such claims could be asserted only within the limits of the said Act.

87. The Government further maintained that if and when certain benefits (also *ex gratia*) were recognised by another State and a procedure for payment thereof was established, there emerged the issue of the admissibility of judicial remedies to challenge individual decisions and the criteria for such payments. However, the Foundation's decisions could not be appealed against to a court, and the Polish courts considered such a situation lawful. The Government emphasised that in matters relating to Nazi persecution this situation had been additionally justified by international practice, which had shown that access to a court in such cases was usually excluded, allowing only for an internal appeals procedure. They contended that this was also the practice of some States Parties to the Convention[1].

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1. In this respect they referred, *inter alia*, to the 1992 Agreement between the Federal Republic of Germany and the Conference on Jewish Material Claims Against Germany on the payment of pensions benefits to eastern European Jews residing in western Europe after the Second World War; the Agreement of 19 September 1995 between the government of the United States of America and the government of the Federal Republic of Germany Concerning Final Benefits to Certain United States Nationals Who Were Victims of National Socialist Measures of Persecution; the Agreement of 18 January 2001 between the government of the United States of America and the government of France concerning payments for certain losses suffered during World War II and the scheme

88. Furthermore, the Government argued against ensuring judicial review in the circumstances of the present case, contesting its practicality and usefulness. They submitted that judicial review by ordinary courts in cases concerning the award or refusal of benefits and also of the Foundation's resolutions would in fact involve interpretation of the eligibility criteria and verification of evidence. The Government also emphasised that the issue of the correct application of the eligibility criteria should not raise questions under the substantive provisions of the Convention. Furthermore, the procedure for the Foundation's internal appeals was justified by vital practical considerations, namely that the one-off benefits be paid as soon as possible to the elderly persons concerned, many of whom died each year.

89. The Government stressed that, by virtue of the humanitarian character of the financial assistance granted by the Foundation from funds allocated by the German government, the civil courts' jurisdiction should be excluded in respect of reviewing the rules for granting those payments and the eligibility criteria. On the other hand they maintained that, notwithstanding the nature of the payments, in certain cases, such as miscalculation of the amount of payment by the Foundation's officials or disbursal of a smaller amount than had been granted, a claimant could institute civil proceedings against the Foundation. They relied on the Supreme Court's Decision no. III ZP 44/97 (see paragraphs 41-42 above).

90. In conclusion, the Government submitted that the complaint under Article 6 § 1 of the Convention should be declared inadmissible on account of it being manifestly ill-founded and/or non-exhaustion of domestic remedies. Alternatively, the Government submitted that there had been no violation of Article 6 § 1 of the Convention.

91. The applicant, who was not assisted by a lawyer, did not address these issues in his observations.

2. *The Court's assessment*

92. Article 6 § 1 requires that in the determination of civil rights and obligations, decisions taken by administrative or other authorities which do not themselves satisfy the requirements of that Article be subject to subsequent control by a judicial body that has full jurisdiction (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 51, Series A no. 43).

93. The Court must therefore first ascertain whether the Foundation's adjudicating bodies – the Verification Commission and the Appeal

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concerning slave and forced labourers and certain property claims operated under the 2000 German Foundation Act and the similar Austrian law of 2001, which were passed following multilateral international negotiations.

Verification Commission – could be considered as tribunals conforming to the requirements of Article 6 § 1.

94. According to the Court's settled case-law, a tribunal within the meaning of that provision must satisfy a series of requirements – independence, in particular of the executive; impartiality; duration of its members' terms of office; and guarantees afforded by its procedure – several of which appear in the text of Article 6 § 1 itself (see *Belilos v. Switzerland*, 29 April 1988, § 64, Series A no. 132; *Demicoli v. Malta*, 27 August 1991, § 39, Series A no. 210; and *Cyprus v. Turkey* [GC], no. 25781/94, § 233, ECHR 2001-IV). In the present case, as regards structural guarantees, the Court notes that the members of the Verification Commission and the Appeal Verification Commission were appointed and dismissed by the Foundation's management board and supervisory board respectively. The Foundation's statute also specified that the rules governing the operation of the Foundation's adjudicating bodies were to be set out in the regulations adopted by the supervisory board. The Foundation's governing bodies were in turn appointed and dismissed by the government minister at his or her full discretion (see paragraph 32 above). Furthermore, a degree of control and supervision over the Foundation was exercised by the government minister. Moreover, it appears that the members of the Verification Commission and the Appeal Verification Commission did not have tenure. Thus, the Court considers that the independence of the Foundation's adjudicating bodies, despite the Government's arguments to the contrary, was open to serious doubt. As regards procedural guarantees, it appears that the adjudicating commissions had no clear and publicly available rules of procedure (see *H. v. Belgium*, 30 November 1987, § 53, Series A no. 127-B) and did not hold public hearings. For these reasons, they cannot be regarded as tribunals within the meaning of Article 6 § 1.

95. Therefore, in order for the obtaining situation to be in compliance with Article 6 § 1, the decisions of the Foundation's adjudicating bodies should have been subject to review by a judicial body having full jurisdiction. However, the Court notes that the Supreme Administrative Court expressly rejected the applicant's complaint against the Appeal Verification Commission's decision of 24 April 2001, relying on Decision no. OPS 3/01 adopted by a seven-member panel of the same court on 3 December 2001 which excluded judicial review of such decisions by administrative courts (see paragraphs 38, 43 and 45 above). Similarly, the Court notes that the Supreme Court's case-law clearly indicated that judicial review by civil courts of the Foundation's decisions in individual cases was excluded (see paragraphs 39, 41, 42 and 44 above). In this respect the Court also observes that the Government have not provided a single example of a civil court judgment to sustain their argument that such cases could be reviewed by those courts.

96. Nevertheless, the Government maintained that the limitations imposed on the applicant's right of access to a court were not in breach of Article 6 § 1. At the same time, they seemed to accept that the issue of providing judicial review in cases such as that obtaining in the instant case could arise (see paragraph 87 above).

97. The Court observes that in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A no. 18) it held that the procedural guarantees laid down in Article 6 concerning fairness, publicity and promptness would be meaningless in the absence of any protection for the precondition for the enjoyment of those guarantees, namely, access to a court. It established this as an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlie much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court.

98. The right of access to a court is not, however, absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I).

99. In this context, the Court reiterates that its scrutiny is based on the principle that the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly true for the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial (see, among other authorities, *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII).

100. The Court must first determine whether the limitation on the applicant's right of access to a court pursued a legitimate aim. It notes that the Government in their observations have not clearly identified the legitimate aim which was pursued by the impugned limitation on the applicant's right of access to a court. They appeared to contend that the exclusion of judicial review was prompted by practical considerations, such as the need to disburse the payments speedily given that the potential beneficiaries were passing away. They further submitted that, had judicial review been provided, it would have had to involve interpretation of the eligibility criteria and assessment of the particular facts of given cases. The

Government also argued that the limitation in issue was justified by the particular nature of the benefits granted by the Foundation. The Court will proceed in its analysis on the assumption that the limitation in issue pursued the legitimate aim of ensuring flexibility and efficiency in the award of compensation by the Foundation.

101. The essential issue in this case is the proportionality of the contested limitation on the applicant's right of access, which the Court will assess in the light of the particular circumstances of the present case.

102. The Court notes that the Government argued against the provision of judicial review in the present case, relying on international practice as it was allegedly established by a number of agreements (see paragraph 87 above) concerning various individual claims related to Nazi or similar forms of persecution. However, the Court does not find this argument conclusive. It observes that the agreements referred to by the Government were concluded between Germany and the United States of America, France and the United States of America, Germany and the Conference on Jewish Material Claims Against Germany and between the parties which participated in the negotiations leading to the creation of the second compensation scheme (see paragraph 87 above). The Court notes that some of the signatory States were parties to these agreements. However, it does not find it established on the basis of the above agreements that there is, as yet, a generally recognised international practice within the Contracting States of excluding judicial review in matters pertaining to individual claims arising out of wartime persecution.

103. Furthermore, it is important to note that the present case, contrary to what is suggested by the Government, does not concern the issue of State immunity (see *Al-Adsani*, cited above; *Fogarty v. the United Kingdom* [GC], no. 37112/97, ECHR 2001-XI; and *Kalogeropoulou and Others*, cited above) or any other form of immunity recognised in international law or generally accepted by the signatory States which could be regarded as a proportionate restriction on the right of access to a court (see *Waite and Kennedy*, cited above, concerning the immunity of international organisations, and *A. v. the United Kingdom*, no. 35373/97, ECHR 2002-X, concerning the doctrine of parliamentary immunity), but a compensation scheme which derives from an international agreement. The Court further observes that the applicant's claim before the Foundation was asserted on the basis of specific eligibility criteria laid down in its regulations and had only a tenuous connection, if any, with Germany, which had originally inflicted the damage on the applicant.

104. The Court further observes that the domestic courts, having interpreted the 1991 Agreement and various domestic laws (see paragraphs 38-45 above), excluded judicial review of the individual decisions rendered by the Foundation. Those findings of the domestic judicial authorities are important considerations for the Court, but are not

decisive. It reiterates that it is not its task to substitute itself for the domestic jurisdictions. It is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. This also applies where domestic law refers to the rules of international agreements. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Waite and Kennedy*, cited above, § 54).

105. The Court notes that, in their case-law pertaining to the first compensation scheme, the Supreme Administrative Court and the Supreme Court substantiated their refusal to review the Foundation's decisions in individual cases by referring to the scope of their respective jurisdictions (see paragraphs 38-45 above). With regard to the jurisdiction of the Supreme Administrative Court, the domestic courts held that the Foundation was not a public authority, that no administrative powers were delegated to it by statute and that the Foundation's decisions were not administrative decisions. Thus, the Supreme Administrative Court did not have jurisdiction. Similarly, in respect of the civil courts, the Supreme Court held that their jurisdiction was excluded on the ground that entitlement to receive compensation from the Foundation did not fall within the scope of civil law.

106. The Court is not in a position to contest whether the above findings reflected a correct interpretation of the domestic legislation. However, the Court cannot but note that, as a result of such an interpretation, the applicant was left in a sort of legal vacuum when both the ordinary and administrative courts established that they had no jurisdiction to hear his claims. Consequently, the applicant had no possibility to have the Foundation's decisions reviewed by a "tribunal" within the meaning of Article 6 § 1 of the Convention. In this context, the Court emphasises that it would not be consistent with the rule of law in a democratic society, or with the basic principle underlying Article 6 § 1 – namely that civil claims must be capable of being submitted to a judge for adjudication – if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons (see *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B, and *Al-Adsani*, cited above, § 47). The Court also notes that the domestic courts' interpretation appeared not to give enough effect to the right to a fair hearing of one's case, enshrined in Article 45 of the Constitution.

107. The Court further considers that the possibility, relied on by the Government, to issue civil proceedings in certain exceptional cases, such as where the Foundation failed to disburse a payment following a decision in the claimant's favour, has no bearing on the domestic courts' well-established practice of excluding judicial review, in civil proceedings, of the Foundation's decisions concerning compensation payments in individual

cases (see, in particular, the Supreme Court's Decision no. III ZP 44/97 of 31 March 1998 – paragraphs 41-42 above).

108. In respect of the proportionality of the impugned limitation on the applicant's right of access, the Court also attaches importance to the fact that the applicant did not have available to him any other reasonable alternative means of redress (see, *mutatis mutandis*, *Waite and Kennedy*, cited above, § 68, and *Cordova v. Italy (no. 1)*, no. 40877/98, § 65, ECHR 2003-I).

109. As regards the Government's argument that the provision of judicial review would have to entail interpretation of the eligibility criteria and assessment of the facts, the Court recalls its findings on the issue of the applicability of Article 6 § 1 to proceedings before the Foundation, to the effect that attempts by claimants to challenge the eligibility criteria as such would be futile. However, the Court emphasises that judicial review of the Foundation's decisions in individual cases cannot be excluded where the respective decisions could arguably be shown to be flawed as a result of erroneous assessment of the facts underlying an applicant's claim (see paragraphs 72-73 above). The Court would also observe that ensuring judicial review of the Foundation's decisions by a domestic tribunal need not necessarily run counter to the principle of expeditious examination of the relevant claims.

110. In so far as the Government attempted to justify the limitation on the applicant's right of access to a court by reference to the particular nature of the benefits granted by the Foundation, the Court observes that it has already addressed that issue at considerable length when examining the question of the applicability of Article 6 § 1 to the present case in the admissibility decision and in the present judgment (see paragraphs 71-80 above). Having regard to its findings on that question, the Court considers that the argument related to the particular nature of the benefits cannot outweigh the importance of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial (see *Aït-Mouhoub v. France*, 28 October 1998, § 52, *Reports* 1998-VIII, referring to *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32; see also *Waite and Kennedy*, cited above, § 67).

111. Having regard to the above considerations, the Court considers that the absolute exclusion of judicial review in respect of the decisions issued by the Foundation under the first compensation scheme was disproportionate to the legitimate aim pursued and impaired the very essence of the applicant's "right of access to a court" within the meaning of Article 6 § 1 of the Convention.

112. It follows that there has been a breach of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

113. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

114. The applicant claimed an unspecified amount as compensation.
115. The Government did not comment.
116. The Court considers that the applicant undoubtedly sustained non-pecuniary damage which is not sufficiently compensated by the finding of a violation of the Convention. Making an assessment on an equitable basis, it awards the sum of 5,000 euros to the applicant under this head.

B. Costs and expenses

117. The applicant claimed 919.80 Polish zlotys for typing, postage and translation.
118. The Government did not comment.
119. The Court notes that the applicant did not submit any relevant documents in support of his claim. It therefore considers that there is no basis for making any award for costs and expenses.

C. Default interest

120. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's preliminary objections as to incompatibility *ratione personae* and the non-exhaustion of domestic remedies;
2. *Joins to the merits* the Government's preliminary objection as to incompatibility *ratione materiae* and *dismisses* it;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with

Article 44 § 2 of the Convention, EUR 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 June 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'Boyle	Nicolas Bratza
Registrar	President