FREE CITY OF DANZIG

CONSTITUTION OF THE FREE CITY [1] COMPOSITION OF THE SENATE.

C.354.1930.I.

I. LETTER FROM THE HIGH COMMISSIONER AT DANZIG TO THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS.

[*Translation.*] Danzig, June 5th, 1930.

I have the honour to send you herewith a copy of the opinion given by the Supreme Court of the Free City on April 12th, 1930, at the request of the Danzig Senate, regarding the question whether the Senate, as at present constituted,[2] is competent to perform its Government functions.

I would ask you to be good enough to communicate this opinion to the Members of the Council.

(Signed) M. GRAVINA,
High Commissioner

ANNEX.

[*Translation from the German.*]

The following question has been submitted to the Supreme Court *(Obergericht)* for its opinion.

> Is the Senate of the Free City competent to take decisions if all the Senators acting in a secondary capacity have resigned ?

I. The " capacity " of the Senate " to take decisions " *(Beschlussfähigkeit)* is manifestly not used here in the sense in which that term is employed in Article 37 of the Constitution, where the capacity depends on a quorum of members of the Senate being present in each particular case when a decision is taken, but rather in the sense of " competence to act" *(Handlungsfähigkeit)* —that is to say that the Senate is generally competent to take action as an organ of the State by way of decisions.

II. The Senate consists of twenty-two members: the President and seven principal Senators, and the Vice-President and thirteen Senators acting in a secondary capacity If all the Senators acting in a secondary capacity, including the Vice-President, were to resign, the number of members would thus be reduced to eight at the most, who would all be principal Senators (including the President).

The number of members might, of course, fall to eight or less through the resignation of both principal Senators and Senators acting in a secondary capacity, but the question of the competence of the Senate to take action would in such a case have to be decided on the same principles as in the first hypothetical case. The fact of the remaining members being principal or secondary Senators can make no difference. All the Senators have equal voting rights in the Senate, which is proved by the fact that nothing to the contrary is to be found in the Constitution, nor are any distinctions of the kind made in Article 36 or Article 41 (paragraph 2), which provide for the Senate being represented by particular Senators.

III. The Constitution nowhere explicitly mentions the number of Senators required for the Senate to be competent to act. There is no reason to assume that the number may not fall below twenty-two. It often happens that one or more members of the Senate resign without it being possible to replace them immediately, and the Senate must necessarily be able to function in such cases.

If, then, the number can fall to below twenty-two without affecting the competence of the Senate to act, there can be no limit to the reduction in the number of members, unless the Constitution provides for a minimum number below which such power to act can no longer be assumed.

The Supreme Court is of opinion that, at any rate, no such minimum number is indicated in Article 37 (paragraph 1, sub-paragraph 2), which says:

> " Not less than one-half of the members of the Senate must be present to constitute a quorum. "

This sentence could only be taken as determining the number necessary for the Senate to be competent to act if it were understood to mean that the Senate was only competent to take decisions

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[1] For the text of the Constitution, see *Official Journal* of the League, Special Supplement No. 7, 1922.

[2] *Note by the Secretary-General.* — Owing to the resignation of the Senators acting in a secondary capacity, the Senate at present consists only of the President and the seven principal Senators.

if at least one-half of the number of members mentioned in Article 25 (paragraph 1) were present. The number of members present then needed to make a quorum would be eleven, and, in the event of there being less than eleven members, the Senate would no longer be competent to act. The Supreme Court, however, interprets Article 37 (paragraph 1, sentence 2) as meaning that, at any rate, not less than one-half of the members of the Senate *for the time being (der jeweiligen Mitglieder des Senats)* must be present to constitute a quorum, so that the number required to be present is relative and not absolute. The justice of this interpretation is definitely confirmed by a reference to the wording of Article 16, which says that not less than one-half of the *elected deputies* of the Assembly must be present to constitute a quorum.

If, then, Article 37 is ruled out in connection with the question of a minimum number, Article 41 is the only one left which can serve as a reliable guide. This article provides that official documents shall be signed in the name of the Free City of Danzig by the President or the Vice-President, and by one other member of the Senate, from which it appears that the Senate cannot in any case be regarded as competent to act if there is only one member.

As, therefore, the Constitution contains no ruling as to the minimum number being more than eight in order that the Senate may be competent to act, the following reply is given to the question submitted.

The Senate is competent to act if all the Senators acting in a secondary capacity have resigned.

As the question of the minimum number of principal Senators required in such a case was not raised, no decision on that point was called for.

Danzig, April 12th, 1930.

SUPREME COURT OF THE FREE CITY OF DANZIG.

C.369.1930.I.

II. SECOND LETTER FROM THE HIGH COMMISSIONER AT DANZIG TO THE SECRETARY-GENERAL OF THE LEAGUE OF NATIONS.

[*Translation.*] Danzig, July 4th, 1930.

With reference to document C.354.1930.I, I have the honour to inform you that, on June 17th last, an agreement having at last been reached by the President, Dr. Sahm, the Government of the Free City which had been reduced to the eight *(hauptamtlich)* principal Senators, has been completed, according to the Constitution, by the election of the fourteen parliamentary Senators.

The new Senate now consists of the eight existing Senators (of whom the President belongs to no party three Senators belong to the Social Democratic Party, two to the Liberal Party and two to the Centre) and of fourteen others (four belonging to the Centre, eight to the Social Democratic Party and two to the Beamtengruppe).

I should here remark that the President of the Senate made a statement in the Volkstag on May 26th concerning the question of the *Beschlussfähigkeit* (capacity of the Senate to take decisions) (see Annex). This question, which the parties had decided to discuss before June 4th, has since been removed from the agenda.

I should be grateful if you would bring the above to the notice of the Council.

(Signed) M. GRAVINA,
High Commissioner

ANNEX.

[*Translation from the German.*]

On May 26th, 1930, M. Sahm, President of the Senate, made the following statement in the Volkstag:

"On April 2nd, 1930, the Government Coalition broke up, and ten members of the Senate acting in a secondary capacity *(Nebenamt)* resigned. Since then, negotiations have taken place to form a new Coalition, but without success. The remaining four Senators acting in a secondary capacity (those belonging to the Centre Party) have now also resigned. *The Senate therefore at present consists of the President and seven principal Senators.*

"The Constitution provides, in addition to the principal Senators, for a certain number of Senators acting in a secondary capacity; but, according to the text of the Constitution, there is no doubt *that the Senate, even as at present composed, still constitutes the valid Government of the Free City in the sense of the Constitution,* and that, consequently it must exercise all the rights and fulfil all the duties provided for in the Constitution. This view is confirmed by the Advisory Opinion given by the Supreme Court at the Senate's request on April 12th, 1930. Thus, no doubt exists that the legislative and administrative acts of the present Senate, pending its completion on the basis of a new Government Coalition, have full legal validity."