

Annex 698 a.

C. 689. 1924. I.

FREE CITY OF DANZIG ATTACHMENT OF DANZIG NATIONALS TO
POLISH CONSULATES.

HIGH COMMISSIONER'S DECISION OF NOVEMBER 8TH, 1924.

1. The Free City has requested me to give a decision in the following terms that Poland is not entitled, for reasons connected with her internal government, to refuse to attach Danzig citizens to Polish consulates in accordance with Article 3 of the Treaty of Paris.

2. The question of Danzig consular attaches has been dragging on for some two and a-half years and, according to the statement of the Free City serious prejudice is being suffered by the failure of the Polish Government to attach Danzig citizens to Polish consulates where the Free City has important economic interests. The only consulate from which the Free City has ever received commercial intelligence is from Hamburg, and from there only since a Danziger has been attached.

The Free City requests the attachment of Danzig citizens to the following places: London, Antwerp, Riga, Reval, Helsingfors, Bucharest, Moscow, Berlin, Copenhagen, Stockholm, New York, Rotterdam and Christiania.

3. The Free City regards the provision of Article 3 of the Treaty of Paris as destined to compensate her for the fact that she has no consulates of her own to look after her trade interests abroad and has limited her request for attaches to those posts where she has really important interests. Poland has no right to refuse to bear the cost of these attachés on the ground that budgetary provision does not exist, since it was the duty of Poland to make the necessary provision, and the Polish Government was in a position to provide in the budget for consular posts three years ago.

The Polish Government has not renounced the other charges it has to bear as a result of the Treaty of Paris — *e.g.* the salary of the High Commissioner and of the President of the Harbour Board — and has no right to renounce the charges arising out of a definite prescription of the Treaty of Paris.

4. The Polish Government states that it has never endeavoured to avoid fulfilling its obligations under Article 3 of the Treaty of Paris, but the Polish Government is of opinion that Danzig and Poland must come to an agreement as to the Polish consulates in which Danzig citizens are to be employed, and in order to arrive at this agreement account must be taken of the real economic interests of the Free City on the one side and the considerable expenditure which falls upon the Polish State on the other. In any case, the Polish Government cannot accept dictation from the Free City without coming to an agreement with Poland as to the places where and the conditions under which Danzig citizens shall be employed in Polish consulates, which appears to be the interpretation of the Free City of Article 3 of the Treaty of Paris. In support of this view, the Polish Government quotes the letter of February 19th, 1924, from the Senate, which refused the appointments proposed for certain posts by Poland and, on the other hand, contains the requests of the Senate for employment of Danzig citizens in numerous consular posts, without supporting the demand by any arguments that the interests of the Free City make these appointments necessary. These questions, as well as all the others connected with consular matters, ought to be handled at the same time in the negotiations which are shortly to take place between Poland and the Free City.

5. With regard to the last part of the Polish point of view, I had hoped that this method might be adopted to settle this question, but in view of the delays which have occurred in arriving at a settlement dealing with the matter, the Senate of the Free City particularly asked that it should be extracted from the list of other consular questions and submitted to me for immediate decision — a proposal which was agreed to at the time it was made by the Polish Government.

6. The actual question has already formed the subject of a request for a decision by the Free City in March 1923, and reached what appeared to be a satisfactory agreement in September 1923¹. No considerable advance, however, has been made in bringing Article 3 of the Treaty of Paris into execution, and the view of the Polish Government that these appointments were dependent upon provision in the budget of the Polish Government has only lately been brought forward.

Article 3 of the Treaty of Paris says

“ In foreign towns where the Free City of Danzig has important economic interests, one or more nationals of the Free City of Danzig, placed at the disposal of the Polish Government by the Free City shall be included in the staff of the Polish consulates.

“ These officials shall be responsible to the Polish Government and shall, under the direction and superintendence of the Polish Consul, be charged with matters specially affecting the interests of nationals of the Free City of Danzig.”

¹ *Official Journal*, November 1923, page 1421.

Article 5

“ The costs of the diplomatic and consular representation of the Free City of Danzig and of the protection of her nationals abroad shall be borne by Poland.”

It is quite clear, therefore, that the Free City of Danzig has a right to the attachment of one or more nationals to Polish consulates in foreign towns where the Free City has important economic interests and that the costs of this representation shall be borne by Poland. It is, I think, also clear that these appointments cannot be conditional on the budgetary considerations of the Polish Government, provided always that the Free City can show that it has important economic interests and that they are such as require the appointment of a consular representative.

7 While it may be true that the constitutional practices of Poland require the approval of Parliament for the expenditure required on any public purpose, it may, I consider, be expected of any State which has undertaken an engagement in advance to do a certain thing to make its constitutional procedure fit that engagement and not *vice versa*. Poland and Danzig are obliged to put into execution decisions of the Council of the League of Nations, and a case recently occurred where a decision of the Council imposed on both parties a considerable expenditure which could not have been foreseen when the budget which had to bear the expenditure was being framed — namely, the construction of a basin for munitions of war. It was therefore incumbent upon these two Governments to make such arrangements internally as were necessary to meet this obligation, and this has been done by the Free City without advancing constitutional budget considerations as a reason for not fulfilling its obligations.

8. I have not seen the arguments advanced by the Free City for the appointment of consular attaches to thirteen posts, but the statement of the Free City that until a consular attache was appointed to Hamburg no commercial intelligence of any kind had been received by the Free City from any Polish consulate is not contradicted by the Polish Government and gives support to the statement that the Free City has important commercial interests which are not attended to by the Polish consulates and which therefore require the appointment of particular attaches for that purpose. I am not aware upon what conditions the Polish Government opens consulates in other countries or whether the appointment of Danzig attaches to thirteen posts can justifiably be described as “numerous” since it is possible that so small a State as Danzig, whose life is largely commercial, may require more particular protection and assistance than a large State whose interests are of a different character, but it is, of course, obvious that the demands of the Free City for consular attaches must be reasonable and must be supported by strong and convincing arguments.

9. The test to be applied to this case is not whether the Polish Government has made the necessary arrangements in advance to pay for these attachés but whether the Danzig Government can make out a sufficiently good case for the appointment of consular attaches at these places. In the event of a difference of opinion arising on this matter, there should be little difficulty in obtaining the independent opinion of an expert on consular matters, to settle the case.

10. I decide, therefore

(1) That the Polish Government is not entitled to refuse to pay for the appointment of a Danzig consular attache in a foreign town where the Free City of Danzig has important economic interests

(2) That, in requesting the Polish Government to make such an appointment, it is incumbent upon the Free City to produce evidence that important economic interests of the Free City do actually exist in that foreign town

(3) In the event of the Free City being unable to convince the Polish Government of its claim to representation at any given place, the matter will be submitted to the arbitration of an independent authority on consular matters to be nominated by the two parties or, if they cannot agree upon the nomination, to be chosen by me.

(Signed) M. S. MacDONNELL.