

“ After examining, not only the previous documents, but also the statement of reasons for the decision of the above-mentioned tribunal, I think I need only propose that the Council should close its examination of this matter.”

The conclusions of the report were adopted.

(b) PETITIONS FROM THE “ DEUTSCHER VOLKSBUND ” DATED AUGUST 1ST AND OCTOBER 25TH, 1932, CONCERNING THE QUESTION OF PROPERTY RIGHTS OVER THE ST. JULIUS HOSPITAL AT RYBNIK (POLAND).

M. DE MADARIAGA presented the following report: ¹

“ In his report, the conclusion of which the Council adopted at its meeting on May 26th, 1933,² the representative of the Irish Free State, my predecessor as Rapporteur for minorities questions, explained the position of the question raised by the petitions of the Deutscher Volksbund of August 1st and October 25th, 1932, concerning the St. Julius Hospital at Rybnik. As my colleagues will remember, these petitions referred.

“ (1) To the refusal by the Rybnik Land Registry Bureau to register the Spolka Pieczy as owner of the hospital, and

“ (2) To the appointment of a trustee for this property

“ In order to decide whether there might possibly be, in the procedure followed in this case, anything incompatible with Part III of the German-Polish Convention of May 15th, 1922, the Council decided to refer the matter to a Committee of Jurists. This Committee, consisting of Professors Basdevant, Ferrari dalle Spade and Lampert, drew up an opinion the text of which was communicated to us in document C.602.1933.I. (Annex 1492). The Council will doubtless wish to take note of this opinion and declare the examination of this question closed. Such decision would seem to be all the more justified by the fact that, according to a communication I have just received from the Polish Government concerning the appointment of a trustee for the St. Julius Hospital (point 3 of the jurists' opinion), the trustee has resigned and the competent tribunal, in accepting this resignation, has decided not to maintain the trusteeship, which, consequently has ceased to exist.”

The conclusions of the report were adopted.

3386. Free City of Danzig. Constitution of the Free City

M. Rauschning, President of the Senate of the Free City of Danzig, and Mr. Lester, High Commissioner of the League of Nations at Danzig, came to the Council table.

Sir John SIMON presented the following report and draft resolution: ³

“ On November 4th, 1933 (Annex 1493), the High Commissioner of the League of Nations at Danzig addressed a letter to the Secretary-General raising a number of points relating to the Constitution of Danzig and asking him to submit the matter to the Council. The High Commissioner based his request on the letter, approved by the Council on June 10th, 1925,⁴ and subsequently addressed to the High Commissioner, with regard to the procedure to be followed concerning information which might come into his possession relating to breaches of the Danzig Constitution. Under the terms of that letter, the High Commissioner is authorised, in the event of his learning through petitions or otherwise that there is a danger of infraction of the stipulations of the Constitution, either to address a report to the Council for information or, in exceptionally serious cases, to request the Council to discuss the matter at one of its sessions.

In its essentials, the High Commissioner's communication may be summarised as follows:

(1) On October 31st, 1933, the Vice-President of the Senate delivered a speech to the Danzig police organisations which is said to have included the following passages:

“ A police official who did not definitely accept the National Socialist State would never hold a position under him. If the totalitarianism to which National Socialism aspired was not achieved, he (Herr Greiser) would also be unable to achieve his object. Firm action would have to be taken to make the new regime a reality. There could no longer be any room in Danzig for parties or for members of the Socialist, Centre or German National Groups. He could promise that all parties would disappear. He would keep a firm grip on the police and make it an instrument of the National Socialist State. On the other hand, the police were bound to take up their stand against all enemies of the National Socialist State.

¹ Document C.64.1934.I.

² See *Official Journal*, July 1933 (Part I), page 832.

³ Document C.65.1934.VII.

⁴ See *Official Journal*, July 1925, pages 863 and 950.

Supporters of the Centre Party were no longer wanted in the civil service, since they were enemies of the State. Political professional organisations would never find any place in the uniformed police.

“ The High Commissioner having requested the President of the Senate to define his views with regard to the purport of the above-mentioned speech in the light of the stipulations of Article 93 and Article 85 of the Constitution regarding freedom of political opinion and freedom of association, the President sent the High Commissioner an *aide-mémoire* in which it was claimed that the speech was not intended to dispute the validity of any article of the Danzig Constitution. The remark that there was no longer any room for parties in the new State was simply meant in the sense that parties, with the influence on the conduct of the affairs of the State which they exercised in the time of the parliamentary regime, were now out of date. The Vice-President's remarks on the members of the Centre Party it was further claimed, had not been reproduced in full. They could only be understood in conjunction with the previously quoted sentence.

A police official who did not definitely accept the National Socialist State would never hold a position under him.

In conclusion, the President added that the Vice-President took the view that, in a territory such as Danzig, it was particularly necessary to safeguard law and order by every possible means; it was therefore essential that especially close relations of trust should exist between the Government and the members of the police force.

“(2) On November 3rd, the representatives of the Centre Party newspaper, the *Danziger Landes-Zeitung*, and the representatives of the Socialist newspaper, the *Danziger Volksstimme*, submitted to the High Commissioner two petitions (Appendices 1 and 2 to Annex 1493), from which it appeared that the two papers had been suspended by decision of the Chief of Police for eight days and two months respectively for having published reports of and articles¹ on the above-mentioned speech of the Vice-President, and further, in the case of the *Danziger Volksstimme*, for having published an article² on a case before the Court of Assize. The two suspensions were based upon an Ordinance of June 30th, 1933, concerning measures for ensuring public order and security which was based upon the law passed by the Volkstag on June 24th, 1933, conferring full powers upon the Senate and providing that periodicals may be suspended whenever their contents endanger public order and security. The petitioners claimed that these suspensions were in conflict with Article 79 of the Constitution, which stipulates that every person shall have the right, within the limits of the law to express his opinion by word, writing or in any other manner.

“(3) The High Commissioner transmitted these petitions to the Senate with a request that it would inform him as to the attitude it intended to take up in the matter. The President of the Senate informed the High Commissioner that there could be no question of cancelling the suspension of the newspapers, and that he would also be obliged to take steps against the petitioners by placing them under preventive arrest (‘Schutzhaft’). To the observation of the High Commissioner that, in his opinion, Danzig nationals were entitled to submit petitions, the President of the Senate replied that the security of the State necessitated the measure in question.

* * *

Article 103 of the Treaty of Versailles stipulates that the Constitution of the Free City of Danzig shall be placed under the guarantee of the League of Nations.

“ The nature and scope of that guarantee have on two occasions formed the subject of decisions by the Council.

“(a) In his report, dated November 17th, 1920, the conclusions of which were approved by the Council, Viscount Ishii, Rapporteur, expressed the following view:

The provision of the Treaty of Versailles, according to which the Constitution of the Free City shall be placed under the guarantee of the League of Nations, implies:

(1) That this Constitution will have to obtain the approval of the League of Nations;

(2) That the Constitution can only be changed with the permission of the League of Nations; and

“(3) That the constitutional life of the Free City of Danzig must always be in accordance with the terms of this Constitution.

“ It is obvious that the guarantee of the Constitution and the protection given by the League are intimately connected. The fundamental idea is that the Free City should form, in the international organisation of Europe, a community which must be protected against all undue interference on the part of any country and which must

¹ Translations of these articles are annexed to document C.636.1933.VII (Appendices 1b and 2b to Annex 1493).

² Copy of this article may be seen at the Secretariat.

have its own regular existence. It is, of course, understood that it would accept in their entirety the terms of the Treaty of Versailles and the rights which this Treaty confers on Poland.

“ It would seem to follow from these considerations that the League of Nations should examine whether this Constitution provides the necessary guarantees for a stable and peaceable political situation, and will ensure a Government which will carry out its duties in accordance with the principles on which the Free City has been constituted, and likewise the obligations which have been imposed upon it by the Peace Treaty of Versailles. It is particularly necessary to see whether the Constitution of the Free City contains germs of disorder, inadequate government, anarchy or disregard for international obligations.

“ It may be added that, on the same occasion, the Council requested the Constituent Assembly of the Free City to insert in the final text of the Constitution certain clauses relating more particularly to the international obligations of Danzig.

“(b) From the letter approved by the Council on June 10th, 1925, on which the High Commissioner based his action in bringing the present question before the Council, it would appear that the Council considered that, as representative of the League of Nations at Danzig, the High Commissioner should be authorised to receive petitions from nationals of the Free City and, if necessary draw the Council's attention to cases in which there was a danger of the Constitution being infringed, no distinction being made between the various stipulations of the Constitution.

“ Furthermore, the advisory opinion of the Permanent Court, dated February 4th, 1932, with regard to the treatment of Polish nationals in the territory of Danzig, contains the following passages on the subject of the League of Nations guarantee of the Danzig Constitution:

“ The League, as guarantor of the Constitution, is therefore concerned, not merely with the text of the Constitution, but also with the proper application of it. It was at the request of the League that an article was inserted in the definitive text of the Constitution, as Article 42, reading:

“ “ The Senate of the Free City shall furnish to the League of Nations at any times upon the request of the latter, official information regarding the public affairs of the Free City.”

“ The object of this provision is obvious. It is to enable the League to exercise its rights and fulfil its duties concerning, *inter alia*, the actual application of the Constitution.

“ From what has been said above, it follows that the League of Nations, as guarantor of the Constitution of the Free City has the right—which, in practice, it exercises through the Council—as well as the duty to intervene in the event of an erroneous application by Danzig of its Constitution.

“ From the foregoing texts, it is, in my opinion, clear that the League's guarantee of the Danzig Constitution implies for the Council the right and duty to satisfy itself in general that the constitutional life of the Free City is in keeping with that Constitution. I think my colleagues will agree that, while the autonomy of the Free City implies that its constitution will be interpreted by its own Government, laws and courts, and while the Council should not necessarily take up every question which may arise with regard to the application of the Constitution and assume the functions of a court of law the Council must remain sole judge of its own action in every new case that may be submitted to it in virtue of the League's guarantee of that Constitution.

* * *

“ With regard to the point raised above under (1), it is not surprising that, having in view the terms of Articles 85 and 93 of the Constitution, guaranteeing to Danzig nationals freedom of political opinion and freedom of association, the High Commissioner should have felt it necessary to satisfy himself as to whether there was not a danger of infraction of the stipulations of the Constitution. Since, however, in reply to the High Commissioner, the President of the Senate has declared that the speech in question was in no way intended to dispute the validity of any article of the Danzig Constitution, I submit that the present situation might be met by the Council's taking note of this important declaration, while at the same time repeating the statement of Viscount Ishii, which I have already quoted, that the League's guarantee of the Constitution implies that the constitutional life of the Free City must always be in accordance with the terms of that Constitution.

“ As regards point (2)—namely the suspension of the two newspapers—the right to free expression of opinion which is guaranteed by the Constitution of Danzig (Article 79) is a right exercisable within the limits of the law. The Constitution does not, in my opinion, prohibit such a measure as was taken in the case before the Council—namely the suspension of newspapers in virtue of a law and by the competent authority on the ground that they had been guilty of publications endangering the safety of the State. The fact of its having been alleged in such a case that the grounds invoked were insufficient to justify the measures taken does not necessarily involve action by the Council under its general responsibility in regard to the Constitution of Danzig; it would be for the Council to appreciate whether the circumstances indicated an abuse of the powers in question which so affected the operation of the Constitution as to necessitate

intervention by the Council. In the circumstances of the present case, and as the newspapers in question have since reappeared, I do not propose that the Council should further consider the point; but I would emphasise that, in adopting this attitude, the Council would not be expressing any view as to whether the measures taken against the two newspapers were, in fact, justified.

"The third point to which our attention is called by the High Commissioner refers to the detention of certain newspaper editors for having addressed petitions to the High Commissioner. The reason put forward for this action by the Chief of Police was that, while every citizen of Danzig has the right to address petitions to the High Commissioner, the editors in question had not, before doing so, employed the remedy provided by the law against the action of which they complained, that the action in question was, at the time of their petition, simply an administrative act by a subordinate authority and that there existed no decision by the Senate, which is the authority designated by law to deal with such complaints. To petition the High Commissioner before a decision by the Senate is considered by the Chief of Police as an act endangering the safety of the State.

"The Council will, I am convinced, be unable to accept this view. It is for the High Commissioner to judge in the first place of the value of petitions of this nature which may be addressed to him, and it is natural that, in forming his judgment, he should consider, amongst other points, the question whether or not a petitioner has exhausted the legal remedies which may be open to him. But this consideration does not imply that a Danzig citizen who desires to petition the High Commissioner should be debarred from doing so until he has exhausted all possible legal remedies, and should be considered on this ground alone (and no other reasons have been suggested to us in this case) to be acting against the safety of the State. I believe that the Council will agree that the right to petition the High Commissioner recognised to Danzig nationals by the Council in the letter of June 10th, 1925, which it duly approved, must remain intact, and I trust that in future the Council may rest assured that such will be the case.

"I feel sure that my colleagues on the Council will share my full confidence that the new High Commissioner will in the future, as his predecessors have always done in the past, continue to perform with care the functions in relation to the application of the Constitution of the Free City resulting from the decisions which the Council has previously taken in the matter.

"I have the honour to submit to the Council the following draft resolution.

"The Council approves the conclusions of this report."

M. RAUSCHNING, President of the Senate of the Free City of Danzig, speaking on behalf of the Danzig Government, desired specifically to state once again that, in any legislative or administrative measures which it might have to take, the Danzig Government would remain, in the future as in the past, within the limits of the Constitution.

With regard to the right of Danzig nationals to submit petitions—a right which had been confirmed in the letter of June 10th, 1925, and was in conformity with Article 79, paragraph 1, of the Danzig Constitution—he was able to state that that right would not be affected and that no obstacle would be placed in the way of its exercise.

As regards the Rapporteur's proposal relating to point (3), it should be observed that the mere fact of allowing petitions to be sent in before the legal remedies had been exhausted was of a nature seriously to weaken the Government's authority and to create uneasiness and legal insecurity among the population. M. Rauschnig was therefore glad that the Rapporteur had himself supported the principle that, when examining a petition, the High Commissioner should take into account the fact that the legal remedies had not been exhausted.

For these reasons, he was prepared to accept the report and to withdraw the objections he had raised.

Sir John SIMON said that the Council would, he was sure, welcome the declaration of the President of the Senate of the Free City that it was the intention of the Government of Danzig to observe the Constitution and not to hamper the exercise of the right of petition to the High Commissioner.

He would like, on his own account, to make two short observations to explain the view which he personally took of Article 79 of the Danzig Constitution. That article began with the words:

"Every person shall have the right, within the limits of the law to express his opinion by word, writing or in any other manner. He may not be obstructed in this right by any conditions of his work or appointment, and no disadvantage of any kind may be imposed on him on account of his exercise of such right."

In the first place, Sir John Simon could not have any doubt that that article, like similar articles in many Continental Constitutions, was intended to secure what was called "the freedom of the Press." In his own country the freedom of the Press was secured by a system of law which was at least as efficacious as a written constitutional guarantee such as that could be. By the very terms of Article 79, it was proclaimed that, as long as a newspaper acted within the limits of the law it was free to express its opinion and was not to be exposed to any disadvantage for

doing so. Attempts therefore to penalise a newspaper because of the opinions which it expressed would, in his judgment, be a breach of the Constitution of Danzig.

Secondly the liberty of the Press which Article 79 guaranteed was "within the limits of the law". That qualification was manifestly intended to preserve intact the law against indecency, defamation, sedition or the like. The report which he was asking the Council to adopt was careful not to express any opinion as to whether there was any possible violation of the law in the particular instance before the Council. It must be realised that, though the Council of the League had a very grave responsibility towards the Free City of Danzig which it could not surrender, it necessarily could not take up every question which might arise and assume the function of a court of law in regard to it. He was glad that, in the present instance, the matter had been disposed of by general consent.

M. PAUL-BONCOUR did not desire the discussion, or rather the exchange of views, to close without a well-deserved tribute being paid to the representative of the United Kingdom for his report on the specially delicate questions that had been raised—questions involving the exercise of the League's supervision over the Free City. Sir John Simon had brought to the study of those questions his well-known legal perspicacity.

The main idea to be retained from the present discussion, apart from the incidents—though the latter were somewhat serious in themselves—with which it dealt, was the statement of principle appearing in the last paragraph of section (b) of the report concerning the situation of the territory of the Free City of Danzig, an international territory placed under the supervision of the League. The Free City was autonomous, and that implied that its Constitution must be interpreted by its own Government, laws and courts. But, at the same time, it was under the supervision of the League, and it was therefore the Council's duty to exercise its powers, with discretion and tact no doubt—the Council had never been lacking in those qualities, and it might even be said that, if it had erred, it had done so in the direction of caution rather than imprudence—but also with authority. Within those limits, the report stated that "the Council must remain sole judge of its own action in every new case that may be submitted to it in virtue of the League's guarantee of that Constitution."

Such were the very brief observations he desired to make, in order to indicate the spirit in which he agreed to the report and to the acceptance of the report by the representative of the Free City.

The PRESIDENT stated that the report which had just been presented to the Council by the representative of the United Kingdom and the statement of the President of the Senate of the Free City to the effect that the Government of the latter fully intended to keep its legal and administrative measures within the Constitution of the Free City formed the best foundation for the future activities of the new High Commissioner, whom the Council was glad that day to welcome in its midst for the first time in his new capacity.

The draft resolution was adopted.