

FREE CITY OF DANZIG.

I.

SITUATION AT DANZIG COMMUNICATION RECEIVED IN CONNECTION
WITH A SPEECH DELIVERED BY THE VICE-PRESIDENT OF THE SENATE
ON NOVEMBER 21ST, 1933.

C.695.1933.VII.

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

[*Translation.*]

Danzig, December 5th, 1933.

In the course of an interview with the President of the Senate on November 25th, I drew his attention to a speech delivered on November 21st by the Vice-President of the Senate, Herr Greiser, and handed him the attached memorandum (Annex 1) on the subject. The President told me that Herr Greiser's speech had undoubtedly been misreported in the Press; the Senate was firmly resolved not to allow any interference with the independence of judges.

On December 4th, the President of the Senate sent me a memorandum containing a correction of the account of Herr Greiser's speech as reported in the *Danziger Neueste Nachrichten* (Annex 2). I beg you to be good enough to bring the above to the notice of the Council.

(Signed) Helmer ROSTING,
High Commissioner

Annex 1.

MEMORANDUM.

[*Translation.*]

Danzig, November 25th, 1933.

According to reports, which have appeared in the Press, the Vice-President of the Senate, Herr Greiser, in a speech delivered on November 21st to the Technical Group "Justice" of the Danzig Federation of Officials (Fachgruppe Justiz des Danziger Beamtenbundes), made the following statement (quoted from the *Danziger Neueste Nachrichten*):

"Although National Socialism has to-day attained power, the legal position for which we National Socialists are contending has not yet been created. Our struggle does not cease with the modification of Roman law: it can cease only when Teutonic law has taken the place of Roman law. There are already several judges who have understanding for this feeling of the younger generation. The issue of the present struggle is *whether the independence of the judges is or is not to remain*—that is to say whether the objectivity of the judges is to remain the supreme legal consideration. Under the parliamentary system and the system of party government it was reasonable to press for objectivity. *In the totalitarian National-Socialist State, the subjective law of the National-Socialist State must take the place of objective law* since the National-Socialist outlook is not based on objective treatment but on subjective assent. The National-Socialist State must have National-Socialist law."

The High Commissioner would appreciate information from the President of the Senate as to whether the Vice-President of the Senate actually made a statement to the above effect and, if so, how such a statement is to be interpreted in the light of the provisions of Article 61 of the Constitution ("Judges shall be independent and subject only to the law").

Annex 2.

[Translation from the German.]

MEMORANDUM WITH REGARD TO THE SPEECH OF THE VICE-PRESIDENT OF THE SENATE, HERR GREISER, AT A MEETING OF THE TECHNICAL GROUP "JUSTICE" OF THE DANZIG FEDERATION OF OFFICIALS (FACHGRUPPE JUSTIZ DES DANZIGER BEAMTENBUNDES) ON NOVEMBER 21ST, 1933.

Danzig, December 4th, 1933.

As will be apparent from the attached copy of a correction for the *Danziger Neueste Nachrichten*, President Greiser's speech was not correctly reported by the Press and by the *Danziger Neueste Nachrichten* in particular. It will be clear from the correction that there is no intention to impair the independence of the judges, which is guaranteed by Article 61 of the Danzig Constitution.

"Correction communicated to the *Danziger Neueste Nachrichten*.

"The report in No. 275 of the *Danziger Neueste Nachrichten* of a speech by the Vice-President of the Senate to officials of the Department of Justice has given rise to misunderstandings. Certain expressions, taken out of their context and reproduced in an incorrect form, distorting the sense, have been interpreted in such a manner as to suggest that the Vice-President argued in favour of making an end of the independence of judges. This was not the case. President Greiser merely put forward the self-evident demand that law and jurisprudence must be brought into harmony with the general legal consciousness of the people. The former Liberal State, he argued, was not based on any united attitude (*Weltanschauung*) and had accordingly no united legal consciousness. The judge was therefore called upon, not to take his stand on the attitude of a single party but to endeavour to do justice in independence of any attitude whatever, and in that sense—*i.e.*, in so far as his attitude was concerned—to be objective. In a State where the population has the National-Socialist consciousness, the position is different, in the sense that further legal development can only proceed on the basis of a single attitude—namely the National-Socialist attitude. A number of new points of view he said, arise in this connection—for example, in the matter of penalties for persons breaking the law in the importance attached to persons as compared with things, and in other respects as well. It was only in this sense—*i.e.*, in connection with the question of attitude and outlook—that President Greiser spoke of the subjective law of the National-Socialist State. He did not attack the independence of the judges as guaranteed by Article 61 of the Danzig Constitution. It is obvious that, in the National-Socialist State too, the judges will be concerned, on the basis of the new conception of law and the new attitude in regard to it, to apply the principles which have won for German (including Danzig) judges the recognition of the whole world—namely the principles of justice, impartiality scientific and careful jurisprudence, and—in this sense, also—objectivity. That the Vice-President's utterances could only be understood in this sense, and were in fact so understood, is plain from the reply of the President of the Supreme Court, Dr. von Hagens, which is also reported in the Press."

II.

DANZIG CONSTITUTION COMMUNICATION RECEIVED CONCERNING THE DECREE PROMULGATED BY THE DANZIG SENATE ON JULY 29TH, 1933, REGARDING THE APPOINTMENT OF STATE COMMISSIONERS FOR COMMUNES OF THE TERRITORY

C.II.1934.VII.

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

[Translation.]

Danzig, December 23rd, 1933.

Article 68 of the Constitution of the Free City of Danzig, placed under the guarantee of the League of Nations, reads as follows:

"Rural districts, towns and communes shall have powers of self-government under the supervision of the Senate, in accordance with the provisions of special laws. Matters of State administration may also be transferred to their jurisdiction."

On July 29th, 1933, the Senate promulgated a decree containing the following stipulation:

“ In order to meet financial, economic, social, cultural or political difficulties, the administration of a commune may pending revision of the communal constitutional law, be entrusted by the supervisory authority wholly or in part, to a representative of the State (State Commissioner) in lieu of the competent communal executive (*Magistrat*) or the communal representative assembly (*Stadtverordnetenversammlung*) or both.”

In application of this decree, Commissioners have been appointed for the borough of Zoppot and for a number of other communes.

In view of these circumstances, I requested the President of the Senate, on November 25th, 1933, to inform me of the Senate's views in regard to the bearing of the Decree of July 29th, 1933, on Article 68 of the Constitution, and to let me know the number of cases in which Commissioners have been appointed. The President of the Senate to-day (December 23rd) handed me the attached Memorandum.

I beg you to bring the above to the notice of the Council.

(Signed) Helmer ROSTING,
High Commissioner

MEMORANDUM.

[Translation from the German.]

Danzig, December 23rd, 1933.

The following appointments have been made under the Decree of July 29th, 1933 (*Gesetzblatt*, page 348), regarding the temporary appointment of representatives of the State (State Commissioners) in communes and unions of communes:

| | State representatives |
|-----------------------------|-----------------------|
| Kreis of Danziger Niederung | 21 |
| Kreis of Danziger Höhe | 51 |
| Kreis of Grosses Werder | 43 |
| Zoppot | 1 |

The object of these appointments, which are explicitly intended as a purely temporary measure, is to meet financial, economic, social, cultural and political difficulties, because, in many communes, the mayors had shown themselves unfit to discharge their duties and the communes were faced with financial collapse.

Under the Enabling Decree of June 30th, 1931, it is the duty of the Senate, or of the supervisory authority appointed by it, to superintend the financial administration of the communes and to see that all necessary steps are taken to regularise their fiscal position. If a commune refuses to take the decisions thereby entailed, the State supervisory authority may itself take such decisions or cause them to be taken by a State Commissioner appointed by it. With a view to securing the aforesaid object, the whole administration of the commune may if necessary be handed over to the State Commissioner (*Gesetzblatt* 1931, page 595, Article 2, paragraph 2).

This decree is constitutional, for Article 68 of the Constitution confers powers of self-government on the communes “ under the supervision of the Senate ” Plainly if, in the course of such supervision, irregularities are revealed in the communal administration, it is the right and the duty of the Senate, as the supervisory authority to restore order by any and every means, even to the appointment of a State Commissioner if need be.

Under the Enabling Decree of July 29th, 1933, the whole administration of a commune may “ in order to meet financial, economic, social, cultural or political difficulties ” be entrusted by the Senate, “ pending revision of the communal constitutional law ” to a State Commissioner in lieu of the communal executive or of the communal representative assembly or both.

This decree also is constitutional, for Article 68 of the Constitution confers powers of self-government on the communes subject always to two restrictions, viz..

- (1) In accordance with the provisions of special laws;
- (2) Under the supervision of the Senate (see passage above on this point).

It is therefore competent to the Senate to determine the extent of such powers of self-government by legislation, if and so far as its duty of supervision so demands. The extent of those powers as so determined may be greater or smaller, provided always that they may not be *arbitrarily* and *generally* withdrawn through the appointment of State Commissioners. In the cases now under consideration, the restriction placed on self-government by the appointment of State Commissioners was not arbitrary or general, but it was necessary because grave deficiencies of the nature above described had come to light in the communal administrations.

Furthermore, the Senate regards the restriction of the self-governing powers of the communes by the appointment of State Commissioners as a purely temporary measure, to continue pending the revision of the communal constitutional law.