

Annex 697a.

C. 565. 1924. I.

FREE CITY OF DANZIG PROTECTION OF THE INTERESTS IN POLAND
OF DANZIG NATIONALS AND ORGANISATIONS.

(*Schauer and Ruetzen-Kositzkau Cases.*)

REPORT BY THE COMMITTEE OF JURISTS DATED OCTOBER 3RD, 1924.

[*Translation.*]

By a resolution dated September 9th, 1924, the Council asked our opinion on two questions regarding the protection of the interests in Poland of Danzig nationals.

The resolution in question reads as follows

“ The Council invites M. Botella and M. Uden, legal advisers to the Spanish and the Swedish Members of the Council respectively, to examine the Schauer and the Ruetzen-Kositzkau cases and to submit to the Rapporteur, at their earliest convenience, proposals with regard to the proper legal solution of the Schauer case and their view as to the legal aspect of the question considered in the High Commissioner's decision of June 21st, 1923, concerning the Ruetzen-Kositzkau case, so that the Rapporteur may be able to submit a further report for the consideration of the Council, if possible before the end of the present session. ”

After examining the documents communicated to us, we have the honour to give the following opinion

A. SCHAUER CASE.

Facts.

The High Commissioner gave the following statement of the facts of the case (Doc. C. 44. 1924. 1)

“ Johann Schauer, who became a Danzig citizen under the Treaty of Versailles, had bought colonisation plot Wiele No. 37 in Kreis Wirsitz in 1911 from the Colonisation Commission for West Prussia and Posen. This property is situated on what is now Polish territory. ‘Auflassung’ was given to Schauer on June 27th, 1919, and his registration in the Landregister as owner took place some time later. The latter operation is stated to have been purely formal and only delayed owing to the post-war conditions in his area. In 1919 Schauer leased the plot to a certain Otto Riemer. On October 15th, 1921, the Polish local authority in Posen ordered Riemer to leave the land on the grounds that the local court had entered the Polish Fisc as owner of plot Wiele No. 37 ”

However, in a subsequent memorandum from the Polish Government, which was annexed to a letter dated September 15th, 1924, addressed to the Secretariat of the League by the Polish delegation to the League of Nations, the Polish Government gives fresh information intended to show that Schauer did not conclude any contract with the Colonisation Commission before June 27th, 1919. According to the statement submitted by the Polish Government, the said Schauer did, it is true, conclude in 1912 a contract of lease relating to the property in question, but only in his capacity as guardian of his son, Hans Joachim Schauer.

If we had considered that this fresh information could materially affect our judgment of the legal aspect of the case, we ought to have awaited the reply of Danzig to the Polish memorandum. As, however, this does not appear to us to be the case, we did not adopt that course.

Conclusions.

As the High Commissioner has pointed out, the circumstances of this case are similar to those of the case of the German settlers in Poland, with which the Permanent Court of International Justice dealt in its Advisory Opinion No. 6, dated September 10th, 1923.

The Polish argument aims at showing that as Schauer neither obtained “Auflassung” nor concluded a contract of lease before the date of the armistice — *viz.* November 11th, 1918 — he cannot plead acquired rights against the new territorial sovereign.

According to the Polish view, the Colonisation Commission, representing the Prussian State, was owner of the property at the time of the armistice and the Prussian State had not the right to dispose of this property after the armistice. Article 256 of the Treaty of Versailles lays down that the Polish State has acquired all property and possessions belonging to the German Empire or to the German States situated in Polish territory. The cancelling of the lease of June 27th, 1919, was therefore in accordance with the provisions of the Treaty.

We do not concur in these views. Even if Schauer senior was not the owner of the property in question before the date of the armistice but held it only in his capacity as guardian of his son, it cannot be held that the transfer of the plot to Schauer senior implies any diminution of German public property. It is merely a normal administrative act which the Colonisation Commission was competent to execute in the interval between the armistice and the entry into force of the Treaty of Peace. We refer to the considerations advanced by the Court in its opinion quoted above.

As regards the question of whether acquired private rights ought to be respected by the new territorial sovereign, we must quote the following passage from the opinion of the Court

“ The general question whether and under what circumstances a State may modify or cancel private rights by its sovereign legislative power requires no consideration here.

“ The Court is here dealing with private rights under specific provisions of law and of treaty and it suffices for the purposes of the present opinion to say that even those who contest the existence in international law of a general principle of State succession do not go so far as to maintain that private rights, including those acquired from the State as the owner of the property are invalid as against a successor in sovereignty ”

The Court adds the following remarks

“ By the Minorities Treaty Poland has agreed that all Polish nationals shall enjoy the same civil and political rights and the same treatment and security in law as well as in fact. The action taken by the Polish authorities under the Law of July 14th, 1920, and particularly under Article 5, is undoubtedly a virtual annulment of the rights which the settlers acquired under their contracts and therefore an infraction of the obligation concerning their civil rights. It is contrary to the principle of equality in that it subjects the settlers to a discriminating and injurious treatment to which other citizens holding contracts of sale or lease are not subject. ”

Although a citizen of Danzig cannot invoke the provisions of the Minorities Treaty to which the Court refers, analogous provisions appear in the Warsaw Agreement between Poland and the Free City dated October 24th, 1921.

Article 43 of this Agreement lays down

“ Die Angehörigen des einen Teiles sind gleich denen des anderen berechtigt, im Gebiet des anderen Teiles bewegliches und unbewegliches Vermögen jeder Art, unter welchem Rechtstitel es auch sei, zu erwerben und in jeder Weise darüber zu verfügen, es zu besitzen und zu verwalten, ohne unter irgend einer Bezeichnung anderen oder höheren Auflagen, Steuern oder Abgaben unterworfen zu sein, als die Angehörigen des anderen Teiles¹ ”

Article 233 contains the following provision

“ Die Republik Polen erklärt, dass sie eine Liquidation des Vermögens derjenigen Personen, die auf Grund des Vertrages von Versailles Danziger Staatsangehöriger geworden sind, nicht vornehmen wird. Diese Bestimmung hat rückwirkende Kraft² ”

From this it follows that Poland undertook not to liquidate the property of Danzig nationals in Poland. It is still more evident that Danzig nationals ought not to be exposed to confiscation of their property without compensation. Article 43 lays down the general principle of equal treatment for Danzig nationals and Poles. Here again the Court was of opinion that the Law of July 14th, 1920, did not, in so far as concern the settlers, satisfy this condition.

We conclude that Poland was not justified in cancelling J Schauer's contract of lease.

B. RUETZEN-KOSITZKAU CASE.

Facts.

Cuno von Ruetzen-Kositzkau, a German national, died in 1922. His property, situated within the present boundaries of Poland, passed by inheritance in the course of the same year to his son, Klaus Gunther von Ruetzen-Kositzkau, who had acquired Danzig nationality under the Treaty of Versailles.

This property was disposed of by the Polish Government under the Polish Law of March 4th, 1920, which provides for the sale of property belonging on January 10th, 1920, to German nationals, in accordance with Articles 92 and 297 of the Treaty of Versailles.

Basing its argument upon Article 39 of the Treaty of November 9th, 1920, and Articles 43 and 233 of the Warsaw Agreement, the Free City of Danzig contested the legitimacy of the sale of this property and requested the High Commissioner of the League of Nations to settle the dispute which had arisen on this subject between it and the Polish Government. On June 21st, 1923, the High Commissioner accordingly gave a decision to the effect that the liquidation of the property did not constitute an infringement of Articles 43 and 233 of the Warsaw Agreement.

The Danzig Government has appealed against this decision to the Council of the League of Nations.

Note by the Secretary-General

¹ [English translation] Article 43

“ The nationals of the one Party shall be entitled, on equal terms with those of the other Party, to acquire movable or immovable property of all kinds, under whatever legal terms it be held, to dispose of it in any manner whatsoever, to possess and administer it without being subject to other or higher charges, taxes or dues than are the nationals of the other Party. ”

² [English translation] Part of Article 233

“ The Republic of Poland declares that it will not proceed to liquidate the properties of those persons who have become citizens of the Free City of Danzig under the terms of the Treaty of Versailles. This provision shall have retrospective force. ”

Conclusions.

The property concerned in the present case was disposed of according to the rules laid down in Article 92 of the Treaty of Versailles with reference to German property these rules also govern the conditions for the payment of the price to the former owner. The Free City of Danzig does not dispute the fact that this property was liable, under Article 92 of the Treaty of Peace, to be liquidated when that Treaty came into force. It urges, however, that when the property passed after that date into the hands of a Danzig national it was no longer liable to liquidation. The Danzig argument is that, since the liquidation is not authorised by the provisions of the Treaty of Peace, it is contrary to the general principles of international law and to the express provisions of Articles 43 and 233 of the Warsaw Agreement.

According to Article 92 of the Treaty of Peace, German property situated in Polish territory may be disposed of under the conditions laid down in Article 297 subject to the special provisions contained in Article 92. It seems clear from the context of these articles that the transfer, *inter vivos*, to a person of other than German nationality, of a property which is liable to liquidation, is not in itself sufficient to invalidate the right of disposal conferred upon Poland by the above-mentioned provisions.

It is not, therefore, to be supposed that a person acquiring by inheritance a property which is liable to liquidation can claim to possess any right of ownership free of the servitude which existed over the property when it was in the hands of the previous owner.

Nor do we consider that the provisions of the Warsaw Agreement have placed Danzig nationals in a privileged position in this respect. The Free City has failed to show that the principle of equality between Polish and Danzig nationals, laid down in Article 43, has been infringed in the present case. We are of opinion that Article 233 cannot be interpreted as meaning that a Danzig national who has acquired a property liable to liquidation can legitimately claim the privilege granted by that article.

We therefore reaffirm the opinion expressed by the High Commissioner in his decision of June 21st, 1923, upon the present case.

(Signed) BOTELLA.
UNDEN.

Annex 698.

C. 752. 1924. I.

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

DANZIG-POLISH AGREEMENT DATED NOVEMBER 25TH, 1924.

Note by the Secretary-General

The Secretary-General has the honour to forward for the information of the Council the following Danzig-Polish Agreement concerning the attachment of Danzig nationals to Polish consulates.

AGREEMENT.

[Translation.]

“ On November 24th, 1924, Dr. Sahn, representative of the Free City of Danzig, and M. Strasburger, representative of the Polish Republic, met under the Presidency of the High Commissioner of the League to consider the situation caused by the High Commissioner's decision of November 8th, 1924 (Annex 698a), relating to the execution of Article 3 of the Treaty of November 9th, 1920, which deals with the appointment of nationals of the Free City to be included in the staff of the Polish consulates. It was agreed that the third party mentioned in paragraph 3 of the decision should give a purely advisory opinion. The Free City of Danzig withdraws its appeal (Annex 698b) against the decision in question.

“ Danzig, November 25th, 1924.

(Signed) HEINRICH SAHM.
Henryk STRASBURGER. ”
