PROTECTION OF MINORITIES IN UPPER SILESIA.

ESTABLISHMENT OF A PRIMARY GERMAN MINORITY SCHOOL
AT BRZEZINKA, POLISH UPPER SILESIA.

Note by the Secretary-General.

The Secretary-General received on April 28th 1928 a petition dated April 26th 1928 addressed directly to the Council by the "Deutscher Volksbund" of Polish Silesia in virtue of Article 147 of the Germano-Polish Convention of May 15th 1922 relating to Upper Silesia. This petition concerns the establishment of a primary German minority school at Brzezinka, Polish Upper Silesia.

A copy of this petition was communicated by the Secretary-General to the Polish Delegation accredited to the League on May 5th 1928. The Polish Government forwarded its observations on the petition by a letter dated May 21st, 1928 from the Polish Delegation.

The Secretary-General has the honour to circulate for the Council's consideration a copy of the petition and of the Polish Government's observations. For convenience of reference the present document also contains a copy of the Opinion by the President of the Upper Silesian Mixed Commission dated December 14th 1927, which is referred to in the petition and observations.
I.

PETITION.

Deutscher Volksbund
für Polnisch-Schlesien.

B.R. 22/27
Katowice,
April 26th 1928.

Reference:
The establishment of a German minority elementary school in Brzezinka in the district of Katowice.

(Translation)

An elementary school for the German minority was to be opened on October 12th 1925 at Brzezinka in the district of Katowice.

The Commune of Brzezinka consists of three hamlets situated at considerable distances from each other. The minority school was to be housed in Morgi. Not a single child was entered for the minority school from this place. The majority of the children entered for the minority school came from Brzezinka, and a few children from Larysz. Brzezinka is about forty-five minutes distant from the school-house in Morgi. Most of the road leads across uninhabited open country and is very exposed to wind and weather. In these circumstances the persons legally responsible for the education of the children refused to send them to Morgi and demanded that the minority school should be housed in the school building at Brzezinka.

On October 15th 1925, we submitted a petition in accordance with Article 149 of the Geneva Convention. The President of the Mixed Commission for Upper Silesia granted

To the Council of the League of Nations,

GENEVA.
the petition and pronounced the following Opinion on December 14th 1927 (Case No. 227):-

"The competent authorities are requested to place one class-room in the old or new school building in Brzezinka (School I) at the disposal of the minority school in Brzezinka".

On February 27th 1928, we gave notice of appeal to the Council of the League of Nations in accordance with Articles 149 and 157 of the Geneva Convention.

We subsequently received an announcement by the Silesian Voivode that he had directed the minority school to be closed in accordance with Article 108, paragraph 2, of the Geneva Convention, in view of the fact that the number of children attending the school in the school years 1925-1926 and 1926-1927 was less than half the number of children requisite for its establishment.

Thus, the authorities closed the school - which in point of fact had never existed - although the minority had finally obtained an Opinion in its favour after the case had been under consideration for over two years.

We therefore request the Council of the League of Nations in virtue of Article 147 of the Geneva Convention to call for the documents relating to Case No. 227 and to render a final decision in the same sense as the Opinion previously given. We would further request that the decision should expressly state that the minority school is to be opened not later than the beginning of the next school year, that is to say September 1st 1928.

(Signed) ULITZ,
Chairman.
II.

OBSERVATIONS OF THE POLISH GOVERNMENT.

Polish Delegation accredited to the League of Nations,
No. 1193.


(Translation)

To the Secretary-General.

Sir,

With reference to your letter of May 5th, 1928, I have the honour to forward to you the Polish Government’s observations on the Petition addressed to the Council by the "Deutscher Volksbund für Polnisches Schlesien", in connection with a Minority elementary school at Brzezinka in the Kreis of Katowice.

Although as regards this question the President of the Mixed Commission for Upper Silesia pronounced on December 14th, 1927 an Opinion favourable to the petitioner’s contention, the Petition has since lost its raison d’être owing to the Silesian Voivode’s having abolished the minority school of Brzezinka under Article 109, paragraph 2 of the Geneva Convention, the number of children attending the school during the school years 1925/26 and 1926/27 having been less than half the number required for the establishment of the school.

As the abolition of the school deprives both the "Deutscher Volksbund’s" Petition and the Opinion of the President of the Mixed Commission of their raison d’être, it is in the Polish Government’s opinion superfluous for the Council to discuss the matter. The Polish Government, however, wishing to demonstrate its determination to carry out faithfully the provisions of the Geneva Convention, and to explain in particular the decisions of the Polish authorities in Upper Silesia in the case of the Brzezinka school, desires to state the reasons which precluded the Voivode of Silesia
from receiving the "Deutscher Volksbund"'s petition favourably.

The minority school was established at Mergi, one of the hamlets of the Commune of Brzesinka, and not at Brzesinka itself, because the school buildings in the latter locality are quite insufficient to shelter at the same time the Polish School, which it now houses, and the minority school. The President of the Mixed Commission himself recognises in his Opinion that in the present state of affairs it would be difficult to establish a minority school in the buildings of the Polish School at Brzesinka, but suggests the transfer of one of the classes of the Polish School to Mergi, and the removal of the Kindergarten to make room for the minority school. There seems to be no reason for giving the minority school preference over the Kindergarten, which cannot be removed too far from Brzesinka owing to the age of the children who attend it, and which has the same rights as the minority school, since it is in fact an educational establishment and not a charitable institution, as the President of the Mixed Commission wrongly thinks; hence it is impossible to destroy the unity of the Polish School and scatter its classes in different places for the sole purpose of making room for the minority school.

It should further be remarked that Article 119 paragraph 1 of the Geneva Convention leaves the Polish Government free to establish a minority school even in another locality than that in which the pupils live. But there is no Article which can prevent the Polish Administrative authorities from choosing a place for the minority school in conformity with practical requirements and with the local situation, provided that it is within the boundaries of the same locality. The minority school at Brzesinka was in fact established at Mergi, which is only one of the hamlets of Brzesinka.
Hence the Mixed Commission's intervention in this matter cannot, in the Polish Government's opinion, be based on the Geneva Convention, and constitutes an interference in affairs belonging to the exclusive competence of the Polish authorities.

Apart altogether from the legal point of view, it cannot be alleged that the German schoolchildren of Brzezinka who were obliged to go to school at Morgi suffered unjust treatment at the hands of the Polish authorities, as the scarcity of school buildings and the special conditions of life in the country often oblige Polish as well as German children to attend school at a considerable distance from their homes. It should also be pointed out that in the case in question the road which leads from Brzezinka to Morgi is in good condition, as the President of the Mixed Commission notes in his Opinion.

(Signed) F. SOKAL.

Minister Plenipotentiary,
Delegato to the League of Nations.
III.

OPINION

(Translation)

dated December 14th, 1927.
given by the President of the Mixed Commission for Upper Silesia
in accordance with Article 153 of the Geneva Convention, and
Article 43 of the Rules of Procedure of the Mixed Commission for
Upper Silesia.

in

Case No. 227.

Petitioner: The Deutsch-Oberschlesischer Volksbund of Polish
Silesia for the protection of the rights of minorities, regist-
tered association, Ulica Młyńska 23, Katowice.

Reference: Premises for the Minority School of Brzeźinka.
I.

1. On December 31st, 1925 (Document 2) the "Deutscher Volksbund," in accordance with Articles 149 at sec. of the Geneva Convention, lodged a petition with the Polish Minorities Office at Kattowitz with regard to the accommodation of the minority school at Brzezinka. On May 29th, 1926, in conformity with Article 152 of the Geneva Convention, this petition was forwarded (Document 1) to the President of the Mixed Commission accompanied by the remarks of the Polish Minorities Office (Document 4). Correspondence ensued as provided for in the rules of Procedure of the Mixed Commission, and in the oral proceedings of November 5th, 1927, which were supplemented by an inspection on the spot, the representative of the Minorities Office and the petitioner were enabled to make further statements with regard to points of fact and points of law.

2. The Brzezinka School district administers three schools:

   I. In Brzezinka itself (an old and a new building),
   II. In the Larysz "settlement",
   III. At Morgi.

It is not disputed that the great majority of entries for the minority school were in respect of Brzezinka itself; some were submitted from Larysz, but none at all from Morgi. Despite this fact, when the school was to be opened in 1925, the competent authorities issued orders that the school-children should be accommodated at Morgi (School III) which is several kilometres from Brzezinka (On the occasion of the inspection it took the Mixed Commission 46 minutes to cover the distance between the school at Brzezinka and the school at Morgi). In consequence, parents and guardians refused to send their
children to Morgi, with the result that the minority school has never been opened.

The petitioner regards this provision made for the minority school by the competent authorities, as being differential treatment of the minority, and demands that the minority school should be accommodated on the premises of the old or new school building at Brzezinka itself. In the course of the oral proceedings the Minorities Office, whose main argument was that there was no room for the minority school at Brzezinka, again declared that there was a class-room available for the minority school in School III at Morgi.

3. According to the disputed decree, children of the minority school living at Brzezinka have to go to Morgi for their education, whereas Polish children living at Brzezinka all attend the local school. It is only the pupils of the minority school who would have every day to cover the distance from Brzezinka to Morgi and back. It was ascertained during the visit to the locality that the children would spend about two hours daily on the road. It is true that the condition of this road is good and there is no doubt that it could be used quite well even during a long spell of bad weather. On the other hand, it lies for the most part in open and uninhabited country, fully exposed to wind and weather. While the older children would be equal to the physical effort and capable of resisting the effects of bad weather, the health of the youngest children and especially those of delicate constitution, might be seriously affected.
The fact that the children have to go a long way to school is not, of course, of itself any proof of discrimination against the minority. In country districts it may sometimes happen that children have just as long and irksome a way to go to school as in this particular case. There is no doubt, however, that, in regard to the minority school, as in regard to other schools, the authorities must act upon the principle that children should only be subjected to the hardship and drawbacks of these long walks to school if there is no alternative. The question therefore arises whether in the case in point the actual conditions allow of the minority school being accommodated in premises more suitable and more in harmony with considerations of justice than those provided by the competent authorities.

There is no doubt whatever that parents living at Brzezinka are perfectly justified in desiring that their children should be sent to school, not at Horgi, but at Brzezinka. As already mentioned, by far the greater number of entries for the minority school were from Brzezinka itself, and none at all were received from Horgi. At the same time, those parents who are living at Larysz and who have entered their children's names for the minority school would suffer no inconvenience by the removal of the school to Brzezinka because the journey to school from that village is no longer.

The inspection further established that the competent authorities cannot justify the standpoint adopted by them in the present petition on the grounds that there is no room at School I, but are perfectly well able to satisfy the legitimate claim of parents and guardians to a class-room in the old or new school building at Brzezinka.
The new school building contains eight rooms. Of the eleven Polish classes, eight have their lessons in the morning. The remaining three classes are taught in the afternoon in three rooms. According to the headmaster, a fourth schoolroom is also used in the afternoon for religious instruction. Four rooms thus remain empty in the afternoon and the children of the minority school could quite easily be taught in one of these schoolrooms during the afternoon, like three of the classes of the Polish majority school. Of course, lessons in the morning are always preferable to lessons in the afternoon. Afternoon lessons are, however, unavoidable in many of the schools of Polish Upper Silesia owing to lack of accommodation. When this lack of room makes it necessary, the minority school must be content, like the majority school, with afternoon teaching. It is simply entitled to claim fair treatment on an equal footing.

It should also be observed that in the old school-building only two rooms out of five are used for school purposes proper. Of the other three rooms one is used as a communal room, another is occupied by the household management school, and a third is used as a Kindergarten. If the competent authority has objections to afternoon lessons and to accommodating the minority school in the new building, the communal room might be placed at the minority school's disposal for its lessons. Another solution would be to remove the Kindergarten and instal the minority school in the room previously used by it. It goes without saying that
in an elementary State school building state school classes should be given the preference over welfare institutions, however useful.

It will be seen from the above remarks that there is no necessity to teach part of the Brzezinka school-children at Morgi and oblige them to make the long and tiring journey to that place. If such necessity existed, it would be only fair to move one of the upper classes of the Polish school, which contains several classes, to Morgi rather than the minority school consisting of a single class and containing children of 6, 7 and 8 years of age, for whom this daily walk to and from school would constitute under the circumstances an unwarrantable hardship and injustice.

It will be seen from the above remarks that, owing to the minority school being established at Morgi, the minority is subjected to differential treatment within the meaning of Article 75 of the Geneva Convention. The competent authorities should be called upon to place a schoolroom in the old or new school-building at Brzezinka (School I) at the minority's disposal.
After a discussion by the members of the Mixed Commission, the President of the Mixed Commission, on the basis of the foregoing considerations, pronounces the following opinion:

1) The competent authorities are requested to place a school-room in the old or new school building at Brzezinka (School I) at the disposal of the Brzezinka Minority School.

In accordance with Articles 154 and 155 of the Geneva Convention, and with Articles 44 and 45 of the Rules of Procedure of the Mixed Commission for Upper Silesia, it is hereby decided that:

1) The publication of this opinion is authorised.

2) Two copies of this opinion in Polish and two in German shall be forwarded to the Polish Minorities Office at Katowice.

3) The Minorities Office is requested:
   a) to forward this opinion to the competent administrative authorities;
   b) to forward to the petitioner a copy of this opinion in German;
   c) to inform the President of the Mixed Commission within the period prescribed in Article 41, paragraph 2 of the Rules of Procedure of the Mixed Commission of the action taken by the competent authorities in this matter, and to
state whether and in what manner these authorities have taken this opinion into account.

4) If the report of the competent administrative authorities on the action taken in this matter fails to satisfy the petitioner, the latter may appeal to the Council of the League of Nations under Articles 149 and 157 of the Geneva Convention.

If the petitioner makes use of his right of appeal to the Council of the League of Nations, he shall immediately notify the President of the Mixed Commission of the fact and communicate to him a copy of his statement of appeal.

(Signed) CALONDEP

President of the Mixed Commission for Upper Silesia.

(Signed, VETTERLI

Assistant Secretary.