

LEAGUE OF NATIONS

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Communicated to
the Council.

Genève, May 19th, 1933.

PROTECTION OF MINORITIES

APPLICATION OF THE GERMANO-POLISH CONVENTION
OF MAY 15th, 1922, CONCERNING UPPER SILESIA.

Petition of M. Franz Bernheim, of May 12th,
1933, concerning the situation of the Jewish Min-
ority in German Upper Silesia.

Note by the Secretary-General.

The Secretary-General considered that this case re-
quired the application of the urgent procedure, laid down
in the Council resolution of September 8th, 1928, as re-
quested in the petition. The petition (of which a French
translation was provided by the petitioner) is therefore
circulated to the Council at the same time as it is forwarded
to the German Government for its observations. The obser-
vations of the German Government will also be circulated to
the Council as soon as they reach the Secretariat.

The petition was accompanied by 8 annexes, which are
kept in the archives of the Secretariat at the disposal of
the Council.

(Translation)

To the President of the Council of the
League of Nations,
GENEVA.

PETITION OF FRANZ BERNHEIM, GERMAN NATIONAL, OF GLEIWITZ, GERMAN
UPPER SILESIA, IN VIRTUE OF ARTICLE 147 OF THE GERMAN-POLISH
CONVENTION RELATING TO UPPER SILESIA OF MAY 15th 1922, WITH
REFERENCE TO THE PROVISIONS OF PART III OF THIS CONVENTION.

I. In the Convention of May 15th 1922 between Germany
and Poland concerning Upper Silesia the Contracting Parties
agreed upon the following provisions:

Article 66. The German Government undertakes to assure full and
complete protection of life and liberty to all inhabitants of
Germany without distinction of birth, nationality, language,
race or religion.

Article 67 para. 1. All German nationals shall be equal before the
law and shall enjoy the same civil and political rights
without distinction as to race, language or religion.

Article 75, para. 2. Legislative and administrative provisions
may not establish any differential treatment of nationals
belonging to a minority. Similarly, they may not be interpreted
or applied in a discriminatory manner to the detriment of
such persons.

para. 3. Nationals belonging to minorities shall in
actual practice receive from the authorities and officials the
same treatment and the same guarantees as other nationals; in
particular, the authorities and officials may not treat
nationals belonging to minorities with contempt nor omit to
protect them against punishable acts.

Article 80: Nationals belonging to minorities shall be treated on
the same footing as other nationals as regards the exercise
of an agricultural, commercial or industrial calling or of any
other calling. They shall only be subject to the provisions
in force applied to other nationals.

Article 83. The High Contracting Parties undertake to assure full
and complete protection of life and liberty to all the
inhabitants of the plebiscite territory without distinction of
birth, nationality, language, race or religion.

II. (1) In the Reich Legal Gazette, Part I, issued
at Berlin on April 7th 1935, N° 54, a law "for the Reorganisation
of the Civil Service" was promulgated by the Government of the
German Reich.

§ 3, para. 1. of this law says:

"Officials who are of non-Aryan descent are to be placed in retirement; in the case of honorary officials, they shall be discharged from their official position".

§ 8 provides, in regard to these officials placed in retirement or dismissed in accordance with § 3, that they shall not receive any pension unless they have completed at least ten years' service.

§ 9 of the law contains a further discriminatory provision with regard to officials placed in retirement in accordance with § 3.

(2) The German Government, in the Reich Legal Gazette, Part I, issued at Berlin on April 10th 1933, N° 36, promulgated a law on "Admission to the Legal Profession", dated April 7th 1933.

§ 1 of this law says:

"The admission of lawyers who, within the meaning of the law on the Reorganisation of the Civil Service of April 7th 1933, are of non-Aryan descent can be cancelled up to September 30th 1933."

§ 2 of this law says: Admission to Legal practice can be refused to persons who, within the meaning of the law on the Reorganisation of the Civil Service of April 7th, 1933, are of non-Aryan descent, even if the reasons provided for in this connection by the Regulations for the Legal Profession do not exist."

§ 4. "The Judicial Administration can forbid a lawyer to act as counsel pending the decision whether use shall be made of the faculty of withdrawing permission to practise under § I, para. 1."

(3) The Prussian Minister of Justice in the decree of April 1st 1933 I.6522. regarding the exercise of the calling of notary, ordered "that the maintenance of public order and security will be exposed to serious danger if Germans are still liable to be served with documents in legal proceedings which have been drawn up or certified by Jewish notaries. I accordingly ask that Jewish notaries should be urgently recommended, in their own interests, to refrain until further notice from exercising their calling.

In this connection, the attention of notaries should be drawn to the fact that should they refuse to comply with this recommendation they will expose themselves to serious dangers in view of the excited state of public opinion. Notaries should be recommended to inform the competent Presidents of the Provincial Courts that they will refrain from exercising their calling pending the issue of further regulations regarding the conditions applying to notaries. "

(signed) KERRL,
Reich Commissioner for the
Prussian Ministry of Justice.

(4) The Government of the German Reich promulgated on April 25th 1933 a law "against the alienisation of German schools and high schools", which says in § 4: "In making new admissions care should be taken that the number of German nationals who, within the meaning of the law on the Reorganisation of the Civil Service of April 7th 1933, are of non-Aryan descent, does not exceed, among the total number of pupils attending each school and faculty, the proportion of Aryans to the total German population. This proportion shall be uniformly fixed for the whole of Germany at 1.5 %.

In reducing the number of pupils and students in accordance with § 3 (owing to the overcrowding of professions) a

proper proportion should also be observed between the total number of pupils and the number of non-Aryans.

The Ministry of the Interior has issued regulations to give effect to this law, of which N° 11 reads as follows: " Pupils of non-Aryan descent who have newly entered or enter the school at the beginning of the academic year 1933 (Easter 1933) shall in all cases be regarded as not yet admitted".

(5) The Labour Minister of the German Reich has promulgated a decree "on the admission of doctors to the panels of health insurance funds".

Article I, para. 1, stipulates that:

"Doctors on the panel of insurance funds of non-Aryan descent shall ~~...no longer~~ be allowed to practise. New entries of such doctors on the panel of insurance funds shall not be allowed".

§ 7, Para. 4 of the Regulations for the admission of health insurance doctors, dated December 30th, 1931, is amended as follows by this decree:

"Registration is only permissible when the doctor is a German national and of Aryan descent..."

All these laws and decrees were promulgated for the whole territory of the German Reich, and therefore also apply to that part of Upper Silesia which remained German as a consequence of the decision of the Conference of Ambassadors, and is subject to the provisions of the Convention of May 15th, 1922.

Only in the law "against the alienisation of German schools and high schools" is there a provision, in § 5, which says that "obligations incurred by Germany under international treaties are not affected by the provisions of the present law". If this means that the law in question does not apply to Upper Silesia, it must be remarked that in practice it has been applied there in exactly the same way, and that Jewish pupils have been refused admission to or turned out of the schools in exactly the same way as in the rest of Germany.

III. The laws and decrees quoted above are in contradiction with the provisions of Part III of this Convention, also reproduced above, and particularly with

- the principle laid down in Articles 67 and 75, of the equality of all German nationals before the law and as regards civil and political rights,

- the principle laid down in article 80, of the obligation to treat all nationals on the same footing as regards the exercise of their callings --

and they constitute an infringement of the obligation laid down in Articles 66, 83 and 75, para. 3, to provide indiscriminating and comprehensive protection of the lives and liberty of all inhabitants and nationals of Germany. This is particularly the case when the Minister of Justice forces Jewish notaries to cease their activities, which they are entitled to exercise by law, under the threat that otherwise he will be unable to protect them from the violence of the populace, and thus makes an illegal demand on them by instead of taking steps to deal with these punishable acts invoking punishable acts/according to the law.

These laws were partly put into force before their promulgation, as, for example, in the case of the exclusion of notaries; while, as regards State officials, the law on the Reorganisation of the Civil Services was applied by the Reich and State authorities before it came into effect and even before its promulgation. In Prussia the Jewish barristers were precluded from representing clients in the courts, with very few exceptions, even before this law was promulgated, and this exclusion was expressly

sanctioned by the representatives of the Ministry of Justice.

The Jewish pupils who had already been attending the higher schools were in many cases removed from the schools by those in charge with the help of the other pupils before the promulgation of the law.

IV. On April 1st, 1935, a public boycott of Jewish businesses, lawyers, doctors, etc. was ordered and organised by an office under the authority of the German Chancellor, and they were treated with public contempt as part of this measure. This boycott was carried out by S.A. and S.S. formations, also under the orders of the German Chancellor as the supreme leader, and the public authorities failed to provide the Jewish subjects of Germany with the protection to which they were entitled by law.

As far as Upper Silesia was concerned, this action constituted an infringement particularly of the provisions of Part III and above all of Articles 75, para. 3, and 83, since German nationals or inhabitants in the plebiscite territory who belonged to the minority were treated in a discriminatory manner by the authorities and officials, who failed to take the necessary steps for their protection against punishable acts.

There are many more legal and administrative measures and decrees which infringe the principle of equality before the law than those we have enumerated above, for this tendency now predominates throughout the legislation of the German Reich.

V. The present petition confines itself to drawing attention to the foregoing and bases itself on the laws and decrees and on the administrative measures quoted above.

It draws attention to the fact that the German Reich undertook in Article 65 that the stipulations contained in Articles 66 to 68 should be recognised as fundamental laws and that no law, regulation or official action should conflict or interfere with these stipulations, nor should any law, regulation or official action prevail over them.

Whereas under Article 72 Germany has agreed that the stipulations in the foregoing articles, in so far as they affect persons belonging to racial, religious or linguistic minorities, constitute obligations of international concern and shall be placed under the guarantee of the League of Nations, and that they shall not be modified without the assent of a majority of the Council of the League of Nations, and whereas Germany has agreed that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or any danger of infraction of any of these obligations and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances:

The undersigned, Franz Bernheim, born on September 15th, 1899 at Salzburg, Austria, a citizen of Wurttemberg, hence a German national, of Jewish and hence of non-Aryan descent, previously residing at Gleiwitz, Schillerstrasse 6 b, German Upper Silesia, at present temporarily staying at Prague, Czechoslovakia, employed from 30-9-31 to 30-4-33 by the Deutsches Familien-Kaufhaus, Ltd., Gleiwitz branch, and then discharged for the reason that all Jewish employees had to be dismissed, Passport No. 180/128/30, issued by the Berlin-Charlottenburg Police Office on 28-2-1930, and thus legitimised under Article 147 as a member of the minority in accordance with Part III of the Geneva Convention of 15.5.22,

Hereby submits the petition to the Council of the League of Nations, signed with his own hand, requesting the Council to take such action and give such directions as it may deem proper in order to declare null and void for Upper Silesia the laws, decrees, and administrative measures in contradiction with the above-mentioned fundamental principles and to ensure that they shall have no validity, and further to give instructions that the situation guaranteed by the Convention shall be restored, that the Jews injured by these measures shall be reinstated in their rights and that they shall be given compensation.

VI. The undersigned, Franz Bernheim, further requests the Secretariat of the League of Nations to treat this petition as urgent.

The reason for this request is that, as the above-quoted laws and decrees demonstrate, the application of the principle of inequality to German nationals of non-Aryan i.e. of Jewish descent is being systematically pursued in all the spheres of private and public life, that already an enormous number of Jewish lives have been ruined and that, if the tendencies at present prevailing in Germany continue to hold sway, in a very short time every Jew in Germany will have suffered permanent injury, so that any restoration and reparation will become impossible and thousands and ten thousands will have completely lost their livelihood.

Prague, May 12th, 1933.

(signed) Franz Bernheim.

(This signature has been legalised by M. Viktor Ludwig, Notary, Prague, on May 12th, 1933).

(translation)

LIST

of documents attached to Franz Bernheim's petition under Article 147 of the Geneva Convention of May 15th 1922, between Germany and Poland.

1. Law on the Reorganisation of the Civil Service, dated April 7th, 1933, Reich Legal Gazette, Part I No. 34, p. 175.
2. Law on admission to practise as a lawyer, dated April 7th, 1933, Legal Gazette Part I, No. 36, p.188.
3. Law against the overcrowding of German schools and high schools, dated April 25th, 1933, Legal Gazette Part I No. 43, p.225.
4. Regulations to give effect to the Law against the overcrowding of German schools and high schools, dated April 25th, 1933, Legal Gazette Part I No.226.
5. Decree of the Prussian Minister of Justice I.6522, Berlin, April 1st, 1933.
6. Second Regulations to give effect to the Civil Service Law "Application to persons in the service of public bodies under private service contracts" ("Frankfurter Zeitung", May 7th, 1933, No. 336-338).
7. Prussian Law on peasants' manorial rights of inheritance ("Völkischer Beobachter" of May 13th-14th, 1933, No. 133/134).
8. Declaration by the DEFAKA, Gleiwitz branch, dated March 30th 1933 and letter from the DEFAKA dated March 31st, 1933.