

N° 548.

ALLEMAGNE ET POLOGNE

Convention concernant le transfert
de la juridiction dans le territoire
plébiscitaire de Haute-Silésie, si-
gnée à Kattowice, le 12 avril 1922.

GERMANY AND POLAND

Convention relating to the transfer
of jurisdiction in the Upper-
Silesian plebiscite area, signed at
Kattowitz, April 12, 1922.

TEXTE POLONAI. — POLISH TEXT.

No. 548. — UKŁAD¹ POLSKO-NIEMIECKI W PRZEDMIOCIE PRZEJĘCIA WYMIARU SPRAWIEDLIWOŚCI NA GÓRNOŚLĄSKIM OBSZARZE PLEBISCYTOWYM, PODPISANY W KATOWICACH DNIA 12. KWIETNIA 1922.

Official German and Polish texts communicated by the German Consul at Geneva and by the Polish Delegate accredited to the League of Nations. The registration of this Convention took place January 14, 1924.

RZĄDY NIEMIECKY I POLSKI, powodowane życzeniem, aby, ile możliwości ułatwić zgodnie z interesami obu ludności dalsze prowadzenie spraw sądowych, na które miał wpływ podział Górnego Śląska, zgodziły się na zawarcie w tym przedmiocie umowy i mianowały w tym celu swymi pełnomocnikami :

RZĄD NIEMIECKI :

Tajnego Nadradcę Sprawiedliwości, Radcę Ministerjalnego P. Dr. Georg CRUSEN;

RZĄD POLSKI :

Wiceministra P. Dr. Zygmunta SEYDĘ.

Pełnomocnicy, po wzajemnem przedłożeniu sobie pełnomocnictw, i po uznaniu ich za wystarczające i należyte co do formy, ugodzili się co do następujących postanowień :

Artykuł I.

CYWILNE SPRAWY SPORNE.

§ 1.

O ile z postanowień §§ 2 do 5 nie wynika co innego, cywilne sprawy sporne, zawisłe w chwili przejścia wymiaru sprawiedliwości w okręgach Sądów Krajowych w Bytomiu, Gliwicach, Opolu i Raciborzu, a niesafatwione prawomocnie w chwili wejścia w życie niniejszego układu, prowadzić będzie dalej sąd, w którym sprawa zawisła, albo w razie, gdy sąd ten uległ zwinięciu, równorzędny niemiecki lub sąd, w którego okręgu leży siedziba urzędowa dotychczasowego sądu procesowego.

§ 2.

Jeżeli skarga została wniesiona przed sąd, który był wyłącznie właściwy do jej rozpoznania, a byłby właściwy w razie wniesienia skargi dopiero w chwili wejścia w życie niniejszego układu sąd równorzędny drugiego państwa, natenczas winno się przekazać spór temuż sądowi.

¹ The exchange of ratifications took place at Warsaw, June 8, 1922.

Artykuł 4.

POMOC PRAWNA I UWIERZYTELNIENIA DOKUMENTÓW.

§ 1.

1. W stosunkach między niemiecką a polską częścią obszaru plebiscytowego mają zastosowanie, bez ujmy dla szczególnych postanowień § 19 artykułu 1 i § 8 artykułu 3 niniejszej umowy, — postanowienia Układu¹ Haskiego z dnia 17 lipca 1905 w przedmiocie postępowania w spornych sprawach cywilnych, z tem, że dozwolone jest bezpośrednie znoszenie się z sobą niemieckich i polskich władz sądowych górnośląskiego obszaru plebiscytowego we wszystkich wypadkach, w których wspomniany układ unormował wzajemny stosunek pomocy prawnej w udzielaniu sądowych i pozasądowych dokumentów oraz w załatwianiu wezwań.

2. Pisma obopólnych władz w celu bezpośredniego znoszenia się między sobą będą układane w ich języku urzędowym.

3. Stosownie do zastrzeżeń w ustępie 2 artykułu 3 oraz w L. 3 ustępu 2 i w ustępie 3 artykułu 19 Układu Haskiego w przedmiocie postępowania w spornych sprawach cywilnych wymagane powyższymi artykułami tłumaczenia wymienionych tam pism, mogą być również uwierzytelniane przez zaprzyśięzonego tłumacza państwa zwywającego.

§ 2.

1. Artykuł 17 Układu Haskiego w przedmiocie postępowania w spornych sprawach cywilnych stosuje się jedynie z tem dalszem postanowieniem, że powód lub interwenient muszą posiadać swoje miejsce zamieszkania albo w państwie, w którego sądzie występują, albo w części górnośląskiego obszaru plebiscytowego przypadłej drugiemu państwu.

2. Oświadczenie wykonalności przewidziane w artykułach 18 i 19 Układu Haskiego w przedmiocie postępowania w spornych sprawach cywilnych, wydane zostaje jedynie na obszar części górnośląskiego terenu plebiscytowego przypadłej państwu o nie wezwanemu.

3. Stosownie do zastrzeżenia w ustępie 3 artykułu 19 Układu Haskiego w przedmiocie postępowania w spornych sprawach cywilnych nie będzie się żądać przewidzianego tamże potwierdzenia najwyższego urzędnika wymiaru sprawiedliwości, o właściwoci władzy, udzielającej zaświadczenia prawomocności rozstrzygnięć o kosztach.

4. Postanowienia artykułów 20 do 23 Układu Haskiego w przedmiocie postępowania w spornych sprawach cywilnych mają zastosowanie do obywateli obu umawiających się państw, bez względu na miejsce zamieszkania.

§ 3.

1. Stosownie do zastrzeżenia w ustępie 2 artykułu 7 Układu Haskiego w przedmiocie postępowania w spornych sprawach cywilnych, nie będzie się żądać zwrotu wydatków powstałych w wypadkach artykułu 3 powołanego układu przez działalność urzędnika wykonawczego.

2. Również nie będzie się żądać stosownie do zastrzeżenia w ustępie 2 artykułu 16 układu zwrotu wydatków poniesionych z powodu wynagrodzenia świadków i z powodu działalności urzędnika wykonawczego koniecznej wskutek niestawienia się świadka. To samo odnosi się w wypadku ustępu 2 artykułu 23 układu do wydatków spowodowanych wynagrodzeniami świadków.

3. Koszty, które można zarachować w myśl Układu Haskiego o postępowaniu w cywilnych sprawach spornych oraz ustępów 1 i 2 niniejszego paragrafu, należy obliczać, wedle przepisów, obowiązujących w państwie wezwanem dla równorzędnych czynności w postępowaniu krajowem.

¹ British and Foreign State Papers, vol. 99, page 990.

¹ TRANSLATION.

No. 548. — GERMAN-POLISH CONVENTION RELATING TO THE TRANSFER OF JURISDICTION IN THE UPPER SILESIAN PLEBISCITE AREA, SIGNED AT KATTOWITZ, APRIL 12, 1922.

The GERMAN and POLISH GOVERNMENTS, desiring to facilitate, as far as possible, in the interest of the respective populations, the continuation of legal business affected by the partition of Upper Silesia, have decided to conclude an agreement on the matter and for this purpose have appointed as their Plenipotentiaries :

The GERMAN GOVERNMENT :

Dr. Georg CRUSEN, Geheimer Oberjustizrat and Ministerialrat (Councillor in the Ministry of Justice) ; and

The POLISH GOVERNMENT :

Dr. Zygmunt SEYDA, Deputy-Minister of State.

The Plenipotentiaries, having communicated their full powers, which were found in good and due form, agreed to the following provisions :

Article 1.

CIVIL ACTIONS.

Paragraph 1.

The hearing of civil actions which, at the time of the transfer of the administration of justice, were pending in the assize court districts of Beuthen, Gleiwitz, Oppeln and Ratibor, and in which final judgment had not yet been given at the time of the coming into force of this Convention, shall, unless otherwise provided for in paragraphs 2-5, be continued before the court in which they are pending or, where such court no longer exists, before the German or Polish court of the same standing in the district in which the court before which the case was originally brought, was situated.

Paragraph 2.

If the action was originally brought in a court which had exclusive jurisdiction over the case and if, had the action been brought at the time of the coming into force of the present Convention, a court of the same competence belonging to the other State would have had exclusive jurisdiction over the case, the action must be transferred to the latter court.

Paragraph 3.

(1) When a case does not come under the exclusive jurisdiction of a particular court, the following provisions shall apply :

¹ Translated by the Secretariat of the League of Nations.

(2) Upon application being made by both parties, the case shall be transferred to that court of the other State which is named in the application.

(3) Should there be a court of the same competence in the other State, which would have been competent to deal with the case if proceedings had been instituted at the time of the coming into force of this Convention, the case shall, even if application is made by only one of the parties, be transferred to this court, unless the court specified in paragraph 1 would have been competent at the date of the coming into force of this Convention. If there are several courts in the other State having jurisdiction, the party making the application shall have the right to choose the court, and, if both parties apply for a transfer, the defendant shall have this right.

Paragraph 4.

(1) If the German Empire or the Prussian State is one of the parties to a suit, the authorities of the Polish State shall become a party, in so far as Poland, in accordance with agreements between Germany and Poland now concluded, or to be concluded, takes the place of the Empire or of Prussia in respect of the claim involved.

(2) If the German Reich or the Prussian State or the Polish State is the defendant, and if no court exists which has jurisdiction over the case, under paragraph 24 of the German regulations regarding civil suits, proceedings shall be transferred to the court in whose district the State on whose behalf the case is being continued has general jurisdiction. The provisions of paragraph 3, sub-paragraph (3), shall not apply.

Paragraph 5.

(1) The transfer of a case may be decided without oral proceedings. The parties shall be heard before the decision.

(2) In the cases provided for in paragraph 3, the application (including a joint application made by several parties to the dispute) shall be made not later than the first law term during which the case is dealt with, after the coming into force of the present Convention. In cases of appeal, it may be made at any time before the close of the oral proceedings on which judgment is passed, in order to provide for the possibility of the suit being referred back to a court of first instance.

(3) No appeal may be made against the order for transfer. On the announcement or issue of this order, the case shall be brought before the court mentioned therein, and this order shall be binding on that court.

(4) The costs of the proceedings in the court where the case was begun shall be reckoned as part of the costs accruing in the court mentioned in the order for transfer. The provisions of paragraph 47, sub-paragraphs (1) and (3) of the German law on legal costs shall apply to the proceedings and decision regarding the transfer of the case.

Paragraph 6.

(1) If cases from the assize court districts referred to in paragraph 1 are pending in a superior district court (Oberlandesgericht), or court of appeal (Reichsgericht), in the supreme court (Oberstes Gericht), the provisions of paragraphs 1-5 shall apply.

(2) Cases referred back shall be sent to the courts determined by the application of paragraphs 1-5. The provisions of the second sentence in paragraph 5, sub-paragraph (2), shall hold good as regards the necessary previous applications.

Paragraph 7.

(1) Should any judgment given before the coming into force of the present Convention, in a case of the kind mentioned in paragraph 1, be appealed against after the coming into force

of this Convention, the proceedings and decision as to the legal remedy shall rest with the court in whose district the court appealed from is situated at the time of the coming into force of this Convention. The provisions of paragraphs 2-6 shall apply.

(2) If, after the coming into force of this Convention an appeal is made for the re-hearing of a case which was pending in one of the assize court districts of Beuthen, Gleiwitz, Oppeln or Ratibor, and in which final judgment had been pronounced at the moment of the coming into force of this Convention, the proceedings and decision, so far as the individual State in which the case occurs is concerned, shall rest with the court in whose district the court appealed against is situated at the time of the coming into force of this Convention. As regards the other State, the decision shall rest with the court to whose general jurisdiction the defendant in the re-hearing proceedings is amenable or, in default of such court, with the court in which an action may be brought against him in accordance with paragraph 23 of the regulations for civil suits.

Paragraph 8.

With regard to proceedings in respect of the transfer of an action to another court, or the lodging of an appeal, the parties may be fully represented by any barrister duly recognised in a German or Polish court situated in the Upper Silesian ceded territory.

Paragraph 9.

If in the case of an action of the kind specified in paragraph 1, pending in a higher court at the time of the transfer of the administration of justice, the original court of first instance no longer exists, the higher court shall, provided that the proceedings are not transferred or referred back, designate a court of the same standing within the country to continue the case in place of the previous civil court of first instance.

Paragraph 10.

Actions for debt falling under the provisions of paragraph 1 shall be continued before the court in which the order to pay is applied for. If opposition or objection is made, the provisions regarding pending cases shall apply. If the claim comes under the jurisdiction of the district courts or assize courts, the provisions of paragraphs 7 and 8 shall apply whenever the case becomes pending in the district court or assize court after the coming into force of the present Convention.

Paragraph 11.

(1) The provisions for pending cases shall also apply in all matters requiring public notice which come under the terms of paragraph 1. As regards appeals which have been entered after the coming into force of this Convention, the provisions of paragraphs 7 and 8 shall apply.

(2) In the case of an application for the declaration of the death of a person who, if still alive, would, at the time of the coming into force of this Convention, have been a German national, the proceedings shall be continued before the Beuthen District Court, if the court in which the case is pending is situated in the part of the Upper Silesian plebiscite area allocated to Poland. If the afore-mentioned person would have been a Polish national, the case shall be continued before the District (Kreis) Court of Kattowitz, if the court in which the case is pending is situated in the part of the Upper Silesian plebiscite area remaining within the German Empire.

(3) In the case of an application for a declaration of death, the Kattowitz District (Kreis) Court and all other Polish courts shall be entitled to apply directly to the Central Registry Office

for War Losses and War Graves (General Decree of the Prussian Ministry of Justice, dated February 23, 1920, *Preussisches Justizministerialblatt*, page 80) for the information referred to in paragraph 22 of the German Ordinance of August 9, 1917 (Legal Gazette of the Reich, page 704).

(4) The Polish courts undertake to transmit the information required in accordance with paragraph 4 of the General Ordinance of the Prussian Minister of Justice, dated August 20, 1917 (*Preussisches Justizministerialblatt*, page 291), directly to the Central Registry Office for War Losses and War Graves at the Ministry of the Interior of the Reich.

Paragraph 12.

Bankruptcy proceedings, to which the conditions defined in paragraph 1 apply, shall be continued before the court in which they are pending, or, if such court no longer exists, before the Polish or German court in the district in which the court where the bankruptcy proceedings were first instituted is situated. If proceedings were instituted at the time of the coming into force of the present Convention, and if only one court is competent in the other State, the proceedings shall be handed over to this court.

Paragraph 13.

(1) Measures of execution to which the conditions defined in paragraph 1 apply shall be continued by the court in whose district the proceedings were instituted, or if such court no longer exists, by the German or Polish court of the same standing in the district in which the court where the measures of execution were first begun, is situated. If the measures of execution have been begun at the time of the coming into force of this Convention, and if a court of the other State is competent, the proceedings shall be transferred to this court.

(2) The provisions of sub-paragraph (1), of paragraph 5, sub-paragraphs (1), (3) and (4) and of paragraph 8 shall, *mutatis mutandis*, apply to the procedure in cases of applications, objections and protests in accordance with paragraph 766 of the regulations for civil cases.

(3) If after the coming into force of the present Convention proceedings are instituted to execute a judgment, and if such proceedings must be opened in the court where the case was heard, the competent court for the matter shall be the court in the district in which the court where the case was first heard is situated at the time of the coming into force of the present Convention. The provisions of paragraphs 2 to 6 and of paragraph 8 shall apply, *mutatis mutandis*.

Paragraph 14.

(1) Dstraint proceedings, to which the conditions defined in paragraph 1 apply *mutatis mutandis*, shall be continued before the court in which they are pending, or, if such court no longer exists, before the Polish or German court in the district in which the court where the dstraint proceedings were first instituted is situated. If the dstraint proceedings are not instituted in the court where the original case was heard, and if, in the event of the application for dstraint being made at the time of the coming into force of this Convention, a court of the same competence is to be found only in the other State, the proceedings shall be handed over to this court.

(2) If the dstraint proceedings are brought before the court where the original case was first begun, and if the original case has, in accordance with the principles of this Convention, been transferred to a court of the other State, the dstraint proceedings shall also be transferred to the corresponding court of the other State.

(3) The provisions of paragraph 5, sub-paragraphs (1), (3) and (4), of paragraph 6, and of paragraph 8 shall apply *mutatis mutandis*.

Paragraph 15.

The provisions of paragraph 14 shall apply to provisional orders.

Paragraph 16.

Unless otherwise provided for in this Convention, paragraphs 1 to 9 shall apply to the settlement of complaints.

Paragraph 17.

(1) Judgments given before or after the entry into force of this Convention in a case coming under paragraph 1 or paragraph 6 of this article, which acquire legal force after such date, shall be regarded as final and conclusive in the German Reich and in Poland and shall be executed in the same manner as judgments pronounced within the country itself; it shall not be necessary to enforce the special provisions regarding the recognition and execution of judgments pronounced abroad unless such judgments have been given in matters coming under the jurisdiction of courts dealing with property (paragraph 23 of the German regulations for civil cases). The clause providing for execution shall be issued by the Clerk of the Court which has to preserve the original deed recording the debt. The same shall apply to the notary. The clause providing for execution shall be worded as follows: "The present copy is issued to.... (Here follow particulars of the party) to enable him to execute this writ in the German Reich and the Polish State". If the clause for execution has already been issued, the following shall be added: "It is hereby certified that this writ may be executed in the Polish State (in the German Reich)". The clause for execution may not be issued in this special form in respect of judgments pronounced in matters coming under the jurisdiction of courts dealing with property. If it is established that such a clause for execution or such an additional note should not have been issued in accordance with the provisions of this Convention, the debtor may, provided the writ is executed in the other State, also appeal to the court authorising the execution against the legality of the clause for execution or the additional note.

(2) The provisions of sub-paragraph 1 shall apply to other claims capable of being executed (provided they are not merely of a provisional character) arising before or after the coming into force of this Convention out of matters of the nature specified in paragraphs 1, 6 and 10 to 16 of this article and in Article 3, paragraph 2 of this Convention.

(3) The provisions of sub-paragraph 1 and sub-paragraph 2 shall not apply to claims capable of being executed which are made against the German Reich, a German State, the Polish State or a German or Polish legal entity.

Paragraph 18.

(1) When in accordance with paragraph 17 of this article a German writ of execution capable of being enforced is admitted in Poland, a Polish court shall, so far as the Polish State is concerned, be competent to decide upon protests relating to the actual claim which is to be executed; the competent court and the procedure will be decided by means of an order of the Polish juridical authorities.

(2) When, in accordance with paragraph 17 of this article, a Polish writ capable of being executed is admitted in the German Reich, the German court to whose general jurisdiction the debtor is amenable in accordance with the German regulations for civil actions shall, so far as the German Reich is concerned, be competent to decide upon protests relating to the actual writ which is to be executed or, in default of such court, the court in which an action may be brought against him, in accordance with paragraph 23 of the German regulations for civil actions.

Paragraph 19.

The German and Polish law courts shall render each other all possible direct legal assistance in all matters arising out of paragraphs 1 to 18. With regard to suing *in forma pauperis*, to the giving of security for the costs of the action, and to payment into court, Germans shall be treated in Polish courts and Poles in German courts on the same footing as nationals of the country.

Article 2.

CRIMINAL CASES.

Paragraph 1.

All criminal cases which, at the time of the transfer of the administration of justice, were pending in the assize court districts of Beuthen, Gleiwitz, Oppeln and Ratibor and in which no final judgment had been pronounced at the time of the coming into force of this Convention, shall be continued before the court in which they are pending or, if such court has ceased to exist, shall be taken over by the German or Polish court of the same standing in the district in which the court before which the case was originally brought was situated.

Paragraph 2.

(1) If criminal proceedings against a German who, at the time of the coming into force of the present Convention is domiciled or, failing such domicile, is habitually resident in the German Empire are to be taken over by a Polish court in accordance with the provisions of paragraph 1, such proceedings shall, on application by the accused, be transferred to a German court, provided the offence with which the accused is charged can be made the subject of criminal proceedings under German Law.

(2) If criminal proceedings against a Pole who, at the time of the coming into force of the present Convention, is domiciled in Poland, or, failing such domicile, is habitually resident in Poland, are to be continued before a German court under the provisions of paragraph 1, such proceedings shall, on application by the accused, be transferred to a Polish court, provided the offence with which the accused is charged can be made the subject of criminal proceedings under Polish law.

(3) If a prosecution is instituted against both Germans and Poles, the case shall be divided in accordance with the above conditions.

(4) The accused must make such application before the opening of the proceedings; his attention should be drawn to this rule at the earliest possible moment. The Prussian or Polish judicial authorities shall decide upon the court to which the prosecution shall be transferred.

Paragraph 3.

(1) When any criminal proceedings from the assize court districts referred to in paragraph 1, as a result of an appeal for re-hearing, were pending before a Superior District Court, Court of Appeal or the Imperial Court — Supreme Court — at the time of the transfer of the judicial administration, and had not been finally disposed of at the time of the coming into force of the present Convention, the provision contained in paragraph 1 shall apply. The same procedure shall be applied in the case of appeals.

(2) Criminal cases shall be referred back to the courts determined by the application of paragraphs 1 and 2. In cases coming under paragraph 2, the transfer of the cases must be applied for prior to the beginning of the first trial proceedings before the court to which the matter is

referred back ; notice should at once be given by the Court of Appeal, so that cases may, if necessary, be referred back direct to the court of the other State.

Paragraph 4.

(1) When, in the course of criminal proceedings of the nature referred to in paragraph 1, sentences which were pronounced before this Convention came into force are appealed against after that date, the matter shall be decided by whatever court is, after the coming into force of this Convention, the Court Superior to the tribunal whose sentence has been appealed against, or to the tribunal which has taken the place of the latter under the provisions of paragraph 1. The provisions of paragraph 2 are applicable in such cases.

(2) If, after the coming into force of this Convention, application should be made for the reopening of proceedings in which final judgment has been pronounced before the coming into force of this Convention, the provisions of paragraphs 1 and 2 shall be applicable.

Paragraph 5.

If proceedings in the nature of an enquiry were pending at the time of the transfer of the administration of justice in the assize court districts referred to in paragraph 1 and should these proceedings still be pending when this Convention comes into force, they shall, should it become evident that the case can only be finally dealt with by the courts of the other State, be transferred by the Public Prosecutor who is dealing with them to the Public Prosecutor of the other State. The same provisions shall apply in the case of preliminary judicial enquiries of the above kind as soon as it becomes apparent that the matter could only be dealt with finally by the courts of the other State, if the Public Prosecution had been instituted after the coming into force of this Convention.

Paragraph 6.

In case a criminal prosecution coming under the terms of this Convention cannot be proceeded with by the authorities of the State which is competent to undertake it in accordance with these provisions, owing to the fact that the accused is residing in the other State and is a national of that State, the latter State shall be bound, on application by the former, to undertake the prosecution, provided that the act alleged can also be the subject of criminal proceedings under the laws of the State to which application is made. The authorities who are to prosecute or the court which is to try the case shall be determined by the Prussian or Polish Department of Justice, as the case may be.

Paragraph 7.

As regards sentences pronounced in the assize court districts referred to in paragraph 1 and due to be executed at the time of the transfer of judicial administration, and sentences in cases coming under paragraph 3, sub-paragraph (1), which become due to be executed after the transfer as a result of the rejection of appeals, the execution of such sentences shall be begun or continued by the executive officers of the court whose judgment has to be executed, or, if that court has ceased to exist, shall be taken over by the executive officers of that German or Polish court in whose district the court whose judgment is to be executed was situated.

Paragraph 8.

(1) A person under sentence whose term of imprisonment began at the date of the transfer of the administration of justice as a result of criminal proceedings duly completed before that date may demand that the execution of the sentence be transferred to the executive authorities of the State of which he is a national, provided that the punishment consists of detention and has at least six weeks to run at the date on which application is made, and that the act in respect

of which the sentence has been pronounced is also an offence under the criminal code of the State called on to take over the execution of the sentence.

(2) Application for the transfer of execution must be made within two weeks after the person under sentence has been informed of his right to make such an application ; in either case, information regarding this right shall be given as soon as possible.

(3) As regards persons under sentence, of the category referred to in sub-paragraph (1), the State which is competent under paragraph 7 to execute the sentence may also demand the transfer of the execution, provided that the sentence is one of detention and has at least six months to run at the time the application is made, and provided the offence is one which fulfils the conditions laid down in sub-paragraph (1). In such cases, application for the transfer should be made within four months of the coming into force of this Convention.

(4) The Prussian or Polish Department of Justice, as the case may be, shall decide who are the proper authorities to carry out the sentence and take the judicial decisions necessitated by the procedure of execution after the transfer of the execution.

Paragraph 9.

Combined sentences on separate indictments or counts, the component portions of which have been passed partly by courts in the ceded territory and partly by courts remaining in the German Empire, shall be executed by the State which, having regard to the total amount of the separate sentences awarded by its own courts, is responsible for the largest share in the combined sentence, or, if both States are responsible for an equal share, by the State which shall first begin, or has already begun, to carry out the sentence. The principles laid down in paragraph 8 apply in such cases.

Paragraph 10.

(1) If a sentence, coming under the terms of this Convention, cannot be carried out by the State which is competent to execute it, because the person sentenced is residing in the other State and is a national of that State, or because his property, in the case of a person sentenced to a fine, is situated in the other State, the latter State shall, on the application of the former, take over the execution of the sentence, provided that the act on account of which the sentence has been passed is an offence under its own laws. The Polish or Prussian judicial administration, as the case may be, shall decide who are the proper authorities to carry out the sentence and take the judicial decisions necessitated by the procedure of execution after the transfer of the execution.

(2) Fines shall remain the property of the State which has recovered them.

Paragraph 11.

(1) The right of pardon shall, in all cases, be transferred, together with the right of executing a sentence, to the State taking over the latter duty.

(2) In no circumstances shall the cost of executing a sentence be refunded.

(3) In connection with the handing over of accused or convicted persons, the party handing over the prisoners shall bear all the expenses up to the moment of surrender, including the costs of the return journey of the officials making the surrender, and the party taking over the prisoners shall be responsible for the costs of the journey of the officials taking over the prisoners, and of the further transportation, subsequent to their transfer of the prisoners, who have been surrendered.

Paragraph 12.

(1) The German and Polish Public Prosecutors and courts shall render legal assistance to each other in all matters arising out of this Convention.

(2) Nevertheless, nationals of one State shall not be handed over to the other State for prosecution or punishment, nor shall witnesses and experts, nationals of one State, be compelled to appear before the authorities of the other State.

Paragraph 13.

(1) Penal records compiled in the assize court districts referred to in paragraph 1 shall be kept until further notice by the registration authorities hitherto responsible for them, or, should these registration authorities have been suppressed, the compilation of such records shall be taken over by the German or Polish registration authorities in the district in which the previous registration authority had its official seat.

(2) Information contained in the registers shall be given to the judicial and other public authorities of both States, on their application, free of cost.

(3) Penal records which one State has no further interest in preserving in its registers shall be gradually extracted in pursuance of a further Agreement to be concluded between the judicial administrations of the German Empire and Poland, and shall be placed at the disposal of the other State.

Article 3.

VOLUNTARY JURISDICTION.

Paragraph 1.

The provisions of paragraphs 2-8 hold good in regard to matters concerning voluntary jurisdiction in the assize court districts of Beuthen, Gleiwitz, Oppeln and Ratibor.

Paragraph 2.

(1) As regards proceedings of a voluntary nature which have not yet been concluded, final judgment will be given by the court before which the proceedings are pending, or, if such court has ceased to exist, by the German or Polish court of the same competence in whose district the seat of that court is situated.

(2) Nevertheless, the Court shall transfer the suit to a court of the same competence in the other State in cases in which the latter would be the competent court if the proceedings had not been instituted before the date of the coming into force of this Convention. If both a German and a Polish court would be competent to try the case at that date, the suit shall only be transferred if the person on whose nationality the competence of the court depends should belong, at that date, to the other State, or if one of the parties to the suit should demand the transfer and all the other parties should agree thereto.

(3) A testator who died before the expiration of the period of option without exercising his right to opt shall, if all the heirs agree thereto, be regarded, so far as all matters connected with the law of inheritance are concerned, as a German if his case is covered by Article 91, paragraph 3, of the Treaty of Versailles, and as a Pole if his case is covered by Article 91, paragraph 4, of the Treaty of Versailles.

(4) The provisions of Article 1, paragraph 5, sub-paragraphs (1) (3) and (4) shall apply.

Paragraph 3.

(1) Land registration offices which possess land registers containing entries regarding land situated in the territory of the other State shall hand over the said land registers to the competent land registration offices of the other State. The date on which a register is handed over shall be publicly announced.

(2) Official acts which have been undertaken by a land registration office coming under the provisions of sub-paragraph (1), before the coming into force of this Convention, cannot be challenged on the ground that the office in question had no jurisdiction in the locality.

(3) If only a portion of a volume of a land register is to be handed over to the land registration office of the other State, or if a sheet of a land register does not refer exclusively to land situated in the territory of one of the two States, the procedure to be adopted is determined by the provisions in the Annex.

(4) The above provisions shall be applicable to railway and mining land registers.

Paragraph 4.

(1) Court records shall continue to be kept by the court which has hitherto kept them or, if such court has ceased to exist, by the German or Polish court in whose district this court was situated.

(2) When, however, at the time of the coming into force of this Convention, the conditions are such that a court of the other State would be competent to keep the records, certified extracts from the records shall be handed over to the court in question. It shall be a matter for agreement between the Prussian and Polish Departments of Justice whether in certain special cases, in lieu of the above procedure, the records themselves may be handed over, certified extracts being retained by the Court which has hitherto kept them.

(3) The date of transfer shall be publicly announced.

(4) The provisions of paragraph 3, sub-paragraph (2), are applicable in such cases.

Paragraph 5.

Wills and deeds of settlement shall remain in the possession of the court which has taken them into official custody, or, if such court has ceased to exist, by the German or Polish court in whose district the court was situated. Nevertheless, until December 31, 1923, German testators may demand the transfer of the above documents to a German court and Polish testators may demand the transfer to a Polish court. If the testator had his last residence in the other Contracting State and died before the above-mentioned date without having demanded the transfer of such will, any lawful heir may, within the aforesaid period and before the opening of the will, apply for such transfer, provided that no other heir is opposed thereto.

Paragraph 6.

(1) Judicial documents shall remain in the custody of the court which has possession of them, or, where such court has ceased to exist, of the German or Polish court in whose district that court was situated.

(2) The same applies in the case of notarial documents in the custody of the courts (original documents, registers, etc.). If, however, the former office of the notary is situated in the territory of the other State, the papers shall be handed over to that court in whose district the former office of the notary was situated.

Paragraph 7.

Written statements, certified copies and extracts from court and notarial documents, including title deeds and extracts from testamentary dispositions, can be claimed, in accordance with the law hitherto in force, by the authorities or the notary who have custody of the original documents. The same applies to the drawing up of certificates of all kinds.

Paragraph 8.

(1) Courts shall afford each other direct legal assistance to the greatest possible extent in order to facilitate the transfer. The above applies especially to the issue of certified copies from land registers, registers, title and settlement deeds.

(2) As regards cases which are transferred, Germans shall be treated on the same footing as natives by Polish courts and Poles by German courts, in regard to questions of suing *in forma pauperis* and payment into court (*Vorschusspflicht*).

Paragraph 9.

(1) If an estate in trust is situated entirely in one of the two States, the trust shall be subject to the laws of that State.

(2) If the property in trust is situated partly in one and partly in the other State, the Prussian and the Polish administrations shall by agreement decide on such modifications as shall become necessary in regard to State control over the trust in consequence of the transfer of the judicial administration. Accordingly, trusts which cover other kinds of property in addition to real estate shall, in respect of the value and destination of the separate component parts, be subjected as a general rule to the laws of the State in whose district the real estate appertaining to the trust is situated. Should no arrangement be made within two years of the coming into force of the present Convention, the respective Governments, provided the period is not extended as a result of an agreement, shall retain all their rights.

(3) No modifications shall be made in the provisions of the Treaty of Peace. The question of the restitution of property at present in Germany shall not be affected by the provisions of the Convention.

Article 4.

LEGAL ASSISTANCE AND THE LEGALISATION OF DOCUMENTS.

Paragraph 1.

(1) Without prejudice to the special provisions contained in Article 1, paragraph 19, and Article 3, paragraph 8, of this Convention, the provisions of the Hague Convention on Civil Procedure, of July 17, 1905, shall be applicable in relations between the German and Polish portions of the Upper Silesian plebiscite area, subject to the condition that, in all cases in which communications regarding legal assistance in respect of the service of judicial and extra-judicial documents, or of the execution of commissions to examine witnesses are regulated by the latter Convention, the German and Polish judicial authorities in the Upper Silesian plebiscite area shall be permitted to communicate with one another direct.

(2) In the case of direct communications, the letters of the authorities of either State shall be drawn up in their official language.

(3) In accordance with the reservations in Article 3, paragraph 2, and Article 19, paragraph 2, No. 3, and paragraph 3, of the Hague Convention on Civil Procedure, the translations, specified in these articles, of the documents mentioned therein may be certified also by a duly sworn interpreter of the State making the request.

Paragraph 2.

(1) Article 17 of the Hague Convention on Civil Procedure shall only be applicable subject to the further condition that the plaintiff or intervener must have his domicile either in the State in whose court he sues or in the portion of the Upper Silesian plebiscite area belonging to the other State.

(2) The order for execution specified in Articles 18 and 19 of the Hague Convention on Civil Procedure shall be carried out only within the area of the portion of the Upper Silesian plebiscite area belonging to the State to which the application therefor is addressed.

(3) In accordance with the reservation in Article 19, paragraph 3, of the Hague Convention on Civil Procedure, the certificate, provided for therein, of the highest judicial administrative official as to the competence of the authority which makes the declaration concerning the legal validity of the decision as to costs shall not be required.

(4) The provisions of Articles 20 to 23 of the Hague Convention on Civil Procedure shall apply to nationals of both Contracting States irrespective of domicile.

Paragraph 3.

(1) In accordance with the reservation in Article 7, paragraph 2, of the Hague Convention on Civil Procedure, no demand shall be made for the repayment of charges and expenses incurred in respect of assistance given by an executory officer in the cases mentioned in Article 3 of the Convention.

(2) Similarly, in accordance with the reservation in Article 16, paragraph 2, of the Convention, no demand shall be made for the repayment of charges and expenses payable to witnesses or in respect of assistance given by an executory officer on account of the non-appearance of witnesses. The same provision shall apply in respect of the charges and expenses payable to witnesses mentioned in Article 23, paragraph 2, of the Convention.

(3) In so far as costs may be claimed under the Hague Convention on Civil Procedure, as supplemented by sub-paragraphs (1) and (2) of this paragraph, they shall be reckoned in conformity with the regulations which apply to similar proceedings in cases between nationals of the State applied to.

Paragraph 4.

(1) Documents, which are drawn up, issued or certified by a court situated in the Upper Silesian plebiscite area or by one of the supreme or higher German or Polish administrative authorities, and which are furnished with the seal or stamp of such court or authority, need not be certified (legalised) for usage in the Upper Silesian plebiscite area.

(2) Documents which have been signed and stamped with the office stamp of a clerk to a court in the Upper Silesian plebiscite area, or by a notary, whose office is situated in the Upper Silesian plebiscite area, shall be regarded as judicial documents, provided that such signature is sufficient authority in accordance with the laws of that portion of the area in which the court or the notary's office is situated.

(3) The Prussian and Polish judicial administrations shall notify one another of the administrative authorities to whom the provisions of sub-paragraph 1 apply and of any changes in these authorities.

Paragraph 5.

The provisions of paragraphs 1 to 4 of this article shall apply in courts situated outside the Upper Silesian plebiscite area in such matters as are in due process of law referred to them from courts in the plebiscite area.

Paragraph 6.

Only those lower court districts which were entirely situated within the plebiscite area shall be regarded as belonging to the Upper Silesian plebiscite area for the purposes of this Article.

Article 5.

FINAL PROVISIONS.

Paragraph 1.

(1) Court documents shall be handed over to the judicial authority which has to continue the case in question in accordance with the above provisions for transfer.

(2) Documents in the nature of records shall remain in the possession of the judicial authority in whose custody they were at the time of the coming into force of this Convention, or, if such authority has been suppressed, in the custody of the German or Polish authority in whose district the official seat of that judicial authority was situated. Should it occur that proceedings to which the documents relate have to be reopened and dealt with by an authority of the other State, in accordance with the above provisions for the transfer of cases, the documents shall be handed over to the authority concerned.

Paragraph 2.

(1) Should it occur, under the provisions of this Convention, that proceedings which have been commenced are transferred to a court of the other State, the latter State shall collect the whole of the outstanding costs of the proceedings; the State which transfers the case shall not be entitled to a refund of the costs incurred up to the time of the transfer.

(2) Similarly, the costs of affording legal assistance, as provided in this Convention, shall not be refunded.

Paragraph 3.

The date of the transfer of the judicial administration shall, for the purposes of the present Convention, be reckoned to be, in the case of courts transferred to Poland, the date of the execution of the protocol concerning the transfer of the court, and in other cases the date of the execution of the protocol concerning the transfer of the court first transferred to Poland.

Paragraph 4.

If a person who has had to make a declaration on the other side of the frontier line within a given time has been unable, through no fault of his own, to do so within the time specified, he shall, upon application, be placed in the same position as though the period had not elapsed. In this case, the period within which application is to be made shall not expire until at least one month after the coming into force of the present Convention.

Paragraph 5.

If jurisdiction in a matter to be transferred to a German authority in accordance with the present Convention rests, not with Prussia, but with another State forming part of the German Reich, the judicial administration of that State shall take the place of the Prussian judicial administration.

Paragraph 6.

It shall remain open to the Prussian judicial administration, acting on behalf of the Reich, and to the Polish judicial administration, to conclude a further agreement as regards the details connected with the transfer and, in particular, with regard to questions concerning deposits, for the purpose of carrying out the present Convention.

Paragraph 7.

(1) From the expiration of the day following the notification by the Inter-Allied Commission to the German and Polish Governments of the decision regarding Upper Silesia, as provided for in paragraph 6 of the Annex to Article 88 of the Treaty of Peace of Versailles, until the date of the coming into force of this Convention, all civil actions affected by this Convention, with the exception of those in respect of which transfer is not lawful or would only be lawful upon an application being made with the consent of both parties, shall be regarded as in abeyance.

(2) During the period mentioned in sub-paragraph (1), the periods laid down for giving notice of appeal shall be regarded as ceasing to run in respect of criminal proceedings affected by this Convention.

Article 6.

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Warsaw as early as possible.

(2) The provisions of Article 4 of this Convention may be denounced at one month's notice.

(3) The Convention shall come into force on the expiration of one month from the date of the notification mentioned in paragraph 7 of Article 5, with the exception of the provisions of paragraph 7 itself, which shall come into force on the expiration of the day after notification.

(4) In witness whereof the Plenipotentiaries have signed this Convention and have thereto affixed their seals.

Done in duplicate, Kattowitz, April 12th, 1922.

(Signed) Dr. GEORG CRUSEN.

(Signed) Dr. ZYGMUNT SEYDA.

ANNEX

TO ARTICLE 3, PARAGRAPH 3, SUB-PARAGRAPH (3), OF THE GERMAN-POLISH CONVENTION REGARDING THE TRANSFER OF THE ADMINISTRATION OF JUSTICE.

Paragraph 1.

In so far as land registers in a land registration office deal with real estate situated in the territory of the other State, the following provisions shall apply:—

Paragraph 2.

If all the sheets of a volume of a land register refer to real estate situated in the territory of the other State, the volume shall not be closed, but shall be held in readiness for transfer to the other State. It shall be decided by agreement between the two judicial administrations when the transfer is to be carried out.

Where an entire area covered by a land register is situated in the territory of the other State, the title-deeds and specially preserved documents (Standing Regulations for the registries of district courts (*Amtsgerichte*), paragraph 46), together with the land register, and also survey papers relating to the registry area and the list of owners (Standing Regulations, paragraph 45, sub-paragraph (6), paragraph 47) shall be held in readiness to be handed over with the volume of the land register. The same provisions shall apply in the case of estates having no land registry sheets corresponding to the papers relating to them.

Title-deeds shall be examined to ascertain whether they include registration certificates, dispositions or other documents relating to real property situated in the territory of the State handing over the documents. If so, certified copies of the documents referring to such real property shall be made.

Paragraph 3.

Should separate sheets of a register apply to real property situated in the territory of the other State, such sheets shall be detached and put together in a "Transfer Volume" to be provided with a plain cover, and shall be supplied with new serial numbers.

Sheets relating to different land registration areas may also be included in one and the same transfer volume. If the number of the sheets renders such a course necessary, several transfer volumes will be prepared, the sheets of which will be numbered consecutively.

If the removal of the sheets appears likely to damage the land registration volume too seriously, or if, for other reasons, it appears inadvisable to detach the sheets, because only a few leaves are to be removed or the entries on a sheet are, for lack of space, continued in other parts of the same or another volume, the leaves which it was proposed to detach may be cancelled. The particulars contained thereon shall be transcribed on new sheets of the transfer volume.

The provisions of paragraph 2 shall apply to the transfer volume.

If, in view of the fact that by far the larger number of sheets relate to real property situated in the territory of the other State, it appears more convenient to hand over the entire volume, the sheets relating to real property situated in the territory of the State handing over the volume shall be cancelled. Their contents shall thereupon be transferred to a new sheet of a volume which is to remain in possession of the land registration office. The transfer of volumes of the land register which have been removed can, in such cases, be demanded by the Polish administration of justice.

Paragraph 4.

If a sheet of a land register contains entries relating to several estates, some of which are situated in the territory of the State transferring the documents and the others in the territory of the other State, particulars relating to the latter estates shall forthwith be copied on a new sheet of the transfer volume.

If only a portion of an estate is situated in the territory of the other State, particulars regarding such portion shall forthwith be copied on a new sheet of the transfer volume. Entries may be copied even where, in respect of the portion of the estate situated in the State transferring the documents, there exists only a certified extract from the tax, rolls and a map certified by the registration officials.

In cases coming under sub-paragraphs (1) and (2), when the entries in the second and third columns are transferred, it is to be made clear, both on the old and the new sheets, that the particulars refer to a single estate. The copy shall be brought to the notice of all persons whose names appear on the land register and on whose behalf an entry was made. The right to receive such notice may be renounced. New title-deeds shall be drawn up for the new sheet. The existing title-deeds shall remain in the possession of the land registration office. In such cases the provisions of paragraph 2, sub-paragraph (3), shall apply.

If, in view of the fact that the entries relate for the most part to estates or portions of estates situated in the territory of the other State, it appears more advantageous to transfer the entire sheet, particulars of the estates or portions of estates in the territory of the State handing over the sheet shall be copied on a new sheet of a volume to be retained at the land registration office. The provisions of sub-paragraph (2), sentence 2, and sub-paragraph (3) shall apply in such cases.

(Signed) Dr. GEORG CRUSEN.

(Signed) Dr. ZYGMUNT SEYDA.

FINAL PROTOCOL.

KATTOWITZ, *April 12th*, 1922.

Upon proceeding to the signature of the foregoing Convention regarding the transfer of the administration of justice in the Upper Silesian plebiscite area, the plenipotentiaries declare on behalf of their Governments that the German Government and the Polish Government agree to the following :

(1) Paragraphs 13 and 17 of Article 1 of the Convention shall not apply in the case of judicial decisions relating to claims for compensation on account of unlawful acts committed in the Upper Silesian plebiscite area between May 1, and July 31 1921, in connection with the nationality campaign. Legal proceedings, including any actions for payment of debt in respect of claims of the aforesaid kind, which come under the provision of Article 1, paragraph 1, of the Convention, shall, notwithstanding the provision contained in paragraph 3, sub-paragraph (3) of that Article, also be transferred upon application by only one of the parties to the court of the other State which would be competent if the case was brought at the time of the coming into force of the Convention even in cases in which the court mentioned in paragraph 1 of the above-mentioned Article would be competent at the time of the coming into force of the Convention ; the same provision applies in the cases specified in paragraphs 6 and 7 of the aforesaid article.

(2) In the case mentioned in Article 1, paragraph 17, of the Convention, a German writ made out for the payment of a sum of money in German marks shall be executed in the territory of the Polish State in the same manner as a similar Polish writ made out for the payment of a sum of money in a foreign currency ; the clause authorising execution must specify that the sum to be recovered is expressed in German marks. The same provision applies to Polish writs made out for the payment of a sum of money in Polish marks, which are to be executed in the territory of the German Reich.

(3) The provisions of Article 1, paragraph 17, of the Convention and of No. 1 of this Final Protocol are applicable *mutatis mutandis* to all writs issued in the German Reich which have been made legally valid or have become final and conclusive between December 31st, 1921, and the date of the transfer of the administration of justice, subject to the proviso, however, that these writs shall only be executed in the German Reich and in Polish Upper Silesia.

(4) The modification of the State control over trusts provided for in Article 3, paragraph 9, sub-paragraph (2) of the Convention shall be accompanied by the transfer of the power to make material modifications in the law regarding such trusts, without prejudice to the right of the Contracting Governments to make or to agree to special provisions on account of the division of the property either prior to or upon the conclusion of an agreement for the modification of State control.

Done in duplicate.

(Signed) Dr. GEORG CRUSEN.

(Signed) Dr. ZYGMUNT SEYDA.