

N° 552.

ALLEMAGNE ET POLOGNE

Accord concernant le droit d'amnistie
dans le territoire plébiscitaire de
Haute-Silésie, signé à Oppeln le
21 juin 1922.

GERMANY AND POLAND

Agreement regarding the right to
exemption from punishment in the
Upper-Silesian Plebiscite area,
signed at Oppeln, June 21, 1922.

TEXTE POLONAI. — POLISH TEXT.

No. 552. — UKŁAD¹ NIEMIECKO-POLSKI W PRZEDMIOCIE AMNESTJI NA GÓRNOŚLĄSKIM OBSZARZE PLEBISCYTOWYM. PODPISANY W OPOLU DNIA 21-GO CZERWCA, 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 Agreement took place January 14, 1924.

RZĄD NIEMIECKI i RZĄD POLSKI, powodowane życzeniem dania wyrazu przez równobrzmiące akty łaski, iż chcą się przyczynić do przyszłego powodzenia ludności górnośląskiego obszaru plebiscytowego, zgodziły się na zawarcie następującego układu i mianowały w tym celu swymi pełnomocnikami :

RZĄD NIEMIECKI :

Posła Dr. Paul ECKARDT,

RZĄD POLSKI :

Wiceministra Dr. Zygmunta SEYDĘ.

Pełnomocnicy po wzajemnem okazaniu sobie pełnomocnictw i po uznaniu ich za sporządzone w dobrej i należytej formie, zgodzili się na postanowienia następujące :

Artykuł I.

§ 1.

1. Zgodnie z postanowieniami ustępu 3 artykułu 88 Traktatu Pokojowego, podpisanego w Wersalu w dniu 28 czerwca 1919, udziela się amnestji za wszelkie przestępstwa, popełnione na górnośląskim obszarze plebiscytowym podczas okupacji przez Mocarstwa Międzysojusznice, o ile je popełniono wyłącznie lub przeważnie z pobudek politycznych.

2. W znaczeniu ustępu 1 okupacja kończy się z dniem ukończenia oddania przez Mocarstwa Międzysojusznice jednej lub drugiej umawiającej się stronie strefy, w której czyn popełniono.

§ 2.

1. Jeżeli władze jednej umawiającej się strony odmówiły rozstrzygnięciem nie dającym się już zmienić udzielenia amnestji po myśli § 1 tego artykułu, może druga umawiająca się strona żądać rozstrzygnięcia sądu rozjemczego. W tym celu tworzy się stały Sąd Rozjemczy.

¹ The exchange of ratifications took place at Berlin, September 7, 1922.

¹ TRANSLATION.

No. 552. — GERMANO-POLISH AGREEMENT REGARDING THE RIGHT TO EXEMPTION FROM PUNISHMENT IN THE UPPER-SILESIAN PLEBISCITE AREA, SIGNED AT OPPELN, JUNE 21, 1922.

The GERMAN GOVERNMENT and the POLISH GOVERNMENT, being desirous of showing their solicitude for the future welfare of the population of the plebiscite area of Upper Silesia by each granting an amnesty in identical terms,

have decided to conclude the following Agreement and have appointed as their Plenipotentiaries :

THE GERMAN GOVERNMENT :

Dr. Paul ECKARDT, Minister Plenipotentiary ;

THE POLISH GOVERNMENT :

Dr. Zygmunt SEYDA, Acting Minister.

These plenipotentiaries, having exchanged their full powers, found in good and due form, have agreed upon the following provisions :

Article I.

Paragraph 1.

(1) In conformity with Article 88, paragraph 3, of the Treaty of Versailles of June 28, 1919, immunity from prosecution for offences of an exclusively or mainly political character is guaranteed in the plebiscite territory of Upper Silesia for the period of its occupation by the Allied Powers.

(2) The occupation within the meaning of Section (1) comes to an end on the date on which the district in which the offence has been committed is handed over by the Allied Powers to one or other of the Contracting Parties.

Paragraph 2.

(1) Should the authorities of one of the Contracting Parties have pronounced an irrevocable sentence thus disregarding the immunity provided for in paragraph 1 of this article, the other Contracting Party shall be entitled to demand that the matter be referred to arbitration. A Permanent Court of Arbitration shall be established for this purpose.

(2) The Court of Arbitration shall consist of two members, one of whom shall be appointed by each of the Contracting Parties; his name shall be notified to the other Party within two weeks of the ratification of this Agreement.

(3) Should the two members of the Court fail to agree on any given case, a neutral arbitrator, whom the President of the Mixed Commission for Upper Silesia shall be asked to nominate, shall be added to the Court. In such cases the Court of Arbitration shall decide by a majority vote.

¹ Translated by the Secretariat of the League of Nations.

(4) The Court of Arbitration may take any evidence which it considers necessary for the examination of the case. The evidence shall be taken by the member of the Contracting Party in whose territory it is to be obtained. In other respects, the Court of Arbitration shall determine its own rules of procedure.

(5) The decisions of the Court of Arbitration shall be binding on the authorities of both Parties.

Article 2.

Paragraph 1.

Immunity from prosecution shall be maintained in the plebiscite area of Upper Silesia until the date mentioned in Article 1, paragraph 1, Section (2), in respect of offences committed by the Press or against paragraphs 113 to 131 of the German Penal Code, and also in respect of penalties incurred in the aforesaid territory before the same date in respect of the possession of, traffic in, or smuggling of arms and ammunition.

Paragraph 2.

Immunity shall be granted in respect of all offences committed in the plebiscite area of Upper Silesia before the date laid down in Article 1, paragraph 1, Section (2), provided that no sentence has been pronounced or incurred of a severer nature than imprisonment or military detention for a maximum period of one year or detention or a fine. This immunity extends to offences against the police regulations and against public order.

Paragraph 3.

The immunity laid down in paragraph 2 shall not apply :

(1) To felonies and misdemeanours in respect of usury, speculation, smuggling or bribery ;

(2) To offences against the customs regulations and fiscal laws except in the case of minor offences.

Article 3.

In so far as immunity is granted under Articles 1 and 2 the sentences pronounced shall not be carried out, proceedings in progress shall be stayed and fresh proceedings shall not be instituted.

Article 4.

In the case of felonies being committed in the plebiscite area of Upper Silesia before the date laid down in Article 1, paragraph 1, Section (2), for which the death sentence or sentence of penal servitude for life has been pronounced, the death sentence shall be commuted to imprisonment for 15 years and penal servitude for life shall be commuted to penal servitude for 10 years, unless the motive of the crime was material gain.

Article 5.

Paragraph 1.

(1) The amnesty provided for in Articles 1 and 2 in conjunction with Article 3 shall apply also to accessory penalties.

(2) Where proceedings are quashed or the institution of proceedings against any given person is inadmissible under the terms of the above-mentioned articles, the Court may, nevertheless, on its own motion, pronounce any sentence imposing any confiscation or forfeiture which has been incurred. Where a sentence of confiscation has been lawfully pronounced, or an object has been lawfully declared to be forfeited, the matter shall not be re-opened.

Paragraph 2.

When a combined sentence has been pronounced on indictment of several offences, amnesty shall be granted in respect of such of the offences as come under the provisions of Articles 1 and 2. The original sentence shall be quashed and, if necessary, a new sentence shall be pronounced.

Paragraph 3.

Entries in regard to all the penalties which have been fully remitted in virtue of Articles 1 and 2 shall be deleted (expunged) from the penal register (police records) unless the penalty has been inflicted in respect of an offence the repetition of which would involve a special penalty or unless the convicted person's name has already been entered in the penal register for a previous offence of the same kind.

Paragraph 4.

Proceedings which are pending and come under the provisions of Article 2 shall be resumed when the person against whom they are directed demands it within one month after such person has been notified of the decision that he shall be immune from prosecution or that the proceedings against him have been quashed. If the accused is found guilty, the provisions of this Agreement in regard to the granting of immunity shall remain applicable.

Paragraph 5.

If a person convicted of an offence for which the present Agreement provides immunity already benefits by a general or special amnesty, the provisions of this Agreement shall only be applicable in so far as they are more favourable than the terms of the amnesty by which he benefits.

Paragraph 6.

The question as to whether any given proceedings are to be stayed in virtue of Articles 1 and 2 must be investigated by the official authorities competent in the matter, whatever stage the proceedings may have reached. If the Court refuses to stay the proceedings or to discharge the accused, an appeal shall be lodged immediately.

Article 6.

The present Agreement shall be ratified and the instruments of ratification shall be exchanged as soon as possible at Berlin. The Agreement shall come into force on the date on which the instruments of ratification are exchanged.

Done in duplicate at Oppeln on June the twenty first, nineteen hundred and twenty-two.

DR. PAUL ECKARDT.

DR. ZYGMUNT SEYDA.

FINAL PROTOCOL.

At the moment of signing the above Agreement the Plenipotentiaries of both Contracting Parties declare that the Agreement was drawn up on the understanding that :

(1) All proceedings pending in the Courts in the Plebiscite Area of Upper Silesia which come under the amnesties pronounced by the Inter-Allied Governing and Plebiscite Commission on February 26 and November 12, 1920, and on June 30, 1921, in the *Official Gazette* of Upper Silesia, No. 1, page 14; No. 9, page 93; No. 22, 23; page 188, shall be permanently stayed, and that the same shall apply to the prosecutions coming under any amnesty the said Commission may grant in the future ;

(2) The provisions of the present Agreement shall not apply to cases which have been settled by an act of pardon of any kind, in virtue of the agreements contained in Chapter III, 2, Part IV, of the "Provisions signed on June 15, 1922, regarding the transfer by the Inter-Allied Governing and Plebiscite Commission for Upper Silesia of the districts assigned to Germany and Poland, in virtue of the Treaty of Peace signed at Versailles on June 28, 1919."

OPPELN, *June 21, 1922.*

DR. PAUL ECKARDT.

DR. ZYGMUNT SEYDA.