

GERMAN-POLISH CONVENTION CONCERNING QUESTIONS OF OPTION AND NATIONALITY, SIGNED AT VIENNA, AUGUST 30, 1924

POLAND, of the one part, and GERMANY, of the other, being desirous of settling questions concerning the change of nationality for former German nationals arising out of Articles 3, 4 and 5 of the Treaty signed at Versailles on June 28, 1919, between the Principal Allied and Associated Powers and Poland, as well as of certain provisions of Article 91 of the Treaty signed at Versailles on June 28, 1919, between the Allied and Associated Powers and Germany, have appointed as their Plenipotentiaries:

POLAND:

M. Witold PRĄDZYŃSKI, Doctor of Law, President of the Office of the Prokuratorja Generalna.

GERMANY:

M. Theodor LEWALD, Doctor of Law, Geheimrat, former Secretary of State,

who, having communicated their full powers, found in good and due form, under the presidency of M. Georges KAECKENBEECK, D.C.L., President of the Arbitral Tribunal for Upper Silesia, and on the basis of his arbitral decision of July 10, 1924, have agreed as follows:

Article 1.

The Treaty signed at Versailles on June 28, 1919, between the Principal Allied and Associated Powers and Poland shall be referred to in the present Convention as the „Treaty of June 28, 1919“; the Treaty signed at Versailles on June 28, 1919, between the Allied and Associated Powers and Germany shall be herein referred to as the „Treaty of Versailles“.

PART I.

Article 2.

For the purposes of the present Convention, „German nationals“, within the meaning of Articles 3 and 4 of the Treaty of June 28, 1919, and of Article 91 of the Treaty of Versailles, shall be understood to mean persons who were in possession of this status on January 10, 1920.

Article 3.

- (1) The words „the territory which is or may be recognised as forming part of Poland“ (Articles 3 and 4 of the Treaty of June 28, 1919) shall refer to the whole territory of Poland.
- (2) The Contracting Parties are agreed that the provisions of Article 91 of the Treaty of Versailles shall also refer to the whole territory of Poland, without prejudice to the question whether or not this interpretation follows from the wording in this article „territories recognised as forming part of Poland“ and “any of the territories recognised as forming part of Poland“.

Article 4.

German nationals shall be considered as habitually resident within the meaning of paragraphs 1, 2 and 3 of Article 91 of the Treaty of Versailles and Article 3 of the Treaty of June 28, 1919, in the territory defined in Article 3 of the present Convention, when, in conformity with the provisions hereinafter contained, they shall have established their habitual residence there and shall not have abandoned it.

Paragraph 1.

(1) Habitual residence shall have been established when a German national shall have settled in the aforementioned territory in order to carry on there the pursuit of his chosen objects in life, and shall be residing there habitually and regularly without any intention of leaving.

(2) Habitual and regular residence implies residence for a substantial proportion of the time.

Paragraph 2.

(1) Habitual residence shall be considered to be abandoned when the establishment has been brought to an end and the German national in question has left the above-mentioned territory without the intention of returning.

(2) The fact that the establishment has been brought to an end gives rise to a presumption of absence of the intention to return. On the other hand, an intention to return shall be presumed when the person concerned shall have re-established himself not later than January 10, 1920, in the centre where he shall have been living before he gave up his establishment. A like presumption arises where the person concerned has re-established himself not later than January 10, 1920, in the territory surrendered by Germany, and where:

(a) during the period of establishment his parents, or, in case the marriage has been dissolved, one of his parents, had been habitually resident in the said territory; or where

(b) between his first settling in the said territory prior to January 1, 1908, and January 10, 1920, he had been established there for at least 10 years after reaching his eighteenth year.

Paragraph 3.

(1) Residence of a temporary nature, or for purposes of pleasure, such as country visiting, inspection of an undertaking, pursuit of game, shall not be regarded as constituting habitual residence within the meaning of the present Convention.

(2) The same applies to residence for secondary purposes; as such will be considered, in particular, attendance at schools of all kinds, professional training or preparation, probation as „assistant“ or „candidate“, compulsory military service or participation in the war.

(3) Where the establishment shall have been given up in the pursuit of secondary objects, such as those referred to under (2) of the present paragraph, maintenance of habitual residence shall be presumed, if the person concerned shall have re-established himself in the territory defined in Article 3 of the present Convention not later than January 10, 1920.

Paragraph 4.

For the purposes of the present Convention the provisions of the preceding paragraphs apply also to the habitual residence of parents referred to in Article 4 of the Treaty of June 28, 1919.

Article 5.

(1) To the extent to which, according to the stipulations of the present Convention, habitual residence is required for the acquisition of Polish nationality, it is necessary and sufficient that the conditions laid down in Article 4 of the present Convention shall be or shall have been fulfilled in the territory defined in Article 3 of the present Convention, even if these conditions have also been complied with in another territory.

(2) If by January 10, 1920, a person shall have acquired Polish nationality, he shall have thereby lost his German nationality, even if, in addition to his habitual residence in Poland, he shall have possessed an habitual residence in Germany.

Article 6.

(1) German nationals have acquired Polish nationality ipso facto, and lost their German nationality, in virtue of Article 91 of the Treaty of Versailles and Article 3 of the Treaty of June 28, 1919, if they were habitually resident in the territory defined in Article 3 of the present Convention at least from January 1, 1908, to January 10, 1920.

(2) Other German nationals habitually resident in the above-mentioned territory on January 10, 1920, shall not be able to acquire Polish nationality without a special authorisation from the Polish State.

Article 7.

Paragraph 1.

(1) German nationals born in the territory defined in Article 3 of the present Convention, of parents who, at the time of the birth, were habitually resident in that territory, shall have acquired Polish nationality ipso facto, whether or not they were themselves habitually resident in that territory on January 10, 1920.

(2) Nevertheless, if both parents shall have established their habitual residence in this territory subsequent to January 1, 1908, these German nationals shall not have acquired Polish nationality.

Paragraph 2.

German nationals who shall have acquired Polish nationality in accordance with paragraph 1 of the present article shall have lost this nationality and retained German nationality, if:

(a) they shall have made the declaration of abandonment provided in paragraph 2 of article 4 of the Treaty of June 28, 1919; or if

(b) they shall have made to the authorities provided for in that same paragraph a formal declaration of abandonment at some time between January 11, 1922, and July 10, 1924; or if

(c) although inhabiting Polish territory on January 10, 1920, they have left this territory between that date and July 10, 1924, in circumstances indicating the intention to emigrate; or if

- (d) they would have acquired German nationality after January 10, 1920, in virtue of German legislation if they had not had it already; or if
- (e) they shall have remained in the service of the Reich or of a German State or Commune after January 10, 1922.

Paragraph 3.

(1) German nationals who, having acquired Polish nationality in accordance with paragraph 1 and not coming under paragraph 2 of this article, shall not have returned to Poland before July 10, 1924, shall be considered as having, on January 10, 1922, abandoned their Polish nationality, unless before February 28, 1925, they shall have claimed Polish nationality before the Polish authorities referred to in paragraph 2 of Article 4 of the Treaty of June 28, 1919, and shall have proved that:

- (a) prior to July 10, 1924, they had made application to the competent Polish authorities, including consulates, for recognition of their Polish nationality, provided always that they shall have made such application in writing or that they shall have received either a written refusal or a written answer equivalent to a refusal; or
- (b) that one of their parents is, at the date of application, habitually resident in the territory specified in Article 3 of the present Convention; or
- (c) that at the date of such application they possess in the aforesaid territory either rural property or other property which has been occupied by them or their parents for at least ten years.

(2) The Polish Government shall communicate to the German Government, through diplomatic channels, the names of persons retaining Polish nationality as a result of such application.

Paragraph 4.

German nationals who retain their Polish nationality under the present Article shall lose their German nationality.

Paragraph 5.

German nationals who satisfy both the requirements of Article 3 of the Treaty of June 28, 1919 (Article 91 of the Treaty of Versailles), and those of Article 4 of the Treaty of June 28, 1919, shall be deemed to have, on January 10, 1920, ipso facto, acquired Polish nationality and lost their German nationality.

Article 8.

Paragraph 1.

(1) Any woman who was of married status on January 10, 1920, shall be deemed to have acquired Polish nationality if she satisfies in her own person the conditions necessary for the acquisition thereof, even if her husband does not satisfy them. Nevertheless, Polish nationality so acquired shall be deemed to have been lost and the nationality of the husband acquired, or January 31, 1920, if the marriage shall still have subsisted at that date.

(2) Any woman who was of married status on January 10, 1920, shall not be deemed to have acquired Polish nationality if she does not satisfy in her own person the conditions necessary for the acquisition thereof, even if her husband satisfies them. Nevertheless, the Polish nationality acquired by the husband shall be considered as extending to the wife as from January 31, 1920, if the marriage shall still have subsisted at that date.

Paragraph 2.

German nationals who were under 18 years of age on January 10, 1920, shall follow the nationality of their father if they are legitimate children and that of their mother if they are illegitimate children. If, however, they satisfy in their own persons the requirements of Article 4 of the Treaty of June 28, 1919, they shall be deemed to have acquired Polish nationality, subject to Article 7, paragraph 1, clause 2, of the present Convention, even if their father or mother does not satisfy the conditions necessary for the acquisition thereof.

CHAPTER II.

Article 9.

(1) To have opted validly, it is necessary:

(1) to have been at least 18 years of age;

(2) to have acquired Polish nationality ipso facto under Article 3 of the Treaty of June 28, 1919 (Article 91, paragraph 1, of the Treaty of Versailles);

(3) to have made before January 11, 1922, a declaration of option, either before the Polish authorities or before the German authorities designated as competent for this purpose.

(2) Where any person who has signified his will to lose Polish nationality satisfies both the requirements of Article 3 of the Treaty of June 28, 1919 (Article 91 of the Treaty of Versailles), and those of Article 4 of the Treaty of June 28, 1919, he shall be regarded as having opted and not as having abandoned his nationality. Any error of designation made in the declaration shall not affect its juristic nature.

Article 10.

(1) Declarations of option cannot be revoked.

(2) In regard to their liability to annulment at the request of their authors on the ground of mental disorder, drunkenness, threats or compulsion, mistake or other circumstances negating freedom of choice, these declarations must be considered on the same footing and treated in the same manner as other declarations of will appertaining to internal public law. Applications for annulment shall be made to the administrative or legal authorities of the country whose authorities received the declaration.

(3) The annulment of a declaration made before the authorities of one of the two Parties shall in no way affect the validity of a declaration made by the same person before the authorities of the other Party.

Article 11.

Paragraph 1.

(1) The Contracting Parties undertake to communicate to one another through the diplomatic channel, before December 1, 1924, lists of all persons who have remained in Polish territory and who have made a declaration of option which the competent authorities consider to be valid under the terms of the present Convention. Such lists shall further specify the persons covered by the option. Any person whose declaration of option shall, in conformity with the provisions of Article 10 of the present Convention, have been annulled before these lists have been communicated shall not be included therein.

(2) In order that optants may be capable of identification, the lists shall give surnames, Christian names, professions and addresses.

(3) If necessary, the Polish Voivodes and German Consuls shall assist each other by exchanging all necessary information, especially in regard to declarations of option.

Paragraph 2.

(1) If, as a result of the communication of such lists, one of the Contracting Parties shall notice any case which, in its opinion, constitutes an infringement of the provisions of the Treaties, it may transmit its observations to the other Party through diplomatic channels.

(2) Both Parties undertake to examine such observations as soon as possible, to recognise them, them if justified, and, if need be, restore his legitimate status to the person concerned.

(3) Observations thus made by one of the Contracting Parties shall have no suspensive force.

Article 12.

Paragraph 1.

(1) Persons included in the lists referred to in Article 11 of the present Convention shall be obliged to transfer their place of residence from Poland to Germany unless their declaration or option be annulled on the ground of absence of freedom of choice, under Article 10 of the present Convention, or such persons have recovered their legitimate status under Article 11, paragraph 2, clause 2, of the present Convention. Such transfer shall take place not later than:

(1) August 1, 1925, in the case of persons who do not possess immovable property in Polish territory;

(2) November 1, 1925, in the case of persons whose immovable property is situated within the area of a fortified place, as defined on July 10, 1924, or within a frontier zone ten kilometres in depth;

(3) July 1, 1926, in the case of persons who have immovable property in Polish territory outside the area of a fortified place or the frontier zone of ten kilometres.

(2) The time-limits granted in the present Article shall in no way prejudice the right of the Polish Government to proceed to the expulsion of optants who prove to be undesirable aliens.

Paragraph 2.

(1) In order to inform each of the optants in person of the obligation to leave Polish territory within the time-limits fixed above, the Polish authorities shall transmit, between January 1, and February 28, 1925, to the persons who have made a declaration of option, a notice which will also specify the other persons covered by the option. The fact that observations submitted in conformity with Article 11 of the present Convention are under discussion shall not preclude notices from being sent between the dates given above.

(2) The German Government shall be informed through diplomatic channels of all notices sent out by the Polish authorities after February 28, 1925, to optants whose names did not figure on the list. The communication of these notices shall be treated in the same way as the communication of the lists.

(3) Optants who on March 1, 1925, shall not have received a notice from the Polish authorities shall be entitled to a period of grace, reckoned as from the date on which they shall have received the delayed notice, equal to the period which they would have had if the notice had reached them on February 28, 1925.

Paragraph 3.

(1) Persons who shall have applied to the competent Polish authorities before July 10, 1924, for the annulment of their declaration of option as provided in Article 10 of the present Convention shall only be obliged to transfer their habitual residence from the date on which their application has been finally refused.

(2) If these applications shall have been made after July 10, 1924, the competent Polish administrative or judicial authorities shall decide themselves, on the basis of the Polish legislation in force, whether the application is to have suspensive force. The same shall apply to persons who shall have made such application before July 10, 1924, but who shall not have appealed to the highest court, provided they renew the application before March 1, 1925.

(3) In the event of the refusal of an application for annulment which, according to Section 1 of the present paragraph, has suspensive force, or to which suspensive force shall have been granted in accordance with Section 2 of the preceding paragraph, the period of grace for departure shall begin to run as from the date of the refusal of the application for annulment ; its duration shall be half the period which the persons concerned would have had if it had begun to run as from March 1, 1925, unless the period to which they would be entitled under paragraph 1 of the present article is longer.

Paragraph 4.

The Contracting Parties agree that the optants who do not carry out their obligation to leave Poland within the time-limits prescribed in the present article may be conducted to the frontier and handed over to the German authorities. Such persons may be refused all further access to Polish territory.

Paragraph 5.

After December 31, 1926, no further notices will be sent. Persons who shall have received no notice by that date will cease to have either the obligations or the privileges of optants. The provisions of the present paragraph shall not apply to the persons specified in

paragraph 3 of the present article in respect of whom a final decision shall not yet have been pronounced by that date.

Article 13.

The two Governments shall give the necessary instructions to the competent authorities to facilitate as far as possible both the journeys the optants may require to make to prepare for their settlement in Germany and the actual journey of emigration.

Article 14.

Paragraph 1.

(1) The optants may carry with them to Germany their movable property of every description. No export or import duties or charges may be imposed upon them in connection with the removal of such property.

(2) The right of optants transferring their domicile to Germany to export their movable property, either by carrying it with them or by despatching it by any method they choose, shall not be restricted in any way by export prohibitions or by any other administrative or legislative measures.

(3) No charges shall be made for the services rendered in connection with such transfer by authorities whose intervention is prescribed by laws, ordinances or other official regulations.

Paragraph 2.

The authorities may require the optant to prove his ownership of the property he wishes to carry away by making a solemn declaration in lieu of an oath. Further evidence may be demanded if the nature or quantity of the property the optant wishes to carry away is such as to give reasonable ground for suspicion that it does not belong to him.

Paragraph 3.

(1) Optants leaving Polish territory to transfer their domicile to Germany shall be exempted from all ordinary taxes or duties on income or capital and from all additions to such taxes or duties due to the Polish State or Communes, in respect of the period beginning after the end of the month during which they emigrate.

(2) Such persons shall be exempted from all deposits guaranteeing the payment of future taxes, duties or additions thereto. Future taxes shall be taken to mean taxes to which the State only becomes entitled by law after the end of the month during which emigration takes place.

(3) As regards the extraordinary tax (podatek jednorazowy) on capital imposed by the Polish law of August 11, 1923, optants shall only pay the regular instalments or fractions of instalments which are due on the day of their emigration. As soon as the Convention is signed, they shall be exempt from all payments in advance and from all deposits guaranteeing payments of this tax. Advance payments already made in conformity with the laws and regulations in force cannot be recovered by the optant. The said advance payments, however, whose value shall be estimated according to the general principles of Polish law, shall be deducted from the regular instalments which the optant still has to pay.

(4) The provisions of Sections 1 to 3 of the present paragraph shall not apply to taxes which are independent of the nationality, domicile or residence of the tax-payer.

Article 15.

The right of optants to retain immovable property in Poland shall not be affected in any way by laws, ordinances or other measures which are not also applicable to Polish nationals, unless such property is situated in the area of a fortified place or in the frontier zone 10 kilometres in depth, in which case such property shall be treated as property belonging to aliens.

Article 16.

Without prejudice to the ordinary legislation regarding aliens, optants who shall have transferred their habitual residence before the expiration of the time-limits fixed in Art. 12 of the present Convention shall not be allowed to spend more than 21 days in Poland per year until December 31, 1930, without special permission from the Polish authorities. As from January 1, 1931, they shall only be subject to the ordinary regulations.

Article 17.

Persons possessing the right of option who shall have left Polish territory in circumstances indicating their intention to emigrate shall be regarded as having opted (tacit option) if:

- (a) they shall have left Poland before January 11, 1922; or
- (b) they shall have left Poland between January 11, 1922, and July 10, 1924, unless they shall have made an application to the competent Polish authorities for the renewal of their Polish passport which was refused; nevertheless, if such persons shall have recovered German nationality, they shall be considered to have tacitly opted.

Article 18.

The special privileges and obligations of optants shall only belong to persons who shall have opted themselves or who are covered by the option.

Article 19.

(1) German nationals who do not fulfill the conditions laid down in Art. 3 of the Treaty of June 28, 1919 (Article 91 of the Treaty of Versailles), but only fulfill those laid down in Art. 4 of the Treaty of June 28, 1919, and who have renounced, or are deemed in virtue of the present Convention to have renounced Polish nationality, shall neither enjoy the special privileges nor be subject to the special obligations of optants.

(2) The mere fact of renunciation does not render the person renouncing an undesirable alien.

Article 20.

Article 5 of the Treaty of June 28, 1919, shall not apply to the options specified in Article 3 of the said Treaty (Art. 91, paragraph 3, of the Treaty of Versailles); it shall be taken to apply to the options specified in Art. 91, paragraphs 4 and 9, of the Treaty of Versailles.

The present Convention including the Final Protocol of the same date, shall be ratified as soon as possible. The instruments of ratification shall be exchanged at Warsaw.

In faith whereof the Plenipotentiaries have signed the present Convention and affixed thereto their seal.

Done at Vienna, at the Hofburg, in duplicate, this thirtieth day of August one thousand nine hundred and twenty-four.

(Signed) Dr. WITOLD PRĄDZYŃSKI.

(Signed) Dr. THEODOR LEWALD.

FINAL PROTOCOL.

At the moment of signing the Convention the Contracting Parties have agreed as follows:

I.

Ad Article 4.

(1) If a person lives continually on his property with all his family during several months of the year, he may be deemed to have acquired habitual residence.

(2) Temporary absence due to political or military events supervening after November 9, 1918, shall not be regarded as constituting abandonment of habitual residence if the person concerned returned to the territory before July 10, 1921.

(3) Former German officials in the direct service of the State (unmittelbare Staatsbeamte), including officers on the active list, who were established on January 10, 1920, in the territory ceded by Germany, shall not be regarded as Polish nationals unless they obtained or asked for their discharge before April 1, 1920.

The general provisions regarding the definition of habitual residence shall be applicable to German nationals who before January 10, 1920, were officials in the direct service of the German State or officers on the active list and to officials in the indirect service of the German State (mittelbare Staatsbeamte), school-masters and ministers of religion.

II.

Ad Article 10.

The fact that a man shall have been called up for military service or notified that he will be called up at a future date, if he shall not have made a declaration of option, shall not in itself be considered as sufficient ground for the annulment of the declaration of option.

The words „in itself“ shall be taken to mean that the application of the general regulations regarding the annulment of declarations of option for absence of freedom of choice is not precluded.

III.

Ad Article 11.

The Contracting Parties consider it desirable that preliminary lists should be communicated as soon as they can be drawn up.

IV.

Ad Article 12, par. 2.

Should the attempts to serve the notice on the optant in person have been unsuccessful, the notice shall be served by public announcement (publiczne doręczenie — öffentliche Zustellung).

V.

Ad Article 12, par. 3.

A decision shall be regarded as final when it is no longer liable to be brought before a higher administrative or judicial court, either owing to the expiration of the time-limit allowed for an appeal or owing to the absence of a higher court.

VI.

Each Government shall communicate to the other a list of the persons possessing the right of option to whom it has granted naturalisation before July 10, 1924.

VII.

(1) The Contracting Parties agree that the provisions of the present Convention regarding option (Articles 9-18 and the provisions of the Final Protocol relating thereto) shall be applicable mutatis mutandis to German nationals of Polish origin who have opted for Polish nationality in conformity with Article 91, paragraph 4, of the Treaty of Versailles.

(2) At the request of the persons concerned, the Contracting Parties undertake to lay down that optants wishing to transfer their habitual residence to a country other than that in favour of which they have opted shall enjoy the facilities and privileges provided in the present Convention in respect of the transfer of habitual residence.

(3) In the event of Germany's imposing an extraordinary tax on capital (einmalige Vermögensabgabe) the German Government undertakes to grant to persons having opted for Polish nationality treatment similar to that laid down in Article 14, paragraph 3, Section 3, of the present Convention.

The provisions laid down in Article 14, paragraph 3, Section 3, shall remain in force even if Poland should impose a further extraordinary tax on capital.

VIII.

In view of the doubts which have arisen in regard to the interpretation of the clauses in the treaties concerning the definition of habitual residence, their application by the Polish authorities shall be considered as carried out in good faith even if it shall have been based on an interpretation differing from that stipulated in the present Convention.

The above does not in any way affect the question of the declaration of „postponement“ made at Geneva.

IX.

The problem of the mechanism of Articles 91 and 93 of the Treaty of Versailles and Articles 3, 4 and 12 of the Treaty of June 28, 1919, arose in the course of negotiations. As this problem was not within the competence of the Arbitrator, it remained unsettled. The Contracting Parties place on record their wish to settle this problem in due course.

X.

The provisions of the present Convention shall in no way affect the provisions of the German-Polish Convention relating to Upper Silesia signed at Geneva on May 15, 1922.

Done at Vienna, at the Hofburg, on the thirtieth day of August one thousand nine hundred and twenty-four.

(Signed) Dr. WITOLD PRĄDZYŃSKI.
(Signed) Dr. THEODOR LEWALD.

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