

PERMANENT COURT OF INTERNATIONAL JUSTICE
Thirty Fourth (Ordinary) Session

Minority Schools in Albania

Advisory Opinion

BEFORE: President: Sir Cecil Hurst
Vice-
President: Guerrero
Judges: Baron Rolin-Jaequemyns, Count Rostworowski, Fromageot,
Altamira, Anzilotti, Urrutia, Schücking, Negulesco, Jhr. Van Eysinga

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[p5] The Court, composed as above, gives the following opinion:

[1] On January 18th, 1935, the Council of the League of Nations adopted the following Resolution:

“The Council of the League of Nations,
In consideration of the Albanian Declaration made before the Council on October 2nd, 1921, Article 5 of which reads as follows:

‘Albanian nationals who belong to racial, religious or linguistic minorities will enjoy the same treatment and security in law and in fact as other Albanian nationals. In particular they shall have an equal right to maintain, manage and control at their own expense or to establish in the future, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

Within six months from the date of the present Declaration, detailed information will be presented to the Council of the League of Nations with regard to the legal status of the religious communities, Churches, Convents, schools, voluntary establishments, and associations of racial, religious and linguistic minorities. The Albanian Government will take into consideration any advice it might receive from the League of Nations with regard to this question.’

In consideration of the provisions of Articles 206-207 of the Albanian Constitution of 1933, which read as follows:

‘The instruction and education of Albanian subjects are reserved to the State and will be given in State schools. Primary education is compulsory for all Albanian nationals and will be given free of charge. Private schools of all categories at present in operation will be closed’;

In consideration of the plea adduced before the Council by the representative of the Albanian Government that, as the - abolition of private schools in Albania constitutes a general measure applicable to the majority as well as to the minority, it is in conformity with Article 5, first paragraph, of the Albanian Declaration;

In consideration of the report submitted to the Council on January 14th, 1935, by the representative of Spain;

Requests the Permanent Court of International Justice to express an advisory opinion on the following question:

1° whether, regard being had to the above-mentioned Declaration of October 2nd, 1921, as a whole, the Albanian Government is justified in its plea that, as the abolition of the private schools in Albania constitutes a general measure applicable to the majority as well as to the minority, it is in conformity with the letter and the spirit of the stipulations laid down in Article 5, first paragraph, of that Declaration; [p6]

2° and if so, whether the Council of the League of Nations can, on the basis of the second paragraph of the said Article, formulate recommendations going beyond the provisions of the first paragraph.

The Secretary-General is authorized to submit this request to the Court, together with all the documents relating to the question, to afford the necessary assistance in the examination of the question, and to arrange to be represented before the Court if necessary.”

[2] In accordance with this Resolution, the Secretary-General of the League of Nations, on January 21st, 1935, transmitted to the Court a request for an advisory opinion in the following terms:

“The Secretary-General of the League of Nations,
in pursuance of the Council Resolution of January 18th, 1935, and in virtue of the authorization given by the Council,
has the honour to submit to the Permanent Court of International Justice an Application requesting the Court, in accordance with Article 14 of the Covenant, to give an advisory opinion to the Council on the question which is referred to the Court by the Resolution of January 18th, 1935 (see attached text).

The Secretary-General will be prepared to furnish any assistance which the Court may. require in the examination of this matter, and will, if necessary, arrange to be represented before the Court.”

[3] The request was registered on January 23rd, 1935, in the Registry of the Court. To the request were appended a number of documents [FN1] concerning the history of the Albanian Declaration of October 2nd, 1921, the application of Article 5 of this Declaration, and the origin of the request for an opinion.

[FN1] See list in the Annex.

[4] In conformity with Article 73, No. 1, paragraph 1, of the Rules, the request was communicated to Members of the League of Nations (through the Secretary-General of the League) and to States entitled to appear before the Court. Furthermore, the Registrar, by letter dated January 26th, 1935, sent to two States regarded by the President—the Court not being in session - as likely to be able to furnish information on the question referred to the Court for advisory opinion, the special and direct communication mentioned in Article 73, No. 1, paragraph 2, of the Rules. These States were Albania and Greece.

[5] The Court being satisfied that the question submitted to it for advisory opinion did not relate to an existing dispute, the second paragraph of Article 71 of the Rules, concerning the appointment of judges in accordance with Article 31 of the Statute, was not applicable.

[6] By an Order made on January 26th, 1935, the President of the Court - the latter not being in session - after having first ascertained by correspondence the views of Albania and Greece with regard to the procedure to be adopted, fixed March 1st, 1935, as the [p7] date by which written statements might be filed on behalf of these two States. These statements having been duly filed by the date fixed, the Court decided on March 1st that there should be oral statements and fixed March nth as the date for their presentation.

[7] In the course of hearings held on March nth and 12th, information was presented in turn by M. G. Gidel, Professor at the Faculty of Law at Paris, Counsel for the Albanian Government, by M. N. Politis, Greek Minister at Paris, Counsel for the Greek Government, and by M. Mehdi Frasheri, President of the Albanian Council of State, the Albanian Agent. The Greek Agent was M. G. Lagoudakis, Greek Minister at The Hague.

[8] In addition to the statements of the interested Governments and the documents transmitted by the Secretariat of the League of Nations, the Court has had before it certain documents collected on its own behalf and expressly mentioned either in the Albanian Memorial or in the Greek Memorial1.

[9] The submission of the case being in all respects regular, these are the circumstances in which the Court is now called upon to give its opinion.

[10] On December 15th, 1920, the Assembly of the League of Nations adopted the following recommendation:

“In the event of Albania, the Baltic and Caucasian States being admitted into the League, the Assembly requests that they should take the necessary measures to enforce the principles of the Minorities Treaties, and that they should arrange with the Council the details required to carry this object into effect.”

[11] Albania was subsequently admitted to membership of the League of Nations by a vote of the Assembly on December 17th, 1920.

[12] The Secretary-General having communicated these decisions to the Albanian Government, the Prime Minister of Albania, in a letter dated February 9th and a telegram dated February 13th, 1921, sent him certain information as to the position of Albania with regard to minorities.

[13] On February 23rd, 1921, the Council decided to include on the agenda of its next session, which was fixed for June of the same year, the question of the protection of minorities in Albania. Meantime, the Director of the Permanent Greek Secretariat attached to the League of Nations sent to the Secretary-General, under cover of a letter dated May 17th, 1921, a memorandum on this question, to which the Albanian President of the Council, Minister for Foreign Affairs, replied by a note dated June 21st, 1921. [p8]

[14] In his memorandum the Greek representative raised the question whether, in order to secure equitable treatment for the racial or religious minorities living in Albanian territory, it would suffice simply to apply to Albania the general principles laid down in the Minority Treaties. In regard to this point, the Greek representative, having arrived at the conclusion that

Albania ought to accept special conditions which, in the case of Albania, should supplement the provisions relating to the régime of minorities, expressed the opinion that, in the drawing up of the minority clauses to be accepted by Albania, regard should be had to certain suggestions made by him and including the following proposals:

“4. That the Albanian Government should promise to take the necessary measures for the construction and preservation of buildings used for Christian worship, for education and for philanthropy, and that no hindrance should be placed in the way of. such work when it is justified by the needs of the communities and the conditions of the buildings.

5. That all Albanian subjects belonging to racial, religious or linguistic minorities should enjoy the same treatment and the same security, both in fact and in law, as other Albanian subjects; and that they should be entitled to establish, to administer and to control at their own expense, charitable, religious or scholastic institutions of all kinds, to employ their own language and to practice their own religion freely without interference by the authorities, provided that the interest of public order is safeguarded.

6. That the ecclesiastic, scholastic and juridical privileges and immunities granted by the Sultan to the non-Mohammedan nationals of Turkey by special ‘berats’, and confirmed by Imperial .decrees, should be recognized, and that the Albanian Government should undertake to respect them in their entirety.”

[15] The reply of the Albanian Minister for Foreign Affairs, dated June 21st, 1921, contained the following in regard to these points:

“4. At the present moment there is in Albania no obstacle to the construction and upkeep of buildings devoted to the Christian faith. The Greek-speaking villages already possess schools where instruction is given in the Greek language, and these schools are subsidized by the Albanian Government.

5. Equal treatment, both in law and in fact, exists for all Albanian citizens without distinction of religion.

6. The ecclesiastic and legal prerogatives and immunities will be dealt with in a special law concerning the Orthodox autocephalous. Churches, and this law will be inspired by a liberal recognition of the freedom of conscience, equal for all Catholic, autocephalous Churches and Bektachite (TÉKÉ) convents.”

[16] On June 27th, the Council decided that the question of minorities in Albania should be examined by the Secretariat together with the interested governments, in order that a report might [p9] be prepared for the next meeting of the Council. The latter took place in August-October, 1921.

[17] The report made by Mr. Fisher, the British representative, submitted to the Council a draft Declaration which was intended by the Rapporteur to be signed by the duly authorized representatives of Albania and formally communicated to the Council of the League. With regard to the contents of this Declaration, which was actually signed by the Albanian representative on October 2nd, 1921 [FN1], the Rapporteur stated that it met most of the suggestions of the Greek Government - he was referring to those made notably in the memorandum of May 17th, 1921. He indicated however two important exceptions, which he explained and accounted for in detail ; neither of these exceptions affected the points covered by Nos. 4 to 6 of the above-mentioned Greek memorandum.

[FN1] For the text, see Annex.

[18] It should be observed that, though it closely follows the corresponding clauses of the Minorities Treaties, and especially those of the first of these Treaties, the Treaty with Poland of June 28th, 1919, the Albanian Declaration differs from it in certain respects. Thus Article 1 of the Declaration, in addition to the usual provision as to the supremacy of the minority clauses, lays down that no act of State shall prevail over them “now or in the future”; again, paragraph 2 of Article 5 of the Declaration does not occur in the model Treaty, and paragraph 1 of the same Article speaks of the “equal right” of the minority to “maintain, manage and control” certain institutions or to “establish” them “in the future”, whereas the model Treaty only mentions the right to “establish, manage and control”.

[19] The Council, on the proposal of the Rapporteur, adopted on the same day (Oct. 2nd, 1921) a Resolution taking note of the Declaration made by the Albanian delegation for the protection of minorities and deciding that the stipulations contained in this Declaration, so far as they concerned racial, religious or linguistic minorities, should be placed under the guarantee of the League of Nations as from the date of their ratification by the Albanian Government. Ratification took place on February 17th, 1922; the instrument of ratification was deposited at Geneva on the following 22nd of March.

[20] After the signature of the Declaration by the Albanian representative at the Council meeting on October 2nd, 1921, the Greek representative, whilst expressing his gratitude to the Council for having considered certain of the suggestions made in the memorandum of May 17th, 1921, drew the Council’s attention to the necessity, in his view, of maintaining in Albania [p10] the secular, religious and educational privileges which the Greek nation had enjoyed in all the territories of the former Turkish Empire.

[21] The Court has received but little precise information as to the educational situation in Albania at the time when the Declaration of October 2nd, 1921, was made and when that Declaration became effective. Certain conclusions may how-ever be drawn from the documents which have been produced. Thus, in the course of the observations made by him before the Council on January 14th, 1935, the Albanian representative said that “education in Albania, until 1912, had varied according to religion: the Moslems attended the Ottoman schools; the Orthodox, the Greek schools, and, in the districts adjacent to the Slavs, the Serbian or Bulgarian schools; the Catholics attended the Italian or Austrian schools....”. With regard to the period subsequent to 1912 - Albania became an independent State in 1913 - it appears from the same observations that only in 1929 was a law concerning communities drafted under which “secular education was separated from religious teaching”. Furthermore, the Agreement signed at Corfu on May 17th, 1914, by the representatives of the Albanian Government, amongst others, declared that “education was free”; and the Agreement signed at Kapishtica on May 15th,

1920, between the Greek authorities and representatives of the Albanian Government laid down that “the Greek schools may function freely” in southern Albania. Again, in a letter dated February 9th, 1921, which is referred to in Mr. Fisher’s report of October 2nd, 1921, and has been mentioned above, the President of the Albanian Council of Ministers declared that the national Government had given “complete cultural freedom” to the Greek (and Slav) elements of the population “by establishing Greek schools and paying the teaching staff”; the letter continues: “The same freedom is given to private initiative for the establishment of educational institutions using the Greek language [FN1].”

[FN1] Translation by the Registry.

[22] The Court would emphasize that it only quotes the Agreements of Corfu and Kapishtica in so far as they may serve to throw light upon the educational situation existing at the period of their conclusion and that it expresses no opinion as to the validity of these arrangements as international agreements imposing obligations on Albania.

[23] Under Article 5, paragraph 2, of the Declaration of October 2nd, 1921, the Albanian Government had, within six months, to present to the Council “detailed information with regard to the legal status of the religious communities, churches, convents, schools, voluntary establishments and associations of [p11] racial, religious and linguistic minorities”. In this connection, the Court would recall that in its Advisory Opinion of July 31st, 1930, concerning the Greco-Bulgarian Communities (Opinion No. 17), it had occasion to state that a community is

“.... a group of persons living in a given country or locality, having a race, religion, language and traditions of their own and united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other.”

[24] By a telegram dated April 2nd, 1922, the Albanian Government, however, announced that it was materially impossible for it to present its report within the time fixed, and that it would do so as soon as possible. In accordance with this promise, the Albanian Minister for Foreign Affairs sent certain information to the Secretary-General on this subject in a letter dated July 7th, 1922. This letter stated that there were in southern Albania a number of Greek minority schools, all maintained solely by the State out of the funds of the Ministry of Education; further, according to the same letter, Albanian communities, including the Orthodox community, had “full rights of establishing schools of various grades teaching in the language of the people over whom their religious heads have rights of jurisdiction”.

[25] Meantime, at a meeting of the Council on May 12th, 1922, the Albanian representative had announced that two classes of laws would be passed to deal with the question of minorities in Albania : the general principles would form an integral part of the constitutional law which was in process of preparation, and the development of these principles and the provisions regarding religious communities would be embodied in another law, which was also in course of preparation.

[26] On September 1st, 1922, the Council noted the information furnished by the Albanian Government in its letter of July 7th regarding the situation of minorities in Albania; at the same time, it instructed the Secretary-General to collect and submit to the Council in due course further information concerning the legislative measures which, according to the statement made by the Albanian representative on May 12th, 1922, were to be taken, particularly with regard to the legal status of minority schools.

[27] The first Albanian Constitution - apart from the organic Statute of August 10th, 1914, and a “Provisional Constitution” which would seem to have been in force in 1923, but the terms [p12] of which have not been produced to the Court - was only adopted on March 7th, 1925.

[28] On June 5th, 1923, however, a law was promulgated “concerning the legal status of religious communities”, the text of which was communicated to the Council on August 15th of the same year. This law does not deal with educational questions; its bearing upon the organization of education in Albania appears indirectly from the letter of the Albanian Minister for Foreign Affairs of July 7th, 1922, to which reference has been made above. On September 17th, 1923, the Council decided to note “the information furnished to date by the Albanian

Government in conformity with Article 5, paragraph 2, of the Albanian Declaration of October 2nd, 1921”, and to instruct the Secretary-General to examine this information “in cooperation with the Albanian representative and to submit [his] conclusions to the Rapporteur”. The results of this examination were set out in a memorandum which the Secretariat communicated to the Council, for its information, on May 14th, 1924.

[29] This memorandum stated that the Minorities Section of the Secretariat had undertaken, together with the Albanian representative, a detailed examination of various questions including the question of schools. In regard to this point, the Albanian representative appears to have informed the Secretariat that a law was being drafted by which no private schools would be allowed in Albania; this law, being general in character and applying to the majority as well as to the minority, would, in his view, be in conformity with Article 5, paragraph 1, of the Declaration of October 2nd, 1921. According to a letter dated November 3rd, 1934, addressed by the Albanian Minister for Foreign Affairs to the Secretary-General, this view had been “expressed in statements made in August, 1923, to the permanent Albanian Delegate by M. Colban, the Director of the Minorities Section [FN1]”. No document confirming this allegation has, however, been produced to the Court.

[FN1] Translation by the Registry.

[30] The Secretariat’s memorandum does not seem to have led to any subsequent decision on the part of the Council. In his “Report to the Sixth Assembly of the League of Nations on the Work of the Council”, etc. (Sept., 1925), the Secretary-General of the League writes that the “memorandum prepared by the Secretariat was communicated to Members of the Council.... The Council has not yet decided to examine this document” ; and in his report to the Council on January 14th, 1935, the Spanish representative said: “since then [May 1924] the Council has not dealt with the matter”. In the same report it is explained that, in view of the information supplied by the Albanian Government in 1922 and 1923, the Council [p13] did not feel that the situation called for any recommendations.

[31] The intentions mentioned by the Albanian representative in his conversations with the Secretariat in 1923 did not take shape for some time. Thus, on December 1st, 1928, a new Constitution was promulgated; Articles 206 and 207 were as follows:

“Article 206. - Elementary education is compulsory for all Albanian subjects and shall be given free of charge in the State schools.

Article 207. - Provided they conform with the laws, principles and curricula approved by the State for its own schools, and subject to the effective control of the Government, Albanian subjects may found private schools.

Provided they comply with the laws, foreigners may be authorized to found technical and agricultural schools only, with theoretical and practical curricula.

Similarly, religious schools may be established by Albanian religious communities with the permission of the competent Minister and in conformity with the laws ; the number of the religious schools of any community and of the pupils of such schools shall be fixed by the competent Minister after consultation with the Council of Ministers.”

[32] In the following year, however, the law regarding the secularization of education to which - as has already been mentioned —the Albanian representative alluded in his observations at the Council meeting on January 14th, 1935, was prepared; but this law, according to the statements of this representative, remained a dead letter. On January 9th, 1930, a new law was

adopted “concerning religious communities”, replacing that of 1923. Under Article 24 of this law, which came into force on February 1st, 1931, “religious communities and their sects may open religious schools and seminaries for the education of their ecclesiastical personnel, so long as they conform to the laws of the State and to the statutes and rules of the community as approved by the State”. On November 14th, 1930, a circular of the Minister of Public Education was published, abolishing religious instruction in schools. Finally, in 1933, the Albanian National Assembly modified Articles 206 and 207 of the Constitution of 1928, and those Articles now run as follows:

“The instruction and education of Albanian subjects are reserved to the State and will be given in State schools. Primary education is compulsory for all Albanian nationals and will be given free of charge. Private schools of all categories at present in operation will be closed [FN1].”

[FN1] This translation is taken from the Council Resolution of January 18th, 1935. The following translation appears in the report adopted by the Council on January 14th, 1935:

“The teaching and education of Albanian subjects are reserved to the [14] State, which shall be responsible for giving such teaching and education in its schools. Elementary education is compulsory for all Albanian nationals and shall be given free of charge. Private schools of all categories at present in existence shall be closed.”

[p14]

[33] Thus the abolition of private schools in Albania was completed.

[34] Following upon these measures, a number of petitions which have not been produced to the Court seem to have been addressed to the League of Nations, relating mainly to the question of the abolition of private schools in Albania. The Committee of the Council which had been instructed to examine these petitions requested the Secretary-General in a letter dated November 21st, 1934, to place the question of the scope of Article 5 of the Albanian Declaration of October 2nd, 1921, in regard to certain points, upon the Council agenda at the earliest possible moment. The letter contains the following passage on the subject:

“This Article contains a set of interdependent provisions. In our opinion the last, which refers to advice to be given by the League of Nations, is a most important point to bear in mind in judging the present situation. As it appears that such advice has not yet been given, we think it would be well to draw the Council’s attention to this fact, so that it may decide whether it desires to take action under these clauses.”

[35] The Committee of the Council, before taking this step, had been able to see, inter alia, the observations sent by the Albanian Government to the Secretary-General on July 23rd and November 3rd, 1934, the text of which has been communicated to the Court. It is stated in the report adopted on January 14th, 1935, that a comparison of the legislation in force in Albania with that of 1923 led three Members of the Council to the conclusion that the situation had changed considerably, so that they thought it desirable to draw the Council’s attention to the fact that the recommendations contemplated in Article 5, paragraph 2, of the Albanian Declaration had not yet been formulated.

[36] After discussing the question on the basis of the reports presented by the Spanish representative at the meetings on January 14th and 18th, 1935, the Council decided, by a Resolution adopted on the latter date and the terms of which are reproduced above, to ask the

Court for an advisory opinion on the questions formulated therein.

[37] The request submitted to the Court by the Council of the League of Nations first asks “whether, regard being had to [p15] the above-mentioned Declaration of October 2nd, 1921, as a whole, the Albanian Government is justified in its plea that, as the abolition of the private schools in Albania constitutes a general measure applicable to the majority as well as to the minority, it is in conformity with the letter and the spirit of the stipulations laid down in Article 5, first paragraph, of that Declaration”.

[38] The contention of the Albanian Government is that the above-mentioned clause imposed no other obligation upon it, in educational matters, than to grant to its nationals belonging to racial, religious, or linguistic minorities a right equal to that possessed by other Albanian nationals. Once the latter have ceased to be entitled to have private schools, the former cannot claim to have them either. This conclusion, which is alleged to follow quite naturally from the wording of paragraph 1 of Article 5, would, it is contended, be in complete conformity with the meaning and spirit of the treaties for the protection of minorities, an essential characteristic of which is the full and complete equality of all nationals of the State, whether belonging to the majority or to the minority. On the other hand, it is argued, any interpretation which would compel Albania to respect the private minority schools would create a privilege in favour of the minority and run counter to the essential idea of the law governing minorities. Moreover, as the minority régime is an extraordinary regime, constituting a derogation from the ordinary law, the text in question should, in case of doubt, be construed in the manner most favourable to the sovereignty of the Albanian State.

[39] According to the explanations furnished to the Court by the Greek Government, the fundamental idea of Article 5 of the Declaration was on the contrary to guarantee freedom of education to the minorities by granting them the right to retain their existing schools and to establish others, if they desired; equality of treatment is, in the Greek Governments’ opinion, merely an adjunct to that right, and cannot impede the purpose in view, which is to ensure full and effectual liberty in matters of education. Moreover, the application of the same régime to a majority as to a minority, whose needs are quite different, would only create an apparent equality, whereas the Albanian Declaration, consistently with ordinary minority law, was designed to ensure a genuine and effective equality, not merely a formal equality.

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[40] The Declaration of October 2nd, 1921, belongs to the numerous category of international acts designed for the protection of minorities. [p16]

[41] The Greek Government recognizes this fact, but it contends that the Declaration must be construed in the light of the historical and social conditions of Albania, and with regard, in particular, to the fact that the rights of the minorities had been long in existence in the Near East, where they were known by the name of community rights.

[42] In accordance with this line of argument, Counsel for the above-mentioned Government gave prominence, in the course of his oral statement, to the points of difference which exist between the Albanian Declaration and the other treaties and declarations of the same kind which have been mentioned above. Thus, he drew attention to the insertion in the second sentence of paragraph 1 of Article 5 of the words “to maintain”, which do not appear in the other treaties and declarations, and which, in his submission, were intended to ensure the continuation of the religious and educational autonomy that was enjoyed by the Greek communities in Albania.

[43] It is only natural to assume that the conditions which existed in Albania after the war and which were themselves the consequence of previous historic events, were within the knowledge of the Assembly of the League of Nations when it included Albania in its recommendation on December 15th, 1920. It is moreover certain that the Declaration of October 2nd, 1921, was drawn up after a prolonged examination, during which the States concerned had an opportunity of stating their points of view and supplying all relevant information.

[44] There appears therefore no reason to doubt that certain special aspects of the situation of the minorities in Albania - for instance the existence of religious communities mentioned in paragraph 2 of Article 5 of the Albanian Declaration - were taken into consideration by the Council, and that they accounted for certain differences between the Albanian Declaration and the other treaties and declarations concerned with the protection of minorities.

[45] These considerations cannot however prevail against the fact that what the Council of the League of Nations asked Albania to accept, and what Albania did accept, was a régime of minority protection substantially the same as that which had been already agreed upon with other States in which there were no "communities".

[46] The differences between the text of the Albanian Declaration and the other texts of the same kind do not affect the essential features of that Act. On the other hand, it is a fact that the Council did not insert in the Declaration certain proposals of the Greek Government which departed "from the general principles adopted in all the treaties for the protection of minorities". It follows that any rights and privileges which the Greek communities in Albania may have enjoyed are only recognized [p17] in the Declaration of October 2nd, 1921, in so far as they are covered by the analogous regime of the protection of minorities.

[47] As the Declaration of October 2nd, 1921, was designed to apply to Albania the general principles of the treaties for the protection of minorities, this is the point of view which, in the Court's opinion, must be adopted in construing paragraph 1 of Article 5 of the said Declaration.

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[48] The idea underlying the treaties for the protection of minorities is to secure for certain elements incorporated in a State, the population of which differs from them in race, language or religion, the possibility of living peaceably alongside that population and cooperating amicably with it, while at the same time preserving the characteristics which distinguish them from the majority, and satisfying the ensuing special needs.

[49] In order to attain this object, two things were regarded as particularly necessary, and have formed the subject of provisions in these treaties.

[50] The first is to ensure that nationals belonging to racial, religious or linguistic minorities shall be placed in every respect on a footing of perfect equality with the other nationals of the State.

[51] The second is to ensure for the minority elements suitable means for the preservation of their racial peculiarities, their traditions and their national characteristics.

[52] These two requirements are indeed closely interlocked, for there would be no true equality between a majority and a minority if the latter were deprived of its own institutions, and were consequently compelled to renounce that which constitutes the very essence of its being as a minority.

[53] In common with the other treaties for the protection of minorities, and in particular with the Polish Treaty of June 28th, 1919, the text of which it follows, so far as concerns the question before the Court, very closely and almost literally, the Declaration of October 2nd, 1921, begins by laying down that no person shall be placed, in his relations with the Albanian authorities, in a position of inferiority by reason of his language, race or religion. Thus, Article 2 stipulates for all inhabitants of Albania a certain minimum of rights, which are to be granted to them “without distinction of birth, nationality, language, race or religion”; and Article 3 guarantees that Albanian nationality will not be refused to any person fulfilling the conditions mentioned in that Article.

[54] Article 4 only relates to Albanian nationals and stipulates on their behalf equality before the law and the enjoyment of [p18] the same civil and political rights, without distinction as to race, language or religion. It also defines certain of these rights, with the same object of preventing differences of race, language or religion from becoming a ground of inferiority in law or an obstacle in fact to the exercise of the rights in question.

[55] In all these cases, the Declaration provides for a régime of legal equality for all persons mentioned in the clause; in fact no standard of comparison was indicated, and none was necessary, for at the same time that it provides for equality of treatment the Declaration specifies the rights which are to be enjoyed equally by all.

[56] After having regulated, as indicated above, the legal position of certain persons who, whether or not possessing Albanian nationality, come under Albanian sovereignty, and the legal position of Albanian nationals in general, the Declaration goes on to make special provision for Albanian nationals belonging to minorities of race, language or religion. That is the subject dealt with in paragraph 1 of Article 5, the provision which is expressly referred to in the first question put to the Court, and with which the Court must now occupy itself more particularly.

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[57] It has already been remarked that paragraph 1 of Article 5 consists of two sentences, the second of which is linked to the first by the words in particular: for a right apprehension of the second part, it is therefore first necessary to determine the meaning and the scope of the first sentence.

[58] This sentence is worded as follows:

“Albanian nationals who belong to racial, linguistic or religious minorities, will enjoy the same treatment and security in law and in fact as other Albanian nationals.”

[59] The question that arises is what is meant by the same treatment and security in law and in fact.

[60] It must be noted to begin with that the equality of all Albanian nationals before the law has already been stipulated in the widest terms in Article 4. As it is difficult to admit that Article 5 set out to repeat in different words what had already been said in Article 4, one is led to the conclusion that “the same treatment and security in law and in fact” which is provided for in Article 5 is not the same notion as the equality before the law which is provided for in Article 4.

[61] Moreover, as Article 4 stipulates equality before the law for all Albanian nationals, while Article 5 stipulates the “same treatment and security in law and in fact” for Albanian nationals

[p19] belonging to racial, religious or linguistic minorities as compared with other Albanian nationals, it is natural to conclude that the “same treatment and security in law and in fact” implies a notion of equality which is peculiar to the relations between the majority and minorities.

[62] This special conception finds expression in the idea of an equality in fact which in Article 5 supplements equality in law. All Albanian nationals enjoy the equality in law stipulated in Article 4 ; on the other hand, the equality between members of the majority and of the minority must, according to the terms of Article 5, be an equality in law and in fact.

[63] It is perhaps not easy to define the distinction between the notions of equality in fact and equality in law ; nevertheless, it may be said that the former notion excludes the idea of a merely formal equality; that is indeed what the Court laid down in its Advisory Opinion of September 10th, 1923, concerning the case of the German settlers in Poland (Opinion No. 6), in which it said that:

“There must be equality in fact as well as ostensible legal equality in the sense of the absence of discrimination in the words of the law.”

[64] Equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of different treatment in order to attain a result which establishes an equilibrium between different situations.

[65] It is easy to imagine cases in which equality of treatment of the majority and of the minority, whose situation and requirements are different, would result in inequality in fact; treatment of this description would run counter to the first sentence of paragraph 1 of Article 5. The equality between members of the majority and of the minority must be an effective, genuine equality ; that is the meaning of this provision.

[66] The second sentence of this paragraph provides as follows:

“In particular they shall have an equal right to maintain, manage and control at their own expense or to establish in the future, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.”

[67] This sentence of the paragraph being linked to the first by the words “in particular”, it is natural to conclude that it envisages a particularly important illustration of the application of the principle of identical treatment in law and in fact that is stipulated in the first sentence of the paragraph. For the institutions mentioned in the second sentence are indispensable to enable the minority to enjoy the same treatment as the [p20] majority, not only in law but also in fact. The abolition of these institutions, which alone can satisfy the special requirements of the minority groups, and their replacement by government institutions, would destroy this equality of treatment, for its effect would be to deprive the minority of the institutions appropriate to its needs, whereas the majority would continue to have them supplied in the institutions created by the State.

[68] Far from creating a privilege in favour of the minority, as the Albanian Government avers, this stipulation ensures that the majority shall not be given a privileged situation as compared with the minority.

[69] It may further be observed that, even disregarding the link between the two parts of paragraph 1 of Article 5, it seems difficult to maintain that the adjective “equal”, which qualifies the word “right”, has the effect of empowering the State to abolish the right, and thus

to render the clause in question illusory; for, if so, the stipulation which confers so important a right on the members of the minority would not only add nothing to what has already been provided in Article 4, but it would become a weapon by which the State could deprive the minority régime of a great part of its practical value. It should be observed that in its Advisory Opinion of September 15th, 1923, concerning the question of the acquisition of Polish nationality (Opinion No. 7), the Court referred to the opinion which it had already expressed in Advisory Opinion No. 6 to the effect that “an interpretation which would deprive the Minorities Treaty of a great part of its value is inadmissible”.

[70] If the object and effect of the second sentence of the paragraph is to ensure that Albanian nationals belonging to racial, linguistic or religious minorities shall in fact enjoy the same treatment as other Albanian nationals, it is clear that the expression “equal right” must be construed on the assumption that the right stipulated must always be accorded to the members of the minority. The idea embodied in the expression “equal right” is that the right thus conferred on the members of the minority cannot in any case be inferior to the corresponding right of other Albanian nationals. In other words, the members of the minority must always enjoy the right stipulated in the Declaration, and, in addition, any more extensive rights which the State may accord to other nationals. The right provided by the Declaration is in fact the minimum necessary to guarantee effective and genuine equality as between the majority and the minority; but if the members of the majority should be granted a right more extensive than that which is provided, the principle of equality of treatment would come into play and would require that the more extensive right should also be granted to the members of the minority.
[p21]

[71] The construction which the Court places on paragraph 1 of Article 5 is confirmed by the history of this provision.

[72] No. 5 of the proposals which the Greek Government submitted to the Council of the League of Nations on May 17th, 1921, and which have in part been reproduced above, was worded as follows:

“That all Albanian subjects belonging to racial, religious or linguistic minorities should enjoy the same treatment and the same security, both in fact and in law, as other Albanian subjects; and that they should be entitled to establish, to administer and to control at their own expense, charitable, religious or scholastic institutions of all kinds, to employ their own language and to practise their own religion freely without interference by the authorities, provided that the interest of public order is safeguarded.”

[73] It is clear that the right of minorities to have their own charitable, religious or educational institutions was envisaged in that proposal as a right which they were to enjoy in any case, irrespective of the legal situation of other Albanian nationals.

[74] This proposal was not contested by the Albanian Government in its reply of June 21st of the same year, the relevant part of which has been quoted above; and the report submitted to the Council by the British representative on October 2nd observed that the Declaration met most of the Greek Government’s suggestions. The points mentioned in the report in which it failed to do so, in no case affect the subject of the proposal in question. That being so, the Court is unable to attach any importance to the fact that the word “equal” does not appear in the fifth Greek proposal, whereas it is used in Article 5 of the Albanian Declaration which, in this respect, follows the exact wording of the minorities treaties.

[75] On the other hand, it was probably with the object of meeting, in so far as was consistent with the general minority régime, the desire expressed by the Greek Government in its sixth proposal that the words “to maintain”, which do not appear in Article 8 of the Treaty with

Poland of June 28th, 1919, were inserted in paragraph 1 of Article 5.

[76] Another argument in support of the interpretation placed by the Court on paragraph 1 of Article 5 is supplied by Article 6 of the Declaration, which is worded as follows:

“Provision will be made in the public educational system in towns and districts in which are resident a considerable proportion of Albanian nationals whose mother-tongue is not the official language, for adequate facilities for ensuring that in the primary schools instruction shall be given to the children of such nationals through the medium of their own language, it being understood that this provision does not prevent teaching of the official language being made obligatory in the said schools. [p22]

In towns and districts where there is a considerable proportion of Albanian nationals belonging to racial, religious or linguistic minorities, these minorities will be assured an equitable share in the enjoyment and application of sums which may be provided out of public funds under the State, municipal or other budgets, for educational, religious or charitable purposes.”

[77] Beginning as it does with the words “in the public educational system”, which thus follow directly after Article 5, Article 6 appears to assume that State education, so far as it is intended for members of the minorities, will be something additional to private education, and is not meant to take the place of private education. For that reason, the Court cannot regard as relevant the information supplied to it by the Albanian Government concerning the present conditions of State education in Albania and the reforms already introduced, or about to be introduced, in order to meet the needs of the minority in the State schools.

*

[78] The Court, having thus established that paragraph 1 of Article 5 of the Declaration, both according to its letter and its spirit, confers on Albanian nationals of racial, religious or linguistic minorities the right that is stipulated in the second sentence of that paragraph, finds it unnecessary to examine the subsidiary argument adduced by the Albanian Government to the effect that the text in question should in case of doubt be interpreted in the sense that is most favourable to the sovereignty of the State.

*

[79] The Court therefore finds that paragraph 1 of Article 5 of the Declaration of October 2nd, 1921, ensures for Albanian nationals belonging to racial, linguistic or religious minorities the right to maintain, manage and control at their own expense or to establish in the future charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

*

[80] The second question in regard to which the opinion of the Court is solicited is worded as follows:

“2° and if so [i. e. if the Albanian plea on the first question is deemed to be in conformity with the letter and spirit of the stipulations in Article 5, first paragraph, of the Declaration of October 2nd, 1921], whether the Council of the League of Nations can, on the basis of the second paragraph of the said Article, [p23] formulate recommendations going beyond the provisions of the first paragraph”.

[81] As the Court has found that the reply to the first question put to it is not in the affirmative, the second question does, not arise.

[82] FOR THESE REASONS,

The Court is of opinion,

by eight votes to three,

that the plea of the Albanian Government that, as the abolition of private schools in Albania constitutes a general measure applicable to the majority as well as to the minority,, it is in conformity with the letter and spirit of the stipulations laid down in Article 5, first paragraph, of the Declaration of October 2nd, 1921, is not well founded.

[83] Done in English and French, the French text being authoritative, at the Peace Palace, The Hague, this sixth day of April, one thousand nine hundred and thirty-five, in two copies, one of which is to be deposited in the archives of the Court and the other to be forwarded to the Council of the League of Nations.

(Signed) Cecil J. B. Hurst,

President.

(Signed) Å. Hammarskjöld,

Registrar.

[84] Sir Cecil Hurst, President of the Court, Count Rostworowski and M. Negulesco, Judges, declare that they are unable to concur in the Opinion given by the Court and, availing themselves of the right conferred on them by Article 71, paragraph 3, of the Rules, have appended thereto the dissenting opinion which follows.

(Initialed) C J. B. H.

(Initialed) A. H. [p24]

Dissenting Opinion by Sir Cecil Hurst, Count Rostworowski and M. Negulesco.

[85] The undermentioned are unable to concur in the opinion rendered by the Court. They can see no adequate reason for holding that the suppression of the private schools effected in Albania in virtue of Articles 206 and 207 of the Constitution of 1933 is not in conformity with the Albanian Declaration of October 2nd, 1921.

[86] The question put to the Court is drafted in such a way that the answer to it must depend on the interpretation to be placed on the first paragraph of Article 5 of the Declaration, but the interpretation is to be arrived at with due regard to the contents of the Declaration as a whole and with due regard to the spirit as well as the letter of Article 5, paragraph 1.

[87] The first paragraph of Article 5 of the Declaration consists of two sentences. The first stipulates that Albanian nationals who belong to racial, religious or linguistic minorities are to enjoy the same treatment and security in law and in fact as other Albanian nationals. The second says that “In particular they [i. e. the members of the minority] shall have an equal right to maintain, manage and control at their own expense or to establish in the future charitable, religious and social institutions, schools and other educational establishments with the right to use their own language and to exercise their religion freely therein.”

[88] The construction of the paragraph is clear and simple. The first sentence stipulates for the treatment and the security being the same for the members of the minority as for the other Albanian nationals. The second provides that as regards certain specified matters the members of the minority shall have an equal right. The two sentences are linked together by the words “In particular” (notamment). These words show that the second sentence is a particular application of the principle enunciated in the first. If the rights of the two categories under the first sentence are to be the same, the equal right provided for in the second sentence must

indicate equality between the same two categories, viz. the members of the minority and the other Albanian nationals. The second sentence is added because the general principle laid down in the first sentence mentions only “treatment and security in law and in fact”—a phrase so indefinite that without further words of precision it would be doubtful whether it covered the right to [p25] establish and maintain charitable, religious and social institutions and schools and other educational establishments, but the particular application of the general principle of identity of treatment and security remains governed by the dominating element of equality as between the two categories.

[89] The word “equal” implies that the right so enjoyed must be equal in measure to the right enjoyed by somebody else. “They shall have an equal right” means that the right to be enjoyed by the people in question is to be equal in measure to that enjoyed by some other group. A right which is unconditional and independent of that enjoyed by other people cannot with accuracy be described as an “equal right”. “Equality” necessarily implies the existence of some extraneous criterion by reference to which the content is to be determined.

[90] If the text of the first paragraph of Article 5 is considered alone, it does not seem that there could be any doubt as to its interpretation. It is, however, laid down in the Opinion from which the undersigned dissent that if the general purpose of the minority treaties is borne in mind and also the contents of the Albanian Declaration taken as a whole, it will be found that the “equal right” provided for in the first paragraph of Article 5 cannot mean a right of which the extent is measured by that enjoyed by other Albanian nationals, and that it must imply an unconditional right, a right of which the members of the minority cannot be deprived.

[91] If that interpretation of Article 5, paragraph 1, is correct, there can be no doubt that the closing of all private schools in Albania in virtue of Articles 206 and 207 of the Constitution of 1933 would not be consistent with the Albanian Declaration of 1921.

[92] The point at issue may shortly be described as being whether the intention of this article in the Albanian Declaration was to rule out discrimination as regards the maintenance and establishment of charitable institutions and schools, etc., or whether the intention was to grant to the minority an unconditional right to maintain and create their own charitable institutions and schools.

[93] The conclusion at which the undersigned have arrived is that it was the former. The view adopted by the Court is that the paragraph intended to confer an unconditional right.

[94] As the opinion of the Court is based on the general purpose which the minorities treaties are presumed to have had in view and not on the text of Article 5, paragraph 1, of the Albanian Declaration, it involves to some extent a departure from the principles hitherto adopted by this Court in the interpretation [p26] of international instruments, that in presence of a clause which is reasonably clear the Court is bound to apply it as it stands without considering whether other provisions might with advantage have been added to it or substituted for it, and this even if the results following from it may in some particular hypothesis seem unsatisfactory.

[95] The conclusion reached by the Court as to the interpretation of this phrase in paragraph 1 of Article 5 may be summarized as follows : Equality in law and fact not merely excludes all discrimination between the majority and the minority, but may necessitate different treatment of the majority and the minority so as to produce an equilibrium between their respective situations. The institutions enumerated in this first paragraph of Article 5 are essential to the minority if that minority is to enjoy the same treatment as the majority. For the same reason the preservation of a right for the minority to maintain private schools is necessary in order to exclude a privileged position for the majority. The phrase “equal right” in the second sentence of paragraph 1 of Article 5 must therefore be interpreted upon the basis that a right for the

minority to possess the institutions mentioned in this paragraph of Article 5 must always be recognized.

[96] The undersigned are unable to concur in this view. Article 5 does not constitute a mere repetition of the equality before the law which has already been prescribed by Article 4 of the Declaration. It is intended to complete it. Article 4 prescribes for all Albanian citizens equality before the law and the enjoyment of the same civil and political rights without distinction as to race, language or religion. The value of the addition provided by Article 5 is that it emphasizes the principle that the members of the minority - over and above the theoretical equality mentioned in Article 4 - are to enjoy the same treatment and the same security in law and in fact as the other Albanian nationals: that means that, on the one hand, in actual practice they are to be treated in the same manner as their fellow-nationals and, on the other hand, there is to be given to them equal opportunity to give effect to their rights and to have them respected. This provision, therefore, is intended to reinforce the idea of equality - to exclude an outward equality which would be no more than a platonic or paper equality. It is intended to render the equality effective and real. There is nothing, however, in the wording of the provision to show that this equality in law may be disregarded and replaced by a system of different treatments for the minority and the majority so as to establish an equilibrium between them.

[97] The intention of the authors of the text appears to be that of consolidating the legal situation of the members of the [p27] minority, not that of depriving it of the sound basis provided by equality and of introducing an elusive search after a perfect equilibrium.

[98] Furthermore, the suppression of the private schools - even if it may prejudice to some appreciable extent the interests of a minority - does not oblige them to abandon an essential part of the characteristic life of a minority. In interpreting Article 5, the question whether the possession of particular institutions may or may not be important to the minority cannot constitute the decisive consideration. There is another consideration entitled to equal weight. That is the extent to which the monopoly of education may be of importance to the State. The two considerations cannot be weighed one against the other: Neither of them - in the absence of a clear stipulation to that effect - can provide an objective standard for determining which of them is to prevail.

[99] International justice must proceed upon the footing of applying treaty stipulations impartially to the rights of the State and to the rights of the minority, and the method of doing so is to adhere to the terms of the treaty - as representing the common will of the parties - as closely as possible.

[100] If the interpretation of the first paragraph of Article 5 of the Declaration adopted in the Opinion of the Court is well-founded, there is one source of information as to the meaning of the minorities treaties in which one would expect to find this principle clearly enunciated. It is the letter signed by the President of the Peace Conference in Paris in 1919, and addressed to M. Paderewski, the leader of the Polish delegation.

[101] It is common ground that the Albanian Declaration is one of the series of instruments for the protection of minorities, and that the first of these instruments was the Treaty of June 28th, 1919, between the Principal Allied and Associated Powers and Poland.

[102] Albania signed the Declaration of October 2nd, 1921, in order to give effect to the Resolution adopted by the First Assembly of the League in 1920 recommending that if the Baltic and Caucasian States and Albania were admitted to the League they should take steps to ensure the application of the general principles laid down in the minorities treaties.

[103] Albania made no objection to doing so and signed in due course a Declaration which

was prepared by the Secretariat and accepted by the Council on October 2nd, 1921.

[104] A comparison of the text of the Albanian Declaration with the Polish Minority Treaty of June 28th, 1919, shows that it follows closely the wording of the latter, just as do the other treaties and declarations for the protection of minorities. Special [p28] provisions applicable only to the particular country concerned figure in most of the treaties and declarations, but there remains a body of stipulations which are common to the whole number, and it is not disputed that the Albanian Declaration conforms to the general type. Some variations of wording were introduced, even in the first paragraph of Article 5, but it is admitted in the Opinion of the Court that these are of secondary importance. They do not affect the point at issue in this case.

[105] Being in conformity with the general type of minority instrument, words and phrases which are common both to the Declaration and to other treaties must be interpreted alike in all; otherwise the obligations of the various Powers bound by such treaties would become divergent.

[106] When the Principal Allied and Associated Powers called on Poland to sign the first of the minority treaties, their purpose was explained at length in the letter from M. Clemenceau to which reference is made above. This letter sets out the reasons which actuated the Principal Allied and Associated Powers in their policy; it calls attention to the various historical precedents; it indicates the grounds on which it has been found necessary to frame articles for the new treaty which differ to some extent from those adopted on previous occasions, and then gives an explanation of the individual clauses of the treaty.

[107] The explanations will be understood more readily if it is remembered that in the Albanian Declaration Article 1 corresponds to Article 1 of the Polish Treaty; Article 2 corresponds to Article 2 of the Treaty, but contains also a special provision as to the family rights of Mohammedans; Article 3 deals with nationality and covers the ground of Articles 3, 4, 5 and 6 of the Treaty. Article 4 corresponds to Article 7 of the Treaty, but contains an additional paragraph as to the introduction of a suitable electoral system. Articles 5 and 6 correspond to Articles 8 and 9 of the Treaty.

[108] Far from supporting the interpretation which the Opinion of the Court places upon Article 5 of the Albanian Declaration, all that the Clemenceau letter says as to Article 8 in the Polish Treaty is as follows:

“Articles 7 and 8 which are in accordance with precedent provide against any discrimination against those Polish citizens who by their religion, their language or their race differ from the large mass of the Polish population.”

[109] Not a word is said as to its being the intention of the article to grant an unconditional right to the minority to maintain [p29] institutions and schools. The object is stated to be that of excluding discrimination, i. e. differential treatment. The letter shows in fact that the intention of the provision was exactly what the text implies, viz. a right for the minority equal to that enjoyed by the majority.

[110] The statement in the Clemenceau letter that Articles 7 and 8 of the Polish Treaty are in accordance with precedent is also worthy of notice in view of the conclusion reached in the Opinion of the Court that the institutions referred to, including schools, are essential to the minority, and that the right for the minority to possess them must always be recognized.

[111] The earlier part of the Clemenceau letter stresses the fact that the Powers, in framing the Polish Treaty, have been giving effect to principles frequently adopted in European history

during the XIXth century. No document, however, which has been brought to the attention of the Court, has mentioned any occasion upon which there have been imposed upon new States, before the date of the Polish Treaty, obligations covering educational matters or conferring upon minorities an unconditional right to maintain institutions of the character referred to in Article 5. If the conclusion reached in the Opinion of the Court is well-founded as to the interpretation of this Article 5, paragraph 1, it is difficult to understand the statement in the Clemenceau letter that this article is “in accordance with precedent”.

[112] Among the papers which the Court has had before it in the present case are the various communications which passed between the Secretary-General of the League and the representatives of the Albanian and Greek Governments before the signature of the Albanian Declaration in October, 1921.

[113] As said above, what the Assembly Resolution of 1920 called upon Albania to do if admitted to the League was to ensure the application of the general principles laid down in the minority treaties.

[114] This wording was repeated in the note sent by the Secretary-General of the League to the Albanian Government. The Albanian Government in its reply of February 9th, 1921, said that it adhered entirely to the general provisions concerning minorities, and proceeded to give full information as to the situation in Albania on the subject.

[115] In May, 1921, the Director of the Permanent Greek Secretariat with the League of Nations sent a note to the Secretariat of the League in which the question was raised whether in the case of Albania it would be sufficient to apply only the general principles laid down in the minority treaty. The note went on to urge that in view of the peculiar conditions [p30] in Albania she ought to subscribe to special provisions. It then set out a series of suggestions for inclusion in the proposed Declaration and described them as “*outré les principes généraux inscrits dans les traités de minorités*”. The fifth suggestion is worded as follows:

“50 Que tous les ressortissants albanais appartenant à des minorités de race, de religion ou de langue jouissent du TÊTE traitement et de la même sécurité en droit et en fait que les autres ressortissants albanais, et qu'ils aient le droit d'établir, d'administrer et de contrôler à leurs propres frais des institutions charitables, religieuses ou scolaires de tous degrés avec droit de se servir de leur propre langue et d'exercer leur propre religion librement sans immixtion des autorités, excepté dans le cas d'ordre public.”

[116] The general similarity between this suggestion on the one hand and the normal type of minority provision exemplified by Article 8 of the Polish Treaty is remarkable: the difference is that with regard to the establishment of charitable institutions and schools it drops the word “equal”. The result would be to confer the right unconditionally.

[117] The Albanian note in reply, after dealing with the general considerations advanced in the Greek note, adds some remarks with regard to each of the Greek suggestions. As to No. 5, all that it says is: “Le traitement égal en droit et en fait existe pour tous les citoyens albanais sans distinction de religion.”

[118] It is stated in the Opinion of the Court that the Greek suggestion was not contested by the Albanian Government. The undersigned are unable to accept that view.

[119] The Greek proposal was only made because Greece considered that something going beyond the provision of the normal minority treaty was wanted. To any such stipulations Albania had not been asked by the League to agree, nor had she ever consented to do so. “Equal treatment” was all that the minority treaties required, and the existence of such equal

treatment in fact in Albania her note places on record. Her answer cannot be treated as implying the absence of objection to the Greek proposal.

[120] The Declaration framed by the Secretariat, adopted by the Council and signed by Albania, restores the word “equal” and thereby brings the provision on which the decision in this case turns back into line with Article 8 of the Polish Treaty, the article which is described in the Clemenceau letter as “providing against any discrimination”.

[121] It is said in the Opinion that there is no practical difference between the Greek suggestion and the clause inserted in the Albanian Declaration as Article 5, paragraph 1. If that argument is sound, it is difficult to see why Greece included [p31] suggestion No. 5 among those to be inserted in the Albanian Declaration as something additional to the general principles of a minority treaty. Greece was herself a signatory of a minority treaty and must have been well aware of the measure of the obligations she had undertaken.

[122] It remains to consider whether the text of the Albanian Declaration, taken as a whole and apart from such indications as exist of the intentions of the minority treaties and declarations in general, affords any support to the view that “equal right” in Article 5 was intended to convey an unconditional right and not to mean that the rights of the minority were to be equal to the rights possessed by the other Albanian nationals.

[123] The Declaration contains no preamble. That source of potential guidance in the interpretation of the instrument is therefore lacking. The provisions affecting the status and the rights of individuals in Albania are to be found in Articles 2, 3, 4, 5 and 6. Article 2 guarantees protection of life and liberty to all the inhabitants of Albania without distinction, with the right to the free exercise of their religion. Article 3 ensures Albanian nationality to all persons born in the territory unless born the nationals of some other State, and to all persons domiciled there before the war if they apply for it. It also gives to Albanian nationals who become Greek by the transfer of certain territory to Greece a right to opt for Albanian nationality.

[124] Article 4 prescribes that all Albanian nationals are to be equal before the law and to enjoy the same political rights. Differences of religion are to be of no account as regards enjoyment of civil and political rights and admission to public functions and to employments.

[125] The element that is common to all these three articles is that they set up a standard which is to be universal. That standard is fixed for everybody, quite irrespective of whether they belong to a minority or not. NO doubt they operate so as to protect a member of the minority, but this is due to the fact that such member is an inhabitant of, or was born in, the territory, or is an Albanian citizen, not because he belongs to the minority.

[126] Article 5 is conceived on a different plan; its first sentence confers rights on the members of the minority as such. It introduces a standard of comparison by prescribing that the treatment or the security is to be the same as that enjoyed by the other Albanian nationals. It ceases to prescribe a universal rule, it legislates for the minority alone, but guarantees to them the same treatment and security as is given to [p32] the others. It is left to the State to determine what the measure of that treatment and security is to be.

[127] If the intention of the second sentence: “In particular they [the minority] shall have an equal right....”, had been that the right so given should be universal and unconditional, there is no reason why the draftsman should not have dealt with the right to establish institutions and schools in the earlier articles. The draftsman should have dealt with the liberty to maintain schools and other institutions on lines similar to those governing the right to the free exercise of religion, which undoubtedly is conferred as a universal and unconditional right. Instead of doing so the right conferred upon the minority is an “equal” right, and it is conferred by a

sentence which - as pointed out in the earlier part of this Dissenting Opinion - is shown by the presence of the words "In particular" (notamment) to be a detailed application of the general principle laid down in the sentence which precedes it.

[128] The examination of the text of the Declaration taken as a whole therefore gives no confirmation to the view that it was the intention of the first paragraph of Article 5 to confer an unconditional right.

[129] In the opinion of the undersigned, there are no sufficient reasons for discarding the natural meaning of the words employed in the second sentence of paragraph 1 of Article 5. To interpret the provision as meaning that it confers an unconditional right not merely runs counter to the natural sense of the words but disregards the explanation of the corresponding provision of the Polish Treaty as given in the Clemenceau letter, namely, that it is a prohibition of discrimination. Furthermore, this interpretation takes no sufficient account of the events leading up to the preparation of the text of the Declaration, in particular of the fact that the Greek Government asked for the insertion of a provision which would have conferred an unconditional right and made this request upon the ground that it was necessary in the case of Albania to go beyond the usual provisions of a minority treaty, and of the fact that the Council, instead of inserting the Greek proposal, used a wording on the same lines as that adopted in other minority treaties.

[130] For these reasons the first question put to the Court should, in the opinion of the undersigned, be answered in the affirmative.

(Signed) Cecil J. B. Hurst

(,,) M. Rostworowski.

(,,) Demetre Negulesco. [p33]

Annex.

1. - DOCUMENTS ANNEXED TO THE REQUEST FOR AN OPINION.

1. Extract from the minutes of the 84th Session of the Council (6th meeting, Jan. 18th, 1935).
2. Report presented to the Council by the representative of Spain (adopted on Jan. 18th, 1935).
3. Extract from the minutes of the 14th Session of the Council 11th meeting, Oct. 2nd, 1921).
- 4 - 5. Report presented to the Council by the British representative (Oct. 2nd, 1921), and Albanian Declaration made before the Council (Oct. 2nd, 1921).
6. Extract from the minutes of the 84th Session of the Council (3rd meeting, Jan. 14th, 1935).
7. Report presented to the Council by the representative of Spain (adopted on Jan. 14th, 1935).
8. Letter from the representatives of the United Kingdom, of Mexico and of Portugal to the Secretary-General (Nov. 21st, 1934).
9. Extract from the minutes of the 18th Session of the Council (2nd meeting, Jan. 12th, 1922).
10. Memorandum by the Secretary-General (communicated to the Council on May 12th, 1922).
11. Report from the Albanian Minister for Foreign Affairs to the Council (July 7th, 1922).
12. Extract from the minutes of the 21st Session of the Council (3rd meeting, Sept. 1st, 1922).
13. Report presented to the Council by the representative of Brazil (adopted on Sept. 1st, 1922).
14. Extract from the minutes of the 25th Session of the Council (12th meeting, July 7th, 1923).
15. Memorandum by the Secretary-General (communicated to the Council on July 7th, 1923).
16. Albanian law with regard to the legal status of religious communities (June 5th, 1923).
17. Extract from the minutes of the 26th Session of the Council (13th meeting, Sept. 17th,

1923).

18. Report presented to the Council by the representative of Brazil (adopted on Sept. 17th, 1923).

19. Memorandum by the Secretariat (communicated to the Council on May 14th, 1924).

20. Albanian law with regard to religious communities (Jan. 9th, 1930).

21. Letter from the Albanian Minister for Foreign Affairs to the Secretary-General (Nov. 3rd, 1934).

22. Idem (Dec. 21st, 1934).

Annexes to No. 22:

1. Greek-speaking villages having complete elementary schools in which Greek is exclusively used as the medium for instruction.

2. Greek-speaking villages without schools.

3. Teachers using Greek only as the medium for instruction.

4. Comparative Table (Albanian and Greek pupils).

5. Comparative Table (Greek-speaking pupils in Albania and pupils in Greece). [p34]

6. Circular of the Albanian Ministry of Public Education (Nov. 8th, 1934).

7. Idem (Nov. 14th, 1930).

23. Observations by the Albanian Government (Dec. 23rd, 1934).

Annexes to No. 23:

1. Comparative Table (schools using the Greek language: private and State).

2. Villages appearing in the petitioners' list but having less than 250 inhabitants.

3. Books in use for instruction in the Greek language

4. Comparative Table (Albanian schools and schools using the Greek language and their expenses).

5. Villages with less than 100 inhabitants having a Greek school.

II. - Documents Mentioned in the Memorial of the Albanian Government or in the Memorial of the Greek Government and Collected by the Registry.

1. Albanian Declaration made before the Council on October 2nd, 1921.

2. "Privileges of the (Ecumenical Patriarchate." Texts reproduced in: *Les Privilèges du Patriarcat œcuménique (communauté grecque orthodoxe) dans l'Empire ottoman*, thesis for the degree of doctor by Const. G. Papadopoulos (Paris, 1924).

3. Letter from M. Clemenceau to M. Paderewski (June 24th, 1919)

4. Treaty of London (May 17/30th, 1913).

5. Protocol of Florence (Dec. 17th, 1913).

6. Note from the Great Powers to the Greek Government (Jan. 31st/Feb. 13th, 1914).

7. Note from the Greek Government in reply to the foregoing (Feb. 8th/21st, 1914).

8. Note to the Great Powers in reply to the foregoing (April 11th/24th, 1914).

9. Agreement between Albania and the International Commission of Control ("Corfu Agreement"; May 17th, 1914).

10. Agreement between representatives of Albania and representatives of the Greek Government ("Kapishtiça Agreement": May 15th, 1914).

11. [I.] "Protection of linguistic, racial and religious Minorities by the League of Nations. Provisions contained in the various international instruments at present in force" (Geneva, 1927).

12. [II.] "Protection of linguistic, racial and religious Minorities by the League of Nations. Resolutions and extracts from the Minutes of the Council, Resolutions and Reports adopted by the Assembly, relating to the procedure to be followed in questions concerning the protection of minorities" (2nd ed., Geneva, 1931).

13. The Albanian Constitution of 1925, in: *Jahrbuch des öffentlichen Rechts*, Vol. XIV, 1926 (pp. 487-494), and . *Les Constitutions modernes*, etc., by Dareste (4th ed., Vol. I, pp. 39-47).
14. Conference for the codification of International Law, held at The Hague in 1930. (Texts adopted in first leading by the Third Committee and revised by the Drafting Committee.)
15. The case of the Montijo. Decision of the arbitrator (July 26th, 1875). *La Fontaine, La Pasicrisie Internationale*, p. 217.
16. Decisions given on October 19th, 1928, by the Franco-Mexican Mixed Commission presided over by Professor Verzijl, in: *La reparation des dommages causés aux étrangers par des mouvements révolutionnaires. Jurisprudence de la Commission franco-mexicaine des réclamations, 1924-1932* (Paris, A. Pedone, 1933).
17. Declaration made by M. Dendramis, Greek representative at the Sixth Assembly (1925) of the L. of N.. at the 4th meeting of the Sixth Committee.
18. [p35] Recommendation adopted by the First Assembly of the L. of N. (25th plenary meeting, Dec. 15th, 1920).
19. German-Polish Convention concerning Upper Silesia (Geneva, May 15th, 1922).
20. Telegram (Feb. 13th, 1921) and letter (Feb. 9th, 1921) sent by the President of the Albanian Council of Ministers to the Secretary-General of the L. of N. (Council Doc. U. 5, of Feb. 16th, 1921).
21. Letter (May 17th, 1921) and memorandum sent to the Secretary-General by M. V. Dendramis, Director of the Permanent Greek Secretariat attached to the L. of N. (L. of N. Doc. C 47. M 23. 1921. I).
22. Note (June 21st, 1921) sent to the Secretary-General of the L. of N. by the Albanian President of the Council and Minister for Foreign Affairs (L. of N. Doc. C 224. M. 163. 1921. I).

III. - Text of the Declaration of October 2nd 1921.

“Article 1. - The stipulations of this Declaration are recognized as fundamental laws of Albania and no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action now or in the future prevail over them.

Article 2. - Full and complete] protection of life and liberty will be assured to all inhabitants of Albania, without distinction of birth, nationality, language, race or religion.

All inhabitants of Albania will be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals. They will have the right to change their religion.

Suitable provision will be made in the case of Mussulmans for regulating family law and personal status in accordance with Mussulman usage.

Article 3. - All persons born in Albania who are not born nationals of another State, shall ipso facto be Albanian nationals.

Persons habitually resident in Albania before the war will be allowed, together with their wives and children under eighteen years of age, within two years from the date of this Declaration, to become Albanian citizens, if they make application to that effect.

Albanian nationals habitually resident at the coming into force of the Treaty between the Principal Allied Powers and Greece signed at Sevres on August 10th, 1920, in territories transferred to Greece by treaties subsequent to January 1st, 1913, shall be recognized as becoming Greek nationals ipso facto and without the requirement of any formality. Nevertheless, they will have the right to opt for the Albanian nationality as provided for in Article 3 of the said Treaty of Sevres, and no hindrance shall be put in the way of the exercise of this right. This right must be exercised within one year of the coming into force of that Treaty.

Albania is prepared to comply with any recommendations which may be made by the Council of the League of Nations with respect to the reciprocal and voluntary emigration of persons belonging to ethnical minorities.

Article 4. - All Albanian nationals shall be equal before the law, and shall enjoy the same civil and political rights without distinction as to race, language or religion.

An electoral system giving due consideration to the rights of racial, religious and linguistic minorities will be applied in Albania.

Differences of religion, creed or confession will not prejudice any Albanian national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries. [p36]

No restriction will be imposed on the free use by any Albanian national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

Notwithstanding any establishment of an official language, adequate facilities will be given to Albanian nationals of non-Albanian speech for the use of their language, either orally or in writing before the Courts.

Article 5. - Albanian nationals who belong to racial, religious or linguistic minorities will enjoy the same treatment and security in law and in fact as other Albanian nationals. In particular they shall have an equal right to maintain, manage and control at their own expense or to establish in the future, charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

Within six months from the date of the present Declaration, detailed information will be presented to the Council of the League of Nations with regard to the legal status of the religious communities, Churches, Convents, schools, voluntary establishments and associations of racial, religious and linguistic minorities. The Albanian Government will take into consideration any advice it might receive from the League of Nations with regard to this question.

Article 6. - Provision will be made in the public educational system in towns and districts in which are resident a considerable proportion of Albanian nationals whose mother-tongue is not the official language, for adequate facilities for ensuring that in the primary schools instruction shall be given to the children of such nationals through the medium of their own language; it being understood that this provision does not prevent the teaching of the official language being made obligatory in the said schools.

In towns and districts where there is a considerable proportion of Albanian nationals belonging to racial, religious or linguistic minorities, these minorities will be assured an equitable share in the enjoyment and application of sums which may be provided out of public funds under the State, municipal or other budgets, for educational, religious or charitable purposes.

Article 7. - The stipulations in the foregoing Articles of this Declaration, so far as they affect the persons belonging to racial, religious or linguistic minorities, are declared to constitute obligations of international concern, and will be placed under the guarantee of the League of Nations. No modification will be made in them without the assent of a majority of the Council of the League of Nations.

Any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction or danger of infraction of any of these stipulations, and the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

Any difference of opinion as to questions of law or fact arising out of these Articles between the Albanian Government and any Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. Any such dispute shall if the other Party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

(Signed) F. S. Noli.”