Administrative Court Decision Concerning the National Categorization of Schoolchildren in Moravia, 1913
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Budwińskis Sammlung der Erkenntnisse des k.k. Verwaltungs-gerichtshofes. [Budwiński's Collection of the Decisions of the i.r. Supreme Administrative Court.] Vol. XXXVII (1913). Administrativ-rechtlicher Teil [Section on Administrative Law]. August Ritter von Popelka, ed. Vienna: Manz, 1914. Pages 495-98.]. Translated by Jeremy King, 2004. Explanatory remarks and original German phrasing provided in brackets [].

No. 9549. (A.)

[Summary]
Elementary school:
The claiming of schoolchildren by the Municipal School Council of one nation from the Municipal School Council of the other nation in accordance with the law of 27 November, 1905, *Moravian Provincial Legal Gazette,* No. 4 of 1906, does not count as an appeal [*Rechtsmittel*] against an order or decision by the latter Municipal School Council. Rather, it counts as a petition to the District School Council, as organ of first instance, to render a decision in the legal dispute over the national school belonging of the child being claimed (Moravia).

Decision of April 19, 1913, No. 4167.
The German Municipal School Council in Hohenstadt, residents Johann Lehár and Josef Hubaček, and Josef Škrott in Rudolfsthal, v. Ministry of Religion and Education, regarding the registration of schoolchildren.

"The appeal is denied, as in part inadmissible and in part unfounded."

Reasons for the decision. At the beginning of the 1911/1912 school year, the Czech Municipal School Council in Hohenstadt objected in the cases of 21 children who had been admitted to German elementary schools in Hohenstadt, because of inadequate knowledge of the German language of construction. Of these children, the school directors had admitted pupil Anna Lehár of the basis of belonging to the German race [*Volksstamm*], and pupils Franziska Hubaček and Josef Škrott of the basis of knowledge of the language of instruction. Administrative review [triggered by the Czech objection], in light of the results of an inquiry into the nationality of Anna Lehár and a testing per committee of schoolchildren Franziska Hubaček and Josef Škrott, resulted in the decision here under appeal. The objection regarding Anna Lehár was sustained, and her exclusion [from the German school] was ordered, because the inquiry by the District Captainship regarding the national belonging of the father of the pupils had seemed to determine that he belonged to the Czech nationality, given that he professed the Czech nationality, was born of Czech parents, claimed Czech as his language of daily use in the census, and was registered in the Czech electoral cadastre. The objections of the fathers of schoolchildren Hubaček and Škrott, directed against the very testing of their children (which yielded a positive result) and against the procedures observed in the course of that testing, were overruled, because the parents of school-age children, when making use of a public elementary school, must submit to the organization of that school and to the regulations pertaining thereto. Accordingly, such parents must comply with the measures required for the implementation of the provisions contained in clause 20, paragraph 2, of the law of November 27, 1905, *Moravian Provincial Legal Gazette*, No. 4 of 1906, section 2. Four appeals were filed against this decision.

1. The appeal of Johann Lehár contests appellant's belonging to the Czech race, because for purposes of assignment to a school, conditions determined at the time of admission are decisive. At the time of his child's admission to the German elementary school, he claims, he professed the German nationality. The subsequent profession of the Czech nationality in the course of questioning at the District School Council, he claims, occurred under the pressure of economic relations. The appellant claims to have emphasized that he was of Czech origin, but that he professed the German nationality and had given German as his language of daily use in the most recent census. Although a member of various German associations, he had registered in the Czech electoral cadastre, because of his Czech clientele. In the most recent elections, however, he had requested a transfer to the German electoral cadastre. Accordingly, at the subsequent questioning by the German Municipal School Council, the appellant had professed the German nationality. Belonging to a race, he claims, is a question of consciousness, not of descent. Moreover, belonging simply cannot be determined, or ascertained according to the language of daily use that one happens to speak or the associations or electoral cadastre to which one belongs. The appellant also invokes his right, acknowledged in Article 18 of the Constitution of December 21, 1867, *Imperial Legal Gazette* No. 142, to have his child educated for a profession however and wherever he wishes, as well as the provisions of clauses 139 and 148 of the General Civil Code, which the law of November 27, 1905, did not supersede. Indeed, by its wording ("as a rule"), that law recognized exceptions in favor of the parent's right. Finally, the appeal challenges the procedures employed in testing Anna Lehár, because that testing was ordered directly by the District School Council, and constitutes an arrangement both unlawful and unpedagogical.

2. The appeal of the German Municipal School Council in Hohenstadt finds procedural faults in the fact that the objection concerning Anna Lehár's enrollment was submitted to the District School Council, and adjudicated without consultation of the German Municipal School Council. Furthermore, it claims, the Czech Municipal School Council possesses no jurisdiction [*Ingerenz*] whatsoever over German schools. On the merits of the case [*meritorisch*], the idea that Josef Lehár should belong to the Czech race is contested, with reference to his sworn statement before the Municipal School Council in Hohenstadt.

3. The appeal of Josef Hubaček contests the right of the Czech Municipal School Council to object to the enrollment of his child, whose belonging to the German race is well-known. The objection, furthermore, should not have been adjudicated, because it was submitted to the District School Council, and thus not to the competent authority. The German District School Council, he claims, should have determined the German nationality of the child before ordering the testing. The ordering of a testing infringed on the right of all citizens to equality before the law. Finally, the composition of the testing commission was completely unlawful, because it included a representative of the Czech Municipal School Council and an official of the District Captainship. Unlawful as well was the testing procedure.

4. The appeal of Josef Škrott contests the legitimacy of testing his son, because according to Article 19 of the Constitution and to provisions of the General Civil Code, everyone has the right to provide for the upbringing of his children as he sees fit. The Czech Municipal School Council, furthermore, has no right to interfere in the affairs of German elementary schools. The testing of the child was unlawful, because the well-known belonging of the child to the German nationality constituted sufficient claim for admission to the German elementary school.

The Supreme Administrative Court has decided the following regarding these appeals:

The appeal of the German Municipal School Council in Hohenstadt perceives a procedural fault in the fact that the objection of the Czech Municipal School Council was submitted not to the German Municipal School Council but to the District School Council. The Court finds this unfounded, because the German Municipal School Council in this case is to be understood not as an authority but as a party to the dispute. Thus it is not a question of an appeal against a decision by the Municipal School Council as an authority, but rather of a petition to the District School Council, as the organ of first instance, to resolve a dispute having the two Municipal School Councils as parties. ....

The appeals of the three fathers, Johann Lehár, Josef Hubaček, and Josef Škrott, on the other hand, which the Supreme Administrative Court had to decide as well, proved in part unfounded and in part inadmissible. They are inadmissible to the extent that they assert a violation of constitutionally guaranteed rights. The inadmissibility rests in this regard on the provisions of clause 3, lit. b, of the Supreme Administrative Court, because it is the Supreme Imperial Court that has the authority to rule concerning violations of constitutionally guaranteed political rights. With regard to the assertion in Johann Lehar's appeal that he had made a declaration of his nationality which was not taken into consideration, the Court cites its definitive ruling of December 11, 1910, according to which a declaration regarding nationality is not solely definitive. Rather, whenever a dispute arises between the parties, objective markers shall be sought from which the nationality of one of the parties might be judged [*sich erkennen läßt*]. On October 8, 1911, Josef Lehar made an official declaration to the effect that he professed the Czech nationality. It is a fact that he gave Czech as his language of daily use in the census, and was registered in the Czech electoral cadastre. The correctness of these factual conditions was not contested in the course of the administrative procedure. Thus if the authorities, in full appreciation of the objective facts both pro and con, arrived at the belief that the appellant belonged to the Czech nationality, no unlawfulness can be seen therein.

With regard to the claim by the appellants that their right, deriving from the provisions of clauses 139 and 148 of the General Civil Code, to determine which school their children would attend had been infringed, the decision of the Supreme Administrative Court on December 11, 1910 is cited, according to which that right indeed did experience a restriction through clause 20, paragraph 2 of the Moravian School Founding Law of November 27, 1905, *Provincial Legal Gazette* No. 4 of 1906, Section 2. With regard to the testing, and the procedures used during that testing, the appeal is unfounded, because in the course of appeals to lower administrative courts, the results of the testing that underlay the decision in the first instance were not contested, while in the appeal it is not claimed that the child is proficient in the language in the sense of clause 20 of the Moravian School Founding Law.

The appeals of the other two fathers, Hubaček and Škrott, are denied as inadmissible. The appellants do not claim not to have been informed of the testing that was ordered. Nor do they claim to have raised any objections to that testing *before* it was held. The fact is, rather, that the children did appear for the testing. ....