

Chapter 2

The Autonomy of Memel

2.1 Link to Minority Rights

There is a clear connection between the autonomy of the Memel Territory and the minority rights of the German population, in particular, a population which lived in a relatively concentrated area in western Lithuania until the Second World War. The minority rights of the population of Memel (or Klaipeda, as the area is called in the Lithuanian language) were guaranteed in the treaty arrangements following the First World War and might therefore be regarded as a part of the League of Nations minority rights arrangement, but with the reservation that there was no formal connection to the League of Nations in the Memel Convention (see below), which was concluded between five different States.¹

The autonomy of the Memel territory has its roots in section X of the 1919 Treaty of Versailles, whose Art. 99 deals with the transfer of a formerly German piece of territory and the inhabitants thereof to the allied and associated powers:

Germany renounces in favour of the Principal Allied and Associated Powers all rights and title over the territories included between the Baltic, the north-eastern frontier of East Prussia as defined in Article 28 of Part II (Boundaries of Germany) of the present Treaty and the former frontier between Germany and Russia. Germany undertakes to accept the settlement made by the Principal Allied and Associated Powers in regard to these territories, particularly in so far as concerns the nationality of the inhabitants.

The State of Lithuania had declared independence from Russia in 1918 and was barely in existence at the time of the signing of the Versailles treaty that regulated the former German territories. Therefore, the settlement concerning the area mentioned in Art. 99 was between the principal allied and associated powers. They intended to place Memel under international administration, which in reality was a French administration supported by the presence of French troops in the area.

¹See also Rogge (1928), p. 176 f., who accounts for a broader role of the League of Nations in the context.

Lithuania was in opposition to this plan and occupied the area in 1923,² but the State of Lithuania eventually accepted involvement in the settlement referred to in Art. 99 and consequently signed the Convention concerning the Territory of Memel (hereinafter in this chapter: the Convention) and the attached Statute of Memel (hereinafter in this chapter: the Statute) together with the British Empire, France, Italy and Japan.³ In this way the Statute of Memel became a part of a treaty under international law,⁴ a legal document which, according to Art. 8 of the Convention, could be tried in the Permanent Court of International Justice (PCIJ).

The Convention was done approximately 2 years after the Constitution of Lithuania was adopted, which means that the Convention and the appended Statute were ratified by the Lithuanian Parliament, but it seems that no formal amendments were made to the Lithuanian Constitution of 1922. Thus the Memel Statute would have constituted an act of exception in relation to the Lithuanian Constitution, with the effect of setting aside the Constitution in situations of conflict. Robinson commented on the birth of the Memel Territory as an autonomous entity by saying that it was actually dependent on a Lithuanian piece of law, not on an act of international law.⁵ The legitimacy of the Statute as an internal domestic act can be grounded in the decision of the constitutional convention of 11 November 1921, which was followed by a declaration of the Lithuanian Government concerning the autonomy of Memel on 7 May 1923. Although the Statute was in many respects modified in comparison with the declaration of 1923, its main objective, that of autonomy, prevailed.⁶

In Art. 1 of the Convention, the principal allied and associated powers transferred the territory to the State of Lithuania, whereas according to Art. 2, “[t]he Memel Territory shall constitute, under the sovereignty of Lithuania, a unit enjoying legislative, judicial, administrative and financial autonomy within the limits prescribed by the Statute set out in Annex I”.⁷ The formerly German citizens

²For a detailed account of the events in and the legal status of the Memel area between 1918 and 1924, see Robinson (1934a), pp. 23–37. In principle, Rogge (1928), *passim*, and Robinson argue and interpret the law from two opposing perspectives, Rogge from the point of view of the autonomy arrangement and Robinson from the point of view of the Lithuanian state. For a description of the history of the Memel area before 1919, see Plieg (1962), pp. 1–7, and Kalijarvi (1937), pp. 19–49. For the period between 1920 and 1924, see Plieg (1962), pp. 12–32. See also Lapidoth (1997), pp. 77–85.

³For a description of the negotiations around the Versailles peace process and the subsequent measures (the Convention and the Statute) with respect to Memel, see Rogge (1928), pp. 1–20, Robinson (1934a), pp. 37–57, Kalijarvi (1937), pp. 50–196.

⁴Convention concerning the Territory of Memel, signed at Paris, May 8, 1924, 736 *League of Nations Treaty Series* 1924, at p. 87. For the final text of the Convention, see also *Official Journal of the League of Nations*, September 1924, pp. 1201–1223. For an analysis of the political situation concerning Memel, see Kalijarvi (1936), pp. 204–215.

⁵Robinson (1934a), p. 106.

⁶See Robinson (1934a), p. 284 f.

⁷According to the *Memel* case, p. 23, the intention of the autonomy arrangement in Memel was to “ensure to the transferred territory a wide measure of legislative, judicial, administrative and financial *decentralization*, which should not disturb the unity of the Lithuanian State and should

who were resident in the territory became citizens of Lithuania. According to the census of 1910, the last before the war, around 140,000 inhabitants lived in the Memel area, and close to 50% of them were speakers of Lithuanian,⁸ thus forming a linguistic minority population in Germany. When the Memel area was then handed over to Lithuania, the Germans in the territory subsequently became a minority in Lithuania, but inside the autonomous Memel Territory, the German population seemed to dominate at least in a political sense, because the German or autonomy-oriented parties enjoyed the support of more than 75% of the vote in the Memel Territory both in the elections to the Assembly of Memel in 1925 and 1927 and also to the Parliament of Lithuania in 1926.⁹ This, in turn, provides evidence of the fact that the great majority of the inhabitants of the Memel Territory, even many of those who linguistically were Lithuanian-speakers, nonetheless identified themselves as Germans or as German-minded citizens of the Memel Territory during its existence as an autonomous entity, rather than considering themselves to be citizens of Lithuania in the ethnic sense.¹⁰ It was not easy for Lithuania to accept such

operate within the framework of Lithuanian sovereignty” (italics by author). The use of the term ‘decentralization’ in the context to describe the transfer of powers is interesting against the background of the more modern term of ‘devolution’. For a commentary to the Convention, see Rogge (1928), pp. 173–250.

⁸Rogge (1928), pp. 4–5. However, because of the long separation of the Lithuanian speakers in the German areas from the Lithuanian speakers in the Russian areas, a unified Lithuanian language was only developing as a written language in the beginning of the twentieth century, while a number of different dialects existed. See Rogge (1928), p. 355.

⁹Rogge (1928), p. 4, fn. 6.

¹⁰See Plieg (1962), p. 34, fn. 122, for population statistics. See also Rogge (1928), pp. 226–229, who does not regard the German speakers in Memel as such a national minority which would come under the declaration relating to protection of minorities that was referred to in Art. 11 of the Convention and which Lithuania had made before the League of Nations. Rogge’s point seems to be that both the German and the Lithuanian languages were state languages or official languages in the Memel Territory, as established in Art. 27 of the Statute and that the Germans in Lithuania were a state-forming people together with the Lithuanians. However, according to Art. 26 of the Statute, the authorities of the Memel Territory were supposed to carry out and cause to be carried out in the Territory the provisions contained in the declaration concerning the protection of minorities made by the Lithuanian Government before the Council of the League of Nations in 1922. This indicates that there might have been some concern over the Lithuanian and other minorities in the Territory and that the authorities of the Memel Territory had an obligation *vis-à-vis* such minorities. Hence as concerns the Lithuanian language, although it was an official language in the Memel Territory together with the German language, it could be regarded, from the point of view of international law, a minority language in the Territory. See Rogge (1928), pp. 227, 354 f. However, the position of Rogge was heavily criticized in Robinson (1934a), p. 169, making the point that the national majority, the Lithuanians, cannot really become a minority in the Memel Territory. Instead, Robinson concludes that in the Memel Territory, it is possible to be a member of the majority and the minority at the same time: “So sind katholische Deutsche des Memelgebiets mit Bezug auf die *staatlichen Behörden* konfessionell Mehrheits-, sprachlich Minderheitsangehörige, dagegen sind protestantische Litauer konfessionell Minderheits-, völkisch Mehrheitsangehörige. Mit Bezug auf die *Lokalbehörden* ist es gerade umgekehrt.” (italics by MS) There were also Jews in the Memel Territory, according to Plieg (1962), p. 115, some 5,000 in the beginning of the 1930s.

strongly defined linguistic and political characteristics in an area that was merged with the newly independent state. Instead, Lithuania showed a clear interest in asserting its existence as a nation state. The attempts to re-orientate the basically German-speaking Memel Territory towards Lithuania by, for instance, requiring the use of the Lithuanian language in official contexts, preventing German teachers, judges and other professionals from entering Memel, encouraging the migration of Lithuanians from other parts of Lithuania to the Memel Territory and establishing Lithuanian as a compulsory language of instruction became a constant source of contention between the two governments, that of Lithuania and that of the Memel Territory.¹¹ It is probably fair to conclude that the forcible transfer of the former German territory via the allied and associated powers to Lithuania, in addition to the suspicion within the Government of Lithuania that Germany might wish to regain the Memel territory, resulted in a situation in which Lithuania did not spare its efforts to “Lithuanize” the area.

The Preamble of the Statute of Memel underlined the wisdom of granting autonomy to the Memel Territory and of preserving the traditional rights and culture of its inhabitants. It also referred to the grant to the Memel Territory of the status of an autonomous unit and proceeded thereafter to state that “[t]he Republic of Lithuania enacts the [...] Statute”. Under Art. 1 of the Statute, “[t]he Memel Territory shall constitute, under the sovereignty of Lithuania, a unit, organised on democratic principles, enjoying legislative, judicial, administrative and financial autonomy within the limits prescribed in the present Statute”. Autonomy was thus explicitly mentioned in the Statute and therefore also in the Convention as a concept that was subjected to the higher principle of sovereignty of the state. Interestingly, in addition to the ordinary identification of the three branches of government in existence in the autonomous territory, financial autonomy was also mentioned as a separate category of autonomy.¹² According to Rogge, the autonomy thus defined differed from other arrangements of self-government, particularly illustrated by the fact that the Lithuanian state was not granted any rights of control and influence in the matters of the Memel Territory, save for the right of veto of the Governor as established in Art. 16 of the Statute.¹³ This agreement did not, however, resolve the conflicting claims of the state of Lithuania and the inhabitants of Memel. Unrest within the Territory continued, with corresponding measures being

¹¹See, e.g., Plieg (1962), pp. 41 f., 44, 175–176, 178, 216 f. Plieg also makes the point that the autonomy arrangement was perhaps seen by Lithuania only as an interim phase in the decentralized fabric of the unitary state, which would evolve in a certain direction and eventually disappear.

¹²Judging from the recurring difficulties of the Memel authorities to adopt a budget in a timely manner in advance of the fiscal year, the financial autonomy was not easy to deal with. See Robinson (1934a), p. 317 ff.

¹³Rogge (1928), p. 269.

implemented by the Lithuanian state in order to curb the German-oriented developments which were taking place in the Memel Territory.

The constitutional life of Lithuania was greatly affected by the authoritarian tendencies of the 1920s and the 1930s, and this domestic authoritarianism was also evident, after the *coup d'état* of 1926,¹⁴ in the Constitutions of 1928 and 1938. Because the Memel Territory became influenced by the Nazi ideology imported from Germany at the beginning of the 1930s, the autonomy arrangement was trying to function under less favorable stars. A central government turning from democracy to authoritarianism is a factor that will negatively affect the “life expectancy” of an autonomous entity,¹⁵ and with the continuously contentious nature of the Memel arrangement as a determining factor, especially after the rise of Germany as a major Central European power in the 1930s, it is no surprise that the Territory was eventually reunited with Germany in May 1939.¹⁶ Actually, the Statute outlived both the first and the second Constitution and stayed in effect, at least normatively, until the spring of 1939. In practice, however, the Statute was often set aside by the Lithuanian authorities.¹⁷ This was the case particularly during 1934–1935, when

¹⁴For the declaration of the state of emergency (or state of war) by president Antanas Smetonas, see Robinson (1934b), pp. 624 f. See also Plieg (1962), pp. 38, 187 f., about the consequences in the Memel Territory, where the declaration of the state of emergency coincided with a governmental crisis involving the appointment of the President of the Directorate. The state of emergency lasted until 30 July 1938, but when it was lifted, no great changes occurred in the attitudes of the Lithuanian Government toward the Memel Territory.

¹⁵As stated in Nordquist (1998), p. 71, an “autonomy that is not threatened by outside events and that is implemented with a certain consensus from the area designed as an autonomy, seems to face as its last major threat the central government, which may change its position towards the autonomy”. On p. 73, Nordquist makes the point that the “internal conditions for an autonomy seem more important than the external. For instance, autonomies within democratic states are more likely to be durable than other autonomies. Considering the conditions that cause a break-up of autonomies, internal governmental actions take precedence over international factors. Besides the internal dimension, a major threat to autonomies is major structural changes in the state system that affect the central government.” On p. 73, he continues to conclude that “[p]olitically weak, or unstable, states may be a greater threat to an autonomy. Having a different political structure within one’s borders may provide a tempting excuse for governments that seek explanations for political failures.” The conclusion is similar to the point made in Wheare (1964), p. 47: “Dictatorship, with its one-party government and its denial of free election, is incompatible with the working of the federal principle. Federalism demands forms of government which have the characteristics usually associated with democracy or free government. There is a wide variety in the forms which such government may take, but the main essentials are free election and a party system, with its guarantee of a responsible opposition.” For a similar argument, see Lapidoth (1997), p. 200.

¹⁶As a part of Nazi-Germany, the area was evidently not granted any sub-state existence as a “Land”, because the sub-state organization of Weimar Germany was abolished and the entire state centralized following the implementation of the Nazi policies in Germany during 1933 and 1934. See Weiss (2004), p. 74. See also Wheare (1964), p. 47.

¹⁷According to Plieg (1962), p. 217, the autonomy arrangement functioned altogether only 6 years and 6 months in the way intended by the Statute. In practice, as stated by Plieg (1962), p. 219, the Statute was suspended.

many civil servants in the Memel Territory were severed from their posts and the number of mandates in the Chamber of Representatives lowered to 24 on very dubious grounds but with the result that the five Lithuanian-oriented representatives could, by abstaining from participation in the sessions, prohibit the quorum of 20 representatives and thus prevent votes of no confidence towards the Lithuanian-minded President of the Directorate.¹⁸ In the Memel Territory, the authoritarianism and nationalism of Lithuania was clearly evident through the resulting obstruction of the functioning of the autonomous entity, and it seems that such tendency to obstruct did not develop into an implementing practice which was somewhat more faithful to the Statute until the last year of the existence of the autonomy arrangement, in 1938–1939.¹⁹

Most of the originally German inhabitants probably wanted to remain German or at least to retain close relations with Germany, while Lithuania was determined not to give away any of the territories it had recently acquired. The sense of nationalism that was growing stronger in Germany did not leave Memel unaffected, and over the years, a tide of irredentism developed with requests concerning unification with Germany. This continued until a state of siege was declared for Memel. After the take-over of the German Government by the Nazis in 1933, the Nazi ideology took hold in Memel as well.²⁰ As a consequence, a number of the Nazi leaders of Memel

¹⁸Plieg (1962), pp. 138–151. The authorities of the Lithuanian state were really making themselves unpopular in the Memel Territory. According to Plieg (1962), p. 166, when the anti-Memel measures by the Lithuanian authorities reached their peak by 1934–1935, Germany became so agitated by the events that Hitler himself referred, in a speech on 21 May 1935 before the German Parliament, to the restoration by the guarantee powers to the Convention of respect of the most basic *human rights* as a condition for concluding a treaty with Lithuania. Although a relatively early use of the notion of human rights in the context of international politics, it was truly an opportune reference to the concept with a view to the violations of human rights that Hitler's policies caused later on. However, in light of the human rights developed after the Second World War, it seems as if many of the actions of the state authorities in the Memel Territory could have been labeled as violations of human rights. In 1945, the concept of human rights was embedded in the Charter of the United Nations, and the first substantive definition of what human rights are came in 1948 with the Universal Declaration of Human Rights (UDHR). Many of the rights later on recorded in the UDHR were violated in the Memel Territory, such as the independence of the judiciary, the right to fair trial, etc. In December 1935, after an ordinary Directorate reflecting the will of the majority in the Chamber had been instituted, civil servants of German origin were re-instituted in their posts. See Plieg (1962), p. 173.

¹⁹Plieg (1962), p. 193 f., 214.

²⁰According to Plieg (1962), pp. 91, 107–118, two competing political organizations with a national socialistic orientation were constituted. They gained substantial support in the elections to the city council of Memel in 1933, but were not at that point seriously competing with the more established parties at the level of the Memel Territory. Interestingly, the main Nazi party was not negatively disposed towards the Jewish population of the Memel Territory. Members of these organizations were accused of treason before a Lithuanian court martial in 1934, and altogether 83 of them were convicted, while 37 were found not guilty. See Plieg (1962), p. 133 f. See also Plieg (1962), pp. 189, 198, 203–206, 221.

and their supporters were imprisoned.²¹ The pressure from Nazi Germany was, however, considerable, and in March 1939, Lithuania finally agreed to cede the Memel territory back to Germany.²² At that point, it was still not known that Lithuania itself would come to be “re-united” in 1940 with what had become of the Russian Empire after the revolution, that is, with the Soviet Union (starting with the grant of military bases to Soviet troops as early as in the Fall of 1939, only months after the Memel Territory was re-united with Germany). With those measures, however, both the construction of the League of Nations era as well as the small independent republic and the autonomy arrangement had effectively disappeared.²³

When German armed forces retreated from Lithuania and the Memel area during the final phases of the Second World War, the practical consequence was that all inhabitants of German origin were evacuated from the Memel Territory. It can therefore be said that the end of the Second World War also brought the autonomy of the Memel Territory to an end, because the population for which it had been created did not exist anymore.²⁴

Even before the Nazi takeover in Germany, the elected political leadership of Memel looked for ways to interact with Germany directly, or with what was still Weimar Germany at the time, in order to offset the agricultural overproduction occurring in the Memel area and to create income for the region. On 17 December 1931, Mr. Böttcher, the first clearly autonomy or German oriented President of the Directorate of the Memel Territory, that is, the Head of Government of the

²¹Plieg (1962), pp. 91–93.

²²Plieg (1962), pp. 206–213. In contacts between the Lithuanian and German Governments, the latter obviously gave two options: either to enter into an agreement about the reunion of the Memel Territory with Germany and thus achieve a peaceful solution or to accept the possibility of armed action. The treaty between Lithuania and Germany became effective on 22 March 1939, and 1 day later, Hitler arrived in Memel together with the German fleet and the ground forces. As concluded by Plieg (1962), p. 223, there is no doubt that the reunification was following the will of the great majority of the inhabitants.

²³The position of the Memel Territory can also be studied from the point of view of the so-called Molotov-Ribbentrop Pact, that is, the non-aggression pact between Nazi Germany and the Soviet Union, concluded on 23 August 1939, that is, after Lithuania ceded the Memel Territory to Germany. According to Art. 1 of the secret additional protocol to the non-aggression pact, “[i]n the event of a territorial and political rearrangement in the areas belonging to the Baltic States (Finland, Estonia, Latvia, Lithuania), the northern boundary of Lithuania shall represent the boundary of the spheres of influence of Germany and U.S.S.R. In this connection the interest of Lithuania in the Vilna area is recognized by each party”. This means that according to the original plan, Lithuania would actually remain in the German sphere of influence, although the implementation of the plan resulted in a situation where all of Lithuania except the Memel Territory was transferred to the Soviet sphere of influence.

²⁴However, Plieg (1962), p. 225, has argued that of all the areas “taken” by Nazi-Germany, the Memel area was not taken by force in violation of international law and that the Memel area should therefore not have been taken away from Germany after the Second World War.

autonomous territory, appointed by the Governor of the Memel Territory after a series of politically unviable Lithuanian-minded cronies which failed to secure normal political confidence with the Chamber of Representatives,²⁵ visited the Ministry of Food and the Ministry of Foreign Affairs of the Republic of Germany together with two representatives of the Memel legislature. The aim of the trip was to secure, through direct negotiations with Germany, an agreement on preferential treatment of agricultural produce exported from Memel to Germany. The visit was undertaken without the knowledge of the Lithuanian Government. Mr. Böttcher claimed that the trip was of a private nature, although his travel expenses had been paid out of the public funds of the Memel Territory. In addition, lacking passports, the members of the delegation were given travel documents by the German consulate in the territory with reference to the importance of the trip for Germany. As a consequence of the trip, the Governor of Memel, as a representative of the Republic of Lithuania in the Memel Territory, dismissed the President of the Directorate for violation of the distribution of powers between Memel on the one hand and Lithuania on the other (foreign relations were, under Art. 7 of the Statute of Memel outlining the residual powers of the central government of Lithuania, within the exclusive jurisdiction of the Lithuanian Republic), although the Memel Statute did not contain any provision that would have made such a dismissal possible. In addition, the Governor of Memel appointed a new President of the Directorate, Mr. Simaitis, and dissolved the Chamber of Representatives of Memel, that is, the representative assembly of the autonomous entity. Claims about the violation of the Statute of Memel were raised²⁶ and the PCIJ was asked to look into the legality of the acts.

The issue was brought before the Permanent Court of International Justice for judicial resolution by the principal allied and associated powers, that is, by the United Kingdom, France, Italy and Japan. Lithuania was the defendant party, and the matter was resolved in the case of *Interpretation of the Statute of the Memel Territory*.²⁷ It is possible to say that the PCIJ sat in this instance in the capacity of a constitutional court, adjudicating an institutional dispute between state bodies. The core legal question in the case can be summarized as the general issue as to how the

²⁵Plieg (1962), pp. 34–49. Böttcher was the first President of the Directorate whose appointment actually reflected the result of the elections to the Chamber of Representatives. The fight over who would be the President of the Directorate, a Lithuanian-minded appointee of the Governor or a regionally established person with support in the Chamber of Representatives was an important political point of contention during the period of the autonomy of the Memel Territory. Several votes of confidence were held in the Chamber of Representatives, indicating a good understanding of the mechanism of parliamentary accountability.

²⁶Such claims were raised several times before the League of Nations, e.g., through the German Government. See Plieg (1962), pp. 40, 46, and Kalijarvi (1937), pp. 221–225 concerning international actions and pp. 225–237 for an article-by-article account of the points of contention concerning the implementation of the Statute.

²⁷*Interpretation of the Statute of the Memel Territory*, Judgment of 11 August 1932, PCIJ, Series A./B.–Fasc. No. 50, p. 294.

process of government should be carried out when the interests of central government, the government of the autonomous entity and the representative assembly of the latter collide. From the perspective of this case, it can be said that the protection of the external sovereignty of a State was a paramount concern,²⁸ not easily relinquished to its sub-divisions.²⁹ However, internal sovereignty, that is, the power to pass laws, is apparently a characteristic that can be divided between the state and its sub-divisions. This divided internal sovereignty translates into the substantive contents of autonomy in the definition of the legislative powers of the autonomous entity over certain subject-matter.

The Court arrived at the more specific conclusion of the case after a vote which was divided (ten against five). The Court departed from the notion that the Governor of the Memel Territory was entitled, in order to protect the interests of the state, to dismiss the President of the Directorate in cases of serious acts which violated the Convention of Paris of 1924, including its annexes, and which were calculated to prejudice the sovereignty of Lithuania, under the premise that no other action could be taken.³⁰ Against that background, the dismissal of Mr. Böttcher as President of the Directorate had been in order in the circumstances in which it took place, but the dismissal of the President of the Directorate did not in itself involve the simultaneous termination of the appointments of the other members of the Directorate. They could continue in office, awaiting the appointment of a new President, which the Governor of Memel did under somewhat chaotic political circumstances when he appointed Mr. Simaitis to the post.³¹ According to the Court, when considering the circumstances, the appointment of the Directorate presided over by Mr. Simaitis was in order. However, the Court also found that the dissolution of the Chamber of

²⁸See also the case of *Lighthouses of Crete and Samos*, Judgment of 8 October 1937, PCIJ, Series A./B.–Fasc. No. 71., in which the PCIJ developed a political link test to determine on the basis of the constitutive documents whether or not an autonomous territory has seceded from the State, and Kalijarvi (1937), p. 205.

²⁹In this context, it should be mentioned that in the *Memel* case, the PCIJ concluded that within the limits fixed by the Statute of Memel, “it certainly was not the intention of the Parties to the Convention that the sovereignty should be divided between the two bodies which were to exist side by side in the same territory”. “Their intention was simply to ensure to the transferred territory a wide measure of legislative, judicial, administrative and financial decentralization, which should not disturb the unity of the Lithuanian State and should operate within the framework of Lithuanian sovereignty.” The *Memel* case, p. 23. The point here is that the external sovereignty, or sovereignty of State under public international law, was not divided by the Convention. The Court continued by saying that “[w]hilst Lithuania was to enjoy full sovereignty over the ceded territory, subject to the limitations imposed on its exercise, the autonomy of Memel was only to operate within the limits so fixed and expressly specified”. *Ibidem*.

³⁰As pointed out in a critical account by Plieg (1962), pp. 68–85, the PCIJ made the decision without knowledge of the fact that earlier Presidents of the Directorate and members of the Memel Government had made similar contacts with the German authorities without any negative reactions by the central government of Lithuania.

³¹It may be inferred from the name of the new President that he was probably not of German origin, but of Lithuanian origin.

Representatives of the Memel Territory by the Governor of the Memel Territory when the Directorate presided over by Mr. Simaitis had not received the confidence of the Chamber was not in order. Hence Lithuania as defendant was vindicated on most of the issues raised before the Court, except on the dissolution of the Chamber of Representatives, but even on the issues that were decided in line with Lithuania's contentions, the interpretation of the PCIJ did not make its full findings in favor of Lithuania, but qualified the issues to a greater or lesser extent.³²

2.2 The Elements of Autonomy in Memel

2.2.1 Powers

The *Memel* case turns to a great extent on the powers granted to the Memel Territory and on the exercise of these powers by the Memel Territory. At the same time, the powers of the Memel Territory are mirrored in the powers of the central government of Lithuania. The PCIJ noted that the Memel Territory had, for the purpose of managing its local affairs as it pleased, been provided under the Statute with a legislature, an executive and a judiciary.³³ The Court concluded, however, that the sovereign powers of the state of Lithuania and the autonomous powers of Memel territory were of quite a different order, and that, as a consequence, the exercise of the powers of the autonomous entity should be based on a legal rule of a positive nature that could not be inferred from the silence of the norm from which the autonomy was derived.³⁴ This means that the Court was looking in a very positivist manner at the normative interfaces between the state of Lithuania and the Memel Territory, requiring a clear rule for the justification of the powers of the latter. Therefore, according to the Court, the autonomy of Memel existed only within the limits fixed by the Statute, and because there were no provisions to the contrary in the Convention or its annexes, precedence was given to the rights ensuing from the sovereignty of Lithuania. In the case, the PCIJ clearly departed from a distinction between legislative acts on the one hand and executive acts on the other.³⁵ At the same time, the Court concluded that the "legislature was intended to be completely independent within the prescribed limits of the autonomy, but that it was to have no legislative powers outside those limits".³⁶

The legislative powers of Memel were identified in Articles 5 through 7 and 10 of the Statute. In Art. 10, it is established that "[l]egislative power in the Memel

³²The *Memel* case, p. 30.

³³The *Memel* case, p. 24.

³⁴The *Memel* case, p. 23.

³⁵The *Memel* case, p. 24.

³⁶The *Memel* case, p. 25.



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