

How to deal with the facts and Liechtenstein family

The reigning František I, Prince of Liechtenstein died at the Valtice castle on 26 July 1938. A government document survived, dated a day later, which reads: *"The Diplomatic Protocol allows to suggest the Minister of Foreign Affairs to recommend the President of the Republic to send a condoling telegram to Prince František Josef I, signed by the President. Firstly, the Protocol is led by the fact that the last official act of the President of the Czechoslovak Republic towards the Prince of Liechtenstein, namely the confirmation of a notification about taking over the power by Prince František I, was signed by the President himself, secondly, the Principality of Liechtenstein will be surely very soon formally recognized by the Czechoslovak Republic."*

In the next lines, the officials from the Diplomatic Protocol suggest that Czechoslovakia could go even further in its gesture: *"If President Edvard Beneš lets himself be represented in person at the funeral, 'the formal recognition of Liechtenstein' will be 'anticipated' by the act."*

And it happened. Edvard Beneš let himself be represented and the report by the Ministry of Foreign Affairs for the Office of the President of the Republic, dated 29 October 1938, reads as follows:

"At the funeral of František I, Prince of Liechtenstein, which was held on 29 July 1938, the President of the Republic was represented by the Regional President of Moravia and Silesia, Jan Černý, who was accompanied by the Deputy Head of the Diplomatic Protocol of the Ministry of Foreign Affairs, Councillor Dr Vladimír Višek. In the name of the President, a flower wreath with a silk ribbon and the inscription "Le Président de la République Tchécoslovaque" was donated at the funeral. This wreath was bought by Councillor Dr Vladimír Višek for 1.250,- Czechoslovak korunas."

By this gesture, Czechoslovakia indeed "anticipated" the recognition of Liechtenstein and was generous when buying flowers. Their price equalled to a tenth of a monthly salary of an official at that time. And was mentioned in the previous part of this series, published here in Deník on Saturday, 31 October, President Beneš sent a personal telegram to the new reigning Prince František Josef II, the father of Hans Adam II, congratulating him on ascending the throne.

Despite this fact, there are some people in the current Czech Republic willing to argue that the Principality of Liechtenstein is not in fact a sovereign

state and that it was not recognized by Czechoslovakia before the war. These evasive actions usually come in the moment where there is lack of arguments in the dispute between the Princely Foundation and the Czech state. The arguments against the statement of the Liechtenstein side that the post-war occupation of the Liechtenstein property in Czechoslovakia was unprecedented: it cannot be compared with any restitution case, no matter if it is called Kinský or Novák, because in the case of the Prince, it was the property of the head of a foreign, and moreover neutral, state.

Constitutional judge: rather more than less evidence

The dispute, about which it is generally known that it is currently going on on all possible levels, from district to international ones, has several basic features. The Czech justice does not admit almost any evidence presented by the Liechtenstein family (see the first part of this series published in Deník on 24 October) and refuses to deal with the historical context of the whole story. In other words: it seems it does not matter how it all happened at that time because formal reasons (based on the interpretation of Czech authorities) allow to say NO.

This approach of Czech authorities however directly contradicts the will of the state which through restitutions and rehabilitations of the victims of post-war injustice has tried (or tried) to do at least some justice. The case of the confiscation of properties from Liechtenstein citizens in Czechoslovakia, including the property of the Prince, does not fall within the area of restitutions, but it is an example of case which was started in the recent past. If we reject to examine this past, we also reject the possibility to orientate sincerely in the unsolved presence.

It is obvious that any legal case requiring an evaluation of historical evidence and facts imposes a big burden on judges and lawyers. Dr Stanislav Balík, a former important constitutional judge, even wrote an article on this topic. It is titled "On the problems of evidence and proof evaluation in restitution cases". Although the Liechtenstein family does not claim "restitution", this essay exactly applies to the case:

"In relation to the past, a historian has surely an advantage because historical research is his daily bread. A judge and lawyer come across history only occasionally in their work," Stanislav Balík writes. "A historian has another big advantage because he is not tied with any professional tricks,

evidence, concentrated proceedings, claim preclusions, deadlines to renew a trial and other formal issues. In a restitution or rehabilitation case the judge and lawyers willy-nilly seek answers to a similar type of questions which historians answer equipped with their skills of historical research and, naturally, with a deeper knowledge of wider historical context."

The former constitutional judge concludes: *"A judge or lawyer who deals with a restitution case should become a historian ad hoc with an ambition to reach a result in the form of the verdict which would succeed even as a study for an expert historical magazine....In such a situation the judge should not hastily reject proposed evidence because such an approach tempts to be aprioristic when evaluating the evidence..."*

The Constitutional Court of the Czech Republic commented a similar issue already in 2013 in one of their findings: *"The restitution cases must be handled with regard to the fact that those who claim restitution suffered much injustice in the past, including property injustice."* Or, in the words of the former Judge Stanislav Balík, in cases involving historical injustice *"the taking of evidence should follow the rule 'rather more than less', regardless the fact that it might prolong the proceeding"*.

Balík's words from the article are supported also by the Constitutional Court which stated on 11 March 2008: *"It is necessary to study individual aspects of every particular case which are based on found facts of the case and which can be rather complicated and atypical. However, it does not liberate common court from the duty to do everything possible to settle the dispute in a just manner no matter how complicated, in terms of law and facts, it seems to be."*

In past five years, the approach of Czech courts in the Liechtenstein case has been - at least in terms of handling the evidence - precisely opposite.

The promise of Jiří Dienstbier has not been lost

"Dear Sir, the government of the Czech and Slovak Federative Republic has interest to establish relations with your country based on principles of sovereign equality, friendship and mutually convenient collaboration. We expect to build our relations, same as with all countries in Europe, with the perspective of new, integrated Europe."

We are aware of the fact that there are many open issues in the relations between our countries On this occasion, let me convey you the readiness of the government of the Czech and Slovak Federative Republic to start negotiation about all open issues of our relations; the date and content of these negotiations will be agreed by diplomatic way."

These words were written by Jiří Dienstbier, the Minister of Foreign Affairs, to the Prime Minister of the Principality of Liechtenstein on 7 November 1990. However, his promise - the promise of the Czech state - has never been fulfilled. As the time passed, the Czech side stated that there were no open issues that there is nothing to talk about and that nobody had promised any negotiation on behalf of the Czech state.

It brings the historians to the scene again. Those who were or have been the members of the common Czech-Liechtenstein Commission of Historians, as well as those who do independent research outside this government initiative, for example journalists. Many interesting volumes and texts have been written, but one conclusion and one recommendation are substantial for the dispute.

Conclusion: The Czech legal and political environment realized already in 1945-1948 that the confiscation of the Liechtenstein property based on the Beneš Decrees was illegal from the point of view of international law. Apart from the fact, that property was seized of a foreign sovereign, of the head of state whose property is protected by privileges and immunities according to international law, it was done without any compensation. Moreover, to perform that, the Czechoslovak authorities had to declare the Prince, as the head of the neutral Principality of Liechtenstein, to be German. The executive bodies on purpose protracted the judicial examination of the illegal confiscation of Liechtenstein properties until it was performed by the justice already controlled by the Communists (in 1951).

Recommendation: both states should settle the dispute extra court, in a diplomatic way because the case is so complicated that it is difficult to settle it at court, i.e. in a binar mode: yes - no.

However, the relation between historiography and judicial power does not work in the case of the Liechtenstein family. If we paraphrased the words of former constitutional judge Balík, the existing verdicts would not be sufficient for a historical study and rather little evidence has been examined. And that

recommendation? The Czech authorities has so far been willing to litigate. To win! Not to negotiate.

An agreement is the best from principle

"A prompt agreement with the princely family would be the best for the Czech Republic," David Klimeš, a renown Czech commentator from Aktualne.cz, wrote this September. Not that he would support the Liechtenstein side for long, but he says he started to be afraid that the Czech Republic could lose the lawsuit on the international level and lose a half of Moravia:

"Although the post-war Czechoslovak regime was very skilful in terms of confiscating properties, in the case of the princes all, what could be, was spoilt. Their property was confiscated because they were German. However, this is based on water when speaking about the princely family from an independent state. Czech courts reasoned that it was generally known that they were true Germans but there was no proof....They indeed cannot be taken for Germans and even the courts before 1948 had doubts about the legitimacy of the confiscation."

To understand the position of the Liechtenstein family, David Klimeš quotes historian Václav Horčíčka who studies the family on a long-term basis: *"For example the German speaking Swiss were compensated for confiscation already by an international agreement from 1949. The same was agreed with Austria in 1974 ... Only with the Liechtenstein family there was nothing."*

According to David Klimeš, it was clear already in 1989 that *"this is a case which will return very big and, unless it is settled between Prague and Vaduz, it will be international."* Klimeš believes Prague had enough time *"to take some reasonable position and strike and agreement"*. The more when *"this possibility was also helped by the offensive of charm and the establishment of diplomatic relations ten years ago"*.

Only one thing can be added to understand completely the family of Liechtenstein: Hans Adam II has always stated that he did not want a lawsuit. He mainly wanted justice: diplomatic negotiations from which he expected a solution convenient for both the sides; win-win. Not a half of Moravia. His ancestors never owned it, anyway.