

Czech Republic versus Liechtenstein:

So it's Strasbourg

In August 2020, the government of the Principality of Liechtenstein filed an international lawsuit against the Czech Republic with the European Court of Human Rights. Even though the complaint concerns steps taken by Czech authorities and courts against the citizens of Liechtenstein in recent history after the 1989 Velvet Revolution, the journey of both countries to Strasbourg started a long time ago. The Vaduz-based government criticised the seizure of the property of all Liechtenstein citizens in Czechoslovakia as early as in 1945. In one of its first post-war notes, the government said that the confiscation ran counter to international law. After all, Czech authorities were well aware of the violation of the law, according to archives. Using the Beneš Decrees as a penal measure towards foreigners and, on top, the citizens of a neutral country would constitute a breach of international law, a committee of the Czechoslovak Justice Ministry said in 1947.

Debates on the seizure of the Liechtenstein citizens' property on the territory of the Czechoslovak government and its offices, led in 1945-1948, illustrate the future setup of the government: while Professor František Weyr, a convinced democrat and the author of the first Czechoslovak constitution from 1920, wrote in his legal analyses that the government had the right to expropriate the assets of foreigners or even a foreign ruler, but only and exclusively for an "adequate compensation", Július Ďuriš, the Communist agriculture minister, threatened at the same time that if the Supreme Administrative Court approved the Liechtenstein protests and rejected the confiscation without compensation, the parliament would pass the so-called Lex Liechtenstein – and we're all good. See Lex Schwarzenberg.

All those who are wondering these days whether it would be better for both countries to go to court and stay there forever, or whether they should reach a diplomatic agreement, should be aware of the history. It is generally known that Czechoslovak authorities managed to lock the Liechtensteins up in a drawer with the Beneš Decrees only because the authorities had wilfully labelled them as Germans. The Land National Committee in Brno said there was nothing like a Liechtenstein nationality and nobody cares if the people own a Liechtenstein

passport. Because it is well known, not only in Brno but across the entire country, that “Liechtenstein is populated by Germans”.

Archives contain hundreds of similar discriminatory quotations. However, few people will realise that the Nazis used absolutely the same arguments about the non-existence of a Liechtenstein nationality when Hitler’s Germany was getting ready to take Liechtenstein by force. (We explained that this did not happen and why it did not happen in one of the previous articles within these series.) Of course, the Liechtensteins themselves, just like a number of international experts, were very well aware that the rhetoric was the same. For instance, Erwin H. Loewenfeld from the University of Cambridge advised the principality in 1947 to address the United Nations, because the property confiscation in Czechoslovakia constituted a breach of the human rights of Liechtenstein citizens. On the other hand, Professor František Weyr thought Czechoslovakia had a considerable chance of success vis-à-vis the UN, for an interesting reason: even if the UN reviewed the case and decided that Liechtenstein is right, the Soviet Union would use its right to a veto and block the case in favour of Czechoslovakia. As the heading of the Rudé Právo daily read for many years of oppression: Communists of all countries, unite!

A stop at the Hague?

All Liechtenstein citizens who lost their property in post-war Czechoslovakia and who tried to defend themselves – in particular Prince Franz Joseph II in this case – soon understood that the authorities and courts of the newly emerging Communist dictatorship would do their best to hold on to the confiscation within “domestic laws”. The problem lay in the fact that Liechtenstein as a state had no means to force Prague to agree that the dispute should be proceeded to the International Court of Justice in the Hague. Neither in 1945-1948, nor after 1989 when, to the astonishment of all the affected or informed Liechtensteins, the democratic governments in Prague and their authorities continued the tactic and rhetoric of Július Ďuriš in matters concerning the seized property.

The bigger was the surprise in September 2019. A series of disputes between the Prince of Liechtenstein Foundation and the Czech Republic called on the district court in Kolín, to which the lawyers of the state-run forest company Lesy ČR had sent a written statement saying that the district courts of

the Czech Republic have no legal power to make decisions within a dispute based on, as they said, repeated divergences “*from international agreements and international law practice... the most serious of which is an unauthorised interference in the executive immunity of the head of state within international law.*” The statement went on to say that according to Lesy ČR, “*similar disputes are to be handled by the International Court of Justice.*”

Two months later, in November 2019, only a handful of people gathered on the benches for the public at the district court in Kolín. Still, there was considerable hum when the Liechtensteins' lawyer stressed in his opening speech that the Prince of Liechtenstein Foundation agreed with the standpoint of the lawyers of the Czech Republic, represented by the Lesy ČR company: “*The International Court of Justice as a renowned international court of a universal span and reputation, as an institution of the United Nations of which both the Czech Republic and Liechtenstein are members, is an appropriate, legally binding forum capable of taking a decision in this dispute in a single instance and efficiently in terms of both costs and time.*”

The Prince of Liechtenstein Foundation did what it had to do in this situation: 1 it asked the princely government for cooperation, 2 it asked the court in Kolín to halt the proceedings, and 3 it asked three different senates of the Constitutional Court, which were dealing with three different aspects of the dispute at the time, to set a deadline for negotiations between the governments of both countries.

The result: 1 the government in Vaduz met the Prince of Liechtenstein Foundation's request and addressed Prague, 2 the Kolín court did not care and issued a verdict against the Liechtensteins, 3 the government in Prague refused to take the dispute to the Hague, because it trusts Czech courts and the Lesy ČR lawyer had made a mistake, 4 two senates of the Constitutional Court set a deadline of end-April, 2020 for both governments to discuss the matter, and 5 Constitutional Court judge Radovan Suchánek, the reporter judge in the so-called Říčany case, offered a speedy verdict against the Liechtensteins after almost two years.

In his justification, judge Suchánek confirmed the approach of lower-instance courts: it is not necessary to accept any evidence offered by the Liechtensteins, because Czech courts are not entitled these days to comment on things that happened in the past. The constitutional judge steered clear of the aspects of international law.

Several months later, in August 2020, the Respekt weekly published an interview with constitutional judge Jiří Zemánek. He admitted considerable divergences between individual judges, in terms of both opinions and culture. Speaking in general, not within the Liechtenstein context, he said that when it comes to noble families and churches, Suchánek's values are different from most of the other Constitutional Court judges. He literally said: "The arguments put forward by Mr Suchánek are very matter-of-fact and sophisticated, but they ignore the crucial issue: an interpretation of the law which will allow us to fulfil the goal pursued by the legislation concerning restitutions, which is the remedy of at least some wrongdoings committed in the past."

Strasbourg, terminus

The discriminatory standpoints of Czech authorities, the refusal of the Czech government to negotiate a compromise solution, and the way Czech courts decided between the autumn of 2019 and this spring finally led the government of the principality to meet the deadline for filing an international complaint at Strasbourg. At its meeting in Vaduz on August 18, 2020, the cabinet decided it was necessary to ensure the country's sovereignty. A day later, the government said in a press release: "PRESS RELEASE"

When Czech media asked Hereditary Prince Alois of Liechtenstein what he thought about the international lawsuit, the head of state said in August 2020: "QUOTE"

In November 2020, during the so-called second wave of the Covid-19 epidemic, the following inscription appeared at a Prague public transport bus stop:

F.E.A.R. always means choice.

Either: **F**orget **E**verything **A**nd **R**un.

Or: **F**ace **E**verything **A**nd **R**ise.

"Even this choice does not only concern the virus itself," says Petr Svoboda, the grandson of the Liechtensteins' last central director František Svoboda. "The deadline for the Czech Republic to offer a reply to the Strasbourg court is approaching. Which option will it choose?"

Box 1:

“Czechoslovakia benefited from the fact that there was actually no way to take it to an international court without its own consent. Besides, there were doubts about the legality of its steps vis-à-vis the Liechtensteins in terms of national law. However, the state had a number of options to set right different flaws, in particular procedural ones, and to defend the confiscation (even using the so-called Lex Liechtenstein if need be). The political circles in Prague, dominated by the Communists after the country’s liberation of 1945, took a political approach to the issue. Still, there were signals – not very frequent – that the government might be willing to contemplate a peaceful solution to the dispute. A potential compromise was then ruled out for good by the Communist coup in February 1948.” (*Václav Horčíčka, a historian*)

Box 2:

Post-war ideology:

Czechoslovakia is the economic owner of the Principality

"The ill-fated, non-Czech politics of the last Přemyslids, King Wenceslas I and especially his son, Ottokar II of Bohemia, soaked with German influences, brought this fifth German colony to our lands more than 700 years ago, the colony which we are finally destroying today."

This is the first sentence of a brochure titled "The Liechtenstein family" which was written and published at his own costs by Dr et Dr Jaroslav Hrubant after World War II. And what was the last sentence? "The existence of the sovereign Principality of Liechtenstein....is a permanent danger for European peace."

It would be funny if a similar ideology did not have its followers even today. In any case, the author of this post-war agitprop brochure knew how to repair these mistakes started by Ottokar II of Bohemia:

"Our state, the Republic of Czechoslovakia, is in fact the economic owner of the Principality of Liechtenstein," writes Jaroslav Hrubant, and therefore the Prince should "return" to Czechoslovakia not only all what he historically built in its territory but also the palaces in Vienna - and simply the whole of the Principality.

