

Czech Republic waves with a paper from a non-existing authority, Prince was not German, says lawyer representing Liechtenstein

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Prague/Vaduz: Liechtenstein will appeal to the European Court for Human Rights in Strasbourg because of a dispute over confiscated properties of the Liechtenstein family in the Czech Republic, which also includes the castles of Lednice and Valtice. "The problem is that when looking at the applicable law at that time, there was no authority named District National Committee in Olomouc. And therefore, it could not decide whether it would confiscate something," Vít Makarius, who represents the Liechtenstein side and who created the international complaint, says in an interview.

Lidovky.cz: Could you sum up from the beginning what your party tries to reach in the dispute?

Firstly, it is definitely not only about properties, but about a serious breach of rights guaranteed by the European Convention for the Protection of Human Rights. Particularly about the breach of the ban of discrimination, breach of the right for the protection of property, right for a fair trial and the breach of the right for private and family life in connection with Article 13 which is the right for an efficient remedy against any breach of rights of the Convention.

The Říčany case

The case is about roughly 600 hectares of land near Říčany, Central Bohemia.

It was discovered during standard legal acts concerning forest land adjustments in 2012 that the land near Říčany in Prague is registered on František Josef II, Prince of Liechtenstein, the head of state during World War II and after.

The Prince of Liechtenstein Foundation, which manages the Liechtenstein properties, immediately applied for the land.

First in 2013, the Czech District Court confirmed that the land belongs to the Liechtenstein Foundation.

The Czech Office for the Government Representation in Property Affairs however later successfully challenged the verdict. The key argument was that the Liechtenstein family registered as Germans during World War II and therefore their properties were expropriated based on the Beneš Decrees in 1945. The family clearly and definitely rejects any collaboration with the Nazis as well as the registration of German ethnicity.

The verdict not to release the land plots to the Liechtenstein family were confirmed by all courts of appeal and, finally this February, also by the Constitutional Court. The case is important because, contrary to the others, concerning for example the castles in Lednice and Valtice, it is ended and has gone through all instances of Czech justice.

Lawyer Vít Makarius representing the Liechtenstein side of the dispute is afraid that it created a precedent which will be followed by all other Czech courts in other, roughly thirty, ongoing lawsuits.

Lidovky.cz: What should a layman imagine under it?

The Liechtenstein government especially does not like that its citizens are involved in lawsuits in the Czech Republic at Czech courts and based on the fact that they are treated by Czech authorities as individuals with German nationality and that the fact is not considered that they are in reality of Liechtenstein nationality. From this angle, the issue appears to be a rather rare case because in those first two cases, and especially in the first one, which is known as the Říčany case, it is not that the Liechtenstein family would sue somebody or would claim anything back, but on contrary. They are facing a motion filed by the Office for the Government Representation in Property Affairs which is based on the fact that the Liechtenstein family is of German nationality and therefore the courts should decide that the ownership right to the land near Říčany, which was duly registered in the Land Registry in favour of the Prince of Liechtenstein Foundation, should be erased and the Czech State should be registered as the owner. On the side of the Liechtenstein citizens there have been defensive steps taken against the act done by some Czech authorities from year 2013, 2014.

Lidovky.cz: What are the other ongoing lawsuits?

The international process which was started by the Liechtenstein government with the court in Strasbourg on 19 August 2020 does not affect only the princely family and their Foundation in relation to the Říčany case but it covers a wide circle of Liechtenstein citizens and totally 33 lawsuits which are currently ongoing in the Czech Republic. The Říčany case is only one branch, although it is the determining one because it reached the farthest and as the only one has gone through all instances of Czech courts, when, in February this year, the final verdict was delivered by the Constitutional Court of the Czech Republic in Brno. Moreover it is obvious that the courts, which deal with the ongoing cases, takes this case as the determining one and through the prism of this verdict they want to look at all the others.

Lidovky.cz: Would not it be logical to wait until all the ongoing lawsuits are ended?

The verdict in the Říčany case and at the same time the reactions in some of the ongoing cases suggest the way in which the courts will deal with these ongoing cases. If they deal with it as their steps suggest, then most probably many similar breaches of the Convention will happen, similar to the Říčany case. The judicature of the European Court in these cases predicts the situation in which a party in a lawsuit at a national court has no reasonable remedy available which would correct the breach and it is not necessary to wait for the final verdicts in the open case but the party may appeal to the European court earlier. From the viewpoint of the Liechtenstein government it is important that the European Court delivers a verdict which could be used not only to remedy the Říčany case but which could also be used in all other trials to prevent other Liechtenstein citizens from lawsuits taking years and not giving many chances for success.

Lidovky.cz: What does the Czech side use to prove that Prince František Josef II registered German ethnicity and behaved accordingly during World War II?

In 2013, one of the Czech district courts delivered a final and binding verdict confirming that the Prince of Liechtenstein Foundation is the heir and therefore the owner of 650 hectares of land near Říčany. The Foundation was therefore registered in the Land Registry and replaced its legal predecessor, František Josef II, Prince of Liechtenstein. Subsequently in 2014, without any diplomatic contact from the Czech Republic towards Liechtenstein, without any pre-action demand or negotiation, the Office for the Government Representation in Property Affairs filed a legal motion

arguing that the owner of properties near Říčany is the Czech State because it is a notoriety (a fact which is not necessary to be proven at a court or at an administrative authority because it is considered as generally known, editor's note) that František Josef II had German nationality. Therefore, the office did not present any evidence that the Czech state was the real owner, that it acquired any legal title in 1945 or in any other time.

Lidovky.cz: What is the action based on?

In the case, there is also the state enterprise of the Forests of the Czech Republic, as an accessory participant supporting the Office for the Government Representation in Property Affairs, i.e. the plaintiff. The plaintiff presented an unsigned, one-page document which was reportedly issued in 1945 by an authority which, according to the header of the paper was called the District National Committee in Olomouc and which in 1945 was reportedly expected to confiscate the properties of František Josef Liechtenstein in political districts which are listed in the paper. There are several political districts in Moravia, and I'm stressing, there is no Czech district in the list, and thus no district of Říčany. The problem is that when looking at the applicable law at that time, there was no authority named District National Committee in Olomouc. Therefore, it even could not have decided on whether it would confiscate anything from anybody, or on anything else. From the view of law, it is a void legal act which is viewed as if it had not existed from the very beginning.

Lidovky.cz: Based on which you believe this document is a void legal act?

Based on law. All district national committees which in that particular time, i.e. in July 1945, which is the date on the paper we speak about, had to be established based on law. It is the same today, the state authorities must have a legal base. The executive power cannot be exercised unless a state institution is supported by legislation. According to applicable regulations at that time, there was only the district of Olomouc-venkov, i.e. the area surrounding Olomouc. There was a different authority in Olomouc, namely the Municipal National Committee in Olomouc, because Olomouc was a statutory city with its own local administration, it was not part of the network of surrounding political districts. It means the issue is rather simple it is sufficient to look into the act where you can find an appendix listing all existing national committees. There is no National District Committee in Olomouc.

Lawyer Vít Makarius.

Lidovky.cz: What the Liechtenstein family use to prove the Prince was not German?

The paper reads that the properties in the listed political districts are confiscated from Prince František Josef II because he has German nationality. Against this, the Foundation presents other evidence proving false the fact that the Prince was of German nationality. It is namely a certificate by the National Committee in Velké Losiny which expressly states that according to the registrations by František Josef II and his family for the residence in Velké Losiny, which they visited, and for the purposes of Police reports, they always registered as individuals with Liechtenstein nationality and as Liechtenstein citizens. In this Říčany case, however, the courts rejected to admit this evidence and did not take it into account. In other words, they based their verdicts only on the evidence presented by the plaintiff.

Lidovky.cz: What was the reason?

It is a crucial question for the trial in Strasbourg. The domestic courts said they were not entitled to examine administrative acts which were issued in Czechoslovakia immediately after World War II. In other words, they admitted the paper as something they considered to be an administrative act issued by an administrative body, but they rejected to examine whether it was an administrative act at all, meaning whether it was issued by an administrative body which existed and had the powers to issue something like this. František Josef II was the head of a foreign state at that time who enjoyed privileges and immunities according to international law. It is inconceivable that any district national committee with its own small apparatus would decide about so sensitive issues like the property of the head of a foreign state and about the fact whether he is covered by immunity or not. Today, and even according to law applicable at that time, these legal issues are discussed on the ministerial level, in particular by the Ministry of Interior in cooperation with the Ministry of Foreign Affairs. However, it did not happen in this case, this committee did not consult the state administration authorities and issued this void legal act.

Lidovky.cz: Is there anything else against the Czech side?

It is important that the properties owned by František Josef II were situated not only in different places in Moravia but also in Bohemia and Silesia, therefore the issue exceeded the powers of one district committee and had to be discussed by a competent body which in this case was not even the superior authority for the district national committee, i.e. regional national committee, but the case must have been discussed by the Ministry. Even if we ignored the non-existence of the district committee in Olomouc and considered this paper as an administrative act, even if we did not consider the protection of properties given by the immunity of the head of a state, still the administrative act issued by a district committee would be void because it exceeded its competence.

Lidovky.cz: Do you think it is a substantial breach of rights of the family of Liechtenstein?

The institute of international complaint is a rarely used tool which is chosen only in a case when states are convinced about a substantial breach of rights. Moreover, there were over one thousand complaints filed with the court in Strasbourg against the Czech Republic, however these were all individual complaints. The Czech Republic is subject to an international complaint for the first time and also Liechtenstein has filed such a complaint for the first time.

It is surely a serious breach from the viewpoint of the Liechtenstein government, otherwise they would not take such steps. As the most serious, the government considers the fact that the Czech courts categorize individuals based on their nationality, which, the Liechtenstein government believes, is discriminating and very rare in the current European environment.

Lidovky.cz: According to Mark Villiger, a former judge of the European Court for Human Rights nominated by Liechtenstein, the hearing could take place probably in 2022. The verdict should be delivered roughly six months after the hearing is started. Don't you expect any complications or delays?

Professor Villiger is very experienced in terms of the operation of the court. It is only up to the court how it will approach the case and within what time horizon. When we look at the statistics of international trials at the European Court for Human Rights, then we see that an average trial takes between 3.5 and 7.5 years. I do not dare to anticipate how long the trial will take but I would be

surprised if we were not somewhere within this interval. It rather depends on how the court will examine the complaint. There are several ways how to tackle it - which procedural mechanism, which procedure to choose. Each of them has different demands in terms of time. It also depends how much in depth the court will deal with the complaint. If it happens that it will hear the case until the stage of, let's say, the verdict about just satisfaction, it means until the final stage of the trial, then I estimate it will indeed take several years.

Lidovky.cz: In its history, the European Court for Human rights has heard roughly a million of individual complaints but only 25 international cases. Could you, as an experienced lawyer, explain what the reason is?

The reason is that after the reform of courts in the 1990s, a possibility was open for any individual, it means for any physical or legal entity, to appeal to the European Court in Strasbourg with their own complaint. From the viewpoint of international justice, it is an unusual possibility and no wonder so many persons have used it. On contrary, the member countries of the European Council are entities which consider very well whether they file such an international complaint and if they take the step, they usually do it based on very serious reasons which led them to the complaint. It again demonstrates how serious the problem of current lawsuits with Liechtenstein citizens in the Czech Republic is for the Liechtenstein government.

Lidovky.cz: Would not an extra-court settlement of the dispute be a possibility?

It is true that the Liechtenstein government as well as the Prince of Liechtenstein Foundation have repeatedly tried to start negotiation with the Czech Republic which would settle the open issues for ever. Last time it was in 2018, however the Czech side has never reacted positively to these offers.

Lidovky.cz: The Czech Republic and Liechtenstein are countries which has been historically connected for centuries. The House of Liechtenstein belonged among the richest Moravian nobility. Cannot this step escalate the Czech-Liechtenstein relations?

The development will show, however the Liechtenstein government has already clearly declared that it did not consider this dispute and this trial at the European Court for Human Rights in Strasbourg as something which should endanger the mutual good relations between the countries. It is also demonstrated by the way in which the trial was started, that even before the complaint was filed, the relevant Czech authorities were notified about the fact.

Lednice Castle. One of the most beautiful buildings in the English Romantic Neogothic style got its current shape in the middle of the 19th century. Another interesting building is the local palm greenhouse next to the castle.