

Lawyers & Business FORUM:

CZECHIA SHOULD MAKE A SETTLEMENT WITH THE LIECHTENSTEINS



The lawsuit over the former Liechtenstein properties maybe boldly called the case of the century. It is about famous castles, billions of korunas and especially about justice. And it has so many aspects that not even the courts can most probably deal with all its consequences. The participants of the Lawyers & Business: FORUM debate, which was held about the issue in April and which is

available from our website, fully agreed that there should be a settlement made between Liechtenstein and the Czech Republic.

**Stanislav Balík, a law historian, Judge Emeritus of the Constitutional Court and the Dean of the Faculty of Law at the University of West Bohemia, Pavel Kysilka, a prominent Czech economist and Vice-Chairman Emeritus of the Czech National Bank, as well as Pavel Šafr, a journalist and editor-in-chief of the Forum 24 internet daily, and Michal Růžička, the spokesman of the Prince of Liechtenstein Foundation, they all call for the settlement.**

**Text by: Jan Januš, Photo by: Daniel Hromada**

One of the oldest noble family operating in the Czech territory does not agree with the application of the Beneš Decrees on their ancestors. Among other reasons because in the period of World War II the family ruled - same as nowadays - from a sovereign and neutral state, the Principality of Liechtenstein and its capital of Vaduz. In other words, the Liechtensteins were not Germans as they were labelled by the Czech authorities.

The Liechtensteins do not want back the properties which are nowadays held by municipalities and regions as well as universities, churches and other private persons. However, they sue - after Czechia ignored all pre-trial notices and efforts at negotiating - for properties held by the state, for example the castles of Lednice, Valtice, Šternberk and Velké Losiny and many land plots in Moravia. The lawsuits are now going on at twenty Czech courts as well as at the European Court for Human Rights. Most probably it is about billions of Czech korunas.

For a long time, the Liechtenstein side called for an extra-court settlement which, in its opinion, is the best possible solution. They say it is mainly about justice. Is a settlement indeed the best possible solution? And what are all the aspects of the lawsuit about Liechtenstein properties? This all was discussed in the latest issue of Lawyers & Business: FORUM titled The Lawsuit about Liechtenstein Property.

### **Historical aspects of the lawsuit**

"The final verdict which was delivered by Czech courts to finally stop the Liechtensteins' protests came in 1951. For many years after that, it did not make any sense for the princely family or the Liechtenstein state to try anything; the reasons is clear to all of us. After 1989, Jiří Dienstbier, the Czechoslovak Minister of Foreign Affairs at that time, wrote a letter to Prince Hans Adam and the Liechtenstein Prime Minister at that time, confirming that Czechoslovakia realized that there were still open issues and that it was necessary to discuss them. Therefore, the Liechtenstein side had legitimate expectations that there would be some political agreement," Michal Růžička, the spokesman of the Prince of Liechtenstein Foundation, reminded of the beginnings of the problem.

"However, the negotiations had never taken place and because of the property issues, Czechia postponed the re-establishment of diplomatic relations between the Czech Republic and Liechtenstein, which happened only in 2009. Unfortunately, Czechoslovakia and the Czech Republic has tried to keep the problem back, conceal it so that everybody would forget. Unfortunately, or

fortunately, the injustice is not only property-related. It is different and fundamental. When you call somebody German although he does not feel like one, it has some consequences. Moreover, the Czech side in some periods doubted the legitimacy of the Principality of Liechtenstein as a state. And that's why you have to defend yourself and you will never forget," Růžička described the basic attitudes of the Liechtensteins.

"For many years, Liechtenstein and the princely family expected it would be solved at some round table. Later it appeared, that in the Land Registry there were many land plots still registered with Prince Franz Josef II or even his predecessors. Therefore, the Foundation, as a proper manager, applied for an inheritance procedure with the intention to look after its properties. At that moment, it was in 2013, the Czech Republic sued the Prince through the Foundation. The lawsuit thus started by a motion complaint filed by the Czech state against the Liechtensteins. They started to defend themselves and it is this first case which is nowadays in Strasbourg. After that the Liechtenstein side discovered that there were various deadlines in the new Civil Code and that the possibility to defend would expire. To prevent that from happening, it sued the Czech state in around 25 district Czech courts. And because the Liechtenstein side did not want to cause other injustices, the complaints omitted did not concern private entities, universities, municipalities and other non-profit organizations which in the meantime had acquired the properties in good faith. It was not that the Prince of Liechtenstein Foundation realized one day that it had some properties in the country and that it would be good to sue the Czech Republic. There was a natural development," Růžička described the further course of events. "However, the case is so complex that no historians and most probably not even district or other courts can solve it for us. Basically, nobody can solve it for us. It can be solved by creative politicians and by all of us, provided we take a certain attitude to it," he also said.

### **Calling them Germans? Personal denigration**

In his opening speech, Constitutional Judge Emeritus Stanislav Balík, who currently leads the Faculty of Law at the University of West Bohemia, reminded of his differing opinion of the verdict by the Constitutional Court concerning the church restitutions, in which he wrote "Thou shalt not steal": "As my father used to say, when they stole it from them, they should return it."

Although the lawsuit about the Liechtenstein property is not a restitution case in the right sense of the word, there are many similarities, the Constitutional Judge Emeritus believes. "The problem lies in the time when the first restitution laws were adopted. It was done by people who were insufficiently informed in the field of the latest the most recent history. Today, the justice should be at another place, we have the Institute for the Study of Totalitarian Regimes and many other new findings about how law had been twisted. The 1951 verdict of the Supreme Administrative Court in Bratislava, which was overturned after 1948, was mentioned. The evidence should be seen and assessed even in this light," Balík said, adding that the verdict "cannot be taken as a decision of an independent court but within its contemporary context".

According to him, the Liechtenstein case is not the only one in which the related Decree of the President of the Republic was misused. "If it is said that it is a notoriety that the Liechtensteins were Germans than the judge who wrote that should have received F if sitting the law history exam at the Brno law faculty and E if at any other faculty," Balík noted. "It is indeed not about the land. Let's try to empathize with the Prince to whom the Czech courts said that his ancestors had been Germans, meaning the Germans who had been put in the same sack with collaborators and traitors by Decree no. 12. To some extent, it is a personal denigration," Balík continued. "The Liechtensteins were

related to our territory, Czech was spoken in the family, they were good managers, and they are still remembered well in the regions," he further added.

### **Bad signal for investors**

"It is unfortunately a lawsuit which says a lot about us. There is blatant historical injustice and an absurd application of the Beneš Decrees on the Liechtensteins. The other side of the coin is the inability of the Czech state to deal with the case," Pavel Kysilka, the Vice-Chairman Emeritus of the Czech National Bank and the former head of Česká spořitelna, described the situation. "It is poisonous for the reputation of the Czech Republic. Even in the criticized Third Republic, there was a decision ready to repair this absurdity. Even then the institutions realized that the Beneš Decrees had been wrongfully applied on somebody who should not have been affected at all. Of course, February 1948 put these efforts either on ice or down the drain. However, the bad thing is that each government after February 1948 contributes to this non-solution either by its passivity or, worse, by its active resistance."

According to Kysilka, it may cause problems even for future. "As an economist I am very sensitive to what a reputation the Czech Republic creates in the world. It is a strong signal for investors who plan to invest in the country or has already invested and now consider whether to leave their dividends here. It is also an extremely strong signal for us, the citizens and companies, because in a situation when we are not able to prove we are legal state with functioning investments, we, on a long-term basis, do not create a good environment for prosperity."

Kysilka also suggested a possible solution to the situation: "If the courts today refer to the German nationality of the Liechtensteins as to a notoriety and they are independent then we can hardly do anything about it. However, there would be a room for another type of solution. From my own experience, I may say that we have been in many business lawsuits worth billions and dragging on for many years. But in many of them, we were able to sit down to a table and find a compromise good for both the sides from which both the parties have been benefiting since. There is the room. It is a case which could have been history but unfortunately it is turning into more and more acute presence."

The debaters also agreed that the Czech Republic could rather win from restoring the property by the Liechtensteins. According to Růžička, also the mayors of many, originally "Liechtenstein-owned" municipalities support the idea. Among other reasons, because they do not have enough resources to finance the care of the properties.

### **Do we still search for enemies of the people?**

Pavel Šafr, a journalist and editor-in-chief of the Forum 24 online daily, intensively comments on the case. One of his latest texts is titled "The court in the Liechtenstein lawsuit ignored facts and decided based on a nationalist pattern" and therefore it is no surprise how he approaches the topic theme: "As a commentator and author of a book on Czech nationalist stereotypes and at the same time about the stereotypes of the still present Marxistic remnants in our society, I explore how the decisions taken by politicians as well as justice are influenced by a certain social order to maintain the phenomenon of the enemy of the people. Enemies of the people belonged among the principal concepts of the Communist ideology from its very beginning. Besides the middle class and the church, they also included aristocracy. I take rather seriously this maintenance of the ideologic

stereotype in the context of democratic Europe and the EU community and within the context of us striving for being a civilized European country where the idea of legal state is absolutely fundamental."

Šafr also critically commented the Czech courts: "I am personally frustrated when the judicial power inclines to the social order to deal with the enemies of the people or to maintain the feeling that we have already dealt with them and that it is good that aristocracy have no large properties here anymore, especially when they were so rich. I consider it as a huge obstacle in the journey of our nation and society to the ideal concept of a civilized member of the European community."

Pavel Šafr also puts the case within a broader historical and social context. "We have agreed that the Communist regime was an illegitimate system. However, the post-war injustice is a thing which we processed insufficiently. And it created many dreadful cases of different types - I must admit I am ashamed for Lex Schwarzenberg - however, the Liechtenstein case is extraordinary for several aspects. We could have a separate discussion about the Beneš Decrees, about their racist character, about their collective guilt character and about how it relates to the present concept of civilized and legal state. But in this case, even the barbarian standards valid at that time were exceeded, and in a manner which is shocking because it is directed against one European country, and only because it is a small country. There were properties owned by Swiss citizens, which were settled in the 1950s. There was no settlement with the Liechtensteins because the state believed Liechtenstein was small. However, law should apply for everybody and the fact that somebody is small does not mean it should be robbed. On the contrary."

The journalist also summarized other aspects of the lawsuits. "There is a strong role of nationalism, opposition against aristocracy and the lack of rationality within the European context: it is crazy to be in a lawsuit with a civilized, successful and sovereign country from Western Europe. I really wish this situation is settled by an interstate agreement, it is the cleanest and rational solution. For us, Czechs, however the problem persists on the moral and legal level. We will have to clean our own house first. We cannot live with the fact that we decided based on nationalist aspects, on denied facts. It is our homework to sort out these things."

### **The Liechtensteins should be preferred**

"I try to visit all the district courts' hearings, sitting in the benches for the public. It is an interesting experience. You can see that many judges have a big problem with it. So far, they have always hidden themselves behind some formal solution or behind a verdict of another court. Many of these judges later say after the hearing, still in the court room or in front of it, I support you a lot, perhaps the next appeal courts or the international ones will revoke my verdict, but I cannot do otherwise," Michal Růžička described his personal experience from the hearings of the lowest level courts. According to him, the judges use only a fragment from dozens of evidence available to reason their opinions. "You ask yourself where is the courage, or personal integrity or independence?"

However, as it is obvious from previous lines, the Czech district courts have so far stood against the Liechtensteins. According to Stanislav Balík the case is far from being definite, among others because the European Court for Human Rights did not stop the lawsuit at the very beginning. "If the European Court for Human Rights ruled against the Czech Republic and the lawsuits were re-opened at the district courts, it would be a real disgrace," described the former constitutional judge. "The Constitutional Court even in other cases, for example concerning the compensations for stopped criminal prosecutions, stated that it was necessary to observe carefully that there was the Czech

court on one side and the Czech Republic on the other side as a party in the lawsuit and nobody should judge his own case. These things should be approached very carefully. Not that it is about billions, not that they were Germans anyway and not that they are too greedy. It is very unfortunate that the problem is seen like this," Stanislav Balík assessed the situation, adding that the Constitutional Court also stated that the restitutions should be preferred and that this case should be, in his opinion, seen within a broader context of a historical debate. "Although it is not a restitution case, I believe that the principle in favorem restitutionis should be also observed."

*The whole debate is available at [www.lawyersandbusiness.cz](http://www.lawyersandbusiness.cz) where you can also find an interview with Maxmilian Schaffgotsch, a legal counsel of the Prince of Liechtenstein Foundation.*