

## **Expropriations of Liechtenstein Property in Czechoslovakia and Their Impact on Bilateral Relations**

Rt. Ambassador Dr. Ferdinand Trauttmansdorff

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Ladies and Gentlemen!

### *Introduction:*

When I speak to you on this topic, I should start by saying that there are several historians and jurists who have been, or still are, dealing with the question of expropriations in Czechoslovakia after both world wars. Among the members of the Liechtenstein-Czech Commission of Historians, I would like to mention Prof. Ondrej Horák for the legal historical context, Peter Geiger for the impacts on the Liechtenstein side, and Prof. Tomáš Knoz and Prof. Thomas Winkelbauer for the historical connections between expropriations and events following the Battle of White Mountain. Other authors such as Susanne Keller-Giger, Rupert Quaderer, and on the Czech side mainly Václav Horčíčka have provided particularly substantial and comprehensive studies on the actual subject of expropriations in the reports of the Historian's Commission. Additionally, there are authors like Lucia Dallabona and others who I cannot all name here. Roland Marxer has most clearly analysed the impacts of the expropriation question on bilateral relations up to the present.

I do not pretend to substantially supplement or qualify these very rich studies. Anyone who reads the historian's report and relevant studies might wonder what new elements there are to mention on this subject. I, therefore, need to do some public relations here and strongly recommend the excellent reports of the Commission of Historians, which thoroughly cover most of the questions I touch upon here. It is easily accessible on the website of the Liechtenstein-Czech Historians' Commission/Publications. For a very brief overview of our topic, I refer you to the introduction by Jan Županič in Volume No. 4 of the historians' report "The State of Liechtenstein, the Princely House, and Czechoslovakia in the 20th Century" (pp. 9-12). Especially in this volume as well as in volumes 6 and 7, you will find particularly substantial contributions from the aforementioned authors.

However, I will try to summarize and highlight some aspects that are particularly relevant to the relations between Liechtenstein and the Czech Republic.

### *Excursus: Legal Opinion Project:*

I am currently participating in the project of the Liechtenstein-Czech Historians' Commission for the publication of legal opinions in connection with expropriations of Liechtensteiners in the former Czechoslovakia. We are dealing with the issue of land reform after the First World War and the questions related to the attempts of submission under state administration and confiscations after the Second World War (mainly under the so-called "Beneš Decrees"). I am conducting this primarily legal-historical project together with Univ. Prof. Ondrej Horak from the University of Olomouc and Masaryk University, making use of his deep knowledge and expert guidance. I personally focus on the assessment and historical classification of these legal opinions, particularly from an international and public international law perspective. From a series of legal opinions dealing with this matter, I would like to share some key conclusions with you. These opinions and other relevant expressions of opinion

touch on a number of aspects that are crucial for the relations between the Principality of Liechtenstein and Czechoslovakia, from which today's Czech Republic emerged in 1992.

*Expropriations, Confiscations, and Their Impact on Relations Between Czechoslovakia-Liechtenstein and Czech Republic-Liechtenstein - Overview:*

To put it bluntly: The thematic connection between expropriations after the First World War and the Second World War and the relations between the Czech Republic and Liechtenstein lies primarily in the negative impacts of the expropriation policy on the respect of Czechoslovakia and its successor states for the independent sovereignty of the Principality and the international legal status of the Prince.

This arises on the one hand from the great importance that the Liechtenstein possessions situated in Czechoslovakia had for the territorial state, both in terms of their size and their historical and political perception. This led to Czechoslovakia's interest in bringing these possessions under its control, especially since there were also some historical reservations against the Liechtenstein family.

It should be noted that the implementation of expropriations after both world wars, especially against large estates, was an expression of Czechoslovakia's newly gained sovereignty. This resulted in the tendency to perceive these expropriations and confiscations as primarily an internal Czechoslovak affair. This interest naturally conflicted with Liechtenstein's interest in treating the issue of expropriations at the inter-state level.

On the other hand, the importance of the extensive Liechtenstein possessions on Czechoslovak soil was disproportionate to the relatively minor political and economic weight of the small state of Liechtenstein in the eyes of the Czechoslovak leadership and public. This was not conducive to adequately respecting vital Liechtenstein interests. At the same time, Liechtenstein's political and diplomatic capabilities towards Czechoslovakia were very limited both after the First World War and after the Second World War. The actual establishment of diplomatic relations, including the setting up of a direct diplomatic representation to the Czech Republic, only occurred in 2009. Until 1938, Czechoslovakia refused to recognize Liechtenstein at all and to establish diplomatic relations, even via Switzerland. This was justified for example by the then Foreign Minister Beneš by the need to first completing the implementation of the land reform against Liechtenstein properties.

In 1945, Czechoslovakia regarded the diplomatic relations with Liechtenstein, which were managed through Switzerland, as interrupted by the German invasion following the Munich Agreement, shortly after their establishment. Although relations with Switzerland were seen as resumed in 1945, Czechoslovakia refused to factually and formally resume the never formally interrupted diplomatic relations with Liechtenstein and effectively continued de facto the non-recognition policy of the interwar period. It was obvious that Czechoslovakia wanted to prevent Liechtenstein from representing the interests of its nationals, especially the Prince, whether directly or through Switzerland, in the matter of the seizure and confiscation of Liechtenstein property.

Thus, there was a close connection between the Czechoslovak expropriation policy and the lack of recognition and perception of Liechtenstein as a sovereign state with all international legal rights and obligations, both after the First and the Second World War. Ultimately, the reluctance by the Czechoslovak Republic and later, after the fall of the iron curtain in 1989 and after 1992 by its successor state, the Czech Republic, to even discuss the resolution of "open questions" related to expropriations against Liechtenstein citizens until 2009 stood in the way of mutual formal recognition and the establishment of diplomatic relations.

Since then, there have been numerous efforts on both sides to shape the relations between the two states in a lively manner. The "open questions," the still unresolved expropriation issues, which are

now being negotiated in courts, including the Czech Constitutional Court and the European Court of Human Rights in Strasbourg, now keep standing as an "elephant" in the room of the relations between the two states. The question arises to what extent Liechtenstein has really exhausted all possibilities on an international level to assert its interests.

Most important, therefore, appears to be the meeting between Hereditary Prince Alois and Czech President Petr Pavel on the sidelines of the UN General Assembly in the fall of 2023, which seemingly brought new movement into the question of a joint resolution of the open issues.

Let me, therefore conclude already now before further going into further detail:

For 106 years since 1918, there have been two contradicting constants in the relations between Liechtenstein and Czechoslovakia:

1) The lack of respect for Liechtenstein's statehood and sovereignty, ultimately motivated by Czechoslovakia's interest in completing the expropriation of Liechtenstein land and its defence and in preventing diplomatic interventions against it; it is, thereby, to be taken into account that Czechoslovakia obviously saw the implementation of expropriations without outside interference as an essential expression of the revolutionary conditions and newly gained sovereignty existing in 1918 and again in 1945.

2) Liechtenstein's interest in preserving Liechtenstein properties in the Czech Republic, in having its sovereignty and neutrality in both world wars and the special international legal status of the Prince respected, and in establishing and maintaining diplomatic relations; this was associated with Liechtenstein's interest in diplomatic relations, at least through Switzerland, and in the search for or at least achieving a balance of interests through intergovernmental negotiations.

A third constant was the support of Liechtenstein's interests by Switzerland, even if this could not always be implemented politically and diplomatically to the extent that seemed possible, especially in crucial phases.

*Expropriations in Czechoslovakia in general – Overview:*

*Expropriations in the course of land reform after World War I:*

The expropriation of foreign, including Liechtenstein, land ownership in Czechoslovakia took place in two phases, i.e., land reform after 1918 and national administration and confiscations starting 1945:

The first phase was the land reform immediately after the establishment of Czechoslovakia as an independent state at the end of World War I in October 1918. The start of land reform, which was widely politically consensual, was one of the first measures of the new leadership under President Masaryk. In fact, the political necessity of confiscation and redistribution of large estates arose not only from social reasons like the land hunger of small farmers. The large land areas owned by a few aristocratic families were perceived by the newly independent Czechoslovakia as the legacy of the old monarchical system, from which they wanted to free themselves. Moreover, the first political leadership of Czechoslovakia, both at the government level and in the parliament until the adoption of a constitution in April 1920, consisted almost exclusively of ethnically Czech-Slovak oriented forces. In contrast, the large estates were mostly in the hands of ethnically German or Hungarian-oriented owner families. Given these and other major circumstances following the founding of Czechoslovakia, the implementation of land reform was also an expression of the newly gained sovereignty and promotion of national identity of the still young Czechoslovakia as a primarily Slavic state.

Even before the formal end of World War I, i.e., in the Czech regions on November 9, 1918, the Czechoslovak leadership issued the first land reform law, which mainly consisted in restricting the sale of registered agricultural property and was extended to forestry properties in December 1918. In April 1919, the "zákon zabrany" (Law on the Seizure of Property) was enacted, a framework law for the seizure and expropriation of agricultural and forestry property along with associated enterprises. This law provided for the seizure of all agricultural land over 150 hectares and land in general over 200 hectares. Section 9 of this law even provided for expropriation without compensation for seven categories of property, including two particularly relevant to the princely Liechtenstein property: "enemy state property" and "illegally acquired" property. I will discuss these points in more detail later.

Although the question of expropriation without compensation (i.e. confiscation) did not lose its full significance, with the adoption of the Compensation Law on April 8, 1920 (attributed to international pressure), Czechoslovakia generally avoided uncompensated expropriation in most cases, with exceptions such as the Habsburg family and some other specially defined groups of persons. The allocation of expropriated property was determined by the Allocation Law of January 30, 1920.

In July 1919, the state Land Office was established with extensive powers regarding the expropriation and redistribution of property, operating centrally with considerable autonomy and without real political supervision. It could also make agreements with the families to be expropriated, including contracts for expedited allocation procedures directly to buyers who could pay up to 50% above the compensation amount. This shows that there were indeed negotiation margins between the expropriated landowners and the Land Office. As a result, some large estates lost significant parts of their properties for relatively small compensation, but they could also retain significant parts, which then became the subject of confiscations and nationalizations starting in 1945. The expropriation processes under the land reform were essentially completed by the mid-1930s.

### *Confiscations after the end of World War II:*

With the end of World War II, the exile government under then President and former Foreign Minister Edvard Beneš took over with a clear intention not only to expel or "deport" large parts of the German-speaking (and Hungarian) population, at least those cooperating with the Nazi regime, and to punish collaborators, but also to completely expropriate the remaining estates that had been left to German and Hungarian large estate owners after the land reform (especially under the influence of communist Agriculture Minister Julius Ďuriš).

Immediately after the end of the war, unregulated acts of revenge primarily against the German-speaking population led to substantial expulsions, thousands of victims, and property thefts (so-called "wild" expulsions and expropriations). Subsequently, there was a more controlled, still partly violent, so-called "deportation" ("Odsun") of practically the entire ethnic German population. In the revolutionary atmosphere after World War II, the political motivation was to hold the entire German minority, which comprised over a quarter of the population, responsible for Nazi crimes, combined with a desire for revenge for the criminal Nazi regime. To comply with this political will, it was necessary to quickly create a legal framework. Naturally, this left room for the interests of the forces represented in the new leadership, including the increasing influence of the communists.

Thus, shortly after the end of the war, the first legal measures were issued for the takeover of property belonging to "persons of German and Hungarian nationality," initially by placing it under "National Administration" and subsequently submitting it to confiscation, i.e. expropriation without compensation. This was done in the form of presidential decrees, the first of which were issued within two months after the end of the war with immediate effect and later approved by the parliament. These decrees are popularly known as "Beneš Decrees," although this does not mean that the president determined their content alone. They reflected the will of the political leadership, primarily from the exile, in which the communists, especially Agriculture Minister Julius Ďuriš, took a radical line

regarding the expropriation of land. The formulation of the legal provisions had a clearly ethnically oriented character (combined with the idea of individual and collective responsibility for Nazi crimes against Czechoslovakia). Besides this "punitive character," Decree No. 12 was mainly intended to serve a renewed, this time comprehensive and final land reform.

At that time, given the immediate post-war situation and the prevailing revolutionary atmosphere, alongside the revolutionary government, there was only a rudimentary state order. Nevertheless, the confiscatory provisions were intended to take effect as immediately as possible.

First, the property of "state unreliable" persons of German and Hungarian "nationality" were to be placed under state national administration. "State unreliable" persons included not only those who had acted against the state integrity and sovereignty of Czechoslovakia but also all persons of German or Hungarian nationality, i.e., those who de facto had the corresponding mother tongue, regardless of their citizenship. In practice, properties abandoned during the expulsion were placed under state forced administration to secure their management and economic function and to prevent unauthorized takeovers. This was done through Decree No. 5 of May 19, 1945, which was immediately applied to Liechtenstein property, including princely estates, by order of the Ministry of Agriculture.

On June 21, 1945, the well-known Decree No. 12/1945 was issued, which provided for confiscation, i.e., expropriation without any compensation, of virtually all agricultural and forestry land, including associated buildings and facilities, belonging to "persons of German and Hungarian nationality or traitors and enemies of the Republic" (between 1938 and 1945), regardless of their citizenship. The decree had an unusual effect *ex lege*, meaning automatically with its issuance, independent of any rule-of-law implementation measures. A public notification of which properties were subject to confiscation according to this law, e.g., by a (competent?) district committee, was deemed sufficient (in practice). No legal remedy was provided. In practice, district and national committees, which were spontaneously established after the war, played a key role, although not necessarily legally on a proper legal basis.

But how should it be legally ensured on which properties the confiscation was applicable in accordance with the law? The decree explicitly defined members of the German nationality as persons who identified themselves as "German-speaking" in a census, e.g., in 1930, or belonged to relevant organizations. But what about persons where this was not the case or not clear? Could they be arbitrarily, e.g. just based on simply "notoriety" of their belonging to an ethnic group, subjected to such a drastic measure as confiscation by Czechoslovak authorities outside rule-of-law procedures, including the head of state of a neutral sovereign state during the war? This was significant in the case of Prince Franz Josef II.

On October 24 and 25, 1945, two decrees, Nos. 100 (and 101) and 108 of October 24 and 25, 1945, were issued. Decree No. 100 essentially provided for the nationalization of industrial plants, excluding persons of German and Hungarian nationality who had not actively resisted the Nazi regime, from compensation. Decree 108 ultimately ordered the confiscation of all "enemy property," i.e., property owned by persons of German or Hungarian nationality, except those who could prove their loyalty to the Czechoslovak Republic, had never acted against the Czech and Slovak people, and had either actively participated in the fight for liberation or suffered under Nazi or fascist terror. Thus, the possibility of an exemption (essentially without prior or simultaneously regulated administrative procedure for their enforcement) was provided.

The nature of confiscations and expropriations based on the mentioned decrees has characteristics and a political-social environment that, in my view, can help to understand the complicated mix that determined the expropriation measures in Czechoslovakia immediately after World War II and their legal foundations. I, thereby, admit to use certain simplifications of more complex developments and issues. This mix includes:

- The concepts developed by the Czechoslovak exile government under President Edvard Beneš for dealing with the German population, including the expulsion of at least part and ultimately practically the entire German-speaking population
- Implementation of another land reform "driven primarily by the desire to finally take Czech and Slovak land out of the hands of foreign German and Hungarian landowners as well as traitors to the Republic" (Preamble to Decree No. 12). It is noteworthy that these landowners were characterized as "foreign."
- The political goals of the Prague leadership after the end of the war, which had to account for the revolutionary and revanchist, naturally national-oriented basic mood along with strong socialist and communist influence in the population, while also stabilizing the country and containing partly massive abuses. By 1945, radical communist attitudes prevailed against the partly less radical approach of President Beneš (Communist Agriculture Minister Julius Ďuriš).
- Initially very rudimentary judicial and administrative structures that could have served the legal protection of persons affected by the expropriation measures through rule-of-law procedures. This stands in contrast to a certain legalistic and democratic tradition and the presence of excellent jurists, who were, however, increasingly subjected to the pressure of revolutionary and communist forces.
- Increasing absence and legal defencelessness of persons affected by the expropriation measures due to the massive expulsion or deportation of Germans and Hungarians and the lack of even a rudimentary rule-of-law procedure
- Limited to no regard for international law and the mechanisms of the United Nations, influenced by an overemphasized - though understandable given the circumstances - national and sovereignty consciousness combined with an emotionally understandable but legally highly problematic ethnically motivated revanchism.

#### *Expropriation measures against Liechtenstein property after the First and Second World War:*

##### *Land reform after 1918:*

##### *General remarks:*

I apologize that I will focus in this limited scope on the measures directed against Liechtenstein property in the former Czechoslovakia, which, according to the Liechtenstein house law, was assigned to the reigning Prince, in this specific case to Princes Johann II, Franz I, and Franz Josef II.

According to investigations by Peter Geiger (HK Report Volume 4, pp. 184-198), there were 38 Liechtenstein owners and landowners affected by the confiscation measures after World War II on the territory of today's Czech Republic and in some cases also in Slovakia. The princely property, of which remained 69,000 hectares after the land reform of the First Republic, is certainly in the foreground. Additionally, there are about 14,000 hectares from 7 other members of the princely house and 7,500 hectares from the remaining 30 persons. Concerning the value of the confiscated property in 1945, the princely property was estimated at 380 million CHF (value 1945) and the affected property of other Liechtenstein citizens at 25 million CHF. Peter Geiger rightly described the individual fates of the expropriated Liechtensteiners as another research desideratum of the Historians' Commission that has not yet been adequately addressed. The same applies, of course, to the measures of land reform, albeit to a lesser extent. Therefore, I will focus on the princely property, as its treatment also had the greatest significance for the relations between Liechtenstein and Czechoslovakia, and with the Czech Republic.

Land reform after 1918 - starting point:

This is not about an abstract relationship between two random European countries. It is about the close intertwining resulting from the seven-hundred-year connection between the Liechtenstein family and the Bohemian lands and the resulting extremely rich cultural, economic, and human heritage. This is vividly illustrated in the eight volumes of the historians' report. The Liechtenstein princely family owned the largest estate in one hand – that of the Prince – mainly in Moravia and Moravian Silesia, and partly in Bohemia. (The Schwarzenberg's estate was larger, but only when the primogeniture and secundogeniture are counted together.)

This rich shared heritage, which today would also provide considerable potential for fruitful cooperation between the Czech Republic and Liechtenstein, was overshadowed by a burdensome narrative since the end of World War I. This narrative stemmed from a historiography that was very present in the leadership and through relevant press in the public of the young Czechoslovakia: According to this, the Liechtenstein family, especially the first Prince Karl I, was considered as having played a significant – and depending on the interpretation, also tragic – role in a historical phase in the 17th century. This period was perceived as particularly relevant to "Bohemian" independence against Habsburg rule, especially in the late 19th and early 20th centuries, during the development of a distinct Czech (-Slovak) national consciousness. It was the Battle of White Mountain and the suppression of the Bohemian Estates' uprising in 1620, followed by property transfers at the expense of the insurgents, primarily based on confiscations of the insurgents' property. The highlighting of this narrative occurred particularly under President Masaryk and his leadership group during the time of Czechoslovak independence and was also present in the broader public. According to this narrative, Prince Karl I of Liechtenstein, as the imperial commissioner, was considered responsible for the bloody suppression of the uprising that was interpreted as a manifestation of Bohemian independence against perceived oppression by Habsburg emperors. Not only that: the Prince was alleged to have used the power conferred by the Emperor to fraudulently and illegally massively expand his possessions from acquisitions of confiscated property of the insurgents and later of Wallenstein.

In the nationalistic current immediately after World War I, this was seen as a fundamental offense against Bohemian interests – according to the leading Czech historian Josef Pekař, even an "iniquity" against the Bohemian, now Czechoslovak, nation. This role was, after World War I, also considered relevant by significant historians and jurists for justifying any uncompensated expropriation of properties in the hands of the Liechtenstein family.

Pekař was certainly aware of the legal obstacles that stood in the way of legally justifying expropriation – let alone uncompensated expropriation – after almost three centuries. He was actually himself generally against confiscations. Nevertheless, he could imagine such expropriation at least for parts of the Liechtenstein property as an exceptional "manifestational punishment" for the responsibility of the Liechtenstein family for the "offenses" after the Battle of White Mountain. He saw "no other in every respect so representative bearer of guilt as the Liechtenstein family," even after nearly 300 years. This negative assessment of the role of the Liechtenstein family in the 17th century was shared not only by Pekař but also by a strong public opinion and other significant authors of reports such as Kadlec, Kapras, Šusta, and Stieber. Thus, the highly productive shared history of the Bohemian lands and the Liechtenstein family had already been overshadowed by this very present negative narrative in the public after World War I.

Yes, this attitude even found its way into the parts of the Czechoslovak legislation related to the land reform that allowed uncompensated expropriation – that is, confiscation – of land. For example, Section 9 of the Confiscation Law of April 1919 allowed uncompensated expropriation, referring in the fifth of the seven explicitly listed facts triggering it to "illegally acquired property." The application of this provision for uncompensated expropriation – that is, confiscation – against Liechtenstein properties was seriously discussed in a series of reports in connection with acquisitions in the 17th century, although it was ultimately not applied since the general view prevailed with the adoption of

the Compensation Law in 1920 that expropriations during the land reform should be compensated with a few exceptions – albeit in the end with only a fraction of the value.

In any case, a significant motive can be seen in the critical perception of the Liechtenstein family, leading the Czechoslovak leadership with corresponding political support to tend to particularly advance the expropriation of the princely properties. This was from the beginning associated with diplomatic efforts, especially attributed to the national-socialist Foreign Minister Edvard Beneš, to undermine the perception of Liechtenstein as an independent and neutral state during World War I at the Paris Peace Conference and towards the League of Nations. This aimed to prevent Prince Johann II from being treated as the sovereign of an independent and neutral state and potentially deriving a special status for the princely properties, which could have opposed the full application of land reform to Liechtenstein properties. This fundamental attitude was legally underpinned mainly by two legal opinions from the respected professor at Charles University, Antonín Hobza.

The lack of respect for the neutrality and sovereignty of Liechtenstein after World War I:

The tendency of the young Czechoslovakia to delegitimize the Principality of Liechtenstein as an independent state was expressed particularly in Prof. Hobza's legal opinions. They partly provided a theoretical basis for the subsequent political actions of the Prague leadership through the following theses:

- The continuing responsibility of the princely house for the alleged unjust enrichment of the Princes of Liechtenstein in the 17th century
- Treating Liechtenstein as an enemy state and not recognizing its neutrality in World War I
- Implicitly treating Prince Johann II of Liechtenstein de facto as an Austrian, at least questioning his status as the head of a sovereign state, among others, by referring to his membership in the Austrian House of Lords during the monarchy
- Recognition of only limited statehood of the Principality of Liechtenstein
- Non-recognition of the legal status of the Prince, especially his "extraterritoriality" and immunity of his property against expropriation, by referring, among other circumstances, to his close ties to the Austro-Hungarian Monarchy.

A series of legal opinions and Memoranda initiated by the Liechtenstein side, including a detailed report by Dr. Gustav Friedrich, Dr. Maximilian Saxl, a report by Prof. Leo Strisower, two memoranda by Prince Eduard, and a memorandum on behalf of the Prince to the Czechoslovak Prime Minister, convincingly contradicted Hobza's theses. Additionally, a memorandum actually applicable to Swiss citizens by Wien-Claudi Knoll and Loewenfeld, and ultimately a late extensive report published in book form by Prof. Jaromír Sedláček in 1928, defended the sovereignty and neutrality of the Principality with evidence, countered the negative impacts of membership in the House of Lords on the status of the Prince as Liechtenstein's sovereign, and supported at least partial immunity of his properties – at least by characterizing them as crown properties serving the performance of state functions.

In the end, all legal opinions had only limited influence on the actual implementation of land reform against the princely Liechtenstein properties. Ultimately, it was the power of the factual, in the form of decisions by the Land Office and negotiations with the management of the princely Liechtenstein estates in Czechoslovakia, that led to the implementation of land reform in three working periods. As a result, the agricultural and forestry estates in princely Liechtenstein ownership were reduced from about 160,000 hectares to about 69,000 hectares. Direct compensation amounted to 149,500 million Czech crowns, of which 115,000 were paid out, about one-sixth of the market value. There were also forced sales and direct allocations that brought the princely administration up to 50% more than the

direct compensation. Neither immunity of the princely properties against expropriation nor formal recognition of even a part of the princely properties as specially protected “crown property” – i.e., properties whose income at least partly serves the financing of state business or expenses in the interest of the Liechtenstein state – was recognized. However, both the argument of extraterritoriality/immunity and of status of crown property might have led to some restraint by the Land Office towards the Liechtenstein properties in the application of land reform. As detailed – such as the study by Suzanne Keller-Giger on land reform measures against the Schwarzkosteletz estate (Suzanne Keller-Giger *Two Countries – One Princely House*) Liechtenstein-Czech Historians' Commission Volume 6) – the negotiations between the princely Central Administration and the Land Office, which stretched over years, were extremely complex and would require detailed research to provide evidence of the impact of a certain special status of the princely estates.

At least equally problematic, however, are the long-term effects of Czech foreign policy that the implementation of land reform to the detriment of the Liechtenstein properties had. The Czechoslovak diplomacy was undoubtedly much more present and potent on the level of the Paris Peace Conference than the Liechtenstein diplomacy and the diplomatic support by Switzerland. Especially Rupert Quaderer and Suzanne Keller-Giger showed in their comprehensive significant studies in Volume 6 of the Liechtenstein-Czech Historians' Report how much Czechoslovakia tried to weaken Liechtenstein's position on the international stage from the end of the war onwards, following the legal arguments of Prof. Hobza. Statements that AM Beneš himself made according to some reliable sources clearly indicate that Czechoslovakia delayed the recognition of Liechtenstein as a state and the establishment of diplomatic relations – including a diplomatic representation through Switzerland – until the completion of the implementation of land reform. The reason is obvious: The Czechoslovak leadership was concerned that any strengthening of Liechtenstein's sovereignty and facilitation of diplomatic influence could at least lead to a strengthening of the special status of Liechtenstein, especially princely, properties. This the Czechoslovak leadership obviously wanted to prevent. Nurturing doubts about the sovereignty and neutrality of Liechtenstein and lacking diplomatic support made it easier for the Czechoslovak leadership to treat the Prince of Liechtenstein during the expropriation as any other private large landowner, not as a head of state whose status is closely connected with the sovereignty of the Principality. This could, in turn, foster a certain republican restraint, for example, in Switzerland, to very vigorously represent the interests of the princely properties diplomatically. The firm stance of the Czechoslovak leadership not to allow diplomatic representation of Liechtenstein's interests towards Czechoslovakia, undoubtedly contributed to this.

What remained, in addition to the reduction of the princely properties, is a serious damage to the sovereignty and international standing of Liechtenstein, including its interest in joining the League of Nations.

Only when the sovereignty of Czechoslovakia itself was at stake in 1938 due to pressure from the German Reich did Czechoslovakia recognize the diplomatic representation of Liechtenstein by Switzerland and thus the establishment of diplomatic relations between Czechoslovakia and Liechtenstein as sovereign states.

### *The question of confiscations after World War II:*

The still "open questions" between Liechtenstein and the Czech Republic, that is, the legally – at least from the Liechtenstein perspective – unresolved measures against 38 Liechtensteiners, primarily Prince Franz Josef II, after World War II, have their origins in the previously described measures against ethnic Germans after World War II. Against the princely properties and, as far as can be traced, also against other Liechtenstein landowners, the establishment of national administration was first ordered by decision of the Czechoslovak Ministry of Agriculture. In the case of the Prince, a complaint was lodged against this as early as June 1945. Already on July 30, 1945, Prince Franz Josef was declared by the District National Committee Olomouc as a person of German nationality and therefore the

uncompensated expropriation of his properties was declared. This declaration was later confirmed by the National Committee in Brno but was contested by the Prince up to the Supreme Administrative Court (OVG).

The personal assets (bank balances, etc.) of the Prince and other members of the princely family and other Liechtensteiners were confiscated based on Decree 108, although there were reservations in the Ministry of Foreign Affairs about the personal assets of the Prince, as Czechoslovakia had already recognized in the interwar period that the personal assets of the Prince fell under the extraterritoriality/immunity of the Prince. Prince Franz Josef had tried from the outset to appeal against the imposition of national administration and confiscation measures, which was difficult given the lack of a rule-of-law administrative procedure for protection against confiscations. His main argument was obvious: that he, as the head of the sovereign and independent state of Liechtenstein, was not of German nationality and could not be, and he had not declared himself as such within the meaning of Decrees Nos. 5 and 12. Moreover, Decree No. 12 had a punitive character and could not be applied to a foreign head of state under international law.

The appeals finally reached the OVG in Bratislava, which had to deal with the arguments of the Liechtenstein side, prepared by excellent jurists. The legality of the actions against the Prince was even doubted by jurists of the Supreme Administrative Court (Senate Councillor Dr. Pilík), which is why the decisive acts should actually have been declared null and void. In 1946 and 1947, even after the communist coup in February 1948, there were considerable doubts among the jurists of the Prague government about the legality and enforceability of an expropriation of the Prince without compensation. This was despite legal attempts to qualify Decree No. 12 not as a penal norm (the application of a penal norm to a foreign head of state is in any case contrary to international law) but as a land reform measure and to replace the lack of self-declaration of the Prince as a German by his "notorious" membership in the German nation. Actually, there was a good chance of complying with the Liechtenstein legal standpoint and at least considering compensation or negotiations for a solution. Even after the communist coup, there were at least in the Ministry of Foreign Affairs still doubts whether Liechtenstein, with appropriate Swiss support, could even achieve internationalization of the conflict. It was only in 1951, after the complete penetration of the administrative and legal system by the communists following the February 1948 coup, that the Supreme Administrative Court decided with a laconic justification against the Prince. Other members of the princely family and about 30 other Liechtenstein citizens were also expropriated without compensation.

Liechtenstein mobilized, under the coordination of the well-connected Prague lawyer Dr. Emil Sobička, excellent jurists, especially those knowledgeable in international law. Among them were a co-author of the Czechoslovak constitution, František Weyr, the prominent Swiss international lawyer Sausser-Hall, Cambridge professor Kurt Lipstein, Dr. Erwin Loewenfeld, also from Cambridge, Dr. Magerstein, Dr. Helbig-Neupauer, the American experts Oliver Hyde and Charles Lissitzyn. They dealt with questions, which I try to summarize here without going into the rich details:

- General permissibility of expropriation of a foreign head of state – Result: Expropriation is fundamentally possible under international law, Question of extraterritoriality or immunity of a head of state against expropriation by a foreign state – varies in international law doctrine and practice
- Permissibility of confiscation, i.e., expropriation without compensation of foreigners – Result: is fundamentally illegal under international law except for exceptions not applicable to the Prince and other Liechtensteiners
- Expropriation of land in the hand of foreigners – Result: This is fundamentally the sovereign right of the territorial state but only against compensation; this must be "adequate" and can include lost profits

- Specific permissibility of applying Decrees Nos. 5 and 12 to princely Liechtenstein property – Result: General rejection of the permissibility of application due to the status of the Prince (and the other Liechtensteiners) as nationals of a neutral third state and lack of application of other offenses; severe rule-of-law deficiencies (F. Weyr); application of purely ethnic criteria to the Prince without legal basis, even considered absurd
- Possibility for Liechtenstein to involve international dispute resolution mechanisms with the confiscation issue: 1) Direct involvement/jurisdiction of the International Court of Justice (ICJ): no compulsory submission for Czechoslovakia; further prerequisites – recognition of the ICJ statute by Liechtenstein or Switzerland representing Liechtenstein diplomatically – not yet given at the time; 2) Triggering compulsory jurisdiction of the ICJ based on an existing arbitration agreement between Switzerland and Czechoslovakia – theoretically possible, but problematic due to the conditions at the time; 3) Involvement via the Security Council or General Assembly and UN dispute resolution procedures: fundamentally possible despite the problem of the prerequisite of a potential threat to international peace and security. General: Basic possibility of involving the Security Council or General Assembly of the UN to generally trigger the application of the UN dispute resolution system
- Question of treating princely Liechtenstein property – at least partly – as “crown or chamber property” immune against expropriation – Result: general acceptance of the existence of crown property under Liechtenstein law but varied assessment whether this should also be recognized by Czechoslovakia

These arguments could not be completely dismissed by reasonably objective-thinking jurists on the Czechoslovak side. Even advisors to the President (Dr. Procházka) and representatives of the Ministries of Interior and Foreign Affairs, at least before the final communist takeover, saw at least the necessity of compensation similar to the Swiss case as realistic.

Nevertheless, the Czechoslovak leadership, especially the Foreign Ministry, took an uncompromising stance. They blocked the continuation or resumption of diplomatic relations with Liechtenstein with partly contradictory arguments. (Switzerland, which represented Liechtenstein diplomatically at the time, broke off diplomatic relations in 1938. The argument was constructed that diplomatic relations with Liechtenstein were also interrupted, although Liechtenstein, unlike Switzerland, did not break off relations. When Switzerland resumed relations in 1945, Czechoslovakia blocked the resumption of diplomatic relations with Liechtenstein, even represented by Switzerland.)

As a result, Liechtenstein was simply diplomatically sidelined, which equated to a clear lack of respect for Liechtenstein's sovereignty and full international legal capacity, although there could no longer be any doubt about the sovereignty itself due to its own Czechoslovak practice.

Liechtenstein nevertheless sought Swiss intervention in its favour with Czechoslovakia. Switzerland initially tried this by conveying Liechtenstein positions – albeit sometimes delayed – to the Czechoslovak side. Only when Switzerland increasingly sought to pursue its own interests, namely appropriate compensation for Swiss citizens, did support for Liechtenstein become more hesitant. (Here, Switzerland had the trump card of holding Czechoslovak gold deposited in Swiss banks.)

At the same time, everything indicated that Liechtenstein's legal, especially international legal, positions were seen as so strong in 1946 and 1947 that it became increasingly clear even within the Czechoslovak leadership that there was a good chance that the Supreme Administrative Court would declare the confiscatory acts against the Prince as invalid and without sufficient legal basis. At least compensation payments to Liechtenstein were considered inevitable by significant legal voices with appropriate international support.

It was only years after the takeover of power by the Stalinist communists that the Supreme Administrative Court in 1951 took a decision that the takeover of state administration and the confiscation was to be considered lawful. It was taken, from a Liechtenstein and likely objectively comprehensible perspective, without proper legal basis. Thus, from the Czechoslovak perspective, the "ex lege" effect of Decree No. 12 took effect with the date of its issuance in June 1945. The key to this decision was the classification of the Prince and thus other confiscated Liechtensteiners as "persons of German nationality."

Although both for Swiss and Austrian German speakers (by a legal opinion of the Czechoslovak Ministry of the Interior) an explicit exception from this classification "German nationality" was seen, Czechoslovakia upheld the classification against Liechtensteiners, especially absurdly against the Prince of Liechtenstein, as the basis for the application of the confiscation measures based on the presidential decrees.

From the Liechtenstein perspective, it is particularly distressing that since 2014, it has been assumed that the classification of the Liechtensteiners and their Prince as "Germans" – and thus subject to the then Czechoslovak confiscation provisions – has been not only maintained but actually renewed and reinforced by Czech authorities and courts. This was triggered by an entry transferring the registered property of Prince Franz Josef II. in favour of his successor in the Czech land registry, which was annulled by administrative and court intervention in 2014, five years after the first establishment of diplomatic relations (Řičany case).

The consequence of this, namely the different treatment of, i.e., discrimination against, Liechtensteiners based purely on linguistic-ethnic grounds, is unacceptable and sanctioned under today's international law and human rights regime. Here Liechtenstein would have possibilities, unlike in 1945, to claim ongoing human rights violations on an ethnic basis and in a dispute, even trigger compulsory jurisdiction of the International Court of Justice.

It is entirely understandable that on the Czech side, there is a general interest in leaving questions of restitution and addressing the consequences of (including unjust) legislation and political decisions after 1945 behind. Likewise, the concern that addressing the still "open questions" with Liechtenstein could disturb the laboriously achieved "legal peace" regarding the application of the 1945 decrees seems understandable. By following such practice, the uniqueness of the case of the Prince of Liechtenstein and the other affected Liechtensteiners is much too underappreciated, although the results of the Historians' Commission's work comprehensively support this. Until today, the consequences of continuing to consider the "open questions" as resolved, so far consistently supported by Czech courts, are largely overlooked at the political-diplomatic level: this perpetuates the de facto illegalities committed under communist influence and still affecting Liechtenstein, thus impacting relations with this European partner country. Therefore, from a Liechtenstein perspective, they cannot be considered resolved.

The continuation of this Czech stance without even the appearance of an effort towards an amicable solution has, especially after the establishment of diplomatic relations in 2009, again an effect: As since 1918, it is a blatant lack of respect for Liechtenstein's sovereignty. The fact that Liechtenstein did not leave the treatment of human rights consequences of this stance to its citizens and the head of state in the form of individual complaints before the European Court of Human Rights in Strasbourg, but presented the Liechtenstein position as a state complaint, is likely the first consequence of this situation.

### *Conclusion and Outlook:*

The review presented here shows that even since the establishment of diplomatic relations, the "open questions" essentially remain not only in the treatment of the consequences of confiscation measures

for Liechtenstein citizens, including the Prince. The damage caused by the non-recognition policy against and the hindrance of diplomatic relations with, Liechtenstein, has been far too little considered. Added to this is the current, i.e., ongoing and repeated legal cementing of the idea that Prince Franz Josef II was "of German nationality" and therefore lawfully expropriated without compensation under the 1945 decrees. This position has even been supported by the Czech side today – for example, before the European Court of Human Rights in Strasbourg – with elaborate arguments asserting that the Prince was unmistakably of German nationality and possibly even had certain affinities with the Nazi leadership. This introduces arguments and narratives today that were neither represented nor proven even in 1945 and not even at the height of communism – for example, following a secret service investigation in 1962. It is to be assumed that the representatives of this position (as much as the fear of fostering a questioning of the validity and applicability of the 1945 presidential decrees may seem understandable) are not even aware of what position they are effectively supporting: The maintenance and even renewal and reinforcement of the almost century-old lack of respect for the sovereignty and independence (and the neutrality of the Principality in World War II) of the Principality of Liechtenstein. If this were more widely known and understood in the Czech public, the political pressure towards an amicable resolution of the open questions would probably be higher, given the well-known Czech sense of justice.

Conversely, Liechtenstein insists that Decree No. 12 simply was not applicable to the Prince and other Liechtensteiners and therefore is actually irrelevant for the legal assessment. Therefore, Liechtenstein does not question the validity or effect of the decrees as such. Also, the non-acceptance of the classification of the reigning Prince of Liechtenstein as "German" under the 1945 circumstances does not affect the validity and effect of the decrees. Besides, Czech courts still cannot conclusively demonstrate for the Liechtenstein side, which lawful and therefore objectively valid confiscation acts based on the decrees actually led to a transfer of ownership.

However, if the domestic legality of the expropriation measures taken against the Prince and other Liechtensteiners in 1945 were finally proven or at least not questioned, the main international legal consequences would come to the foreground: The indisputable international legal claim of the expropriated Liechtensteiners for adequate compensation, which not only would reach billions but could also trigger claims outside the Liechtenstein case.

Even if some Czech politicians and jurists may not be aware of this, surveys show that dealing with the almost unique case of Liechtenstein causes discomfort in the Czech public, especially among the young population. Therefore, a majority opinion is slowly emerging that the since 1945 "open questions" with Liechtenstein should ideally be clarified through negotiations aimed at a mutually beneficial solution. (In a recent survey, twice as many Czechs advocate a negotiated solution as are opposed to a judicial one.)

However, this does not mean in political reality that such a process could be initiated so easily. There is still the justified concern that willingness to negotiate could still be exploited i.e. by extreme nationalist forces to the detriment of a constructive attitude ("Mikado effect").

All the more relevant, therefore, is the foundation for a rethink initiated by Hereditary Prince Alois in a meeting with the very open-minded Czech President Petr Pavel last autumn in New York:

The Search for a Joint Solution Based on Three Principles:

- Liechtenstein does not insist on restitution of the property taken over by Czechoslovakia or on adequate compensation, which would now be in the billions.
- Instead, a joint structure is created in which the disputed properties, including the valuable cultural assets to be preserved, are incorporated.

- Their economic success, alongside the preservation and promotion of these cultural assets, benefits the Liechtenstein shareholders. Furthermore, economic and investment opportunities would arise, benefiting the further revitalization of the economic and tourism location of the Czech Republic, currently unreachable in form and extent.

In a time of necessity for political convergence in Europe, such a flagship project could set an important example for other countries in Europe and beyond:

700 years of shared history between the now prosperous countries of the Czech Republic and Liechtenstein could turn the previous burden on bilateral relations into a future project and a development with unforeseen possibilities for the joint mobilization of the potential of both countries.

This would be the best manifestation of mutual recognition and respect for the sovereignty of both states that has burdened relations for over a hundred years.

I hope to have contributed to fostering this understanding with my presentation today