

Comments of the Czech Republic on the specific issues raised in Chapter III of the Report of the International Law Commission on the work of its 67th session (2015)

The Czech Republic presents the following information on the specific issues concerning the topic “Subsequent agreements and subsequent practice in relation to the interpretation of treaties” contained in Chapter III (section A) of the Report of the International Law Commission on the work of its 67th session (2015, doc. A/70/10). As far as other topics are concerned, the Czech Republic refers to its comments to Reports of the ILC on the work of its 66th and 65th session, where appropriate.

Subsequent agreements and subsequent practice in relation to the interpretation of treaties

The decision of the Constitutional Court of the Czech Republic of 23 July 2002 (II. ÚS 305/01) – “Nature of the Agreement between Czechoslovakia and the United Kingdom of 28 September 1949 (compensation for British property)”

The relevant property was classified as Jewish property and transferred to the German Reich as part of the policy of racial persecution during the German occupation of Czechoslovakia (in 1940). After the war the property was placed under “national administration” by virtue of Decree of the President of the Czechoslovak Republic No. 108/1945. Mr. BV, the original owner of the property, acquired British citizenship in April 1948 and applied for the restitution of his property in June 1949. However, the competent Czechoslovak regional court discontinued the restitution proceedings in May 1951 with reference to the fact that Mr. BV had made a claim in terms of Article II of the Agreement between Czechoslovakia and the United Kingdom of 28 September 1949 (Agreement regarding compensation for British property, rights and interests affected by Czechoslovak measures of nationalization, expropriation and dispossession, signed at London on 28 September 1949)¹ and obtained a compensation (the British Claims Commission accepted Mr. BV’s claim and included it on the list of claims to be settled from the £8 million in sterling provided by Czechoslovakia as a lump sum payment in settlement of all eligible claims; Mr. BV’s compensation was then paid from this lump sum).

In Constitutional Court proceedings the complainant (Mr. BV’s legal successor) maintained i.a. that, since the property was confiscated during the war and/or after the war as a result of subsequent Czechoslovak measures under Decree No. 108/1945, the Compensation

¹ Article II of the Agreement: „If the claim of a British national is in respect of British property confiscated or taken over by the enemy between the 17th September, 1938, and the 9th May, 1945, and thereafter affected by one of the various Czechoslovak measures, this claim shall fall within the provisions of the present Agreement notwithstanding the fact that the restitution or recognition of his title to the property by the Czechoslovak authorities has not taken place before the coming into force of the present Agreement. Consequently, the Czechoslovak authorities shall have the right to discontinue any proceedings that may have been initiated for the restitution or recognition of the title to such property. “

Agreement of 28 September 1949 did not apply to his legal predecessor because it covered only physical persons who at the date of signature of the Compensation Agreement were citizens of the United Kingdom and Colonies, provided that they were equally British nationals in accordance with this definition at the date of the relevant Czechoslovak measure.²

The competent Czechoslovak regional court held (in its decision of 1951) that in this case the “relevant Czechoslovak measure” was the “national administration” which was of a lasting nature and existed as of 28 September 1949. On this basis, the regional court concluded that the Compensation Agreement was applicable to this case. The Constitutional Court (in its decision of 23 July 2002) found this conclusion justified and added the following:

“... even if the Constitutional Court accepted the view that the ‘relevant Czechoslovak measure’ was the Decree of the President of the Republic No. 108/1945, taking into account the fact that the complainant was not yet a British national at the time when this Decree was issued, it would inevitably reach the same conclusion. According to Article 31 of the 1969 Vienna Convention on the Law of Treaties, ... a treaty must be interpreted in good faith and in the appropriate context which is deemed to include i.a. any subsequent practice of the parties in the application of the treaty which establishes the agreement of the parties regarding its interpretation. The court’s file shows that the complainant’s property was included on the British Claims Commission’s list and that the Commission accepted his claim and provided compensation. This means that in this case there existed a subsequent agreement between the parties that the 1949 Compensation Agreement was applicable to the category of persons to which the complainant belongs. Moreover, such subsequent agreement regarding the interpretation of a treaty is not inconsistent with the rules of general international law concerning diplomatic protection which are of a dispositive nature and may be superseded by another agreement between the States concerned”.

² Article 1(a) of the Agreement: “For the purposes of the present Agreement, “British property” shall mean all property, rights and interests affected by the various Czechoslovak measures which on the date of the relevant measure were owned directly or indirectly, in whole or in part, and whether legally or beneficially, by British nationals, to the extent to which they were so owned”. Article 1(b) of the Agreement: “For the purposes of the present Agreement, “British nationals” shall mean (i) Physical persons who at the date of the signature of the present Agreement are citizens of the United Kingdom and Colonies, or British protected persons belonging to any of the territories mentioned in subparagraph (ii) of this paragraph, and their heirs and legal representatives; ... provided that the persons ... concerned were equally British nationals in accordance with the foregoing definition at the date of the relevant Czechoslovak measure”).