The Legal Status of the Republic of China (Taiwan) and Its Reflection in International Administrative Law

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Abstract

The Republic of China (Taiwan) controls a compact territory, with inhabitants settled there possessing Taiwanese citizenship. At the same time, it established its own legal framework and enforces this framework by its own judicial and administrative structures. The fact is, however, that only eleven member states of the United Nations and the Holy See maintain full diplomatic relations with Taiwan as a sovereign state. The problem, as discussed very recently in international private law, arises in those states which maintain no diplomatic relations with it. This discussion also has relevance for the field of administrative law. Taiwan maintains its own administration, applying its own law vis-á-vis its own citizens. Consequently, the question arises whether the laws of this nation's administrative laws have any effect in those states which do not maintain diplomatic relations. In this respect, this article argues for a 'special status' for the law of Taiwan in their relations with international administrative law. In strict contrast to other non-recognised entities, Taiwan neither exists in a kind of "legal limbo", nor under an international boycott. Despite the absence of diplomatic recognition, the presence of cooperation and trust vis-á-vis the Taiwanese administration allows the application of its laws in certain specific cases. At the same time, however, the quasi-independent status of this entity also implies certain restrictions concerning the status of Taiwanese citizens.

Keywords: *Republic of China (Taiwan); quasi-independent states; application of foreign law, recognition of foreign administrative acts; international administrative law.*

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1. Introduction[3]

In international private law, the problem of applicability of the law, as

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established by the Republic of China (Taiwan)[4], has been the subject of attention in both legal scholarship and judicial practice.[5] The republic controls a compact territory, with the island of Taiwan (formerly Formosa) being the largest and main component of the controlled territories. At the same time, it executes effective control over inhabitants settled in the controlled territory and possessing Taiwanese citizenship.[6] Accordingly, it established its own legal framework and enforces this framework by its own judicial and administrative structures.[7] Consequently, the legal scholarship has been referring to a distinctive system of legal norms - the law of Taiwan, or Taiwanese law.

The fact is, however, that only eleven member states[8] of the United Nations and the Holy See (Vatican City) maintain full diplomatic relations with the republic as of 30th April 2024.[9] All other member states of the United Nations maintain diplomatic relations with the People's Republic of China (PRC) and do not recognise Taiwan as a sovereign state.[10] Thus, Taiwan is considered one of the "non-recognised entities", or "de facto states" in most of the nations worldwide.[11]

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[4] While the Republic of China (**中華民國**) is the official name, the entity has been widely known and referred to as Taiwan (**臺灣**). Other terms, such as "the Republic of China on Taiwan" have been also used. This article will be using term "Taiwan" to refer to the Republic of China.

[5] See Joe Verhoeven, Luigi Ferrari Bravo and Antonio Cassese, *Relations internationales de droit privé en l'absence de reconnaissance d'un Etat, d'un gouvernement ou d'une situation*, M. Nijhoff, Leiden, 1986, at pp. 86-87, Jürgen Basedow, "Non-recognised states in private international law", *Yearbook of Private International Law*, 20 (2018-2019), pp. 1-14 and Daniel Gruenbaum, "From Statehood to Effectiveness: The Law of Unrecognised States in Private International Law", *Rabel Journal of Comparative and International Private Law*, 86, issue 3 (June 2022), pp. 577-616. Also see Susanne Deissner, *Interregionales Privatrecht in China - zugleich ein Beitrag zum chinesischen IPR*, Mohr Siebeck, Tübingen, 2012, pp. 1-6.

[6] See Michael C. Davis, "The Concept of Statehood and the Status of Taiwan", *Journal of Chinese Law*, 4, issue 1 (January 1990), pp. 135-160, Tzu-wen Lee, "The international legal status of the Republic of China on Taiwan", *UCLA Journal of International Law and Foreign Affairs*, 1, issue 2 (Fall-Winter 1996/1997), pp. 351-392, Y. Frank Chiang, "State, Sovereignty and Taiwan", *Fordham International Law Review*, 23, issue 4 (October 1999), pp. 959-1005. Also see John F. Copper, *Taiwan. Nation State, or Province*, 7. ed., New York: Routledge, 2019, pp. 20-25. Also see George Kyris, "State recognition and dynamic sovereignty", *European Journal of International Relations*, 28, issue 2, (February 2022), pp. 287-311.

[7] See Chang-Fa Lo, *The Legal Culture and System of Taiwan*, Wolters Kluwer, Alphen aan den Rijn, 2006; Tay-sheng Wang, "The Legal Development of Taiwan in the 20th Century: Toward a Liberal and Democratic Country", *Pacific Rim Law & Policy Journal*, 11, issue 3 (January 2002), pp. 531-560, Rong-chwan Chen, "The Recent Development of Private International Law in Taiwan", in *Codification in East Asia, Selected Papers from the 2nd IACL Thematic Conference*, edited by Wen-Yeu Wang, Springer International, Vienna, 2014, pp. 233–248.

[8] Belize, Eswatini (formerly Swaziland), Guatemala, Haiti, Marshall Island, Nauru, Palau, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Tuvalu.

[9] The fact is that several states have recently switched diplomatic recognition from Taiwan to the People's Republic of China (PRC). This was the case of Panama (2017), El Salvador (2018), Burkina Faso (2018), Dominican Republic (2018), Solomon Island (2019), Kiribati (2019), Nicaragua (2021), Honduras (2023).

[10] See Stefan Talmon, *Kollektive Nichtanerkennung illegaler Staaten: Grundlagen und Rechtsfolgen einer international koordinierten Sanktion, dargestellt am Beispiel der Türkischen Republik Nord-Zypern*, Mohr Siebeck, Tübingen, 2006, at pp. 20-26.

[11] See Lung-chu Chen, "Taiwan's Current International Legal Status", *New England Law Review*, 32, issue 3 (September 1998), pp. 675-685; Shigeru Oda, "Taiwan as Sovereign and Independent State, Status of Taiwan under International Law", *Japanese Yearbook of International Law*, 54 (December 2011), pp. 386-

Thus, its legal system is classified as an example of the law of non-recognised states from the viewpoint of those legal systems in Europe.[12]

The problem, as discussed in international private law, arises in those states which fail to maintain diplomatic relations with this entity.[13] In these jurisdictions, the question has been asked whether the laws of Taiwan implicate any legal consequences before courts. The question asks, if the courts of a state may allow application of law of such an entity, which hasn't been recognised by this state in international relations. In many jurisdictions, such applicability has been admitted in the relations of private law - in spite of the republic's non-recognition in the relevant jurisdiction.

In his outstanding study, Roberto Ruoppo has recently analysed[14] the impact of the legal status of Taiwan for the relations of international private law. The fact is, however, that a very similar problem may also arise in the relation of administrative law. Taiwan maintains its own administration, applying its own law vis-á-vis its own citizens.[15] In this respect, passports and identity cards are issued, criminal records certified, and university diplomas conferred to successful graduates. The fact is, that despite the absence of diplomatic recognition vis-á-vis the republic, there have been vibrant economic and academic relations with this particular entity in Europe. Consequently, the question arises whether the application of its law may gain any recognition in the administrative laws of those jurisdictions which choose not to maintain diplomatic relations with this non-recognised entity.[16]

The problem of applicability of the law of non-recognised entities (or de facto states) in the relations of administrative law was addressed in this journal earlier in 2023.[17] This article aims to add this particular research by addressing the question of

406, Phil C. W. Chan, "The Legal Status of Taiwan and the Legality of the Use of Force in a Cross-Taiwan Strait Conflict", *Chinese Journal of International Law*, 8, issue 2 (July 2009), pp. 455-492, Brad R. Roth, "The entity that dare not speak its name: unrecognised Taiwan as a right-bearer in the international legal order", *East Asia Law Review*, 4, issue 1 (Spring 2009), pp. 91-124, Pasha L. Hsieh, "The Quest for Recognition: Taiwan's military and trade agreements with Singapore under the one-China policy", *International Relations of Asia – Pacific*, 19, issue 1 (January 2019), pp. 89-115. Also see Hu Shaohua, "Small State Foreign Policy: The Diplomatic Recognition of Taiwan", *China: An International Journal*, 13, issue 2 (August 2015), pp. 1-23.

[12] See Janis Grybowsky, "The paradox of state identification: de facto states, recognition, and the (re-) production of the international", *International Theory*, 11, issue 3, (November 2019), pp. 241-263.

[13] France, Italy, Germany, Spain, Portugal, the Netherlands, Belgium, Luxembourg, Switzerland, Austria, the Czech Republic, Poland, Ukraine etc. See Samuel S. Kim, "Taiwan and the International System: The Challenge of Legitimation", in *Taiwan in World Affairs*, edited by Robert G. Sutter and William Oscar Johnson, Routledge, London, 2019, pp. 145–190.

[14] See Roberto Ruoppo, "Lo status giurizionale di Taiwan e i suoi riflessi sul piano internazional-privatistico", *Rivista di diritto internazionale privato e processuale*, 56, issue 2 (April 2020), pp. 325-362.

[15] See Ching-Hui Chen, "Administrative law reform in Taiwan", in *Judicial Reform in Taiwan. Democratisation and the Diffusion of Law*, ed. Neil Chisholm, Routledge, London, 2019, pp. 360-375. Also see Jeeyang Rhee Baum, "The Political Origins of the Taiwan Administrative Procedure Act", *Journal of East Asian Studies*, 5, issue 3 (September-December 2005), pp. 365-399.

[16] Steve Allen, "Statehood, self-determination and the Taiwan Question", *Asian Yearbook of International Law*, 9 (December 2004), pp. 191-219.

[17] See Jakub Handrlica, Gabriela Prokopová, Liliia Serhiichuk, Vladimir Sharp, "The enigma of recognition of administrative acts issued by non-recognised regimes", *Juridical Tribune - Tribuna Juridica*, 13, issue 4 (December 2023), pp. 513-535.

applicability of the law of Taiwan. This paper will focus on the problem from the viewpoint of the Czech Republic. On one hand, the Czech Republic maintains full diplomatic relations with the mainland China (PRC) and does not recognise Taiwan as a sovereign state. At the same time, the Czech Republic represents one of those countries of Europe that maintains considerable commercial relations with Taiwan.[18] Taiwanese electronics manufacturer, Foxconn, runs its largest European operation in the Czech Republic, which serves as the company's EU hub. Its subsidiary, Foxconn CZ, is one of largest exporters from the Czech Republic.[19]At the same time, there have been relatively well established scientific and academic relations between the Czech Republic and Taiwan.[20] The interests of Taiwan in the Czech Republic have been represented by the *Taipei Economic and Cultural Office* in Prague. One may argue that, in the last decade, the Czech Republic became one of Taiwan's closest partners in the European Union.[21] In this respect, this article will address the main research question as follows:

Firstly, the current practice of the administrative authorities of the Czech Republic will be analysed. As outlined above, the Czech Republic hasn't diplomatically recognised Taiwan, although those same administrative authorities have regularly admitted the law of Taiwan to apply when the public law of the Czech Republic is addressed. This argument will be demonstrated by several examples, including the treatment of Taiwanese citizens by the administrative authorities of the Czech Republic. Further, the argument is also demonstrated by the recognition of certain acts issued by the Taiwanese administration, such as certifications of criminal records, and digital COVID-19 certificates. Attention will also be paid in those cases where the domestic legislation of the Czech Republic explicitly links certain status with the diplomatic

[18] See Rudolf Furst and Gabriela Pleschová, "Czech and Slovak Relations with China: Contenders for China's Favour", *Europe-Asia Studies*, 62, issue 8 (October 2010), pp. 1363-1381, Alice Rezková, "Czech–Chinese Relations: Friends or Foes?", in *China and Central Europe: Success or Failure?*, ed. Tamás Matura, Budapest: Dialóg Campus, 2020, pp. 91-115, Wen-Yu Chen, "Changes in Taiwan-Czech Relations", Diploma Thesis, Faculty of Social Sciences, Charles University, Prague, 2023. See also Jean-Pierre Cabestan, "The Taiwan issue in Europe–China relations: An irritant more than leverage", in *China-Europe Relations. Perceptions, Policies and Prospects*, ed. David Shambaugh and Eberhard Sandschneider, Zhou Hong, Routledge, London, 2007, pp. 17-26.

[19] See https://www.foxconn.cz/news/foxconn-obhajil-pozici-top2-exportera-v-ceske-republice, accessed on May 10, 2024.

[20] For example, the Czech Science Foundation established a cooperation with the National Science and Technology Council of Taiwan. This serves as a platform for support of joint research projects and for the exchange of academicians and researchers. Many universities (including the Charles University in Prague) concluded memoranda of understanding and agreements on the exchange of students and academicians. This article was also written under the umbrella of a scientific cooperation between the Charles University and a Taiwanese partner.

[21] See Daniel McVicar, "How the Czech Republic Became One of Taiwan's Closest European Partners and What It Means for EU-China Relations", blog contribution available at https://www.cfr.org/blog/how-czech-republic-became-one-taiwans-closest-european-partners-and-what-it-means-eu-china, accessed on May 10, 2024. Also see Jan Fiala, "The relationship between the Czech Republic and Taiwan in the context of the People's republic of China", Diploma Thesis, CEVRO University, Prague, 2022 and Wen-Yu Chen, "Changes in Taiwan-Czech Relations", Diploma Thesis, Faculty of Social Sciences, Charles University, Prague, 2023.

recognition of a foreign entity. In this respect, acts providing for exterritorial status will be briefly analysed and their applicability to the staff of the *Taipei Economic and Cultural Office* in Prague will be evaluated.

Secondly, certain theoretical observations will be presented, with respect to the current practice of the administrative authorities of the Czech Republic. Eiki Berg and Raol Toomla argued that *"Taiwan is somewhat different from the other de facto states covered in this article as it did not obtain de facto status through secession, but because the international community decided to recognise mainland China and withdrew its recognition from Taiwan in confirmation of the 'one-China policy' (...)."*[22] In this respect, Berg and Toomla have classified Taiwan as a *quasi-recognised state*.[23] They supported[24] their arguments by stating that "*although not a member of the International Telecommunication Union (ITU), the Republic of China (Taiwan) has its own international country code.*[25] *The Republic of China (Taiwan) also has its own internet domain (.tw). Three Taiwanese airline companies are members of the International Air Transport Association (IATA) with their country of origin listed as 'Chinese Taipei'.*[26] *Further, while not being a Contracting Party to the Convention on Chicago Convention, there are three airports operating regular international flights to many places in the world. Also, even though Taiwan is not a member of the Universal Postal Union (UPU), it has direct mail connections with the rest of the world.*[27] *That means that the national post services worldwide do recognise post stamps*[28]*, as issued by the Taiwanese post administrations, as being valid. Passports, as issued by the Taiwanese administration, are being recognised as valid travel documents in many jurisdictions.*[29] *Lastly, as a member of the International Olympic Committee (IOC), Taiwanese athletes compete in the Olympic Games.*[30]" This argument has been recently shared also by other authors.[31] This article aims to further elaborate the argument, that the legal status of Taiwan is very different from other non-recognised entities, in that it exists

[22] See Eiki Berg and Raul Toomla, "Forms of Normalisation in the Quest for De Facto Statehood", *The International Spectator. Italian Journal of International Affairs*, 44, issue 4 (January 2010), p. 33.

[23] See also Czeslaw Tubilewicz, "Taiwan and Europe", in *Europe – Asia Relations. Building Multilateralism*, edited by Richard Balme and Brian Bridge, Palgrave Macmillan, London, 2008, pp. 172–194.

[24] See Eiki Berg and Raul Toomla, "Forms of Normalisation in the Quest for De Facto Statehood", *op. cit.*, at pp. 33-36.

[25] This has been listed as 'Taiwan, China'.

[26] Also see Michael Yahuda, "The International Standing of the Republic of China on Taiwan", *The China Quarterly*, 148 (December 1996), pp. 1319-1339.

[27] In December 2008, direct mail connections between the People's Republic and Taiwan were also established and mail no longer goes through Hong Kong or Macau.

[28] They bear inscription 'Republic of China', 'Republic of China (Taiwan)' or 'Taiwan Republic'.

[29] See Horng-Iuen Wang, "Regulating Transnational Flows of People: An Institutional Analysis of Passports and Visas as a Regime of Mobility", *Identities, Global Studies in Culture and Power*, 11, issue 3 (2004), pp. 351-376.

[30] The participation is under the country name of 'Chinese Taipei'.

[31] See eg. Theo Tindall, 'Citizens without States. The implications of non-recognition for people in de facto states', ODI Policy Brief, ODI/Centre for Armed Groups, London, 2023, at p. 5 (here, the argues that "*de facto states like Taiwan function much like any other state in both their domestic politics and international relations, even as they lack the formal status of de jure statehood and recognition by most other states.*").

worldwide.[32]

This article is focused on the law and practice of the administrative authorities of the Czech Republic with regard to foreign law.[33] Consequently, the scope of the article is limited to one specific jurisdiction. Having said this, the authors of this article also believe that the arguments presented here will also be inspiring for other jurisdictions in situations similar to the Czech Republic. At the same time, the authors also aim to fulfil the gap that recently exists in the scholarship of administrative law regarding the applicability of such laws, as established by Taiwan.

2. The public law of Taiwan in the application practice of administrative authorities of the Czech Republic

2.1. The citizenship of Taiwan

The law of the Czech Republic provides that a legal residence of a third country citizen in its territory must be based either on temporary (*přechodný pobyt*)[34], or permanent residence (*trvalý pobyt*).[35] Most types of temporary residence[36] and permanent residence are granted to third country citizens in the form of a residence permit (*povolení k pobytu*), which is issued by the competent administrative authority.

In this respect, the Czech Statistical Office monitors and frequently publishes the number of third country citizens who reside legally in the territory of the Czech Republic. When classifying third country citizens, the Czech Statistical Office used the criterium of citizenship. With respect to the topic of this article, it is important to note that despite the absence of diplomatic recognition between the Czech Republic and Taiwan, the Czech Statistical Office regularly identified the citizens of Taiwan as a distinctive category, which is separated and different from the citizenship of the People's Republic of China (PRC). Having said this, it must be stressed that Taiwan represents the only example of a non-recognised entity, as referenced in the entire document (see Table 1 below).

The fact is, that the public administration of the Czech Republic also regularly refers to the citizenship of Taiwan in other statistics. For example, Taiwanese citizenship is referenced by the Ministry of Industry and Trade in its statistics on foreign citizens who possess trade licences (*živnostenské oprávnění*) pursuant to the domestic legislation[37] (see Table 2 below).

Having said this, we must bear in mind that both the citizenship of mainline China (PRC) and those of Taiwan are products of the application of the laws of each

[32] Such as, for example, the Turkish Republic of Northern Cyprus, Pridnestrovian Moldovan Republic (Transnistria) etc.

[33] See Jakub Handrlica, "A treatise For International Administrative Law", *The Lawyer Quarterly*, 10, issue 4 (December 2020), pp. 462-475.

[34] See Act 326/1999 Coll., § 17 et seq.

[35] Ibid, § 65 et seq.

[36] In some cases a temporary residence is allowed also without a residence permit (visa), see Act 326/1999 Coll, § 18.

[37] See Act 455/1991 Coll., § 10.

specific entity.[38] Consequently, the above presented examples show that, despite the absence of diplomatic recognition, the administrative authorities of the Czech Republic allow in certain cases the application of the laws of Taiwan.

Table 1: Citizens of the People's Republic of China (PRC) and of Taiwan with residence permits in the Czech Republic[39]

	2019			2020		
	In total	Temporary residence (long-term residence permit longer than 90 days)	Permanent residence	In total	Temporary residence (long-term residence permit longer than 90 days)	Permanent residence
People's Republic of China (PRC)	7673	3150	4 523	7940	3354	4 586
Taiwan	461	384	77	619	526	93

	2021			2022		
	In total	Temporary residence (long-term residence permit longer than 90 days)	Permanent residence	In total	Temporary residence (long-term residence permit longer than 90 days)	Permanent residence
People's Republic of China (PRC)	7825	3157	4 668	7916	3178	4 738
Taiwan	589	484	105	737	616	121

Source: available at https://www.czso.cz/csu/cizinci/4-ciz_pocet_cizincu

[38] See Choo Chin Low, "Report on Citizenship Law: China and Taiwan", Country report 2016/10, Robert Schuman Centre for Advanced Studies, European University Institute, 2016, at pp. 18-25.
[39] Lastly updated on 31st December 2022.

Table 2: Citizens of the People's Republic of China (PRC) and of Taiwan, possessing trade licences[40]

	In total	In the territory of the Capital city of Prague
People's Republic of China (PRC)	327	214
Taiwan	24	18

Source: available at https://www.mpo.cz/cz/podnikani/zivnostenske-podnikani/statisticke-uda je-o-podnikatelich/pocty-podnikatelu-dle-obcanstvi-podnikajicich-v-ceske-republice--151024/

2.2. Acts, issued by the Taiwanese administration

Further, several examples clearly show that, despite the absence of diplomatic recognition, the administrative authorities of the Czech Republic recognise in their practice certain acts, issued by the Taiwanese administration.

The practice of recognition of the Taiwanese certifications of criminal records represents a first example to illustrate this argument. The law of the Czech Republic provides that residence permit can be issued to a foreign citizen who presented a certification of criminal record *(doklad obdobný výpisu z evidence Rejstříku trestů*). In case the state of origin does not issue a criminal record, the applicant may substitute such by a solemn declaration.[41]

The law, as referred above, further specifies that the foreign citizen must obtain this certification either from the state of his/her own state citizenship, or from the state of his/her residence (when applying for permanent residency).[42] The law also simultaneously requires that a foreign citizen applying for a permanent residency has to also submit a certification of criminal record from those states where he/she has lived for more than six months in the three years prior to application for a residence permit in the Czech Republic.[43] When a foreign citizen applies for a temporary residency, the public authorities may request such certification as well.[44] The "certification", as required by the law, represents an umbrella term. It covers all those acts of foreign states, as issued either by administrative authorities, or by courts, which certify the criminal past of the individual. The purpose of this regulation is that the public administration must guarantee that no residence permits will be issued to individuals with a criminal past. This cannot be ensured in any other way than requiring certification of criminal past from the jurisdiction of the applicants most recent residence. The regulation simultaneously reflects the fact that such jurisdiction exist that do not provide for a certification of criminal record. In these cases, it would be unjust to require such certification from the foreigner concerned. Therefore, in these situations, the law provides for a possibility to substitute the certificate by a solemn

[40] Lastly updated on 31st March 2024.
[41] See Act 326/1999 Coll., § 31 (1) letter g), § 70 (2) letter e).
[42] Ibid.
[43] Ibid, § 70 (2) letter e).
[44] Ibid, § 31 (3) letter a).

declaration.[45]

In practice, the Ministry of Interior has prepared a concise overview of the existing legal frameworks in various jurisdictions, which serves as guidance for decision making by competent administrative authorities (thereinafter "the Overview").[46] The Overview hasn't been enacted in a form of a legally binding norm, but merely represents a summary of best practices. The fact is, however, that, despite its unbinding nature, the Overview is accepted as an authoritative source for the administrative practice. Consequently, one may argue that the Overview actually represents a source of 'soft' law. The Overview provides for information on:

1) whether the respective legal framework provides for a possibility to obtain a certification of criminal record,

2) which judicial, or administrative authority is competent to issue such a certification in the respective jurisdiction,

3) what are the preconditions for obtaining such certification (e.g. age of the individual, duration of residence in the respective country etc.),

4) arrangements to guarantee authenticity of the certification (legalisation of the certification, apostille etc.).

The fact is that the overview refers to the law, as applicable in those states which maintain diplomatic relations. Having said this, the Overview refers to the certificates, as issued pursuant to the law of the People's Republic of China (PRC).[47] In this respect, the Overview provides, that a citizen of the People's Republic of China (PRC) demonstrates his criminal record by presenting a certification, issued by the notary public, who is being based in the place of his permanent residence. At the same time, however, the Overview also refers to the legal framework, as established by Taiwan.[48] Pursuant to this legal framework, the certificate on criminal record is issued by the Taipei Country Police Bureau. Also, the Taipei Economic and Cultural Office in Prague accepts applications for the certification of criminal records and presents these applications to the competent Taiwanese authority.

Thus, the Overview treads the law of the People's Republic of China (PRC) on one hand and the law of Taiwan on the other, as two equal legal frameworks. The competent authorities of the Czech Republic accept certifications, issued by both these legal frameworks. Obviously, the existence of mutual trust and cooperation between the concerned administrations is more important in this regard than the absence of diplomatic recognition. Consequently, the certificate issued by the Taipei Country Police Bureau represents an example of an act of Taiwanese administration, which is legally recognised in the practice of the administration authorities of the Czech Republic.

The existence of trust into the Taiwanese administration can also be

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[45] Ibid.

[46] Ministry of Interior of the Czech Republic, *Státy vydávající doklad o bezúhonnosti obdobný výpisu z Rejstříku trestů České republiky* [States issuing a Certificate on Criminal Record, which is Equivalent to the Certificate, as issued according to the Law of the Czech Republic], 2019.

[47] Ibid, at p. 10.

[48] Ibid, at pp. 63-64.

demonstrated on the case of recognition of its digital COVID-19 certificates. A system of mutual recognition of the digital COVID-19 certificates was introduced among the member states of the European Union by the Regulation (EU) 2021/953.[49] The system of mutual recognition of the digital certificates in the European Union was based on mutual trust between the concerned public administrations of the member states.[50] At the same time, the Regulation has also opened a possibility to establish regimes of mutual recognition with those non-EU states that shared the basic standards in health protection with the EU. 51. Apart from Iceland, Liechtenstein, Norway, San Marino, Monaco, Switzerland, and the Vatican, 28 other non-EU countries were admitted by the European Commission to participate in the regime of mutual recognition established by the Regulation. By its Decision 2021/2300 of 21 December 202152, the European Commission provided for equivalence between the EU digital COVID-19 certificated and certificates, issued in accordance with the 'Taiwan Digital COVID-19 Certificate System'.[53]

Consequently, Taiwan became the third country in Asia - after the State of Israel[54] and Singapore[55] - to be added to the EU's digital COVID certificate system. On one hand, this step has reconfirmed the existence of trust vis-á-vis the Taiwanese administration. At the same time, the European Commission also clearly stated that "this Decision should not be interpreted as reflecting any official position of the European Union with regard to the legal status of Taiwan.

[49] Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (the Regulation is no longer in force, it ceased to be applicable on 30th June 2023).

[50] See also Jakub Handrlica, "Hesitantly towards mutual recognition of "vaccination passports". A survey on potential ubiquity in administrative law", *Juridical Tribune - Tribuna Juridica*, 11, special issue (October 2021), pp. 277-290.

[51] Regulation (EU) 2021/953, Art. 5 (5): "Where Member States accept proof of vaccination in order to waive restrictions to free movement put in place, in accordance with Union law, to limit the spread of SARS-CoV-2, they shall also accept, under the same conditions, vaccination certificates issued by other Member States in accordance with this Regulation for a COVID-19 vaccine that has been granted a marketing authorisation pursuant to Regulation (EC) No 726/2004."

[52] See Commission Implementing Decision (EU) 2021/2300 of 21 December 2021 establishing the equivalence, for the purpose of facilitating the right of free movement within the Union, of COVID-19 certificates issued by Taiwan, OJ L 458, 22.12.2021, pp. 533–535.

[53] See Tzu-Chia Yu, I-Ming Parng, Jing-Sun Yen, Gang-Wei Cao and Fu-Chung Wang, "A Digital Certificate System That Complies with International Standards: Taiwan Digital COVID-19 Certificate", *Standards*, 3, issue 4 (September 2023), pp. 341-355.

[54] See Commission Implementing Decision (EU) 2021/1482 of 14 September 2021 establishing the equivalence, for the purpose of facilitating the right of free movement within the Union, of COVID-19 certificates issued by the State of Israel to the certificates issued in accordance with Regulation (EU) 2021/953 of the European Parliament and of the Council, OJ L 077, 23.03.2016, pp. 1-3.

[55] See Commission Implementing Decision (EU) 2021/2057 of 24 November 2021 establishing the equivalence, for the purpose of facilitating the right of free movement within the Union, of COVID-19 certificates issued by the Republic of Singapore to the certificates issued in accordance with Regulation (EU) 2021/953 of the European Parliament and of the Council, OJ L 420, 25.11.2021, pp. 129–131.

2.3. Status of the Taipei Economic and Cultural Office in Prague

The fact is, however, that the absence of diplomatic recognition between the Czech Republic and the Taiwan has also certain consequences in the relations of administrative law.[56] This argument can be demonstrated by the following examples, providing for exterritorial status of certain persons:

1) in the field of administrative offences, the Administrative Offences Act provides[57] that no administrative proceeding on an offence can be conducted *vis-á-vis* a person, enjoying immunities pursuant to the international public law,

2) in the field of residence permits, the *Act on the Residence of Foreigners in the Territory of the Czech Republic* provides[58] that a person, enjoying immunities pursuant to the international public law can remain in the territory of the Czech Republic, based on a diplomatic visa,

3) in the field of road traffic, the *Act on Road Traffic* provides[59] that a person, enjoying immunities pursuant to the international public law is entitled to obtain a diplomatic driver licence.

Having said this, one must argue, that the staff of the *Taipei Economic and Cultural Office* in Prague cannot enjoy the preferential treatment outlined above. In all these cases, the legal framework links the status of the 'individual' with the regime of international public law. The situation is very similar concerning the regime of consular protection, which cannot be provided by the employees of the Taipei Economic and Cultural Office in Prague.[60] Consequently, these examples clearly demonstrate that the absence of diplomatic recognition also has direct consequences for the relations of administrative law.

3. Quasi-independent state, mutual cooperation and trust in international administrative law

Very recently, the problem of the application of law for non-recognised entities has become a subject of attention in legal scholarship.[61] The fact is that this discussion specifically concerns the practice in international private law. In the case of private law,

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[56] See also Margaret E. McGuinness, "Non-recognition and State Immunities: Toward a Functional Theory", in *Unrecognised Subjects in International Law*, edited by Władysław Czapliński and Agata Lleczkowska, Wydawnictwo naukowe, Warszawa, 2019, pp. 283-320.

[57] See Act 250/2016 Coll., § 4.

[58] See Act 326/1999 Coll., § 40.

[59] See Act 361/2000 Coll., § 104 (2) letter e).

[60] See Luke T. Lee, *Consular Law and Practice*, 2. ed., Clarendon Press, Oxford, 1991, pp. 260-262.

[61] See Jürgen Basedow, "Non-recognised states in private international law", *op. cit.*, pp. 1-14, Daniel Gruenbaum, "From Statehood to Effectiveness: The Law of Unrecognised States in Private International Law", *op. cit.*, pp. 577-616. Also see Hanna Stakhyra, "Applicability of Private Law of De-Facto Regimes", *Osteuropa Recht*, 65, issue 2 (June 2019), pp. 207-222, Nataliia Martsenko, "Peculiarities of Recognition of Judgments and other Acts Issued by Unrecognized Authorities – The Example of the Autonomous Republic of Crimea, and Luhansk and Donetsk Oblasts", *Osteuropa Recht*, 66, issue 2 (October 2019), pp. 223-237 and Katažyna Mikša, "Consequences of Non-recognition of States in Private International Law", *Osteuropa Recht*, 62, issue 2 (January 2016), pp. 149-160.

the applicability of law for non-recognised entities has been permitted in several cases. On the contrary, both the scholarship and practice of international administrative law basically interlinks recognition by the means of diplomatic relations and the recognition of acts of foreign administration (the 'one voice,' or normative approach).[62] Pursuant to this theory, the public administration of a state can only apply the law of a state recognised by international public law. This theory was based on the following arguments:

1) Firstly, the executive of a state must act consistently in diplomatic relations and those relations between the administration and the individual. A state cannot refuse a recognition to a foreign executive on one hand and admit application of the law of this state on the other.

2) Secondly, the refusal to apply the law of non-recognised entities has been justified by a lack of trust in foreign administration.[63] This reservation has been specifically expressed towards the law, as established by various separatist entities.[64] However, the concept has been applied more broadly.[65]

3) Lastly, the practice has recognised mutual administrative cooperation as a key precondition for the application of foreign law. Only the existence of such mutual cooperation can facilitate an exchange of information between the concerned administrations.

The above outlined practice of application of law, as established by Taiwan appears a contradiction to the one voice approach. Having said this, it is necessary to mention that in the scholarship of international private law, a novel argument has been presented concerning the application of the law of Taiwan. Several authors recently argued[66] that application of the law of this non-recognised entity represents a precedent

[62] See Jakub Handrlica, "The law of non-recognised states in international administrative law", *P.A. Persona e Amministrazione*, 11, issue 2 (April 2023), pp. 757-786.

[63] Henrik Wenander, "Recognition of Foreign Administrative Decisions, Balancing International Cooperation, National Self-Determination, and Individual Rights", *Heidelberg Journal of International Law*, 71, issue 1 (December 2011), pp. 800-802.

[64] See C-432/92 *The Queen v Minister of Agriculture, Fisheries and Food, ex parte S. P. Anastasiou (Pissouri) Ltd*., sub 2 alinea 3 (the Court of Justice of the European Union refused any possibility to recognise a phytosanitary certificate for imported citruses, issued by inspection authorities of the Turkish Republic of Northern Cyprus; here the argument of the absence of trust into the foreign administration was used).

[65] Due to absence of trust, a number of European countries (such the United Kingdom, France, the Netherlands, Belgium etc.) had refused recognition of travel passports issued by Somalia. See European Commission, "Ad-Hoc Query on recognition of identification documents issued by Somalia nationals", available at https://home-affairs.ec.europa.eu/system/files/2020-09/587_emn_ahq_identity_ documents_ issued_somalia_nationals_en.pdf. For the same reasons, the Czech administration refused to accept certifications on criminal records, as issued by the diplomatic mission of the Republic of Ghana. See Ministry of Interior of the Czech Republic, *Státy vydávající doklad o bezúhonnosti obdobný výpisu z Rejstříku trestů České republiky* [States issuing a Certificate on Criminal Record, which is Equivalent to the Certificate, as issued according to the Law of the Czech Republic], 2019, at p. 12.

[66] See Nataliia, "Peculiarities of Recognition of Judgments and other Acts Issued by Unrecognized Authorities", *op. cit.*, pp. 235-236 and more recently, Szymon Zareba, "Documents issued by non-recognised entities. The Approach of the Polish Courts: Comment on the Judgment of the Supreme Court of 25 June 2020", *Polish Yearbook of International Law*, 40, issue 1 (December 2020), p. 301.

that also justifies the application of law within other non-recognised entities. The fact is, however, that this argument cannot be accepted in the annals of administrative law. This is specifically due to following reasons:

1) Firstly, the argument mentioned above was presented concerning the circumstances of private law. Here, in particular, Szymon Zaręba argued[67] that the application of the law of Taiwan also represents a precedent for the possible application of legal systems in other non-recognised entities. In this respect, Zaręba argued in favour of the application of the law for the Turkish Republic of Northern Cyprus. Having said this, we must take into consideration the difference between the relations of private law on one hand and the relations of administrative law on the other. In the relations of administrative law, the administration cannot resign its international stance of the state towards a particular jurisdiction.

2) The fact is that full diplomatic relations between the Czech Republic and Taiwan are withheld for the time being. Even so, administrative cooperation does exist between those nations.[68] This situation reflects the very special position of Taiwan, which is very different from other non-recognised entities existing now worldwide.

3) Concurrently, recognition of the acts issued by Taiwan, clearly show the existence of mutual trust between the two administrations concerned. This is a feature which differs from relations with non-recognised entities from other de facto regimes.

In their article on the de facto statehood, Eiki Berg and Raol Toomla argued[69] that Taiwan must be classified as a quasi-independent state. The authors supported their argumentation with factual participation of this entity at the international communication, air transport, post exchange etc. Taiwan is a member of several international organisations, such as the Asian Development Bank (ADB) and Asia-Pacific Economic Cooperation (APEC). In strict contrast to other non-recognised entities, Taiwan neither exists in a kind of a "legal limbo" (such is the case of the Turkish Republic of Northern Cyprus), nor under an international boycott (such as the Pridnestrovian Moldovan Republic).[70]

The aim of this article is to further elaborate these arguments from the viewpoint of administrative law. The example of Taiwan demonstrates that cooperation and trust between public administrations can also exist in a circumstance when diplomatic recognition between the two concerned states is absent. Having said this, however, one must bear in mind that the Taiwan example is unique. One can barely find a similar situation where effective administrative cooperation exists with a non-recognised entity.[71] The consequences of this are twofold:

1) Firstly, the current practice clearly demonstrates that the relations of international public law on one hand and the relations of administrative law on the other

[67] See Szymon Zareba, "Documents issued by non-recognised entities", *op. cit.,* p. 301.

[68] See for example mutual cooperation in the health sector, which was facilitated by a Memorandum of Understanding signed on 14th July 2023.

[69] See Eiki Berg and Raul Toomla, "Forms of Normalisation in the Quest for De Facto Statehood", *op. cit*., at pp. 33-35.

[70] Ibid, at pp. 36-38.

[71] Having said this, we must bear in mind that Kosovo was also identified as a quasi-independent state in the classification, as developed by Eiki Berg and Raul Toomla.

have distinctive features and their own characteristic nature. Absence of diplomatic recognition does not necessary mean that the laws of non-recognised entities cannot be applied by the administrative authorities of concerned states. At the same time, the provisions on exterritorial the status of certain persons also demonstrates that the absence of diplomatic recognition also has a certain relevance for the relations of administrative law.

2) Secondly, the example Taiwan can barely serve as a precedent for the applicability of law, as also established by other non-recognised entities, as both administrative cooperation and mutual trust are absent *vis-á-vis* these entities.

4. Conclusions

The legal status of Taiwan is a special one. The fact is that the republic represents an entity which is recognised by only eleven member states to the United Nations. Despite the absence of diplomatic recognition, the practice of administrative authorities clearly demonstrates, that the law of this entity is being regularly applied abroad. The reason for this application is the existence of administrative cooperation and mutual trust with the Taiwanese administration. In this respect, the Taiwan strictly differs from other non-recognised entities worldwide. Having said this, the special legal status of Taiwan in international administrative law clearly reflects the notion of a quasi-independent state, which has been developed in the scholarship of international relations.

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