

AGREEMENT ON SOCIAL SECURITY

BETWEEN

THE CZECH REPUBLIC

AND

CANADA

THE CZECH REPUBLIC

AND

CANADA,

hereinafter referred to as “the Parties”,

RESOLVED to co-operate in the field of social security,

HAVE DECIDED to conclude an agreement for this purpose, and

HAVE AGREED AS FOLLOWS:

PART I
GENERAL PROVISIONS

ARTICLE 1
Definitions

1. For the purposes of this Agreement:

“benefit” means, as regards a Party, any cash benefit for which provision is made in the legislation of that Party and includes any supplements or increases applicable to such a cash benefit;

“competent authority” means, as regards a Party, the Minister or Ministry responsible for the application of the legislation of that Party;

“competent institution” means:

as regards the Czech Republic, the institution which provides benefits under the legislation of that Party, and

as regards Canada, the competent authority;

“creditable period” means:

as regards the Czech Republic, a period of insurance, substitute period and equivalent period under the legislation of the Czech Republic; however, a period in the former Czechoslovakia shall be considered as a period of insurance under the legislation of the Czech Republic only to the extent stipulated in the *Agreement between the Czech Republic and the Slovak Republic on Social Security* of 29 October 1992, and

as regards Canada, a period of contributions or residence used to acquire the right to a benefit under the legislation of Canada, and includes a period during which a disability pension is payable under the *Canada Pension Plan*;

“legislation” means the legislation specified in Article 2(1).

2. Any term not defined in this Article has the meaning assigned to it in the applicable legislation.

ARTICLE 2
Material Scope of Application

1. This Agreement shall apply to the following legislation:
 - (a) with respect to Canada:
 - (i) the *Old Age Security Act* and the regulations made thereunder,
 - (ii) the *Canada Pension Plan* and the regulations made thereunder;
 - (b) with respect to the Czech Republic:

the *Pension Insurance Act* and other related legal instruments.
2. Subject to paragraph 3, this Agreement shall also apply to legislation which amends or supersedes that specified in paragraph 1.
3. This Agreement shall further apply to legislation of a Party establishing new categories of beneficiaries or new benefits unless an objection on the part of that Party has been communicated to the other Party not later than 3 months following the entry into force of such legislation.

ARTICLE 3
Personal Scope of Application

This Agreement shall apply to:

- (a) any person who is or who has been subject to the legislation of one or both of the Parties;
- (b) other persons to the extent they derive rights under the applicable legislation from persons described in sub-paragraph (a).

ARTICLE 4
Equality of Treatment

Any person described in Article 3 to whom the legislation of a Party applies shall have the same rights and obligations under that legislation as the citizens of that Party.

ARTICLE 5
Export of Benefits

1. Unless otherwise provided in this Agreement, benefits payable under the legislation of a Party to any person described in Article 3, including benefits acquired by virtue of this Agreement, shall not be subject to any reduction, modification, suspension or cancellation by reason only of the fact that the person resides in the territory of the other Party, and these benefits shall be paid when that person is in the territory of the other Party.
2. Benefits payable under this Agreement to a person described in Article 3 shall be paid even when that person is in the territory of a third State.

PART II
PROVISIONS CONCERNING THE APPLICABLE LEGISLATION

ARTICLE 6
Employed and Self-Employed Persons

Subject to Articles 7 and 8, or unless otherwise agreed by the competent authorities of the Parties or their delegated institutions in accordance with Article 9:

- (a) an employed person who works in the territory of a Party shall, in respect of that work, be subject only to the legislation of that Party;
- (b) a self-employed person who, but for this Agreement, would be subject to the legislation of both Parties in respect of that self-employment shall, in respect thereof, be subject only to the legislation of the Party in whose territory he or she resides.

ARTICLE 7
Detachments

If a person who is subject to the legislation of a Party and who is employed by an employer having a place of business in the territory of that Party is sent, in the course of that employment, to work in the territory of the other Party for the same or a related employer, that person shall, in respect of that work, be subject only to the legislation of the first Party as though that work was performed in its territory. In the case of a detachment, this coverage may not be maintained for more than 60 months without the prior consent of the competent authorities of both Parties or their delegated institutions.

ARTICLE 8

Government Employment

1. Notwithstanding any provision of this Agreement, the provisions regarding social security of the *Vienna Convention on Diplomatic Relations* of 18 April 1961 and the *Vienna Convention on Consular Relations* of 24 April 1963 shall continue to apply.
2. A person engaged in government employment for a Party who is posted to work in the territory of the other Party shall, in respect of that employment, be subject only to the legislation of the first Party.
3. Except as provided in paragraphs 1 and 2, a person who resides in the territory of a Party and who is engaged therein in government employment for the other Party shall, in respect of that employment, be subject only to the legislation of the first Party. However, if that person has, prior to the start of that employment, made contributions under the legislation of the employing Party, he or she may, within 6 months of the start of that employment or the entry into force of this Agreement, whichever is later, elect to be subject only to the legislation of the latter Party.

ARTICLE 9

Exceptions

On the joint request of an employed person and his or her employer, or on the request of a self-employed person, the competent authorities of the Parties or their delegated institutions may, by common agreement, make exceptions to the provisions of Article 6 through 8 with respect to any person or categories of persons.

ARTICLE 10

Definition of Certain Periods of Residence with Respect to the Legislation of Canada

1. For the purpose of calculating the amount of benefits under the *Old Age Security Act*:
 - (a) if a person is subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada during any period of presence or residence in the Czech Republic, that period shall be considered as a period of residence in Canada for that person as well as for that person's spouse or common-law partner and dependants who reside with him or her and who are

not subject to the legislation of the Czech Republic by reason of employment or self-employment;

- (b) if a person is subject to the legislation of the Czech Republic during any period of presence or residence in Canada, that period shall not be considered as a period of residence in Canada for that person and for that person's spouse or common-law partner and dependants who reside with him or her and who are not subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada by reason of employment or self-employment.

2. In the application of paragraph 1:

- (a) a person shall be considered to be subject to the *Canada Pension Plan* or to the comprehensive pension plan of a province of Canada during a period of presence or residence in the Czech Republic only if that person makes contributions pursuant to the plan concerned during that period by reason of employment or self-employment;
- (b) a person shall be considered to be subject to the legislation of the Czech Republic during a period of presence or residence in Canada only if that person makes compulsory contributions pursuant to that legislation during that period by reason of employment or self-employment.

PART III PROVISIONS CONCERNING BENEFITS

CHAPTER 1 TOTALIZING

ARTICLE 11

Periods under the Legislation of the Czech Republic and Canada

- 1. If a person is not eligible for a benefit because he or she has not accumulated sufficient creditable periods under the legislation of a Party, the eligibility of that person for that benefit shall be determined by totalizing these periods and those specified in paragraphs 2 through 4, provided that the periods do not overlap.
- 2. (a) For purposes of determining eligibility for a benefit under the *Old Age Security Act* of Canada, a creditable period under the legislation of the Czech Republic shall be considered as a period of residence in Canada.

- (b) For purposes of determining eligibility for a benefit under the *Canada Pension Plan*, a calendar year including at least 90 days which are creditable periods under the legislation of the Czech Republic shall be considered as a year which is creditable under the *Canada Pension Plan*.
- 3. For purposes of determining eligibility for an old age benefit under the legislation of the Czech Republic:
 - (a) a calendar year which is a creditable period under the *Canada Pension Plan* shall be considered as a creditable period under the legislation of the Czech Republic;
 - (b) a period which is creditable under the *Old Age Security Act* of Canada and which is not part of a creditable period under the *Canada Pension Plan* shall be considered as a creditable period under the legislation of the Czech Republic.
- 4. For purposes of determining eligibility for an invalidity or survivor's benefit under the legislation of the Czech Republic, a calendar year which is a creditable period under the *Canada Pension Plan* shall be considered as a creditable period under the legislation of the Czech Republic.

ARTICLE 12

Periods under the Legislation of a Third State

If a person is not eligible for a benefit on the basis of the creditable periods under the legislation of the Parties, totalized as provided in Article 11, the eligibility of that person for that benefit shall be determined by totalizing these periods and creditable periods accumulated under the legislation of a third State with which both Parties are bound by social security instruments which provide for the totalizing of periods.

ARTICLE 13

Minimum Period to be Totalized

Notwithstanding any other provision of this Agreement, if the total duration of the creditable periods accumulated by a person under the legislation of a Party is less than one year and if, taking into account only those periods, no right to a benefit exists under the legislation of that Party, the competent institution of that Party shall not be required to pay a benefit to that person in respect of those periods by virtue of this Agreement.

CHAPTER 2
BENEFITS UNDER THE LEGISLATION OF CANADA

ARTICLE 14
Benefits under the Old Age Security Act

1. If a person is eligible for an Old Age Security pension or an allowance solely through the application of the totalizing provisions of Chapter 1, the competent institution of Canada shall calculate the amount of the pension or allowance payable to that person in conformity with the provisions of the *Old Age Security Act* governing the payment of a partial pension or allowance, exclusively on the basis of the periods of residence in Canada which may be considered under that Act.
2. Paragraph 1 shall also apply to a person outside Canada who would be eligible for a full pension in Canada but who has not resided in Canada for the minimum period required by the *Old Age Security Act* for the payment of a pension outside Canada.
3. Notwithstanding any other provision of this Agreement:
 - (a) an Old Age Security pension shall be paid to a person who is outside Canada only if that person's periods of residence, when totalized as provided in Chapter 1, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for the payment of a pension outside Canada;
 - (b) an allowance and a guaranteed income supplement shall be paid to a person who is outside Canada only to the extent permitted by the *Old Age Security Act*.

ARTICLE 15
Benefits under the Canada Pension Plan

If a person is eligible for a benefit solely through the application of the totalizing provisions of Chapter 1, the competent institution of Canada shall calculate the amount of benefit payable to that person in the following manner:

- (a) the earnings-related portion of the benefit shall be determined in conformity with the provisions of the *Canada Pension Plan*, exclusively on the basis of the pensionable earnings under that Plan;

- (b) the flat-rate portion of the benefit shall be determined by multiplying:
 - (i) the amount of the flat-rate portion of the benefit determined in conformity with the provisions of the *Canada Pension Plan*
by
 - (ii) the fraction which represents the ratio of the periods of contributions to the *Canada Pension Plan* in relation to the minimum qualifying period required under that Plan to establish eligibility for that benefit, but in no case shall that fraction exceed the value of one.

CHAPTER 3

BENEFITS UNDER THE LEGISLATION OF THE CZECH REPUBLIC

ARTICLE 16

Calculating the Amount of Benefit Payable

1. If, under the legislation of the Czech Republic, the conditions for eligibility for a benefit are met without the need to take into account creditable periods accumulated under the legislation of Canada, the competent institution of the Czech Republic shall determine the amount of that benefit exclusively on the basis of the creditable periods accumulated under its legislation.
2. If, under the legislation of the Czech Republic, eligibility for a benefit can be established only through the application of the totalizing provisions of Chapter 1, the competent institution of the Czech Republic:
 - (a) shall calculate the theoretical amount of the benefit which would be paid if the totalized creditable periods had been accumulated under the legislation of the Czech Republic alone; and
 - (b) on the basis of the theoretical amount calculated in accordance with sub-paragraph (a), shall determine the amount of benefit payable by applying the ratio of the length of the creditable periods accumulated under the legislation of the Czech Republic to the totalized creditable periods.
3. For purposes of determining the assessment base used in calculating the amount of a benefit, creditable periods under the legislation of Canada shall be excluded.
4. A supplement due to infirmity which is payable to a person whose eligibility for a pension has been determined through the application of the totalizing provisions of Chapter 1 shall be calculated in accordance with the formula specified in paragraph (2)(b).

ARTICLE 17
Restrictions

1. The provisions of the legislation of the Czech Republic concerning the reduction, suspension or cancellation of benefits when these overlap with other benefits or when the beneficiary derives other income or pursues gainful employment shall also be applied to a person who receives a benefit under the legislation of Canada or who derives other income or pursues gainful employment outside the Czech Republic. The preceding sentence, however, shall not apply in instances involving overlapping of benefits of the same kind for invalidity, old age and survivorship which have been granted by the competent institutions of both Parties.
2. The competent authority of the Czech Republic may, in regard to a recipient of a benefit under its legislation, limit the application of the legislative provisions mentioned in paragraph 1 concerning the reduction, suspension or cancellation of benefits which overlap with other benefits, or it may entirely waive the application of those provisions. The application of those provisions shall be waived in all cases in which the application of the provisions would result in a lower entitlement to benefit than would occur through the application of the provisions of the legislation of the Czech Republic concerning overlapping benefits in regard to a State with which the Czech Republic has not concluded an international agreement on social security.
3. A person whose invalidity began before he or she reached age 18 and who has not participated in the insurance scheme of the Czech Republic for the necessary period shall acquire the right to a full invalidity pension only if that person is a permanent resident of the Czech Republic.

PART IV
ADMINISTRATIVE AND MISCELLANEOUS PROVISIONS

ARTICLE 18
Administrative Arrangement

The competent authorities of the Parties shall conclude an administrative arrangement which establishes the measures necessary for the application of this Agreement and designates the liaison agencies of the Parties.

ARTICLE 19
Exchange of Information and Mutual Assistance

1. The competent authorities and institutions responsible for the application of this Agreement:
 - (a) shall, to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of this Agreement;
 - (b) shall lend their good offices and furnish assistance to one another for the purpose of determining eligibility for, or the amount of, any benefit under this Agreement, or under the legislation to which this Agreement applies, as if the matter involved the application of their own legislation;
 - (c) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement.
2. The assistance referred to in sub-paragraph 1(b) shall be provided free of charge, subject to any provision contained in an administrative arrangement concluded pursuant to Article 18 for the reimbursement of certain types of expenses.
3. Unless disclosure is required under the laws of a Party, any information about a person which is transmitted in accordance with this Agreement to that Party by the other Party is confidential and shall be used only for purposes of implementing this Agreement and the legislation to which this Agreement applies.

ARTICLE 20
Exemption or Reduction of Taxes and Charges

1. Any exemption from or reduction of taxes and legal, consular and administrative charges for which provision is made in the legislation of a Party in connection with the issuing of any certificate or document required to be produced for the application of that legislation shall be extended to certificates or documents required to be produced for the application of the legislation of the other Party.
2. Any documents of an official nature required to be produced for the application of this Agreement shall be exempt from any authentication by diplomatic or consular authorities and similar formality.

ARTICLE 21
Language of Communication

For the application of this Agreement, the competent authorities and institutions of the Parties may communicate directly with one another in any official language of either Party.

ARTICLE 22
Submitting Claims, Notices and Appeals

1. Claims, notices and appeals concerning eligibility for, or the amount of, a benefit under the legislation of a Party which should, for the purposes of that legislation, have been presented within a prescribed period to a competent authority or institution of that Party, but which are presented within the same period to an authority or institution of the other Party, shall be treated as if they had been presented to the competent authority or institution of the first Party. The date of presentation of claims, notices and appeals to the authority or institution of the other Party shall be deemed to be the date of their presentation to the competent authority or institution of the first Party.
2. Subject to the second sentence of this paragraph, a claim for a benefit under the legislation of a Party made after the date of entry into force of this Agreement shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant at the time of application:
 - (a) requests that it be considered an application under the legislation of the other Party, or
 - (b) provides information indicating that creditable periods have been completed under the legislation of the other Party.

The preceding sentence shall not apply if the applicant requests that his or her claim to the benefit under the legislation of the other Party be delayed.

3. In any case to which paragraph 1 or 2 applies, the authority or institution to which the claim, notice or appeal has been submitted shall transmit it without delay to the authority or institution of the other Party.

ARTICLE 23
Payment of Benefits

1. (a) The competent institution of Canada shall pay its benefits under this Agreement in the currency of Canada.
- (b) The competent institution of the Czech Republic shall pay its benefits under this Agreement to a beneficiary resident in Canada or a third State in the currency of Canada or in any other freely convertible currency.
2. The competent institutions of the Parties shall pay their benefits under this Agreement without any deduction for their administrative expenses.

ARTICLE 24
Resolution of Difficulties

1. The competent authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement.
2. Any dispute which has not been resolved in accordance with paragraph 1 shall be settled by negotiations between the Parties.

ARTICLE 25
Understandings with a Province of Canada

The relevant authority of the Czech Republic and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada in so far as those understandings are not inconsistent with the provisions of this Agreement.

PART V
TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 26
Transitional Provisions

1. Any creditable period completed before the date of entry into force of this Agreement shall be taken into account for the purpose of determining the right to a benefit under this Agreement and its amount.

2. No provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of this Agreement.
3. Subject to paragraph 2, a benefit, other than a lump sum payment, shall be paid under this Agreement in respect of events which happened before the date of entry into force of this Agreement.

ARTICLE 27
Duration and Termination

1. This Agreement shall remain in force without any limitation on its duration. It may be terminated at any time by either Party giving written notice of termination through the diplomatic channel to the other Party; in such a case, the termination shall take effect on the first day of the thirteenth month following the final day of the month in which the first Party has delivered a written notice to the other Party.
2. In the event of the termination of this Agreement, any right acquired by a person in accordance with its provisions shall be maintained and negotiations shall take place for the settlement of any rights then in course of acquisition by virtue of those provisions.

ARTICLE 28
Entry into Force

This Agreement shall enter into force on the first day of the fourth month following the final day of the month in which the Parties shall have exchanged written notices through the diplomatic channel confirming that their respective legal requirements for the entry into force of this Agreement have been completed. The date of the exchange of the written notices shall be the date of the delivery of the last notice.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Prague, this 24th day of May 2001, in two original copies each in the Czech, English and French languages, all texts being equally authentic.

FOR THE CZECH REPUBLIC
Vladimír Špidla

FOR CANADA
Jane Stewart